

ANALYSIS OF THE APPLICATION FOR DEVELOPMENT OF
Quail Meadows Apartments, Encinitas
MULTI-003751-2020, DR-003759-2020, and CDP-003761- 2020

BY ENCINITAS RESIDENTS FOR RESPONSIBLE DEVELOPMENT
A NON-PROFIT, COMMUNITY ALLIANCE OF ENCINITAS RESIDENTS
SUPPORTING RESPONSIBLE DEVELOPMENT IN ENCINITAS

Sept. 30, 2024

Avitacor
Management Consulting

Steven C. Gerken, Ph.D., MBA
President

INTRODUCTION

Baldwin and Sons propose to develop a 448 dwelling unit, multi-family apartment Housing Element Site on Quail Gardens Dr. The 11.96 acre site is situated in an environmentally sensitive flood zone that contains wetlands, protected species, environmentally sensitive habitat areas and steep slopes forming the natural creek that is a tributary to Cottonwood Creek. The Encinitas residents for Responsible Development oppose the Baldwin and Sons Quail Meadows application for a Density Bonus, Coastal Development Permit, and Design Review for the development of Quail Meadows, MULTI-003751-2020, DR-003759-2020, and CDP-003761- 2020 and recommend the denial of the project.

ECRD opposes the project on the following grounds:

- The project has changed significantly and the developer has not presented the changed design to the public in a CPP meeting.
- The project is inconsistent with the General Plan.
 - Housing Element
 - Land Use Element
 - Circulation Element
 - Public Safety Element
- The project would adversely affect the health, safety and general welfare of the residents, visitors and businesses.
- The Coastal Development Permit is inconsistent with the Local Coastal Program
- The project does not conform to the Public Resources Code Section and does not follow CEQA

From Staff Report: Planning Commission Agenda, Oct. 3 2024

This is deemed an SB330 project.

"The project was deemed in accordance with SB330 on July 2, 2020. Per (California Government Code §65589.5(o)(i) the project is subject only to the ordinances, policies, and standards adopted and in effect when the preliminary application was submitted. At the time of certification, the following local and state laws and agreements were effective for the project:"

"The Quail Meadows Apartments site was previously known as Sites AD2a, AD2b and AD2c, (Baldwin and Sons properties), as part of the City's 2013 – 2021 Housing Element Update.

- The Encinitas General Plan was in effect.
- The Encinitas municipal codes were in effect,
- The City Council adopted the 2013-2021 Housing Element Update on March 13, 2019, and subsequently approved amendments to the Local Coastal Program, including the Municipal Code and Specific Plans.
- The State Department of Housing and Community Development (HCD) certified the 2013-2021 Housing Element on October 8, 2019.

The SB330 declaration means the Baldwin Housing element sites are subject to state and local laws and municipal codes in effect at the time of approval of the SB330 status.

The project is inconsistent with the General Plan

According to the Encinitas General Plan, Land Use Policy 3.2 refers to the "net acreage" concept, which essentially means the total land area available for development after subtracting any areas designated as unusable or dedicated to public uses like streets, parks, or open space within a specific development parcel. In plain and simple language, this means that to calculate the net acreage, the total land area of a parcel is reduced by the area taken up by streets, easements, and other non-buildable areas.

The Housing Element plan, which is part of the General Plan, Appendix C, Table C-2, shows that the Baldwin sites would yield 225 units on a **net acreage** of 9.04 acres based on known site factors that were unbuildable.

Table C-2: Net Acreage and Unit Yield Per Site				
Site Number	Site Name	Gross Acreage	Net Acreage	Unit Yield (DU)
Vacant¹				
02	Cannon Property (Piraeus)	6.93	6.93	173
05	Encinitas Blvd & Quail Gardens Sites	4.91	4.78	119
06a	Armstrong Parcels	1.92	1.06	26 ²
08a	Rancho Santa Fe Parcels (Gaffney/Goodsen)	1.75	1.45	36
AD1	Sage Canyon	5.23	2.40	60
AD2a	Baldwin & Sons Properties	3.14	2.98	74
AD2b	Baldwin & Sons Properties	6.66	4.86	121
Subtotal		30.54	24.46	609
Non-vacant				
01	Greek Church Parcel	2.50	2.00	50
06b	Armstrong Parcels	1.32	1.16	29 ²
07	Jackel Properties	2.97	2.97	33 ³
08b	Rancho Santa Fe Parcels (Gaffney/Goodsen)	4.88	4.57	113
09	Echter Property	21.49	9.85	246
12	Sunshine Gardens Parcels	3.39	3.39	84
AD2c	Baldwin & Sons Properties	1.79	1.21	30
AD8	Vulcan & La Costa	2.00	2.00	50
AD9	Seacoast Church	4.45	1.41	35
AD11	Manchester Avenue West Sites	1.67	1.67	41
AD14	Harrison Sites	1.91	1.91	21 ³
AD31	Meyer Proposal	6.62	6.52	163
Subtotal		54.99	38.66	895
Total		85.53	63.12	1,504

Notes:

1. HCD has stated to the City that vacant parcels must be entirely unimproved and separately subdivided parcels, and Table 2-6 reflects this direction. However, the City believes that the following sites should also be considered to be vacant: Site 01 (50 units) consists entirely of unimproved land, but has not been subdivided from the improved part of the site. Site 07 (33 units) consists of unimproved land and an abandoned, vacant structure. Site AD2c (30 units) has utility lines on a portion of the site which have been deducted from net acreage, but the parcel is otherwise entirely unimproved, and the utility lines would not prevent an owner from developing the site for residential units. In the City's view, these sites should be considered vacant, adding 118 additional units to the Unit Yield on vacant property, for a sub-total of 727 units on vacant sites, far above 50% of the unmet RHNA need for the planning period.

2. HCD does not consider Site numbers 06a and 06b adequate sites to meet any portion of the Regional Housing Needs Allocation for lower-income households. The City acknowledges that it should not consider these sites available pursuant to Gov. Code Section 65863 absent additional information regarding site availability and owner interest in developing a residential project.

3. Unit Yield anticipates that this site will be developed for mixed-use.

To further clarify the use of net acreage in the housing element plan, Appendix C, p. 6 states:

NET ACREAGE CALCULATIONS

Very Low/Low Income RHNA Candidate Sites

CALCULATION METHOD

The net acreage for each candidate site was calculated based on the gross acreage (for all parcels included in the site) minus the acreage deemed partially or completely undevelopable based on existing steep slopes and known environmental constraints. Environmental constraints were determined based on known site information for the parcels where that information was available and other sources, such as the City's Local Coastal Program and site observations. The site capacity was determined by applying a 25 du/ac standard to the net acreage for each candidate site. The following calculation methods apply to slope constraints (per the City of Encinitas Municipal Code for purposes of calculating density): • All land in 0-25% slope of natural grade is allowed to use 100% of acreage. • All land in 25-40% slope of natural grade is allowed to use 50% of acreage. • All land in 40% + slope of natural grade is allowed to use 0% of acreage. All acreages shown on the following sheets include any applicable acreage deductions from the gross acreage. The informational sheets include a note either stating that there were no known topographic or environmental constraints or detailing the acreage removed from the gross acreage and the reasoning.

Baldwin volunteered and agreed to include its sites in the housing element plan. Therefore, Baldwin complicitly agreed that it would be required to use the city's general plan and agreement with the HCD to use net acreage of the site in exchange for an R-30 overlay special zoning.

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The following calculation methods apply to slope constraints (per the City of Encinitas Municipal Code for purposes of calculating density):

- All land in 0-25% slope of natural grade is allowed to use 100% of acreage.
- All land in 25-40% slope of natural grade is allowed to use 50% of acreage.
- All land in 40% + slope of natural grade is allowed to use 0% of acreage.

All acreages shown on the following sheets include any applicable acreage deductions from the gross acreage. The informational sheets include a note either stating that there were no known topographic or environmental constraints or detailing the acreage removed from the gross acreage and the reasoning.

WATER AND SEWER AVAILABILITY

As discussed in Appendix B, each site has been evaluated to ensure there is adequate access to water and sewer connections. Each site is situated adjacent to a public street that has the appropriate water and sewer mains and other infrastructure to service the candidate site.

On June 10, 2020, the acting deputy director for the CA HCD issued a memo to city planning directors on the Housing Element Site Inventory Guidebook Government Code Section 65583.2. In this guidebook, p. 20 Applicable land-use controls and site improvement requirements, states that:

"The capacity of a site should also be adjusted for areas that cannot be developed due to environmental factors such as hazards, wetlands, or topography that cannot be mitigated. The capacity of sites subject to specific plans, overlays or other modifications of the base zoning should be adjusted to reflect those factors. For purposes of this analysis, it is recommended that the jurisdiction start with the gross acreage and adjust the buildable acreage accordingly to reach net buildable acreage."

In clear and simple language, in 2020, HCD guidance was that cities would use net buildable acreage for housing site density calculations.

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
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June 10, 2020

MEMORANDUM FOR: Planning Directors and Interested Parties

A handwritten signature in black ink, appearing to read "Megan Kirkeby".

FROM: Megan Kirkeby, Acting Deputy Director
Division of Housing Policy Development

SUBJECT: **Housing Element Site Inventory Guidebook
Government Code Section 65583.2**

The housing element of the general plan must include an inventory of land suitable and available for residential development to meet the locality's regional housing need by income level. The purpose of this Guidebook is to assist jurisdictions and interested parties with the development of the site inventory analysis for the 6th Housing Element Planning Cycle and identify changes to the law as a result of Chapter 375, Statutes of 2017 (AB 1397), Chapter 958, Statutes of 2018 (AB 686), Chapter 664, Statutes of 2019 (AB 1486), and Chapter 667, Statutes of 2019 (SB 6). The Guidebook should be used in conjunction with the site inventory form developed by the California Department of Housing and Community Development (HCD). These laws introduced changes to the following components of the site inventory:

- Design and development of the site inventory (SB 6, 2019)
- Requirements in the site inventory table (AB 1397, 2017 AB 1486, 2019)
- Capacity calculation (AB 1397, 2017)
- Infrastructure requirements (AB 1397, 2017)
- Suitability of nonvacant sites (AB 1397, 2017)
- Size of site requirements (AB 1397, 2017)
- Locational requirements of identified sites (AB 686, 2018)
- Sites identified in previous housing elements (AB 1397, 2017)
- Nonvacant site replacement unit requirements (AB 1397, 2017)
- Rezone program requirements (AB 1397, 2017)

The workbook is divided into five components: (Part A) identification of sites; (Part B) sites to accommodate the lower income RHNA; (Part C) capacity analysis; (Part D) non-vacant sites; and (Part E) determination of adequate sites.

If you have any questions, or would like additional information or technical assistance, please contact the Division of Housing Policy Development at (916) 263-2911.

Applicable land-use controls and site improvement requirements

The analysis must consider the imposition of any development standards that impact the residential development capacity of the sites identified in the inventory. When establishing realistic unit capacity calculations, the jurisdiction must consider the cumulative impact of standards such as maximum lot coverage, height, open space, parking, on-site improvements such as sidewalks or easements, and floor area ratios. The analysis should consider any development standards or the cumulative effect of development standards that would limit the achievable density on a site. For example, if a mixed-use zone requires commercial on the ground floor and has a height limit of three stories along with lot coverage and other development standards, the density that can actually be achieved on that site might be less than the maximum allowable density.

The capacity of a site should also be adjusted for areas that cannot be developed due to environmental factors such as hazards, wetlands, or topography that cannot be mitigated. The capacity of sites subject to specific plans, overlays or other modifications of the base zoning should be adjusted to reflect those factors. For purposes of this analysis, it is recommended that the jurisdiction start with the gross acreage and adjust the buildable acreage accordingly to reach net buildable acreage.

Form Based Codes

To estimate capacity for sites in jurisdictions that have adopted form-based codes, the element should describe the relationship between general plan land-use designation and the form-based code and density assumptions used to determine capacity. Specifically, describe where residential development is allowed, how density requirements found within the general plan are incorporated, how the zoning designations under the form-based code relate to the land-use designations of the general plan, identify potential densities, and consider development standards such as bulk, height, and build-to requirements, buildings types, and use requirements. The element could include examples of recently built projects and densities to support the analysis.



Realistic development capacity for nonresidential, nonvacant, or overlay zoned sites

The capacity calculation must be adjusted to reflect the realistic potential for residential development capacity on the sites in the inventory. Specifically, when the site has the potential to be developed with nonresidential uses, requires redevelopment, or has an overlay zone allowing the underlying zoning to be utilized for residential units, these capacity limits must be reflected in the housing element. Factors used to make this adjustment may include the following:

- Performance standards mandating a specified portion of residential development in mixed use or nonresidential zones (e.g., residential allowed only above first floor commercial).
- The likelihood for residential development such as incentives for residential use, market demand, efforts to attract and assist developers, or allowance of 100 percent residential development.
- Local or regional residential development trends in the same nonresidential zoning districts.
- Local or regional track records, past production trends, or net unit increases/yields for redeveloping sites or site intensification. This estimate may be based on the rate at which similar parcels were developed during the previous planning period, with

A legal memo dated Feb. 1, 2021 from Encinitas housing attorney, Barbara Kautz, to the Land Use and Planning Unit Chief, CA HCD, stated Encinitas' position on use of net acreage in its determination of Housing Element site density. The memo stated that in 2020 and previous years, the city used " net lot area, rather than gross lot area, to calculate base density." On pages 4-5 of the memo, city attorney Kautz stated that "Throughout the development of the City's Fifth Cycle Housing Element, HCD closely reviewed site capacity and insisted that significant deductions in capacity be made for hillsides, wetlands, roadways, and similar areas." The memo also states that "the staff modified its calculations of base density so that maximum *net* density was applied to the gross acreage of the site, including clearly unbuildable areas such as easement areas occupied by public streets, wetlands, and other environmentally sensitive habitat areas (ESH) in the Coastal Zone." **"This process was followed without any authorization from any decision making body."**

The memo goes on to say "Although the calculation of base density using gross acreage was **not authorized by any adopted city policy and is inconsistent with the city's general plan and zoning**, the City has elected to "grandfather" applicants who applied for density bonuses in good faith utilizing gross acreage prior to adoption of the ordinance." However, the city has no policy on grandfathering sites or land use, making the grandfathering an action also without any authorization from any decision making body.

In summary, in clear and plain language in the city general plan, in the housing element plan, in the HCD Guidebook, in the city's housing attorney memo to HCD, in 2020 Encinitas calculated housing density was to be based on the net acreage of buildable land. Therefore, the Quail Meadows application to build 448 apartments was based on unauthorized gross acreage calculations of density. The Planning Commission must recognize this error by staff and return the application for correction and compliance with the general plan or deny the application.

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February 1, 2021

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via email

Re: City of Encinitas' Density Bonus Ordinance – Letter of Technical Assistance

Dear Ms. West:

This letter responds to the Letter of Technical Assistance (the Letter) provided to the City of Encinitas (the City) on December 16, 2020 regarding the City's density bonus ordinance adopted on December 16, 2020 (the Ordinance) and its conformance with Government Code Section 65915¹ (Density Bonus Law). This response supplements that provided to the Department of Housing and Community Development (HCD or the Department) on January 18, 2020 in response to HCD's comments regarding the City's draft Sixth Cycle Housing Element. It also responds to concerns expressed by the Attorney General's office in a telephone conversation held on January 12, 2020.

In particular, the Letter of Technical Assistance expressed these concerns regarding the density bonus ordinance adopted by the City on December 16, 2020:

1. Conformance of the Ordinance to Section 65915(s) (AB 2345).
2. Application requirements for an incentive or concession.
3. Use of net lot area, rather than gross lot area, to calculate base density.
4. Requirement that affordable units equal at least 75 percent of the average square footage of market rate units.

After describing the City's highly successful density bonus program, we respond below to each of these issues.

Los Angeles

213.627.6336

San Diego

619.239.6336

Goldfarb & Lipman LLP

¹ All further references are to the Government Code unless otherwise stated.

particular, the Letter states that a "financial analysis or report" is specifically prohibited under Density Bonus Law and that the Ordinance heightens the showing required to obtain a concession or incentive beyond that allowed by Density Bonus Law.

This is incorrect. Density Bonus law does *not* specifically prohibit a "financial analysis or report." Rather, a "study" is prohibited. (§ 65915(a)(2), (j)(1).) However, a "study" does not include "reasonable documentation to establish eligibility for the incentive or concession or to demonstrate that the incentive or concession *meets the definition* set forth in subdivision (k)." (§ 65915(j)(1); *emphasis added*.) The City *may* require an applicant to demonstrate that an incentive or concession meets the definition included in subdivision (k).

The definition of an incentive or concession, except for mixed-use zoning, is a modification of development regulations "that results in identifiable and actual cost reductions to provide for affordable housing costs...or rents." (§ 65915(k)(1), (3).) The definition has two parts: the modification must (1) "result in identifiable and actual cost reductions;" and (2) must "provide for" affordable housing costs and rents. The Ordinance's requirements for "reasonable documentation" closely mirror this definition.

Demonstrating that a requested incentive meets the definition included in subdivision (k) requires some financial analysis: first, to show that the incentive reduces costs; and second, to show that those reduced costs "provide for" the affordable housing. Merriam-Webster defines "provide for" as either to cause something to be available or to happen in the future; or to supply what is needed for something. Financial analysis of some type is needed to show that the reduced costs either "cause" the affordable housing to be available or supply what is "needed" to enable the project to support the affordable housing. The City does not specify what form the financial analysis should take.

The additional phrase, "*required in order to provide for*" affordable housing clarifies the meaning of the phrase "provide for" and does not substantively change the meaning of "provide for," which requires that the incentive is *needed or required* to obtain affordable housing.

The Legislature has specifically allowed cities to require applicants to demonstrate that their requests for incentives and concessions meet the definition in Density Bonus Law. That is all that this Ordinance provision requires. Interpreting the Density Bonus Law in a way that would forbid local agencies from requiring reasonable documentation establishing eligibility for an incentive or concession cannot be squared with the statute's plain meaning and would render portions of the statute meaningless surplusage.



Use of Net Lot Area, Rather than Gross Lot Area, to Calculate Base Density.

In the Letter, HCD expressed concern that the Ordinance modified provisions of the City's density bonus ordinance to calculate "base density" using net acreage, rather than gross acreage.

The City's prior density bonus ordinance contained no language relating to calculation of base density based on gross acreage. Rather, both the City's zoning ordinance and General Plan, including the City's Housing Element, rely exclusively on net acreage to calculate allowed density. The only mention of density based on gross acreage in the City's planning documents is a statement in the Land Use

Element of the General Plan that, on average, density based on gross acreage would be 20 percent lower than density based on net acreage. Throughout the development of the City's Fifth Cycle Housing Element, HCD closely reviewed site capacity and insisted that significant deductions in capacity be made for hillsides, wetlands, roadways, and similar areas. Notably, HCD's Housing Element Site Inventory Guidebook specifically allows cities to use net acreage to calculate site capacity, if consistent with the standard the City uses to determine allowable density. The modification to the Ordinance that calculates base density by using net acreage is consistent with this approach.

Density Bonus Law contains a detailed definition of "maximum allowable residential density," which means the density allowed under the zoning ordinance and land use element of the general plan, with the general plan density prevailing if the two are inconsistent. (§ 65915(o)(2).) However, AB 2501, effective January 1, 2017, modified the definition of "density bonus" to state that it means an increase over "maximum allowable *gross* residential density," without providing a definition of the modified term. (§ 65915(f); emphasis needed.)

Following this amendment to Density Bonus Law, the staff modified its calculations of base density so that maximum *net* density was applied to the *gross* acreage of the site, including clearly unbuildable areas such as easement areas occupied by public streets, wetlands, and environmentally sensitive habitat areas (FSHA) in the Coastal Zone. This practice was followed without any authorization from any decision-making body.

During the review of the Ordinance, this practice was discussed and determined to be in conflict with the City's General Plan and zoning ordinance. Further, a review of the practices of four other North County cities and the City of San Diego found that all utilize net acreage to determine base density. Finally, in most cases, the use of net rather than gross acreage to calculate base density would have had a minimal effect on approved projects. Of the 34 density bonus projects approved by the City to date, only two would have experienced any change from the use of net density.

Although the calculation of base density using gross acreage was not authorized by any adopted City policy and is inconsistent with the City's General Plan and zoning, the City has elected to "grandfather" applicants who applied for density bonuses in good faith utilizing gross acreage prior to adoption of the Ordinance.

Requirement that Affordable Units Equal at Least 75 Percent of the Average Square Footage of Market Rate Units.

In the Letter, the Department expressed concern regarding the requirement that affordable units must equal at least 75 percent of the average square footage of market-rate units.

This provision, along with similar provisions regarding the dispersal of units and number of bedrooms, is intended to ensure that residents of affordable units have approximately equal living environments as residents of market-rate units and to affirmatively further fair housing by ensuring that affordable units serve families with children to the same extent as market-rate homes. However, the Ordinance provides that no affordable unit is required to be larger than 2,000 square feet, regardless of the size

Hillside/Inland Bluff Overlay Zone

Encinitas municipal 30,34.030A (Hillside/Inland Bluff Overlay Zone) regulations shall apply to all areas within the Special Study Overlay Zone where site specific analysis indicates that 10% or more of the area of a parcel of land exceeds 25%. The Planning Commission shall be the authorized agency for reviewing and granting discretionary approvals for proposed development within the Hillside /Inland Bluff Overlay Zone.

Specifically, EMC 30.034.030B2 specifically states that slopes greater than 25% shall be preserved in their natural state (emphasis added in EMC code). Therefore demonstrated areas and slopes that have been disturbed by manmade activities do not qualify since such locations are no longer in their "natural state" and are therefore exempt from the calculation.

The slopes report for lot shows that over 25% of the lot is covered with natural slopes greater than 25%. Therefore, lot 2 is subject to the Hillside/Inland Bluff overlay zone. Exceptions to this regulation include modified slopes.

Based upon a historic review of the previous site conditions, topographic maps, and aerial photos, the existing slopes on site, especially lot 2 steep slopes under building 2, have been maintained as natural waterways of the inland creek, and therefore are NOT disturbed. The most striking example of undisturbed areas of lot 2 are shown in the aerials. The aerial shows that greenhouses are not built on the inland creeks and steep slopes. The analysis should properly conclude that the major portions of lot 2, especially the inland waterways, are subject to the overlay.

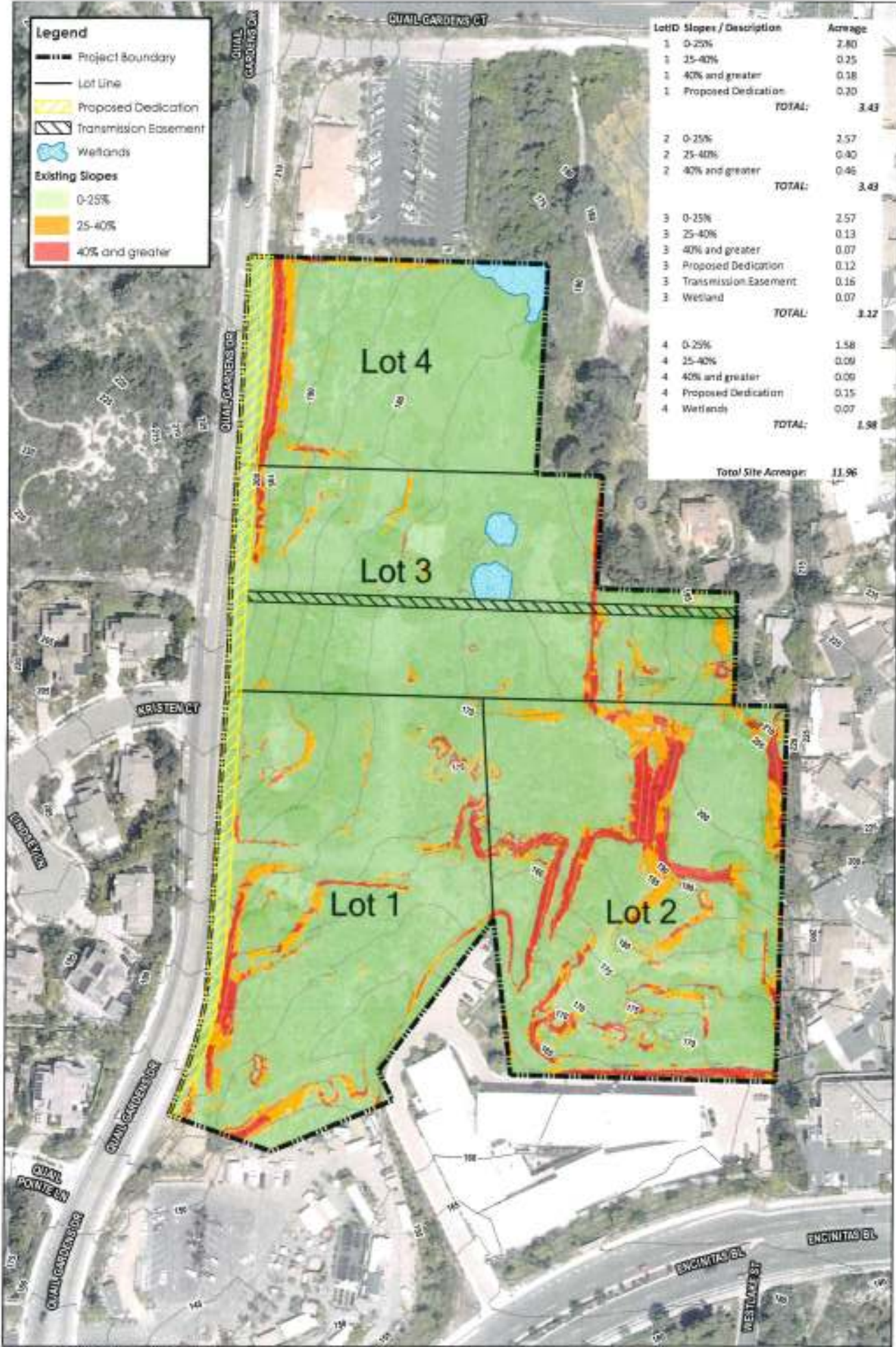
Legend

- Project Boundary
- Lot Line
- Proposed Dedication
- Transmission Easement
- Wetlands

Existing Slopes

- 0-25%
- 25-40%
- 40% and greater

LotID	Slopes / Description	Acres
1	0-25%	2.80
	25-40%	0.25
	40% and greater	0.18
	Proposed Dedication	0.20
TOTAL:		3.43
2	0-25%	2.57
	25-40%	0.40
	40% and greater	0.46
TOTAL:		3.43
3	0-25%	2.57
	25-40%	0.13
	40% and greater	0.07
	Proposed Dedication	0.12
	Transmission Easement	0.16
	Wetland	0.07
	TOTAL:	3.12
4	0-25%	1.58
	25-40%	0.09
	40% and greater	0.09
	Proposed Dedication	0.15
	Wetlands	0.07
TOTAL:		1.98
Total Site Acres:		11.96



Scale in Feet

North

Date of Exhibit: 7/19/2023
 SAMS/SANDAG Aerial Imagery, 2017

Quail Meadows
 Existing Conditions Slope Analysis by Lot (Proposed Dedication)

Photo/Aerial Slope Analysis Summary

1. Slope was man made - basically a fence with Ice plant located on to the north of Green house. See Photo
2. Similar situation to Photo 1 of slope adjacent to greenhouse Lots of iceplant. No Photo available.
3. Similar situation to Photo 1. See Photo 3.
4. Slopes around old shacks onsite. No Photo available but aerial shows that it is obviously man made.
5. Slope adjacent to Quail Gardens Drive and between existing structures all man made and result from Construction of Road. See photo 5
6. Slopes adjacent top existing subdivision to the east. Slopes were established during the construction of that subdivision and are man made although have older vegetation on them. No Photo other than Aerial available.
7. 7A and 7b again are adjacent to Quail Gardens Drive and old structures. Development of houses and structures created slopes with landscaping and are all man made. No Photo available other than Aerial photo
8. Slope man made to hold up Greenhouse to west and also for construction of old Storm Drain. which is now being replaced by larger storm drain. See Photo 8&9.
9. Man made slope constructed to hold up flat pad location for potted plants and drivable access for plants. Slope also created when old storm drain construction occurred. The old storm drain is now being replaced. See Photo 8&9.
10. Slope for Nursery operation building - man made and created for pad establishment and slope was partially landscaped. See Photo 10.
11. Slope for Nursery operation building is man made similar to 10. See Photo 11.
12. Slopes are created by debris piles and are not natural. See Aerial Photo.



UBRA, PHOTIC
DUBAI MEADOWS



Steep Slopes

Encinitas municipal 30.34.030 applies to areas where 10% or more of a parcel of land is over 25% slope. Applicants must submit a slope analysis that includes a topographic map with contour intervals of no more than two feet.

Encinitas municipal 30.34.030A states that to demonstrate that there had been slope modification of a site, a standard environmental assessment engineering report (such as for the Ocean Bluff) would provide:

Site Diagram/Vicinity Map

Site Photographs

Questionnaires / User Provided Information

Regulatory Records Appendix

Historical Records

Other Documents / Lab Results

The topographic map, made from a 2017 aerial, uses five foot contour intervals. The slopes report therefore is not consistent with Hillside/Inland Bluff overlay requirements. The site has experienced significant topological change in the last few years due to multiple storm events with flooding of the site that resulted in loss of property and buildings. An updated survey should be provided to the planning department and the planning commission prior to further consideration of the application.

For its report on manufactured slopes, Baldwin merely states ((3751 Tech Study - Slope Analysis 2023.10.9)), with no series of historical aerials or analysis, that historical aerials showed the site had manufactured slopes.

The single topographic map is from 2017 . This single aerial in fact shows that areas of lot 2 with over 25% slopes and areas with over 40% slopes, which are the inland creek, are not covered with nursery operations and therefore are not manufactured. The pictures of greenhouses shows evidence of commercial nursery operations but does not show that any slopes were manufactured.

Baldwin did not provide any series of historical aerials of the property.

Nor did Baldwin have an engineering firm specializing in topographic analysis of historical images analyze the site. Baldwin made a self-serving claim without supporting studies. This cannot suffice as adequate evidence of any historical grading activity on the site. Historical aerial analysis images dating back to the early the late 1800s are available for the site for just such an analysis.

Baldwin did not provide any regulatory information about site modifications.. County and city grading records for the site are available.

Baldwin did not provide any historical narrative of grading on the site.

Ron Martin, one of the co-owners since 196, still lives in SD County. He told me in 2023 that they did minimal slope manufacturing and he described where that work was done. That information is available for the records if Baldwin wants to submit it.

Baldwin did not provide a map of manufactured slopes for this development and is claiming such in the application, without evidence.

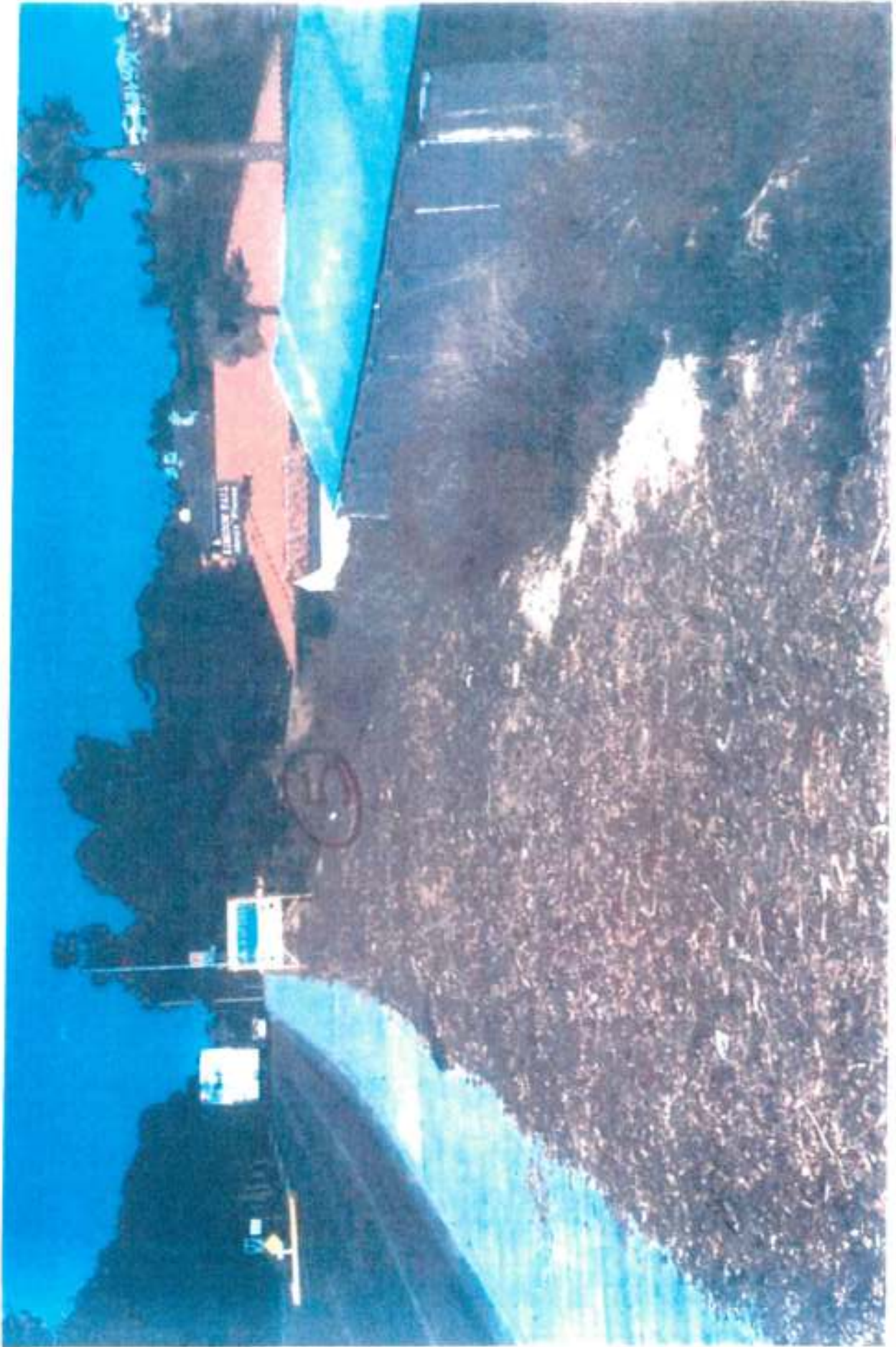
Baldwin did provide pictures of greenhouses on the property. Baldwin stated that the photos were proof of manufactured slopes. The photos, below, are clearly not proof of manufactured slopes.

In summary, the manufactured slopes analysis provided no evidence of manufactured slopes and no allowance for disturbed or manufactured slopes from should be permitted. The Planning Commission should return the application as incomplete until all reports are properly completed.





3

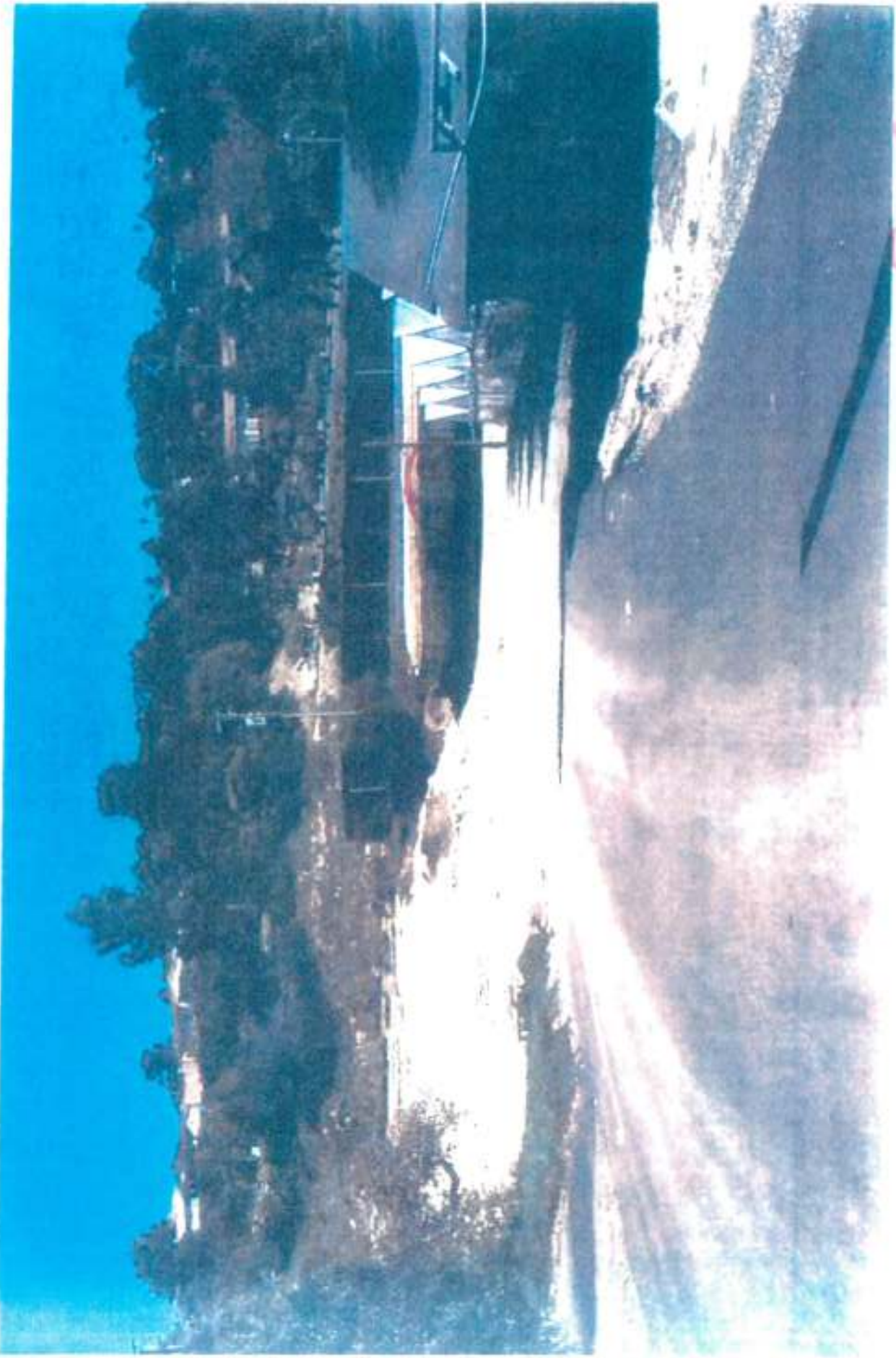


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11/19/63



Net Acreage and housing Density Calculation based on net acreage

The slopes analysis does not include the 3.37 acre conservation easement and its location on lots 3 and 4.

Based on the conservation easement, utility easement, wetlands, and steep slopes of lots 3 and 4, it appears that approximately 5.4 acres or more of the 11.96 is unbuildable. Accurate maps and topography updates would clearly show what the exclusions are. Additionally, lot 2, with its steep slopes as part of the local creek being directly under the lot 2 apartments and underground garage, the 3.43 acres of lot 2 should be removed from the buildable acreage. The natural site features that are unbuildable results in a total of 8.83 acres of unbuildable land yielding 3.13 acres of buildable land, net of wetlands, ESHA, conservation easements, utility easements, steep slopes and natural creeks.

Calculated Density

3.13 acres @ 30 DU/acre = 94 DUs base density on Lot 1 should be permitted.

By following the general plan, the HEU plan, the city's municipal code, the threats to public safety from building in the flood plain on lot 2 on inland creeks and on steep slopes would be eliminated using unbuildable acreage.

In summary, the Quail Meadows site is consistent with 94 DUs, based on net acreage of the site.



REFERENCE NOTES SCHEDULE

1. SEE ARCHITECTURAL DRAWINGS FOR BUILDING FOOTPRINTS AND MATERIALS.
2. SEE ARCHITECTURAL DRAWINGS FOR PAVEMENT AND CURB DETAILS.
3. SEE ARCHITECTURAL DRAWINGS FOR FURNITURE AND FIXTURES.
4. SEE ARCHITECTURAL DRAWINGS FOR LIGHTING FIXTURES AND SCHEDULE.
5. SEE ARCHITECTURAL DRAWINGS FOR SIGNAGE AND WAYFINDING.
6. SEE ARCHITECTURAL DRAWINGS FOR LANDSCAPE PLANTINGS AND SCHEDULE.
7. SEE ARCHITECTURAL DRAWINGS FOR IRRIGATION SYSTEMS AND SCHEDULE.
8. SEE ARCHITECTURAL DRAWINGS FOR UTILITY LOCATIONS AND DEPTHS.
9. SEE ARCHITECTURAL DRAWINGS FOR EROSION CONTROL MEASURES.
10. SEE ARCHITECTURAL DRAWINGS FOR DRAINAGE SYSTEMS AND SCHEDULE.
11. SEE ARCHITECTURAL DRAWINGS FOR FENCE AND GATE DETAILS.
12. SEE ARCHITECTURAL DRAWINGS FOR SECURITY SYSTEMS AND SCHEDULE.
13. SEE ARCHITECTURAL DRAWINGS FOR ACCESSIBILITY FEATURES.
14. SEE ARCHITECTURAL DRAWINGS FOR PUBLIC ART AND LANDSCAPE ART.
15. SEE ARCHITECTURAL DRAWINGS FOR SPECIAL FEATURES AND SCHEDULE.
16. SEE ARCHITECTURAL DRAWINGS FOR CONSTRUCTION SEQUENCING.
17. SEE ARCHITECTURAL DRAWINGS FOR MAINTENANCE ACCESS.
18. SEE ARCHITECTURAL DRAWINGS FOR FUTURE DEVELOPMENT POTENTIAL.
19. SEE ARCHITECTURAL DRAWINGS FOR ENVIRONMENTAL RESTORATION.
20. SEE ARCHITECTURAL DRAWINGS FOR HISTORIC PRESERVATION.
21. SEE ARCHITECTURAL DRAWINGS FOR CULTURAL RESOURCE PROTECTION.
22. SEE ARCHITECTURAL DRAWINGS FOR ARCHAEOPALAEONTOLOGICAL INVESTIGATION.
23. SEE ARCHITECTURAL DRAWINGS FOR HISTORIC ARCHITECTURE.
24. SEE ARCHITECTURAL DRAWINGS FOR HISTORIC LANDSCAPE.
25. SEE ARCHITECTURAL DRAWINGS FOR HISTORIC STRUCTURES.
26. SEE ARCHITECTURAL DRAWINGS FOR HISTORIC DISTRICT DESIGNATION.
27. SEE ARCHITECTURAL DRAWINGS FOR HISTORIC MONUMENT DESIGNATION.
28. SEE ARCHITECTURAL DRAWINGS FOR HISTORIC PRESERVATION DISTRICT DESIGNATION.
29. SEE ARCHITECTURAL DRAWINGS FOR HISTORIC PRESERVATION DISTRICT DESIGNATION.
30. SEE ARCHITECTURAL DRAWINGS FOR HISTORIC PRESERVATION DISTRICT DESIGNATION.



CONCEPTUAL LANDSCAPE PLAN

QUAIL MEADOWS
 ENCINITAS, CA
 CLARK MERRITT, LLC



Coastal Development Permit

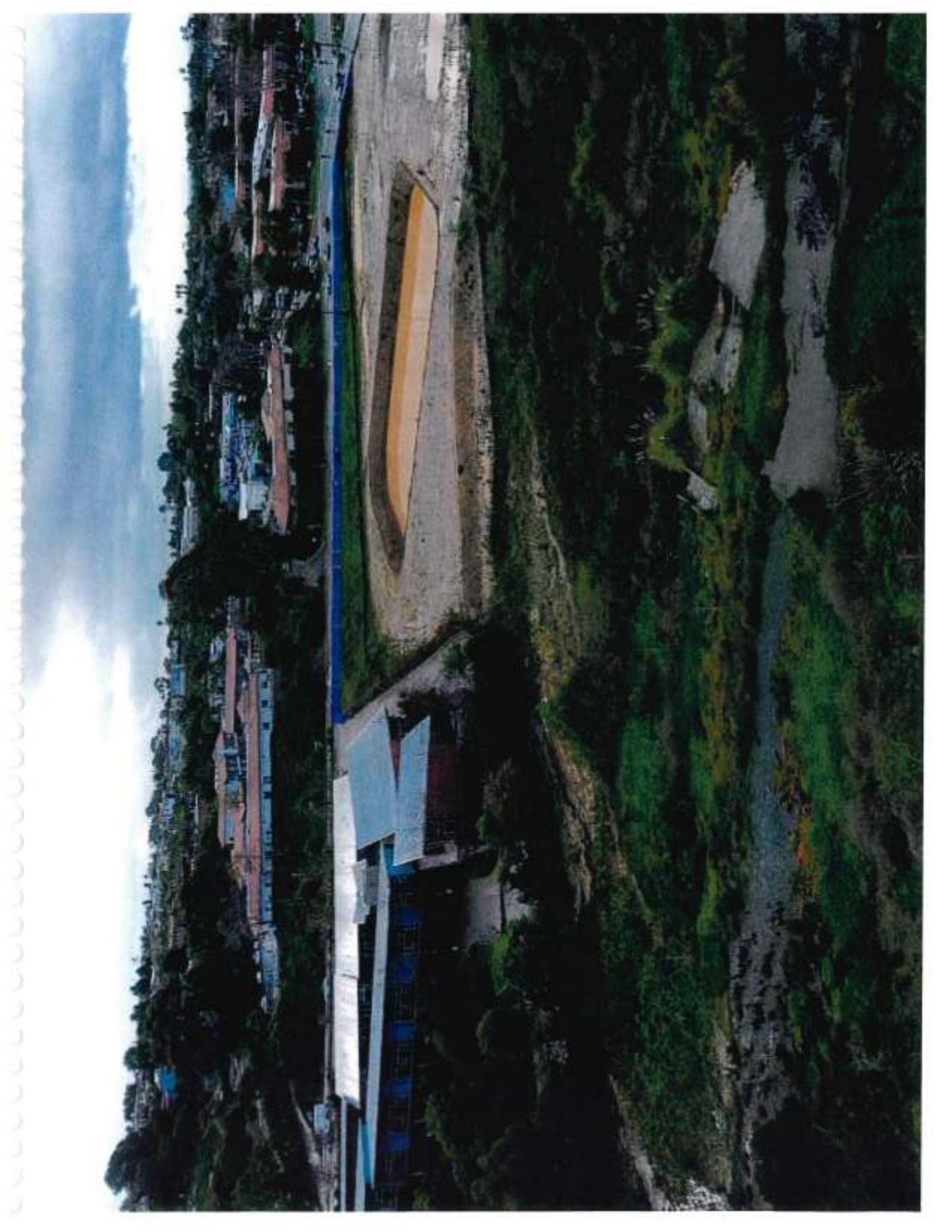
Drainage

The Baldwin sites sit in a historical flood plain that is depicted in the city's 10 and 100 year flood plain maps. The site floods frequently as demonstrated by three floods causing destruction of property, businesses and buildings in the last five years. Damages to Cuppa Juice, Sunshine nursery, multiple small businesses, and the Quail Gardens Corporate Center. The drainage plans call for use of a historical, 60 year old 48" buried, corrugated metal pipe to convey 91 CFS of the 512 CFS offsite flows into the 84" RCP storm drain on the property located North of Building 2's driveway to its subterranean garage entrance. The drainage plan also relies upon the 60-year-old historical headwall to channel offsite flows into the 48" CMP. Staff was asked if the pipe and the headwall had been examined for integrity and functionality, that the pipeline and the headwall had been built with no engineering and without permits, as per discussion with Ron Martin who installed the drainage system.. Staff was also advised that soils along the pipeline route had collapsed suggesting the pipe had collapsed. Staff was also informed that the headwall was constructed using stacked bags of concrete and that the drainage study indicated that the system was frequently overflowed by offsite flows. The city's ten-year flood map shows that the headwall is a site where water flows would overtop the headwall.

The backbone of the drainage plan is to slipline the 48" CMP and restore its flow capacity. Staff was informed that the California Coastal Commission had deemed that access to the wetlands which the pipeline ran through was not permitted as part of the agreement for management of the wetlands with the Baldwin Company. Additionally, the CCC recognized in email communications to the Baldwins agent that the CMP had probably failed and was a significant part of the wetlands (see email below). When asked what would be the plan to mitigate the collapse of the 48" CMP, staff wrote that the sections would be removed and replaced.

This information must draw critical attention to the feasibility of completing the drainage system which is essential to the safety of residents and visitors of Quail Meadows and to the protection of property. The Planning Commission should note that the 100 year flood plain is marked as the northern edge of the Quail Meadows driveway and the low points along the driveway of the entrances into the two subterranean garages. This site, with its historic record of flooding, should flood due to the inability to install the drainage system as designed, the potential for loss of life and property will be historic. No one wants to see anyone harmed or killed by a flawed design. This Planning Commission needs to take a very detailed look into the drainage plans so as to ensure the safety of visitors, businesses and Encinitans that they serve to protect. Also, there is no plan for the restoration of the wetlands. What is the plan? Has it been approved by the agencies overseeing the wetlands (CCC and USFWS)?





How can you approve a plan when there is no plan? Failure to plan is a plan for failure. That is certain in this matter. Deny the CDP.

Deny the CDP because the drainage plan fails to protect the wetlands, fails to provide a proper study of the sliplining of the pipe, fails to protect life and property from onsite water flows, and fails to even provide a plan for protecting the wetlands, PC has no authority to approve a plan that doesn't exist. That would be a violation of the LCP and the basis for an appeal with the CCC.

Open Space

What is the actual active open space per resident? Quail Meadows is claiming 3.4 acres of conservation easement with no public access as part of its open space. The conservation easement does not allow active nor passive use. Therefore, it is not available as open space for the residents.

How much space do residents really get? Baldwin shouldn't get to take credit for turning protected habitat into open space for residents. They can't use it. It ain't right.

General Plan: Circulation Element

This project is inconsistent with the city's General Plan Circulation element Policy 1.3 regarding levels of service. The Quail Gardens Dr/Westlake St/Encinitas Blvd is in conflict with Policy 1.3. Review of the traffic conditions that are proposed for the project, which are necessary for the intersection to be consistent with and comply with General Plan Circulation Policy 1.3 will not provide the traffic modifications necessary to provide a LOS required by the circulation element.

Firstly, the construction of signal modifications at Encinitas Blvd at Quail Gardens southbound approach assume that vehicles can reach the intersection to utilize the right turn signal for southbound traffic. Traffic is already stopped and backed up ¼ mile on southbound QGD. There is no street space or property available to install another southbound lane on QGD. Therefore southbound vehicles turning West on Encinitas Blvd with the right turn signal, will not be able to reach the intersection because they are stopped in traffic.

The signal timing modification of Encinitas Blvd has been proposed. However, CalTrans, not the city of Encinitas, controls the signals at the I-5 intersections. Encinitas traffic has been unsuccessful in obtaining signal timing control of these intersections for the past 20 years. This signal timing modification makes no mention of this issue nor any proposal to get CalTrans to change its long-standing policy of controlling its signal timing.

Lastly, the project proposes to change the signal timing for southbound Quail Gardens Dr. This would not allow sufficient southbound cars to proceed through the intersection due to the fact that southbound Westlake is full and traffic is also stopped and backed up. The next southbound intersection, Westlake St and Requeza St is a four way stop-sign controlled intersection. This intersection feeds cars to four way stop sign controlled intersections. Adjusting the signal timing will not affect the flow of cars on Westlake St and therefore will not provide significant increases of southbound vehicles. Thus the LOS E at the intersection will continue or degrade to F. This lack of improvement in the LOS is inconsistent with the Circulation element 1.3. This project will make traffic delays unreasonable. The mitigation as proposed lacks any traffic modeling or traffic analysis. The mitigations measures are just words without any facts that the PC can use to consider the mitigation statement.

ECRD will submit its own peer review and analysis of the proposed mitigation strategies.

The safety of residents, visitors and businesses is part of the general plan. As is known the Quail Meadows site has a long history of flooding resulting in road closures and emergency responders to evacuate businesses operating on the site. The site has had three catastrophic flooding events in the last six-seven years. The Encinitas fire department has not acknowledged that site flooding will require their services. The underground parking structures increase the risk of loss of life and property from site

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Coastal Development Permit

The Coastal Development permit contains provisions for protection of the wetlands, protected species and environmentally sensitive habitat areas on Quail Meadows site. The wetlands are to be protected by a 100 foot buffer with fencing that will prevent incursions by people, domestic pets and vehicles. The conservation easement will be protected in an identical manner. The CDP stipulates that any sliplining of the 48" CMP under the wetlands will be done in a manner that will not enter or impact the wetlands. Sliplining the 48" CMP is a crucial component of the drainage plan, providing conveyance of over 90 CFS of off site flows from surface flows to the 64" RCP storm drain on the site. The CA Coastal Commission has identified that the 48" CMP is part of the hydrology of the wetlands. The CDP fails to address the impact of slip lining the 48" CMP will have on the hydrology of the wetlands and on the viability of the wetlands. Staff is aware that CMPs over 50 years old have likely collapsed and corroded and will need removal and replacement. Staff has not acknowledged that a storm water inlet headwall located in the northerly wetlands was constructed without designs, without engineering, without rebar and without permits. The historical narrative from the previous property owner of over almost 40 years, Ron Martin, is that the headwall was built by merely piling cement bags into a wall and letting them harden in place. No Rebar. No engineering. No permits. Since the headwall, like the 48" CMP is likely to have failed after 50+ years of operation, the CDP also needs to evaluate the impact of the drainage plan and its components on the hydrology of both wetlands and the viability of both wetlands. The 48" CMP drainage system, including its headwall, is a critical component of the drainage plan and it is located in both wetlands. Thus the LCP should not permit the CDP to be approved because the drainage plan is inconsistent with the CDP.

Additionally, staff acknowledges that the collapsed 48" CMP sections will need to be removed and replaced. This is inconsistent with the CDP, inconsistent with the agreement between Baldwin and the CCC regarding protection of the wetlands. The CDP should be denied. The CDP can't serve to protect the wetlands when the drainage plans call for significant adverse impacts to the wetlands. Deny the CDP.

The CDP also calls for a vegetation plan for the wetlands. There is no vegetation plan on file. The CCC and USFWS have not approved a vegetation plan. It would be a violation of the LCP to approve a CDP that has components not approved by all appropriate regulatory agencies, You must deny the CDP.

CCC email to Andrew Magyard 4/10/2022

Hi Andrew,

We've had a bit more time to review the subject project and wanted to offer some more extensive initial comments and points for clarification:

- According to the 2020 gnatcatcher report for the Quail Meadows Property, adult gnatcatchers were observed foraging in non-native species such as Sydney golden wattle, tree tobacco, and Crown daisy, along with limited scattered native species such as coyote bush, deerweed, and of course the coastal sage scrub (CSS) on-site. Likewise, the 2018 gnatcatcher survey results state that the adult gnatcatchers on site were observed foraging in the non-native species listed above, and that the "pair and fledglings were observed using the entire site including foraging in castorbean, tree tobacco, the crown daisy and the extensive patches of mustard. They were noted foraging in iceplant and on the ground as well." Given the extensive use of the site by a federally threatened species, Commission staff has concerns that large areas of the site are potential ESHA. We're also concerned because at this point, it does not appear that the current project proposal complies with the City's LCP and its protection policies for ESHA (including Goal 10 of the Resource Management Element, Policy 10.5 of the Resource Management Element, and Policy 10.5 of the Resource Management Element), given that there are impacts to sensitive vegetation communities and no buffer is provided for them.
- The Biological Report for the project notes that three federally or state-listed species or other special-status species were observed during the survey, including gnatcatcher, willow flycatcher, and Cooper's hawk. A least Bell's vireo was also observed within the SDG&E easement onsite for less than an hour, and follow-up surveys for the species were negative. Other potential special-status species that have been observed or may occur on site include Western bluebird, southern California legless lizard, California horned lark, yellow-breasted chat, and yellow warbler. Because the project would develop the overwhelming majority of the site (outside of the riparian area and a 50-foot buffer), these special status species will likely be impacted and suffer habitat loss on the site. Additionally, even just construction and operation of the building will bring a significant increase in noise and lighting that will no doubt impact the wildlife that currently uses the site. The certified LCP (in particular, Policy 10.5 of the Resource Management Element) requires the City to ameliorate potential impacts to these special-status species and ensure habitat is protected to the greatest extent feasible; the City's staff report should detail how these requirements are being met.
- The biology report for the Quail Meadows project characterizes the resources on-site differently than the 2019 biology report that was put together for the Sanderling School site at 749 Mays Hollow Lane (and which also characterized

the vegetation on the Quail Meadows property). There appear to be 6 patches of vegetation that were previously characterized as Diegan coastal sage scrub (Baccharis-dominated) in the Sanderling report and are now characterized in the 2021 Quail Meadows report as coyote bush. In reading through the Methods and Results sections of the report, it's unclear if coyote bush is intended to be characterized as CSS similar to Baccharis-dominated CSS patches. Please clarify. If a follow-up vegetation mapping survey was conducted after the 2019 biology report for Sanderling School was issued, please provide this survey, including an explanation of why the communities are mapped differently. The Methods section of the report notes a 2019 site visit with USFWS – if the results of this survey are why the community mapping changed, we would like to review the report associated with this visit.

- The 2021 Quail Meadows Bio Report states vegetation mapping was conducted in June 2019, and revealed a resulting 0.30 acre of CSS on site, 0.32 acre of deerweed, 0.29 acre of coyote bush, and 0.07 acre of southern willow scrub, with the rest of the site being disturbed or developed. The 2020 gnatcatcher survey report for the Quail Meadows has similar acreages, and states that 0.9 acre of the 11.9 acre site is mapped suitable California gnatcatcher habitat. Please clarify if the 0.9 acre is intended to encompass the coyote bush, CSS, and deerweed patches on site.
- The Methods section of the 2021 report notes that the 2019 site visit with USFWS was intended to determine the precise amount of native habitat available to support coastal California gnatcatcher; however, the 2018 report makes the larger point that gnatcatchers were utilizing the entire site, including the invasive and non-native species. This 2018 finding should be considered in the City's ESHA determination. Importantly, the results of the 2018 site visit gnatcatcher surveys are not depicted on the 2021 Quail Meadows Biological Mapping (only the sightings from 2020 are included). We believe this is an omission that is important to rectify and consider in light of the project scope, as the 2018 report for the property reveals that a gnatcatcher pair was not only foraging on the site, but also nesting and raising young there, including in one area currently characterized as coyote bush but formerly characterized as CSS in the BTR for Sanderling School.
- Commission staff is glad to see the project has included a 50-foot buffer for the on-site riparian wetlands, and would urge the City to include a larger buffer if possible due to the valuable habitat this provides to many bird, mammal, and reptile species utilizing the area and making use of a rare freshwater supply. Policy 10.6 of the Resource Management Element states that a minimum 50-foot buffer shall be provided upland of riparian wetlands, and in this instance, we believe a larger buffer is necessary to achieve the necessary level of protection.

Thank you. Please let me know if you have any questions about the comments above.

Stephanie Leach

Coastal Planner
San Diego Coast District

cc email to Andrew Maynard, 4/15/2022

Hi Andrew,

I just wanted to pass along three additional comments from our ecologist:

- Looking back over the years on aerial imagery, it's apparent that some areas of the site have been cleared, perhaps repeatedly. One clearing event that seems more obvious from the aerial imagery occurred in 2017, and it is plausible other clearing events occurred both before and after this date. The permit history for the site as provided by the City does not appear to include any approval for the clearings, and therefore we believe unpermitted development has occurred on this site.
-
- The 2022 Biological Resources Report state that the most recent surveys for the site are vegetation mapping from 2019 and focused surveys for wildlife and rare plants in 2018, 2019, and 2020. The report is presented as an update but the data and datasheets cited in the report are all from the previous surveys. The wildlife and botanical surveys should be updated to include more recent data.
-
- More robust mitigation should be considered for the project given the impacts to sensitive vegetation used by rare wildlife.

Thanks!

Stephanie Leach
Coastal Planner
San Diego Coast District

In conclusion, the Encinitas Citizens for Responsible Development recognize that many changes have been made to the design and size of the Quail Meadows apartments since the last planning commission hearing. ECRD requests that the Planning Commission consider that the project violates the general plan and housing element based on applicable base density regulations as permitted under state and city laws and ordinances. The plan also violates Encinitas municipal codes which will endanger public safety by building on steep slopes, building on lots with over 25% steep slopes and by building in flood zones. The development endangers public safety with the potential for loss of life and property with inadequate drainage systems. The project design will not meet the standards of the Local Coastal Program for protection of coastal wetlands, proposes to violate the Ca Coastal Commission agreement to protect and not enter the wetlands and its hydrology, and proposes destruction of coastal wetlands to implement its drainage design. Finally, the traffic mitigation measures fail to adequately mitigate the impact of almost 3,000 car trips daily from the project that utilizes a narrow, two lane country collector road that is already experiencing unacceptable delays with failing levels of service.

This analysis shows that the very basis for the Quail Meadows project, the base density calculation for dwelling units, is inconsistent with the general plan and the housing element. The density requested is not permitted under the applicable ordinances and policies at the local and state levels that govern housing element site applications submitted in 2020.

The plan is also inconsistent with the circulation element, providing no substantive basis that the mitigation methods will have any impact of the decline in LOS from vehicle trips generated by the Quail Meadows development.

The very real threat to the safety and property of residents, visitors and businesses from the frequent site flooding, which we have been reminded of repeatedly over the past few years, has not been addressed adequately by the drainage plan. And plans for the sliplining of the 48" CMP drainage plan in the wetlands are inconsistent with the agreement with the CCC to protect the hydrology of the wetlands and to protect it from intrusion by persons, vehicles or equipment. The CDP is not consistent with the LCP and must be denied.

To conclude, the Quail Meadows site is an 11.96 acre site situated in the Coastal Zone and is located in an environmentally sensitive flood zone that contains wetlands, protected species, environmentally sensitive habitat areas and steep slopes forming the natural creek that is a tributary to Cottonwood Creek. Almost nine of the 11.96 acres are unbuildable by city and CA state guidelines. It should be apparent to the Planning Commission that there are multiple environmental, technical and public safety

reasons why this site has never been developed. This development of this site poses one of the greatest risks to the safety of residents, businesses and visitors that the city will ever face. Building in floodplains is never a safe idea. Building in environmentally protected areas is not allowed. Quail Meadows is not the right place for this development. In conclusion, ECRD recommends denying the permits for development for the legal, technical and safety issues posed and out of an abundance of concerns. Please deny the permits and the application for development.