

SUPPLEMENTAL REPORT

CONTINUED APPEAL OF THE 10/03/24 ENCINITAS PLANNING COMMISSION APPROVAL OF QUAIL MEADOWS APARTMENTS

(CASE NO. MULTI-003751-2020,
DR-003759-2020, & CDP-003761- 2020)

Encinitas Citizens for Responsible Development | February 12, 2025

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Supplemental Report for the Appeal to the Encinitas Planning Commission Approval of Quail Meadows Apartments

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

Introduction

On November 20, 2024, the Encinitas City Council heard arguments from Encinitas Citizens for Responsible Development (ECRD), Supporters Alliance for Environmental Responsibility (SAFER; another appellant), and the applicant. Mayor Kranz called a motion to continue the hearing where the appellants and applicant would present information regarding the California Environmental Quality Act's (CEQA) applicability to this project. The motion carried unanimously to continue the meeting.

This report is submitted as supplemental to the original appeal, filed on behalf of ECRD, of the Planning Commission's October 3, 2024 decision to approve the Quail Meadows Apartments development ("project"; #MULTI-003751-2020; DR-003759-2020 & CDP-003761-2020).

The goal of CEQA is to reduce or prevent environmental damage by identifying potential impacts, determining mitigatory measures to reduce or eliminate impacts; if possible, consider alternatives to the project; and document the impacts in an Initial Study with a Negative Declaration or Mitigated Negative Declaration, or Environmental Impact Report (EIR).

While there is no specific CEQA exemption for density bonus projects in California, some projects may qualify for exemptions should they meet certain criteria. This report provides additional information regarding CEQA relevance and shows that the proposed project does not qualify for exemptions.

- The blue-line stream, identified in several federal and City resources as a segment of Cottonwood Creek, is omitted from project documents;
- The project does not qualify as "by-right" and is not exempt from CEQA;
- The project does not comply with the certified Local Coastal Program (LCP) or certified Final Environmental Assessment (EA) in that it exceeds significance thresholds for water quality impacts;
- Technical reports submitted for the project are insufficient in determining the specific impacts of this project;
- The project does not qualify for additional exemptions under CEQA; and
- The certified Final EA does not cover the currently approved project size as it exceeds the maximum unit capacity evaluated for the site.

Supporting evidence for this report is also provided in the form of Exhibits.

A full list of Exhibits is provided at the end of this supplemental report.

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The blue-line stream is identified in City resources as segment of Cottonwood Creek

Summary Argument

As approved by the Planning Commission, the project would build a residential structure over a segment of Cottonwood Creek (as identified on federal maps and datasets) and riparian area and would build a subterranean parking garage within the Cottonwood Creeks's drainage course.

The project's current application, staff report, and supplemental studies make no mention of the presence of Cottonwood Creek and a riparian area on the project site, no analysis for its applicability as Waters of the United States or impact to Waters of the State of California, nor have the relevant agencies governing water resources been cited as contacted for assessment. Due to this segment of Cottonwood Creek's identification on relevant federal resource maps the project is wholly subject to review by the California Coastal Commission.

The segment of Cottonwood Creek running through the project site is identified on historic federal maps, and current federal maps and datasets.

The City of Encinitas further references this stream as a hydrological resource on a City of Encinitas sign regarding the Cottonwood Creek Watershed, identifies it as a stream/Cottonwood Creek in the Hydrological and Biological Resources sections of the Final Environmental Assessment, and is a 303(d)-listed impaired water body.

Evidence

The original report submitted for this appeal (dated November 20, 2024) referenced several key resources identifying a blue-line stream along the property site, including:

- Historic USGS 7.5 minute topographic maps dated 1948 and 1968, accessed from <https://apps.nationalmap.gov/downloader/#/mapshttps://apps.nationalmap.gov/downloader/#/maps>.
- City of Encinitas Open GIS Streams dataset, described as "Streams located within the City of Encinitas boundary, represented as blue lines. Heads-up digitized from USGS 7.5 minute topo quad DRGs", accessed at <https://gis-encinitas.opendata.arcgis.com/https://gis-encinitas.opendata.arcgis.com/>
- City of Encinitas-hosted Open GIS Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM) viewer, accessed at <https://firm.encinitasca.gov/https://firm.encinitasca.gov/>

Appended screenshots of the four resources listed above are included in this supplemental report as Exhibit S1.

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These maps and datasets provide the basis for identification of the stream as a preliminary indicator of waters of the United States (WOUS), and waters of the state of California. EMC § 20.02.030 reinforces definitions of this, and adds the following:

“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.***” (emphasis added)

The term “stream” is further defined under 14 California Code of Regulations (CCR) § 13577 for California Coastal Commission (CCC) jurisdiction and permit requirements:

“any stream mapped by USGS, or identified in a local coastal program. . .”

Current data is available from the City of Encinitas’ Open GIS Data Hub¹, described as:

“The City's site for downloading and learning more about available GIS data. This is a constantly growing repository of public data”.

The description for the Stream dataset is:

“Streams located within the City of Encinitas boundary, represented as blue lines. Heads-up digitized from USGS 7.5 minute topo quad DRGs”².

This dataset shows the stream located on the project site; the datapoint for which was uploaded on January 25, 2005. A screenshot image was retrieved on October 25, 2024, and is provided in Exhibit S1.

A publicly displayed sign describing the Cottonwood Creek Watershed, created by the City of Encinitas Public Works, Parks and Recreation, and Cultural Arts Departments, also shows the stream running through the Quail Meadows site, names it as a segment of Cottonwood Creek, and describes it as “visible above ground”.

The sign further describes the watershed as “a small coastal drainage part of a network of watersheds...” and that the headwaters are a “pond ... located on Sunset Ranch ... [that today] is part of the Encinitas Ranch Golf Course”.

This sign is posted on Highway 101 at the following pinned location in Google Maps: <https://maps.app.goo.gl/Nbumk7rWFFbE5XvJ8><https://maps.app.goo.gl/Nbumk7rWFFbE5XvJ8>. A screenshot of the location, shown as a yellow pin on S. Coast Highway 101, is provided in Figure 1

¹ The USGS Stream dataset via City of Encinitas Open GIS Data Hub is accessed at <https://gis-encinitas.opendata.arcgis.com/>.

² Description available online at https://gis-encinitas.opendata.arcgis.com/datasets/cf25b56d218f41dfbc39a4be7372ab09_0/about

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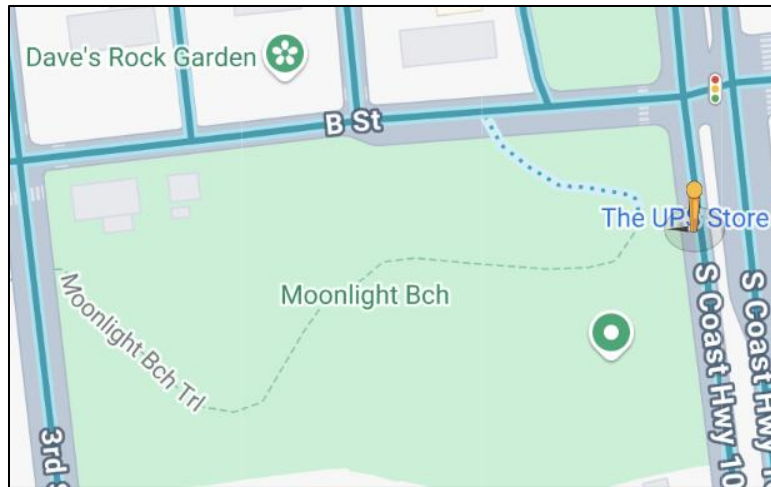


Figure 1 – Location of the Cottonwood Creek Watershed sign in Google Maps

A photo of the sign is provided as Figure 2 and a zoomed-in photo of the map showing the stream is provided as Figure 3.

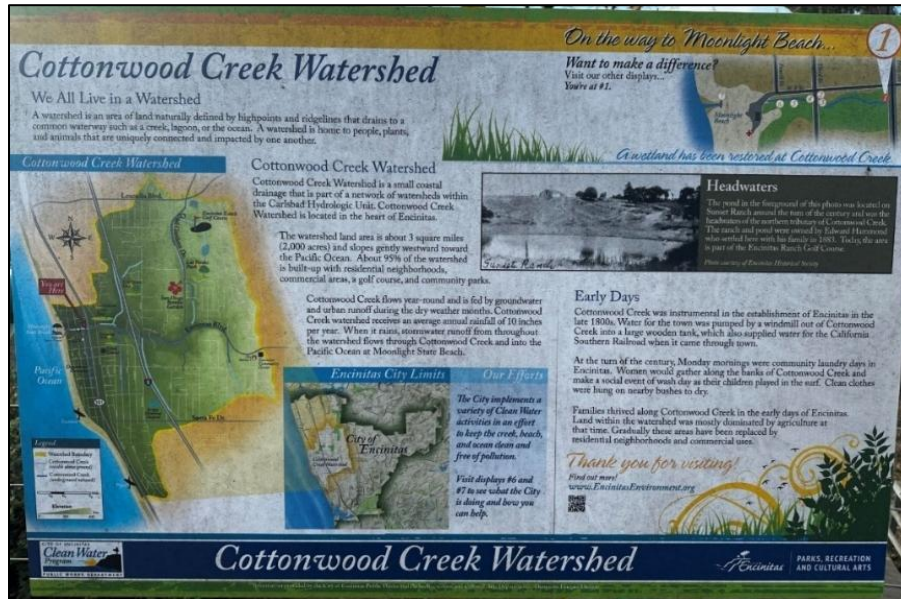


Figure 2 – Publicly-displayed Informational Sign naming the stream as Cottonwood Creek

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Figure 3 – Zoom-in of Cottonwood Creek Watershed Map, project site highlighted in red outline.

As shown above, Cottonwood Creek outfalls to Moonlight State Beach and impacts to Cottonwood Creek are likely to result in significant impacts to this public resource.

Further review of the City of Encinitas' certified Final Environmental Assessment (Final EA)³ also identifies this segment of Cottonwood Creek on the project site under section 4.8 Hydrology and Water Quality

³ Final Environmental Assessment for the 2013-2021 Draft Housing Element Update, prepared by Kimley-Horn & Associates. 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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Figure 4.8-1, Hydrological Features, shows the project site (AD2) and a mapped stream running through the project site within the San Marcos Hydrologic Area (Batiqitos Subunit 904.51). As shown, this segment is considered a “surface water feature”. An excerpt of the figure and its legend showing the project site and stream identification is provided as Figure 4 and the full image is provided as Exhibit S2.

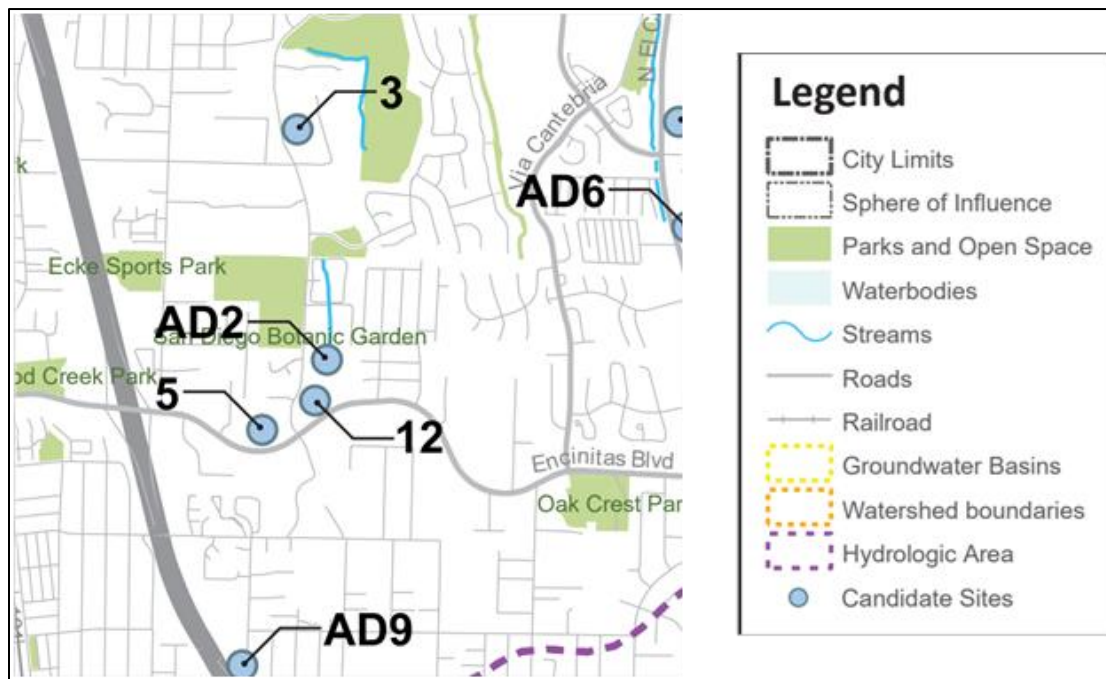


Figure 4 – Excerpt of Final Environmental Assessment Figure 4.8-1, Hydrological Resources and Legend

Furthermore, the Final EA references the 2016 certified Program Environmental Impact Report’s (2016 PEIR⁴) identification of beneficial uses of surface water in the San Marcos and Escondido Creek Hydrological Areas, including:

“...preservation of biological habitats of special concern, estuarine habitat, wildlife habitat, preservation of rare and endangered species...” (*Final EA*, pg. 4.8-4)

The Final EA continues to address Federal Clean Water Act Section 303(d), and a state’s requirement to assess the quality of their waters and publish a list of those waters not meeting water quality standards. As described in the Final EA:

“Once a water body is placed on the 303(d) List of Water Quality Limited Segments, it remains on the list until a Total Maximum Daily Load (TMDL) is adopted and/or water quality standards are attained.” (*Final EA*, pg. 4.8-4)

⁴ Environmental Assessment/Program Environmental Impact Report for the 2013-2021 Housing Element (SCH # 2015041044) prepared by RECON. Accessed at <https://www.encinitasca.gov/government/departments/development-services/policy-planning-housing/policy-planning/housing-plan-update-2013-2016/final-environmental-impact-report>

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The Final EA specifically lists the project site as within or adjacent to impaired waters of Cottonwood Creek (pg. 4.8-8)

Figure 4.8-3 shows the list of 303(d) Impaired Water Bodies within the City of Encinitas and their candidate sites. This image shows Cottonwood Creek as a listed impaired body running the entirety of the project site. An excerpt of the Cottonwood Creek identification and legend is provided as Figure 5 and the full image is provided as Exhibit S3.

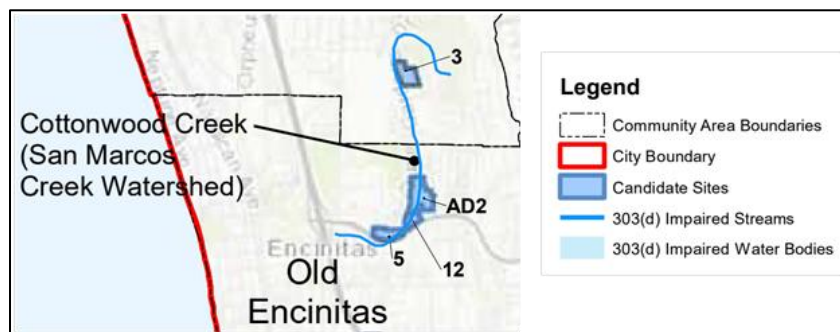


Figure 5 – Excerpt of Final Environmental Assessment Figure 4.8-3, 303(d) List of Impaired Water Quality Segments and Legend

As the Final EA did not perform focused biological studies for each project site, a biological resources technical report was completed for the project. The Biological Resources Letter Report prepared by Dudek⁵ did not identify the 303(d) listed Cottonwood Creek as identified jurisdictional water with potential project impacts, which is in direct conflict with the Final EA. Specifically, the Final EA states:

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

An excerpt of Figure 4.3-2, Potential Jurisdictional Wetlands & Water is provided as Figure 6 and the full exhibit is provided as Exhibit S4.

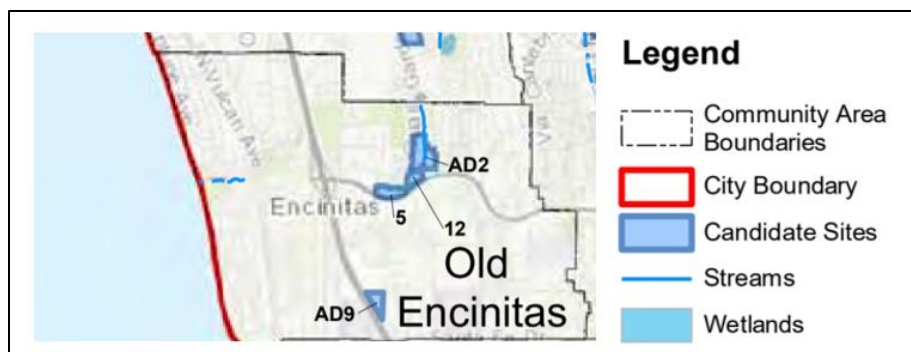


Figure 6 - Excerpt of Final Environmental Assessment Figure 4.3-2, Potential Jurisdictional Wetlands & Water

⁵ Biological Resources Letter Report for the Quail Meadows Apartments Project, City of Encinitas, California. Prepared by Dudek. October 3, 2024 Planning Commission Agenda Item 8b – PC-9

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The applicant and historic Planning Department staff are also aware of this segment of Cottonwood Creek and relevant city standards, as its incorporation was planned for in a previous application (heard on August 2, 2007; Case No: 05-002 TM/MUP/DR/CDP/EIA)⁶. The report refers to this stream channel as a natural drainage course.

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*, pg. 6-2)

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)

Conclusion

There is a well documented history of surface water flows on this project site:

- Historic USGS Topographic Maps from 1948 and 1968
- City of Encinitas-hosted Stream Dataset (digitized from USGS 7.5 minute topographic maps; 2005 datapoint)
- 2007 Planning Commission agenda report, incorporating via a swale and rehabilitated riparian area
- City of Encinitas-hosted Flood Insurance Rate Map Viewer
- Cottonwood Creek Watershed informational sign
- Certified Final Environmental Assessment (2018)

The importance of the stream, a segment of Cottonwood Creek which outfalls to Moonlight State Beach, has been identified in federal maps, datasets, City of Encinitas public educational resources, prior development plans, and the certified Final EA.

The City of Encinitas acts as a custodian for waters within its boundaries and is responsible for implementing control and remedial actions to waters listed as 303(d) impaired bodies through the application of General Plan/Local Coastal Program policies and ensuring conformance with federal and state laws. The project's approval does not satisfy this obligation.

⁶ *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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The project does not qualify as “by right” and is not exempt from CEQA

Summary Argument

“By-right” development is one that fully complies with all existing building and zoning codes, where no special permits or variances are required.

The proposed project is in the Coastal Zone and as such is subject to the issuance of a Coastal Development Permit. Additionally, the project’s diversion of a segment of Cottonwood Creek into a box culvert is subject to review by the California Department of Fish and Wildlife to identify if the action requires a Lake and Streambed Alteration Agreement. Both actions require evaluation of additional project criteria and a decision by the issuing agencies, which meets the definition of discretionary review.

The project also seeks to use an existing, unpermitted 48” corrugated metal pipe (CMP) and headwall to support low volume flows across the project site. Use of unpermitted structures is illegal, and therefore the project does not comply with existing building code requirements.

The project is not considered “by right” under the law, qualifies as a “discretionary project”, and therefore is subject to CEQA.

Evidence

Projects considered “by right” are defined under Government Code §§ 65583.2(h) and (i), where the project is located on a site designated for “by right” approval, complies with the Subdivision Map Act, and:

“at least 20 percent of the units are affordable to lower income households during the planning period”

The project meets the three criteria listed under subsection (h), where it is located on a site zoned for “by right” development identified in the 5th Cycle Housing Element Update, does not require a subdivision, as well as provides 20 percent of the minimum total number of units as affordable.

However, subsection (i) reads:

“the local government’s review of the owner-occupied or multifamily residential use may not require a conditional use permit, planned unit development permit, or other discretionary local government review or approval that would constitute a “project” for purposes of Division 13 (commencing with Section 21000) of the Public Resources Code.” (emphasis added).

The staff report interprets subsection (i) to mean that the City shall not require discretionary review, however this interpretation is incorrect. The criteria indicates that **if no additional discretionary local government review or approval is required, it meets the criteria for “by right”.**

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Under CEQA Guidelines (PRC § 21080(a)), all discretionary projects are subject to CEQA. Discretionary projects are defined under 14 CCR § 15357:

“[A] project which requires the exercise of judgment or deliberation when the public agency or body **decides to approve or disapprove** a particular activity, as distinguished from situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances, or regulations.” (emphasis added).

Encinitas municipal code defines the Action by the Authorized City Agency for Coastal Development Permits under EMC § 30.80.90 as:

“**A decision** to approve a coastal development permit must be based upon the following written findings:

1. The proposed **project is consistent with the certified Local Coastal Program** of the City of Encinitas.
2. The **proposed development conforms with Public Resources Code Section 21000 and following (CEQA)** and that there are no feasible mitigation measures or feasible alternatives available which would substantially lessen any significant adverse impact that the activity may have on the environment.
3. For projects involving development between the sea or other body of water and the nearest public road, approval shall include a specific finding that such development is in conformity with the public access and public recreation policies of Section 30200 et seq. of the Coastal Act.” (emphasis added).

Furthermore, the project, as approved, diverts a segment of Cottonwood Creek into a box culvert and builds over its stream channel and riparian area. Diversion, alteration or other disturbance of streams and natural drainage courses requires coordination with federal and state agencies to assess impacts and permitting requirements. The project to date has not acknowledged the need for such coordination.

At a minimum, the California Department of Fish and Wildlife is required to be notified of this plan under California Fish and Game Code § 1602. Upon review, the agency will determine the impact of the activity and if a Lake and Streambed Alteration Agreement is required under that section. This action also meets the criteria for discretionary approval under 14 CCR § 15357 and 14 CCR § 669.5:

“(q) Type of Agreement.

- (1) The **department shall determine at its sole discretion** the type of agreement the entity may obtain for a project or projects.” (emphasis added)

The project’s need for a Coastal Development Permit and review for streambed impacts by California Department of Fish and Wildlife renders it discretionary and therefore subject to CEQA.

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As established in the original appeal report, no Coastal Development Permit was issued for the 48” CMP and headwall, which was installed sometime between 1982 and 1986 making them qualifying development under the California Coastal Act. These structures are therefore unpermitted and illegal. Under City of Encinitas Building Codes, EMC § 23.24.230 Permit Limitations and Conditions, it states:

“It shall be a condition of every permit issued under this chapter that the applicant shall comply with all the provisions of the City of Encinitas Watercourse Protection, Stormwater Management and Discharge Control Ordinance in Chapter **20.08** of this Code and City of Encinitas BMP Design Manual, Part II.”

As the project seeks to attempt repair of and use this 48’ CMP and connect it to a proposed storm drain system, the drainage plan is inconsistent with municipal code under EMC § 20.08.070:

“No person shall establish, use, or maintain an illegal connection to the stormwater conveyance system or the receiving waters.”

This inconsistency disqualifies the project from “by right” status.

Additionally, the project does not conform with several elements of the certified LCP, conflicts with state law regarding water quality, and exceeds significance thresholds identified in the Final EA, as is discussed in subsequent sections.

Conclusion

Due to the project’s location within the Coastal Zone and the presence of a stream on site, the project requires discretionary review to decide whether the project qualifies for a Coastal Development Permit and requires a Lake and Streambed Alteration Agreement issued by California Department of Fish and Wildlife. Use of the unpermitted 48” CMP and headwall violates EMC § 20.08.070 and therefore does not qualify for a building permit under EMC § 23.24.230.

These reviews and inconsistency with existing building code exclude the project from “by right” status and render it subject to CEQA.

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The project exceeds significance thresholds for water quality impacts

Summary Argument

In order to qualify for a Coastal Development Permit, projects must comply with the certified LCP and findings within the certified Final EA.

The Final EA identifies this stream as part of Cottonwood Creek, a 303(d) listed impaired water body for which the City of Encinitas is responsible for implementing avoidance or water quality improvement efforts through project conformance with the General Plan/Local Coastal Program.

The project fails to identify the stream, despite its listing as a hydrologic resource in the Final EA and City resources. The project fails to incorporate relevant policies and laws to protect this segment of Cottonwood Creek thereby resulting in significant impacts.

As the project does not comply with federal or state water quality laws and policies and those set forth in the General Plan/LCP, the project does not qualify as exempt from CEQA and does not qualify for a Coastal Development Permit.

Evidence

The presence of this segment of Cottonwood Creek and its status as a 303(d) listed impaired water body is well documented in the Final EA's Hydrology and Water Quality section⁷.

The Final EA also lists significance determination thresholds, or cases in which development would have a significant adverse impact on the environment, typically requiring mitigation measures. As stated under section 4.8.3 Significance Determination Thresholds, impacts would be significant if a project would:

- Violate any water quality standards or waste discharge requirements (see Issue 1);...
- Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in a substantial erosion or siltation on- or off-site (see Issue 3);
- Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off-site (see Issue 4);...
- Otherwise substantially degrade water quality (see Issue 6);" (*Final EA*, pg. 4.8-6 – 4.8-7)

The Final EA referenced the conclusions of the 2016 PEIR, stating:

“while development of the housing sites has the potential to increase the amount of pollutants discharged into surface waters, **all development would be subject to Federal, State, and local regulations including Encinitas General Plan (EGP) policies intended to control water**

⁷ Section 4.8 Hydrology and Water Quality of the Final Environmental Assessment for the 2013-2021 Draft Housing Element Update, prepared by Kimley-Horn & Associates. Accessed at <https://www.encinitasca.gov/home/showpublisheddocument/1088/638039330005400000>

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quality impacts. Substantial adverse water quality impacts would be avoided and impacts would be less than significant.” (Final EA, pg. 4.8-7, emphasis added)

Therefore, development would only be considered below significance thresholds if a project complies with all applicable laws and regulations, including the Encinitas General Plan and its certified Local Coastal Program.

The project, as approved, diverts this segment of Cottonwood Creek into a box culvert, builds over Cottonwood Creek’s stream channel and riparian area, and has not identified the need for a Lake and Streambed Alteration Agreement. At a minimum, the California Department of Fish and Wildlife is required to be notified under California Fish and Game Code §1602:

“An entity **shall not substantially divert** or obstruct the natural flow of, **or substantially change or use any material from the bed, channel, or bank of, any river, stream,** or lake, or deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake, **unless** all of the following occur... **The department receives written notification** regarding the activity in the manner prescribed by the department” (emphasis added)

The project conflicts with the California Coastal Act by interfering with surface water flow of this segment of Cottonwood Creek. Under PRC § 30231:

“The biological productivity and the quality of coastal waters, **streams,** wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, **minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface waterflow,** encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, **and minimizing alteration of natural streams**” (emphasis added).

Due to the project building over the stream channel, thereby eliminating this segment of Cottonwood Creek’s natural drainage course and historic riparian area, it is also inconsistent with the LCP’s Land Use Policy 8.6:

“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.” (emphasis added).

Additionally, Land Use Policy 8.10 requires 50-foot buffer zones for natural drainage courses and riparian areas, and that:

“...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...”

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The Final EA also lists general plan policies and mitigation measures the project would be required to comply with in order to be consistent with the EA and below significance thresholds.

By not incorporating this segment of Cottonwood Creek and historic riparian area into the development, and the increase in impervious surfaces along the project site to 75% or more of the existing land⁸, the project risks significant degradation of its water quality due to increase runoff pollutants entering the natural drainage.

The Final EA identifies that this project is “within or adjacent to impaired waters” (i.e., 303(d) listed impaired water bodies). The project, as approved, risks unmitigated impact to this segment of Cottonwood Creek. The additional following General Plan/Local Coastal Program policies listed in the Final EA as, if followed, would result in a project with less than significant impact:

“Land Use Policy 2.8: **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. (Coastal Act/30231)” (emphasis added)

“Land Use Policy 8.2: **Development within coastal and flood plain areas identified in the Land Use and Resource Management Elements must be limited, designed to minimize hazards associated with development in these areas, and to preserve area resources.**” (emphasis added)

“Resource Management Policy 2.3: 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. (Coastal Act/30230/30231/30233)” (emphasis added)

The project does not adequately manage for the continued improvement of this segment of Cottonwood Creek as it directly conflicts with preservation of area resources by diverting it into a box culvert and further into the stormwater management system. The risk of additional contaminants entering the waterway are not managed by any Best Management Practices within the project’s Storm Water Quality Management Plan⁴.

Conclusion

This project does not identify nor incorporate the stream into the development and is inconsistent with the Encinitas General Plan, certified LCP, and certified Final EA. As approved by the Planning Commission the project develops over the streambed without resource protection, assessment, mitigation, or authorization from federal or state agencies for potential impact and permitting requirements as required under Land Use Policy 8.10 and California Fish and Game Code §1602.

⁸ Stormwater Intake Form and Priority Development Project Stormwater Quality Management Plan for Quail Meadows Apartments prepared by Rick Engineering. October 3, 2024 Planning Commission Agenda Item 8b – PC-17.

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This plan is inconsistent with the requirements of Land Use Policies 2.8, 8.2, and 8.6 and Resource Management Policy 2.3.

As a result, this project will likely result in significant impacts to a 303(d) listed water body and is inconsistent with both federal and state water law protections for water quality.

The project does not comply with federal and state laws regarding water resources and does not comply with the Land Use Element and Resource Management Element of the General Plan/LCP, thereby making the project's impact significant.

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Technical reports for the project are insufficient

Summary Argument

The staff report for this appeal argued that the project's associated technical studies sufficiently concluded that no environmental impacts would exceed the expected impacts under the Final EA. This report provides evidence to the contrary.

Additionally, the LCP amendment for the 5th Cycle Housing Element Update was certified by the California Coastal Commission specifically because each site would be subject to all resource protections under the LCP.

The project's technical reports fail to correlate with findings in the certified Final EA, and the project remains inconsistent with the LCP.

Evidence

When presenting the staff report for the appeal hearing on November 20, 2024, Assistant Director Colamussi, presenting on behalf of the project's Senior Planner Dichoso, stated:

“An Environmental Assessment was prepared to identify, and mitigate where feasible, the potentially significant environmental effects of implementing the housing element. This EA was adopted by reference and incorporated into the General Plan upon adoption of the Housing Element and related documents... Several site-specific technical studies were conducted to demonstrate compliance with the EA. The project was then conditioned to comply with the recommendations of those technical studies. The technical studies concluded that there were no environmental impacts that would exceed what was already anticipated during the Housing Element review cycle and that city-certified Housing Element was certified by the California Coastal Commission.”

This statement infers that the project, a Housing Element site, need only comply with the avoidance and mitigation measures identified in the Final EA to be approved. This report seeks to disabuse Staff of this notion if this is indeed their assertion.

In fact, both the Final EA and LCP policies must be considered when analyzing a project's specific impacts. When the California Coastal Commission certified the LCP amendment for adoption of the 5th Cycle Housing Element Update, they did so because the LCP policies protecting sensitive resources would remain in place. As individual permits for each Housing Element site are considered, these LCP protections would apply and site constraints imposed by sensitive resources would be identified at that time. This is reiterated through email correspondence obtained through public record request, where the California Coastal Commission indicated:

“... the actual site constraints imposed by sensitive resources at the time a development project is proposed will be reviewed and must be consistent with the all the resource protection policies of the LCP” (Exhibit S5, pg. 1)

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The City is required to not only follow measures protecting sensitive resources in the Final EA, but also required to implement the LCP's protections for sensitive resources.

Technical reports submitted for the project have not identified the segment of Cottonwood Creek running through the project site, did not correctly identify the portion of natural steep slopes present on Lot 2, and the project's approved design conflicts with several LCP policies. The project is also likely to result in significant impacts on water quality.

As described in an earlier section, the Biological Resources Letter Report prepared by Dudek⁹ did not identify the 303(d) listed Cottonwood Creek as identified jurisdictional water with project impacts, which is in direct conflict with the Final EA. Specifically, the Final EA states:

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

Additionally, two independent biologists submitted, via public comment, their own reports contradicting the findings of these reports, questioned the methods used by Dudek, as well as identified significant additional biological resources on the project site. These reports can be accessed in the following public comments:

Table 1 – Additional Biological Reports

Meeting	Prepared By	Comment Item & Pages	Link
Planning Commission, November 03, 2022	Hamilton Biological	Item 8A Correspondence Pages 1-8	11-01-2022 Correspondence
Planning Commission, February 01, 2024	Hamilton Biological	Item 8A Correspondence Pages 66-72	2024-01-31 Correspondence (1 of 2)
Planning Commission, October 03, 2024	Shawn Smallwood, PhD, submitted via Lozeau Drury	Item 8B Correspondence Pages 21-88	2024-10-02 Correspondence

⁹ Biological Resources Letter Report for the Quail Meadows Apartments Project, City of Encinitas, California. Prepared by Dudek. October 3, 2024 Planning Commission Agenda Item 8b – PC-9

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Meeting	Prepared By	Comment Item & Pages	Link
Planning Commission, October 03, 2024	Hamilton Biological	Item 8B Correspondence Pages 26-33	2024-10-03 Correspondence 1

The Biological Resources section of the Final EA concluded that significant impacts would exist unless specific mitigation measures were incorporated.

The technical reports associated with the project are insufficient as they fail to identify significant resources and do not correlate with the findings of the Final EA.

Conclusion

The California Coastal Commission certified the LCP Amendment incorporating the 5th Cycle Housing Element Update with the expectation that Housing Element sites located in the Coastal Zone will fully comply with LCP policies and the findings of the Final EA.

This project is inconsistent with the requirements of Land Use Policies 2.8, 8.2, 8.6, and 8.10 and Resource Management Policy 2.3. As discussed in previous sections, this project will likely result in significant impacts to a 303(d) listed water body and is inconsistent with both federal and state water law protections for water quality.

The project's associated technical reports failed to adequately characterize natural resources on the site, and result in a project that is inconsistent with the LCP and Final EA. Staff's assertion that the project's technical reports correlate with the Final EA and LCP are inconsistent with the findings of these specific reports.

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The project does not qualify for additional statutory or categorical exemptions under CEQA

Summary Argument

The project does not qualify for “by right” exemption from CEQA due to the need for a Coastal Development Permit, assessment by the California Department of Fish and Wildlife for a Lake and Streambed Alteration Agreement, and its inconsistency with relevant building codes.

There are several additional statutory or categorical exemptions that the project may qualify for. This project’s unique characteristics and inconsistencies with the Final EA, General Plan and Local Coastal Program eliminate its eligibility for exemptions under CEQA. Additionally, as the Final EA evaluated all Housing Element candidate sites potential density using net acreage calculations, it is insufficient for projects calculating density under gross acreage calculations.

Evidence

Statutory exemptions are types of projects that the California Legislature have determined are not subject to CEQA. A statutory exemption applies to any given project that falls under its definition, regardless of the project’s potential impacts to the environment. Statutory exemptions include:

- Transit Priority Projects (PRC § 2115.1; SB 375)
- Sustainable Communities Strategy: Specific Plan in Transit Priority Areas (PRC § 21155.4; SB 743)
- Infill Housing (PRC § 21159.24; SB 1925)
- Unincorporated Infill (PRC § 21159.25; AB 1804, similar to Class 32 Categorical Exemption under CEQA)
- Projects where a Specific Plan has a pre-existing, certified EIR (Govt. Code § 6545, CEQA Guidelines § 15182)

Categorical exemptions are made up of classes of projects that generally are considered not to have potential impacts on the environment. Categorical exemptions are identified by the Natural Resources Agency, are defined in the CEQA Guidelines, and are subject to limitations contained in CEQA. There are several, however these are the two most common used for housing:

- Class 3 Small Structures (CEQA Guidelines § 15303)
- Class 32 Infill Development (CEQA Guidelines § 15332)

A full summary of criteria associated with each exemption listed is provided as Exhibit S6.

The project was analyzed for the criteria associated with each exemption case in Table 1.

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Table 1 – CEQA Exemption Evaluation		
Exemption	Assessment	Rationale ¹⁰
Statutory Exemption: Transit Priority Projects (PRC § 2115.1)	Does not qualify	<ul style="list-style-type: none"> • Most parcels have 25% of their area farther than one-half mile from an existing or planned major transit stop¹¹ • Project size is greater than 8 acres • Project consists of more than 200 residential units • Project site contains wetlands • Project site has significant value as a wildlife habitat¹²
Statutory Exemption: Sustainable Communities Strategy: Specific Plan in Transit Priority Areas (PRC § 21155.4; SB 743)	Does not qualify	<ul style="list-style-type: none"> • Most parcels have 25% of their area farther than one-half mile from an existing or planned major transit stop • Project is inconsistent with the certified Final EA, General Plan, and certified Local Coastal Program
Statutory Exemption: Infill Housing (PRC § 21159.24; SB 1925)	Does not qualify	<ul style="list-style-type: none"> • Most parcels have 25% of their area farther than one-half mile from an existing or planned major transit stop • Project size is greater than 4 acres • Project consists of more than 100 residential units • Project site contains wetlands • Project site has significant value as a wildlife habitat¹³

¹⁰ Note: the rationale for not meeting criteria for exemption may or may not be exhaustive. However, if a project does not meet all criteria for an exemption it does not qualify.

¹¹ PRC § 21099 defines Transit Priority Areas

¹² As per PRC § 2115.1 (a)(2)(c)(iii): Habitat of “significant value” includes wildlife habitat of national, statewide, regional, or local importance; habitat for species protected by the federal Endangered Species Act of 1973 the California Endangered Species Act or the Native Plant Protection Act; habitat identified as candidate, fully protected, sensitive, or species of special status by local, state, or federal agencies; or habitat essential to the movement of resident or migratory wildlife. According to both the Final EA and the applicant’s Biological Resources technical report (submitted as Agenda Item 8B – PC-9 to the October 3, 2024 Planning Commission)

¹³ As per PRC § 2115.1 (a)(2)(c)(iii): Habitat of “significant value” includes wildlife habitat of national, statewide, regional, or local importance; habitat for species protected by the federal Endangered Species Act of 1973 the California Endangered Species Act or the Native Plant Protection Act; habitat identified as candidate, fully protected, sensitive, or

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Table 1 – CEQA Exemption Evaluation		
Exemption	Assessment	Rationale ¹⁰
Statutory Exemption: Unincorporated Infill (PRC § 21159.25; AB 1804, similar to Class 32 Categorical Exemption under CEQA)	Does not qualify	<ul style="list-style-type: none"> Project site is not located in an unincorporated area of a county.
Statutory Exemption: Projects where a Specific Plan has a pre-existing, certified EIR (Govt. Code § 6545, CEQA Guidelines § 15182)	Does not qualify	<ul style="list-style-type: none"> Final EA evaluates the candidate sites based on net acreage density calculations, where the project uses gross density calculations Project exceeds significance thresholds of several criteria in the Final EA Project does not conform with General Plan nor certified Local Coastal Program
Categorical Exemption: Class 3 Small Structures (CEQA Guidelines § 15303)	Does not qualify	<ul style="list-style-type: none"> Project exceeds 6 dwelling units Project is co-located with two housing element (density bonus) sites and is likely to result in cumulative impacts due to successive projects of the same type in the same place.
Categorical Exemption: Class 32 Infill Development (CEQA Guidelines § 15332)	Does not qualify	<ul style="list-style-type: none"> Project is greater than 5 acres Project is co-located with two housing element (density bonus) sites and is likely to result in cumulative impacts due to successive projects of the same type in the same place. Project site has significant value as a wildlife habitat¹⁴

species of special status by local, state, or federal agencies; or habitat essential to the movement of resident or migratory wildlife. According to both the Final EA and the applicant’s Biological Resources technical report (submitted as Agenda Item 8B – PC-9 to the October 3, 2024 Planning Commission)

¹⁴ As per PRC § 2115.1 (a)(2)(c)(iii): Habitat of “significant value” includes wildlife habitat of national, statewide, regional, or local importance; habitat for species protected by the federal Endangered Species Act of 1973 the California Endangered Species Act or the Native Plant Protection Act; habitat identified as candidate, fully protected, sensitive, or species of special status by local, state, or federal agencies; or habitat essential to the movement of resident or migratory wildlife. According to both the Final EA and the applicant’s Biological Resources technical report (submitted as Agenda Item 8B – PC-9 to the October 3, 2024 Planning Commission)

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In addition to the project's inconsistencies with the findings of the Final EA, and policies outlined in the General Plan/Local Coastal Program, the final EA evaluated each site for its total potential net acreage density. As defined in the Final EA:

“The candidate sites' maximum realistic yield (MRY), based on the proposed amendments permitted a maximum density of 30 dwelling units (DU) per net acre” (*Final EA*, pg. ES-1)

Appendices A and B of the Final EA, excerpts of which are provided as Exhibit S7, shows the maximum unit capacity evaluated for the project site as 270 units. Therefore, the analysis of potential project impacts and findings of less than significant impacts are limited to a project comprising 270 units at this site. A project exceeding 270 units must undergo further environmental review to ensure the project is adequately assessed for potential impacts or exceedance of significance thresholds.

Conclusion

The project does not qualify as a Transit Priority Project or within a Transit Priority Area under PRC § 21099, nor the exemptions under Transit Priority Projects (PRC § 2115.1) and Sustainable Communities Strategy: Specific Plan in Transit Priority Areas (PRC § 21155.4; SB 743).

The project exceeds size and unit limits for Transit Priority Projects (PRC § 2115.1), Infill Housing (PRC § 21159.24; SB 1925), Class 3 Small Structures (CEQA Guidelines § 15303) and Class 32 Infill Development (CEQA Guidelines § 15332).

Due to the presence of wetlands and habitat of significant value, the project further does not qualify for exemption under Transit Priority Projects (PRC § 2115.1), Infill Housing (PRC § 21159.24; SB 1925), and Class 32 Infill Development (CEQA Guidelines § 15332).

As the project is located in an incorporated part of the County of San Diego, it does not qualify for Unincorporated Infill (PRC § 21159.25; AB 1804, similar to Class 32 Categorical Exemption under CEQA).

Finally, the project's proposed size, density, and inconsistencies with the Final EA, General Plan, and certified Local Coastal Program further suggest that CEQA analysis of the project should be required.

As the certified Final EA only evaluates for a maximum of 270 units at this site, the Final EA does not cover the project as proposed and does not qualify for exemption under Govt. Code § 6545, CEQA Guidelines § 15182.

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List of Supplemental Exhibits

Exhibits	File Name	Retrieved From
Exhibit S1	Previously Submitted Blue Line Stream Evidence	Report Authors
Exhibit S2	Final EA Hydrological Resources Figure 4.8-1	Final Environmental Assessment for the 2013-2021 Draft Housing Element Update, prepared by Kimley-Horn & Associates
Exhibit S3	Final EA 303d Listed Impaired Water Bodies Figure 4.8-3	Final Environmental Assessment for the 2013-2021 Draft Housing Element Update, prepared by Kimley-Horn & Associates
Exhibit S4	Final EA Potential Jurisdictional Wetlands & Water Figure 4.3-2	Final Environmental Assessment for the 2013-2021 Draft Housing Element Update, prepared by Kimley-Horn & Associates
Exhibit S5	California Coastal Commission Email Correspondence with City of Encinitas Planning Staff	Public Records Request
Exhibit S6	Statutory and Categorical CEQA Exemption Summary	Report Authors
Exhibit S7	Final EA Project Fact Sheet and Candidate Sites Table	Final Environmental Assessment for the 2013-2021 Draft Housing Element Update, prepared by Kimley-Horn & Associates