



AN APPEAL OF THE APPROVAL OF QUAIL MEADOWS APARTMENTS PROJECT

APPLICATION No. 6-ENC-25-0196
CDP-003761-2020

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Approved Project

The approved project is a multi-family residential development consisting of 448 residential apartments (358 market rate and 90 low-income units) in two four-story residential buildings with two levels of basement parking, a two-story fitness/community building, private amenity and common open spaces, grading/utility, and landscaping improvements, stormdrain sliplining repair, and the use of three temporary construction trailers.

As stated in the staff report, a neighboring property owner submitted a third-party environmental survey of the project site, which identified two willow trees that were not identified as sensitive resources by the project's initial biological report per the industry-standard (e.g., the presence of hydrophytic vegetation, hydric soil, and wetland hydrology), but were considered wetlands under the jurisdiction of the California Coastal Commission.

The City of Encinitas staff report states: "The development (448 apartment complex) being proposed is not subject to the Coastal Commission Appeal Jurisdiction. However, the project includes two improvements that are appealable: (1) sliplining repair of an existing stormdrain that passes underneath the identified wetlands and the habitat restoration within the 100-foot wetland buffer, and (2) the habitat restoration. Since the wetlands have been determined to be under the California Coastal Commission's jurisdiction, only the improvements associated with the stormdrain repair and the habitat restoration are subject to Coastal Commission appeal."

Within the stated appealable portion of the project, we argue:

- the existing stormdrain and its headwall are unpermitted, illegal structures;
- the existing stormdrain impedes the natural flow of a blue line stream; a well-documented tributary to Cottonwood Creek;
- the project has not adequately analyzed water quality impacts to Cottonwood Creek;

We further argue the development outside of the wetland area is subject to review by the California Coastal Commission as surface water flows of Cottonwood Creek's tributary extend beyond the wetland and throughout the middle of the project site. Under PRC §30603(a)(2):

"Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff."

Finally, we argue additional inconsistencies with the California Coastal Act and Encinitas certified Local Coastal Program (LCP):

- traffic impacts to coastal access were not sufficiently analyzed;
- impacts to special communities were not analyzed;
- project develops over natural steep slopes;
- waiver inconsistent with LCP.

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Issues Within Stated Appealable Jurisdiction

Existing storm drain and headwall are unpermitted, illegal structures

The project’s drainage plan relies on the use of a pre-existing headwall and 48” corrugated metal pipe (CMP) for low-flow volumes of off-site flows from the middle-north of the property. This CMP is to undergo slip line repair and to be connected to a proposed on-site 84-inch reinforced concrete pipe storm drain system. The staff report and associated technical reports do not provide confirmation of the installation date of the headwall and 48” CMP nor its current state of functionality. Rather, the 48” CMP and headwall is referred to as “existing” or “pre-existing”.

Figure 1 shows a photo taken of the 48” in CMP and historic headwall in its current condition, taken in February 2024.



Figure 1 – Photo of the 48” existing pipe and headwall, taken February 2024

The existing headwall and 48” CMP were installed by previous owners of the property in the 1980’s as evidenced by a letter and deed to the property, provided by a former resident of the site, and included as Exhibit 1. This timeframe is after the implementation of the California Coastal Act (CCA) which required a Coastal Development Permit (CDP) for all development within the Coastal Zone of the city.

Under PRC §30106:

“ ‘Development’ means, on land, in or under water, the placement or erection of any solid material or structure ... As used in this section, “structure” includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.” (emphasis added)

A search of the California Coastal Commission’s Public Data Portal resulted in no records of a permit issued for the installation of neither the 48” CMP nor headwall for any parcel that comprises the project, as shown in Exhibit 2. A further search of all CDP records issued for Quail Gardens Drive resulted in no records for any development within the parcels nor addresses that comprise the project, as shown on the Public Data Portal export provided as Exhibit 3. During the City Council meeting on February 12, 2025, during which the project was approved, City engineering staff confirmed that they could find no evidence of a permit for these structures on record with the City of Encinitas nor the County of San Diego.

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Existing storm drain and headwall impede the natural flow of a blue line stream

A well-documented blue line stream, identified on several resources as a tributary to Cottonwood Creek, enters the middle of the project to the north of the wetland area and travels south along its natural drainage course extending beyond the wetlands, eventually draining to an existing 84” reinforced concrete pipe at the south end of the property.

Surface water flows are impeded by the unpermitted headwall and 48” CMP within the wetland, which are also incapable of capturing the total surface water flows observed on the site as described in the project’s associated drainage technical report. The project also diverts flows exceeding the capacity of this CMP into a box culvert at the edge of the wetland area.

This blue line stream is identified as potential jurisdictional waters in several resources, including the 2018 City of Encinitas Final Environmental Assessment (Final EA)¹ prepared for analysis of all candidate Housing Element sites. This project is identified as candidate site AD2 in the Final EA. Specifically, the Biological Resources section of the Final EA states:

“Candidate Sites #11, #AD1, and #AD2 are adjacent to/contain a stream.” (*Final EA*, pg. 4.3-8)

A composite excerpt of Final EA Figure 4.3-2, Potential Jurisdictional Wetlands & Water and its legend is provided as Figure 2.

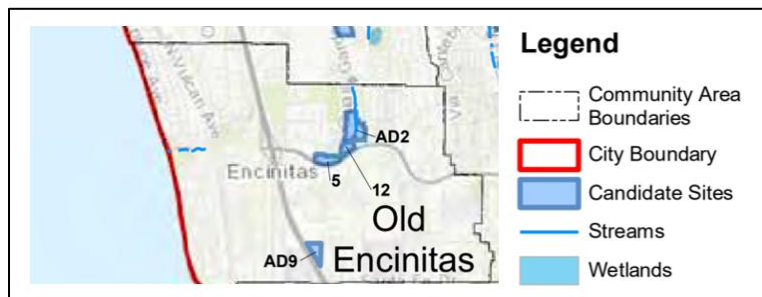


Figure 2 - Excerpt of Final Environmental Assessment Figure 4.3-2, Potential Jurisdictional Wetlands & Water

The project’s Biological Resources Letter Report inaccurately describes this drainage course as an “unnamed tributary” that is undergrounded via the existing 48” CMP. This is in direct contrast to the project’s associated drainage report and the following resources, also provided as Exhibit 4:

- Historic USGS Topographic Maps from 1948 and 1968
- City of Encinitas-hosted Stream Dataset (digitized from USGS 7.5 minute topographic maps; 2005 datapoint)
- City of Encinitas-hosted Flood Insurance Rate Map Viewer
- 2007 Planning Commission agenda report for a project by this applicant on this site, incorporating the natural drainage course via a swale and rehabilitated riparian area
- Cottonwood Creek Watershed informational sign created by the City of Encinitas

¹ Accessed at <https://www.encinitasca.gov/government/departments/development-services/policy-planning-housing/policy-planning/housing-plan-update-2018/environmental-assessment-final>

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- Certified Final Environmental Assessment (2018)
 - Listed as surface water flows within the biological resources section
 - Listed as a hydrological resource and a 303(d)-listed impaired water body
- Recent photographic evidence showing incised channel and surface water flows beyond the wetland buffer area.

Due to the presence of this tributary to Cottonwood Creek and its natural drainage course, the project would be consistent with the LCP if it incorporated the drainage course into the design of the development, rather than divert its flows into the proposed box culvert at the edge of the wetland area.

Land Use Policy 8.6 states:

“Significant natural features shall be preserved and incorporated into all development. Such features may include bluffs, rock outcroppings, natural drainage courses, wetland and riparian areas, steep topography, trees and views.”

Resource Management Goal 1 states:

“The City will conserve, protect, and enhance the water resources in the Planning Area.”

Resource Management Policy 9.2 states:

“All drainage courses should be maintained in natural or semi- natural vegetation utilizing existing topography as opposed to concrete ditches or pipes.”

Resource Management Policy 9.3:

“Where possible, bridges should be used in lieu of pipes, box culverts, or underground channels to preserve the integrity of the natural stream courses, in keeping with community character in the Planning Area.”

Resource Management Policy 13.5:

“The City shall promote and require the conservation and preservation of natural resources and features of the area in their natural state and avoid the creation of a totally urbanized landscape. Encourage the planting of trees and other vegetation, especially native species, to enhance the environment.”

Project has not adequately analyzed water quality impacts to Cottonwood Creek

The Encinitas Final EA specifically lists the project site (identified as AD2) as “within or adjacent to impaired waters” (*Final EA*, pg. 4.8-8)

Figure 4.8-3 in the Final EA identifies 303(d) Impaired Water Bodies within the City of Encinitas and their candidate sites. This image shows Cottonwood Creek, including the tributary section flowing across the project site (AD2), as a listed impaired body. An excerpt of the figure identifying Cottonwood Creek as a 303(d)-listed impaired water body and its legend is provided as Figure 3

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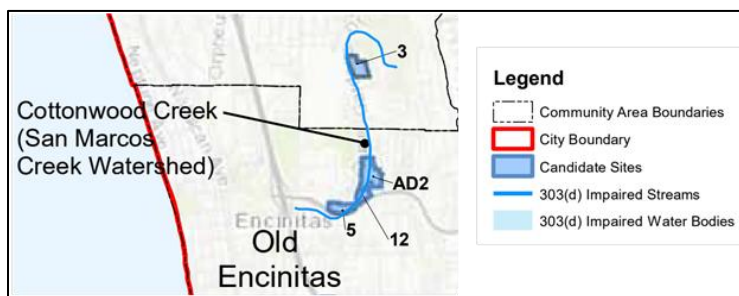


Figure 3 – Excerpt of Final Environmental Assessment Figure 4.8-3, 303(d) List of Impaired Water Quality Segments and Legend

The project’s stormwater quality control plan includes two biofiltration basins (BMP-200 and BMP-300) leading to underground vaults at the far east and west portions of the wetland area bordering the development. However, as the project has not adequately identified this tributary of Cottonwood Creek nor its impaired status, we argue the project has not determined if the associated best management practices are sufficient to prevent additional contamination of 303(d)-listed water body Cottonwood Creek.

Land Use Policy 2.8 states, in relevant part:

“Development shall not be permitted where it will result in significant degradation of ground, surface, or ocean water quality, or where it will result in significant increased risk of sewage overflows, spills, or similar accidents.”

Resource Management Policy 2.3 states:

“To minimize harmful pollutants from entering the ocean environment from lagoons, streams, storm drains and other waterways containing potential contaminants, the City shall mandate the reduction or elimination of contaminants entering all such waterways; pursue measures to monitor the quality of such contaminated waterways, and pursue prosecution of intentional and grossly negligent polluters of such waterways.”

Issues Outside of Stated Appealable Jurisdiction

Surface water flows of Cottonwood Creek tributary extend beyond the wetland and throughout the project site

There is a well-documented history of surface water flows of this identified tributary to Cottonwood Creek extending from the north of the project site, through the wetlands, and further south to an existing 84” reinforced concrete pipe.

Documentary evidence of this tributary to Cottonwood Creek’s identification is provided in Exhibit 4, and is listed below:

- Historic USGS Topographic Maps from 1948 and 1968
- City of Encinitas-hosed Stream Dataset (digitized from USGS 7.5 minute topographic maps; 2005 datapoint)

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- City of Encinitas-hosted Flood Insurance Rate Map Viewer
- 2007 Planning Commission agenda report for a project by this applicant on this site, incorporating via a swale and rehabilitated riparian area
- Cottonwood Creek Watershed informational sign created by the City of Encinitas
- Certified Final Environmental Assessment (2018)
 - Listed as surface water flows within the biological resources section
 - Listed as a hydrological resource and a 303(d)-listed impaired water body
- Recent photographic evidence showing incised channel and surface water flows beyond the wetland buffer area.

Surface water flows persist along the majority of the natural drainage course. As the 48” CMP has failed within the wetland area, the project’s drainage report describes the existing condition as follows:

“The topography of the project site consists of a valley aligned in north to south direction (i.e., flow generally drains from north to south). As such, in the existing condition, storm water runoff generated on-site flows towards the middle of the site, valley bottom, and then towards the south... Flows in excess of the 48-inch CMP capacity, estimated to be 425 cfs (see Section 3.1 for additional information on this estimate), will overtop the headwall at the south end of the wetland area and flow south across the project site and into a low area located near the south project site boundary where a storm drain lateral conveys the flow to the 84-inch RCP.”



Figure 4 – Photo of Stream

A photograph of the stream, taken by a neighbor on January 22, 2024, is provided as Figure 4. This photograph shows a large volume of water flowing through the natural stream channel, with well-defined vegetated banks, towards the existing 84” storm drain system at the southern border of the property. This flow demonstrates the unpermitted CMP’s failed state and the headwall and CMP’s inability to contain surface water flows beyond the wetlands, and this tributary of Cottonwood Creek is in its natural state.

The approved project would build a residential structure and subterranean parking garage within the natural drainage course of this tributary to Cottonwood Creek and its historic riparian area, diverting flows in excess of the failed 48” CMP’s capacity into a box culvert at the edge of the wetlands.

An original application by this same applicant included this stream’s natural drainage course into its design via a swale and re-created riparian habitat. In this previous development proposal, under the summary of the Citizen’s Participation Plan (CPP): “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.” (*Agenda Report*², pg. 6-2)

² *Agenda Report*, City of Encinitas Planning Commission item 6, Case Number 05-002 TM/MUP/DR/CDP/EIA. Meeting date August 2, 2007. Accessed via archived data from the City of Encinitas at <https://archive.encinitasca.gov/>

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Additionally, the applicant and City of Encinitas Planning Department proposed lot averaging to:

- “re-create a riparian drainage area through the property as it had existed historically” (*Agenda Report*, pg. 6-24), and
- “The riparian area will be preserved in open space and the residential lots distributed throughout the remainder of the property”. (*Agenda Report*, pg. 6-13)

This proposed action of incorporating the was determined to be beneficial to the project:

“The proposed project will improve the condition of the drainage channel by opening the existing pipe into a large swale without affecting the off-site wetland area.” (*Agenda Report*, pg. 6-15)

Finally, with regards to lot averaging:

“The applicant proposes lot averaging in accordance with Section 30.16.020A of the Municipal Code to re-create and preserve an open riparian area across the subject property...The intent of lot averaging is to provide subdivision design flexibility to preserve unique physical features of a property, such as the historic drainage course across the subject property... The design of the proposed project would re-create and preserve the drainage course and residential lots would be distributed throughout the rest of the subject property.”

Due to this tributary to Cottonwood Creek’s identification on relevant federal resource maps and datasets, the certified Final EA, city-owned educational signs, and prior applicant knowledge of the historic drainage course, we argue the development outside of the wetland buffer area is subject to review by the California Coastal Commission as under PRC §30603(a)(2):

“Developments approved by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, or stream, or within 300 feet of the top of the seaward face of any coastal bluff.

Without incorporation of the stream’s natural drainage channel, the project is inconsistent with several LCP policies.

Land Use Policy 8.6 states:

“Significant natural features shall be preserved and incorporated into all development. Such features may include bluffs, rock outcroppings, natural drainage courses, wetland and riparian areas, steep topography, trees and views.”

Due to the presence of a historic riparian area, Land Use Policy 8.10 states, in relevant part:

“...The California Department of Fish and Game and the U. S. Fish and Wildlife Service shall be consulted in such buffer determinations and their comments shall be accorded great weight...”

Resource Management Goal 1 states:

“The City will conserve, protect, and enhance the water resources in the Planning Area.”

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Resource Management Policy 9.2 states:

“All drainage courses should be maintained in natural or semi- natural vegetation utilizing existing topography as opposed to concrete ditches or pipes.”

Resource Management Policy 9.3:

“Where possible, bridges should be used in lieu of pipes, box culverts, or underground channels to preserve the integrity of the natural stream courses, in keeping with community character in the Planning Area.”

Resource Management Policy 13.5:

“The City shall promote and require the conservation and preservation of natural resources and features of the area in their natural state and avoid the creation of a totally urbanized landscape. Encourage the planting of trees and other vegetation, especially native species, to enhance the environment.”

Recreation Policy 1.1 states:

“Continue to cooperate with property owners, the County of San Diego, and others to preserve and maintain the riparian habitats within the planning area.”

Traffic impacts to coastal access were not sufficiently analyzed

The project has exclusive ingress and egress along Quail Gardens Drive, a collector street between two major arterials: Encinitas Boulevard and Leucadia Boulevard. West of Interstate 5, these two roads are listed as “major coastal access roadways”.

Circulation Element Policy 6.8, states, in relevant part:

“Major coastal access roadways include Coast Highway 101 and the portions of the following roadways that are located west of Interstate 5: Manchester Avenue, Birmingham Drive, Santa Fe Drive, Encinitas Boulevard, Leucadia Boulevard, and La Costa Avenue.”

This project is co-located with two other approved Housing Element sites with density bonuses at Encinitas Boulevard and Quail Gardens Drive. While these properties are east of Interstate 5 by 0.5 miles, the main access to coastal resources for remains via Encinitas Boulevard.

According to the Final EA’s Transportation and Traffic section, the following segments of Encinitas Boulevard would still result in a deficient level of service (LOS) in Future Year 2035 without any development or approval of housing element sites:

- Encinitas Boulevard: I-5 SB Ramps to I-5 NB Ramps – LOS F
- Encinitas Boulevard: I-5 NB Ramps to Saxony Road – LOS F
- Encinitas Boulevard: Quail Gardens Drive to Delphinium Street – LOS F
- Encinitas Boulevard: Delphinium Street to Balour Drive – LOS F

With the approval and development of the housing element sites, all above listed segments would remain at a deficient level of service. As modeled under Future Year 2035 conditions with the project

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(implementation of all Housing Element sites), these segments would have significant, unavoidable impacts and remain at LOS F.

Critically, the impacts studied in the Final EA only accounted for base density calculated at net acreage for the candidate sites with no evaluated potential density increases. Additionally, with the approval of the two co-located projects at the corner of Quail Gardens Drive and Encinitas Boulevard the approved unit count (using gross density and density bonus) exceeds the evaluated impact of these developments by 53%, as described in Table 2.

Table 2 – Approved Projects Impacting Encinitas Boulevard and Quail Gardens Drive

Project	Final EA Candidate Site Identification	Final EA Maximum Units Evaluated	Total Approved Apartment Units
Sunshine Gardens Apartments	12	102	140
Encinitas Boulevard & Quail Gardens Drive (a.k.a. Moonlight Apartments)	05	144	202
Quail Meadows Apartments	AD2	270	448
Total		516	790

Individual traffic studies for the projects did not evaluate access to the coast and evaluated each project individually. No study to date has determined the cumulative impacts of these projects at their total approved density. The specific traffic study for this project states:

“Freeway mainline segments were not analyzed since the Proposed Project is not anticipated to add more than 50 peak hour trips, in either direction, to a freeway mainline segment.”

It is unclear what justification assumes no more than 50 peak-hour trips for a development that accommodates 448 units and 770 parking spaces.

Under PRC §30250(a), in relevant part:

“New residential, 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 where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.”

No cumulative impact analysis has been performed for these co-located sites. Future year projections without the co-located projects would still render four contiguous segments of Encinitas Boulevard at a deficient LOS F. We argue that the project underestimates its potential to impact coastal access and believe this study warrants further investigation.

Furthermore, the project is assumed to have significant, unavoidable traffic impacts to those major segments of Encinitas Boulevard. By co-locating three high-density residential developments, where two sites are in a largely undeveloped state and the third was previously used as a commercial nursery, it significantly alters the existing character of this intersection. The impacts of these developments on traffic and transportation are inconsistent with the California Coastal Act and several Circulation Element goals.

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Under PRC § 30252, in relevant part:

“The location and amount of new development should maintain and enhance public access to the coast by: ... (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads...”

Circulation Element Goal 1 states:

“Encinitas should have a transportation system that is safe, convenient and efficient, and sensitive to and compatible with surrounding community character.”

Circulation Element Goal 2 states:

“The City will make every effort to develop a varied transportation system that is capable of serving both the existing population and future residents while preserving community values and character.”

Additional Inconsistencies with Encinitas certified LCP

A number of additional inconsistencies have been identified regarding the project’s approval, the Encinitas certified LCP, and California Coastal Act. Several major inconsistencies are described below.

Impacts to Special Communities

The project is located on Quail Gardens Drive, which also provides exclusive access to several popular visitor sites such as the San Diego Botanic Gardens, the San Dieguito Heritage Museum, and the Encinitas Union School District (EUSD) FARM Lab.

The San Diego Botanic Garden is a 37-acre property with 29 unique, themed gardens and a glass conservatory located directly across the street from the project. In their 2023 Annual Report, the San Diego Botanic Gardens reported a total of 265,000 visitors, exclusive of private events.

The San Dieguito Heritage Museum and Heritage Ranch, located across the street from the San Diego Botanic Garden, regularly provides visiting elementary school studies with local history tours as part of their state-mandated curriculum, in addition to hosting unique and first-of-their kind exhibits and community events.

The EUSD Farm Lab provides sustainability education to visiting students and growing organic produce for student lunches through regenerative agriculture practices. This property serves over 6,000 students annually in addition to hosting public and private events.

No analysis on impacts to access of these attractive and essential community and visitor resources has been performed.

Land Use Policy 2.7 states:

“The design of future development shall consider the constraints and opportunities that are provided by adjacent existing development.”

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PRC § 30253 states, in relevant part:

“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”

Project Develops over Natural Steep Slopes

The project is within the Hillside/Inland Bluff overlay zone. Steep slopes on Lot 2, the majority of which are in excess of 25%, are characterized as manufactured rather than naturally occurring without any supporting studies. The project’s associated Manufactured Slopes Report image (relevant to report numbered items 8 and 9) shows the parts of Lot 2 on the eastern portion of the lot contain a vegetated slope and were not impacted by previous nursery operations by the prior owners of the property. Discussions with the historic owners of the site indicate that these slopes bordering the existing development to the east have not been modified and rather are part of the natural topography. Additional steep slopes within the property are natural banks and fluvial erosion due to the identified blue line stream and its natural drainage course. A comparison of the existing conditions slope analysis and historic aerial show the natural state of the steep slopes from before previous nursery operations on the site, and are provided as Exhibit 5.

Public Safety Element Policy 1.2 states, in relevant part:

“Restrict development in those areas where slope exceeds 25% specified in the Hillside/Inland Bluff overlay zone regulations of the zoning code.”

Land Use Policy 8.6:

“Significant natural features shall be preserved and incorporated into all development. Such features may include bluffs, rock outcroppings, natural drainage courses, wetland and riparian areas, steep topography, trees and views.”

Waiver Inconsistent with LCP

The project requests a waiver of design standards on Lot 2 to a 0-foot front yard setback for an approximately 147-foot section of the building that crosses over the lot line. Lot 3 has a 0-foot side yard setback for a length of approximately 100 feet, associated with the same encroachment. This waiver impacts Quail Gardens Drive, a 2-lane limited local augmented road. This waiver is inconsistent with the Circulation Element as well as Encinitas Municipal Code.

Circulation Element Policy 2.10:

“Establish landscaping buffer and building setback requirements along all roads which are local augmented status or larger, except where inappropriate.”

EMC § 30.16.010(3)(f) states that front yard setback (ft.) of 10’ are required for R-30 OL.

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List of Exhibits

Exhibits	File Name	Retrieved From
Exhibit 1	Letter Confirming Date Range of Pipe and Headwall Installation	Former Resident of Site
Exhibit 2	Project Parcel Coastal Development Permit Search	California Coastal Commission Public Data Portal
Exhibit 3	Quail Gardens Drive Coastal Development Permit Search	California Coastal Commission Public Data Portal
Exhibit 4	Evidence of Surface Water Flows of Cottonwood Creek Tributary	Report Authors, several resources
Exhibit 5	Comparison of Existing Conditions to Historic Aerial	Historic Aerials by NETROnline