AN 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 | November 20, 2024

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Executive Summary

This report represents the reasons for the appeal, filed on behalf of Encinitas Citizens for Responsible Development (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).

There are several key issues with the approval of this project, which can be summarized by:

- insufficient project site analysis;
- inconsistent application of state law;
- a risk to public safety due to the project's specific impact and cumulative impacts due to its co-location with other approved high-density developments; and
- design inconsistent in accordance with the requirements of the General Plan, Local Coastal Plan (LCP) and Encinitas Municipal Code (EMC).

A set of references and supporting documents regarding inconsistencies and legal irregularities is set forth in the Exhibit 1 and additional attached Exhibits.

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

A blue line stream exists on the property that was not identified, analyzed, nor mitigated for.

Summary Argument

Comprehensive site analysis should consider the current physical condition of the site and its surroundings, as well as any relevant historical information.

As approved, the project places a residential building over a historic stream (as identified on federal maps and datasets) and riparian area, and placing a subterranean parking garage within the drainage course.

Existing natural drainages must, at a minimum, be maintained for wetlands potential, drainage, and water quality, including increased flows from upslope development and climate change.

Diversion, alteration or otherwise disturbance of streams and natural drainage courses require coordination with federal and state agencies to assess impact and permitting requirements. The project has not identified the need for such coordination.

Additionally, the project is inconsistent with Land Use Policy 8.6, which requires the incorporation of natural drainage courses, wetland and riparian areas into all development.

The appropriate state and federal agencies must be consulted in the development planning phase.

Evidence

Blue line streams are identified on United States Geological Survey (USGS) 7.5 minute topographic maps as a solid or dashed blue line, and are used by the United States Army Corps of Engineers as a preliminary indicator of waters of the United States (WOUS). A blue line stream may be any creek, stream, or other flowing water feature, perennial or ephemeral, with the exception of man-made water courses. In addition, many states have additional protections in place and define waters of the state separately from WOUS. California Water Code § 13050(e) defines waters of the state as:

> "any surface water or groundwater, including saline waters, within the boundaries of the state."

This definition is reinforced under EMC § 20.02.030, 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)

Additionally, the term "stream" is 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. . ."

Historic USGS 7.5 minute topographic maps from 1948 and 1968, excerpts of which are provided herein as Figure 1 and Figure 2 respectively, show a blue line stream running north-south through the project site.

These excerpts were retrieved from full topographic maps, provided as Exhibit 2 (1948 map) and Exhibit 3 (1968 map), downloaded from the USGS' National Map Downloader[1].

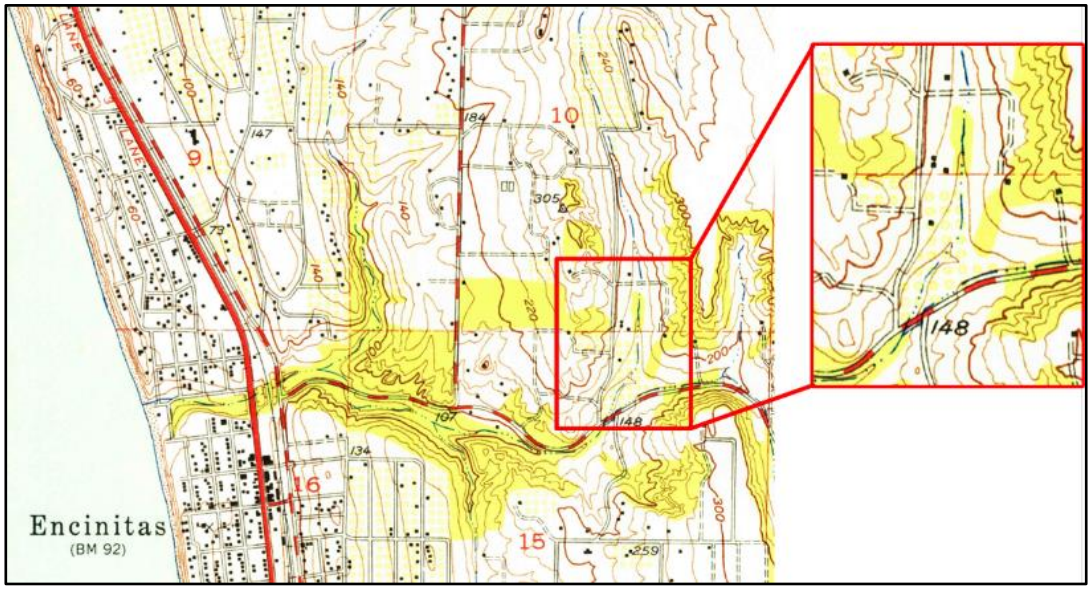

Figure 1 – Excerpt from 1948 USGS Topographic Map Showing Blue Line Stream on Project Site

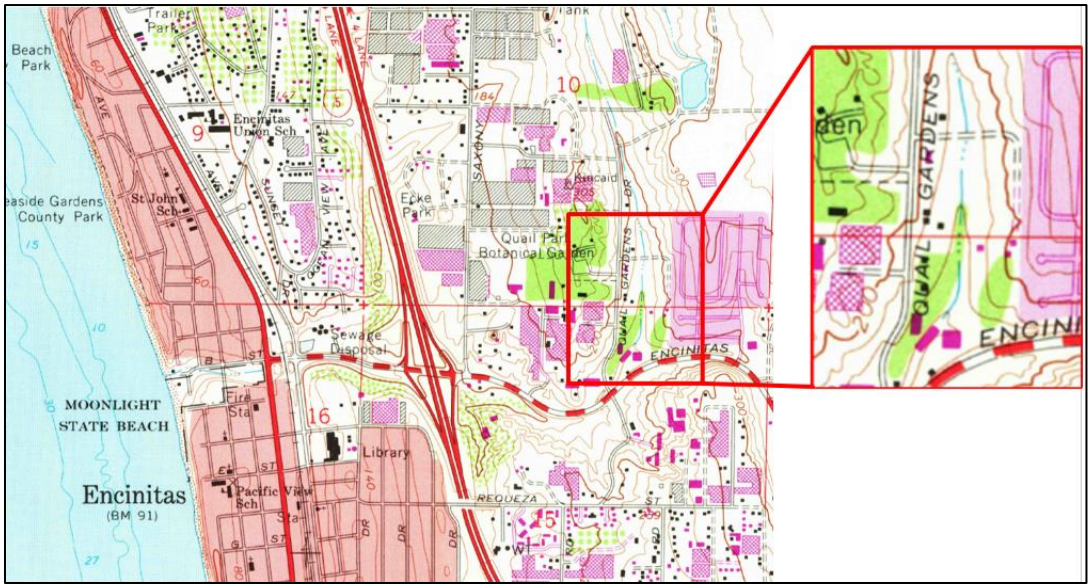

Figure 2 – Excerpt from 1968 USGS Topographic Map Showing Blue Line Stream on Project Site

[1] USGS National Map Downloader, accessed at https://apps.nationalmap.gov/downloader/#/maps

Current data is available from the City of Encinitas' Open GIS Data Hub[2], described as:

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

This repository contains a stream dataset and a Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM) dataset.

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"[3].

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 as Figure 3.

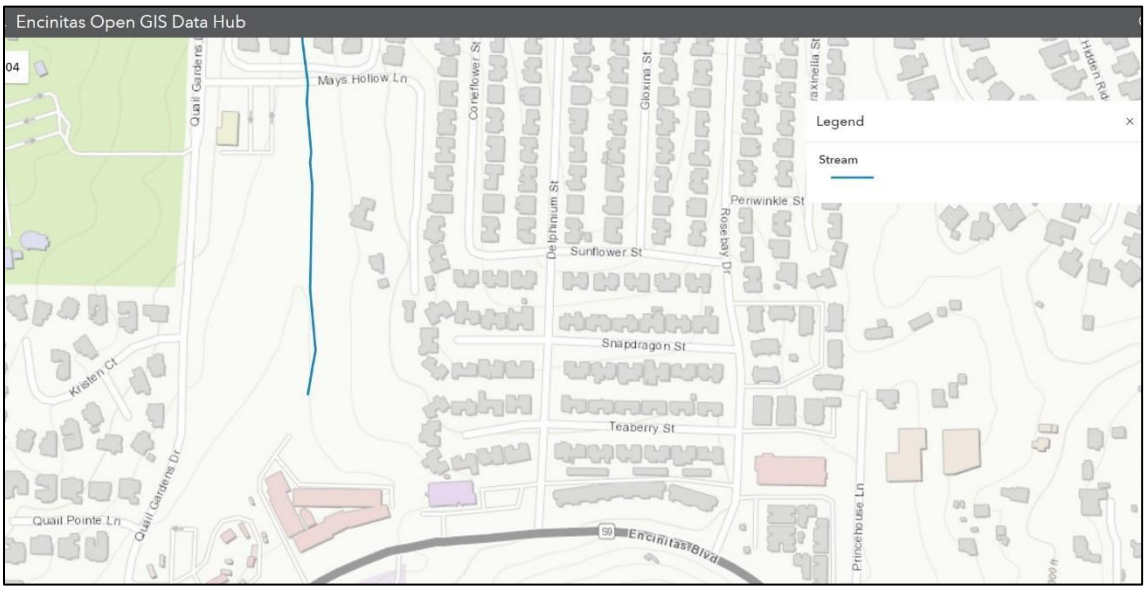

Figure 3 – USGS 7.5 Minute Topographic Stream Dataset Screenshot Showing Stream on Project Site

The City of Encinitas FIRM Viewer[4] also identifies this stream. A map showing the project site with the stream was exported from the FIRM viewer on October 25, 2024 and is provided as Figure 4 (provided on the next page) and Exhibit 4.

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

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

[4] The City of Encinitas FIRM viewer is accessed at https://firm.encinitasca.gov/

Figure 4 – Exported FIRM Map Showing Stream on Project Site

Neighbors bordering the property have captured recent photographic and video evidence of the stream in active flow and actively flooding neighboring southerly properties. Photo evidence of the stream was captured via drone photography on February 8, 2024 and is shown as Figure 5. Videos showing active stream flow, provided as Exhibits 5, 6 and 7, were captured in January 2024. A screen capture from Exhibit 5 is provided as Figure 6.

Figure 5 – Aerial Photo of Actively Flowing Stream on Project Site on February 8, 2024

Figure 6 – Screen capture from Exhibit 5; Quail Gardens Corporate Center Visible in Background

Finally, the applicant and historic Planning Department staff are also aware of this stream and relevant city standards, as it was planned for in a previous application (heard on August 2, 2007; Case No: 05-002 TM/MUP/DR/CDP/EIA)[5]. 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)

Staff further state:

> "The intent of lot averaging is to provide subdivision design flexibility to preserve unique physical features of a property, such as the historic drainage course across the subject property." (*Agenda Report,* pg. 6-18)

Notably, due to this previous development plan's inclusion of a large swale (i.e. shallow, broad, vegetated channel), the project would not impact the wetlands identified onsite and would maintain the historic drainage channel of the site, a proposal approved by California Department of Fish and Wildlife, one of several state agencies responsible for streambed impact analysis and permitting.

The current plan does not identify the potential for streambed impacts nor impacts to the historic riparian area and develops over the natural drainage course, thereby also making it inconsistent with Land Use Policy 8.6 which states:

> "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."

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

> "…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…"

[5] *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/

Should a project site plan to divert, alter or otherwise disturb an existing stream channel, regardless of its condition, under current water regulations and the General Plan, the following federal and state agencies are required to be notified for assessment and permitting requirements at a minimum:

- United States Army Corps of Engineers
- United States Fish and Wildlife Service
- California State Water Resources Control Board
- California Department of Fish and Wildlife

None of the listed agencies have been cited as contacted to date regarding this current application.

Conclusion

The current project's application, staff report, and supplemental studies make no mention of the presence of a historic stream channel and riparian area on the project site, analysis for its applicability as WOUS or impact to Waters of the State of California, nor have the relevant agencies governing water resources been cited as contacted for assessment.

Historic and current federal USGS and FEMA maps identify a blue line stream on the project site. A 2007 staff report for a previously approved development plan of this site by the applicant identifies, maintains and reinforces this historic natural drainage course and riparian environment.

As proposed, the current project develops over the streambed without resource protection, assessment, mitigation, or authorization from federal or state agencies for potential impact and permitting requirements and develops over the historic riparian area.

At a minimum, the presence of this historic drainage course on the project site requires full and accurate identification and assessment to the City and other reviewing agencies because the issue of natural drainages is an issue of great public welfare and safety to the People and State, notwithstanding making the project ***discretionary and appealable***.

The current project is also inconsistent with Encinitas' Land Use Policy 8.6, which requires natural drainage courses be maintained and incorporated into the development, and Land Use Policy 8.10 which requires consultation with California Department of Fish and Wildlife and United States Fish and Wildlife Service.

The project does not comply with federal and state laws regarding water resources, and does not comply with the Land Use Element of the General Plan.

Density Bonus Law does not supersede California Coastal Act

Summary Argument

The proposed project is located in the Coastal Zone and contains several design elements that are inconsistent with Encinitas' Local Coastal Plan (LCP). According to current regulations (i.e., California Government Code, California Coastal Act [CCA], and EMC), Density Bonus Law does not supersede the CCA. As stated in the Encinitas General Plan, the LCP takes precedence for ***all development*** within the Coastal Zone.

Further, due to the existence of a stream within 100 feet of the project site, the CCC has jurisdiction over the entire project pursuant to PRC § 30603, subdivision (a)(2).

Local governments have the authority to deny projects which do not conform with the LCP or to restrict density so that the project will conform with the LCP.

Evidence

Provisions under Density Bonus Law do not take priority over the provisions of the CCA. The project and waivers granted must also remain consistent with our Local Coastal Program as stated in Government Code §65915(m):

> "This section ***does not supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976*** (Division 20 (commencing with Section 30000) of the Public Resources Code). ***Any density bonus***, concessions, incentives, ***waivers or reductions of development standards***, and parking ratios to which the applicant is entitled under this section shall be permitted in a manner that is ***consistent with this section and Division 20*** (commencing with Section 30000) of the Public Resources Code" (emphasis added)

Encinitas ordinance governing Density Projects reinforce CCA's applicability and Local Coastal Plan Consistency under EMC §30.16.020(C)(7)(b):

> "For development within the coastal zone, any requested density bonus, incentive(s), waiver(s), parking reduction(s), or commercial development bonus(es) shall be consistent with all applicable requirements of the certified Encinitas Local Coastal Program, with the exception of density."

Furthermore, the City of Encinitas' General Plan introduction states:

> "Where any policy or provision of the General Plan that is part of the Local Coastal Program Land Use Plan (LUP) conflicts with any policy or provision of the General Plan that is not part of the Local Coastal Program Land Use Plan (LUP), the LUP policy or provision shall take precedence in the area of the City within the Coastal Zone." (*Encinitas General Plan,* pg. I-2)

> "Development within the City of Encinitas coastal zone would then ***only be approved if found to be in conformity with the certified LCP***." (*Encinitas General Plan,* pg. I-16. Emphasis added)

To summarize, to be consistent with the LCP, a project and any associated waivers, except density, must be consistent with the General Plan and the City's zoning ordinance (Title 30 of the municipal code). According to the Encinitas General Plan, the LCP takes precedence for all development within the Coastal Zone.

At a minimum, the proposed project is inconsistent with the LCP in the ways described in Table 1.

Table 1 – Project Element Comparison to Local Coastal Program Requirements

Code or Policy Reference	Requirement	Inconsistent Project Element
EMC§30.16.010(A)(3)	Front Yard Setback 10'	Front Yard Setback 0'
EMC§30.16.010(B)(6)	Maximum 3 story residential development	4 story residential development
EMC§30.16.010(B)(6)	Maximum 35' for flat roofs or 39' for pitched roofs	Building 1- Height of 50'10" (top of parapet), 53'10" (top of ridgeline) and 61'4" ((top of stairs/elevator tower). Building 2 – Height of 49'3" (top of parapet), 48'10" (top of ridgeline), and 64'10" (top of stairs/elevator tower)
EMC §8.04.070	Within any City beach, park, recreational trail, or waterway, it shall be unlawful for any person to destroy, disturb, deface or remove earth, sand, gravel, oil, minerals, rocks or fossils, features of caves, archaeological artifacts or any parts thereof	Project develops over an ephemeral stream that has not been identified nor analyzed. EMC does not define waterways, but does define Waters of the State of California, which include ephemeral streams.
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	Project develops over the natural drainage channel and historic riparian area, placing an underground parking garage in the drainage path. Natural steep slopes on Lot 2 are developed over and miscategorized as "disturbed".

Code or Policy Reference	Requirement	Inconsistent Project Element
Land Use Policy 8.10	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… Wetland/ riparian areas and their associated buffers shall be permanently protected from development through the application of an open space easement or other suitable instrument	Project develops over historic riparian area and did not consult California Department of Fish and Wildlife nor U.S. Fish and Wildlife Service for discussion of impacts to this natural drainage course and historic riparian area.

Several additional inconsistencies are listed in Exhibit 1.

Under the CCA, density projects are encouraged. However, the project must:

- meet the requirements for housing for very low, low-, or moderate-income households as defined under Government Code §65589.5(h)(3); and
- remain consistent with the density afforded in local zoning plus the bonuses afforded under Government Code §65915.

An exception exists under PRC §30604(f) where projects may be denied or require a reduction in density where:

> "the density sought by the applicant cannot feasibly be accommodated on the site in a manner that is in conformity with Chapter 3 (commencing with Section 30200) ***or the certified local coastal program***." (emphasis added)

The project design is inconsistent with several elements of Encinitas' LCP and therefore can lawfully be denied or require a reduction in density.

Furthermore, the CCC's jurisdiction is not limited to consideration of only the aspect of the project related to the 48" CMP. Rather, the entirety of the project is appealable to the California Coastal Commission pursuant to PRC § 30603, subdivision (a)(2):

> After certification of its local coastal program, a***n action taken by a local government on a coastal development permit application may be appealed to the commission for*** only the following types of developments:... ***Developments approved*** by the local government not included within paragraph (1) that are located on tidelands, submerged lands, public trust lands, ***within 100 feet of any*** wetland, estuary, or ***stream***, or within 300 feet of the top of the seaward face of any coastal bluff. (Id., emphasis added.)

Conclusion

Due to the project's location within the Coastal Zone, requirements under the CCA are applicable to the project as well as conformity with the design requirements of the LCP. This applicability is reinforced by Density Bonus Law (Government Code §65915), the Encinitas General Plan, and EMC §30.16.020(C)(7).

Due to the presence of a USGS identified blue line stream within the project site, the entirety of the project is subject to CCC appeal.

As the project's density cannot be accommodated without waivers that are inconsistent with the LCP, the City of Encinitas has the authority to deny the project altogether or require reduction in density of this project size to bring the project into conformance.

The project is inconsistent with the General Plan, applicable Housing Element Update, and California Department of Housing and Community Development guidance in its density calculations.

Summary Argument

The project's density calculations are inconsistent with the ordinances, policies, and standards adopted and in effect when the preliminary application was submitted, under which net acreage was the method of calculation.

Additionally, due to the presence of a historic stream, riparian area and steep slopes, the net acreage is inflated to include unbuildable areas, making the project inconsistent with the LCP and General Plan.

The project's density calculations should be adjusted to remain in compliance with California Senate Bill 330 (SB330), the 5th Cycle HEU, design standards effective in 2020, EMC §30.13.010, and the agreements between California Department of Housing and Community Development (HCD) and the City of Encinitas.

Evidence

California SB330, the Housing Accountability Act made effective on October 19, 2019, revised Government Code §65589.5(o)(1) to state:

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

Due to the project's initial application date of May 5, 2020, this project is subject to the 2020 Encinitas General Plan, design standards, the guidance and agreements between HCD and the City of Encinitas at that time and is a Housing Element site under the 5th Cycle HEU.

The 2020 Encinitas General Plan, Land Use Policy 3.2, refers to the net acreage concept for development, defined as the total land area available for development after subtracting any areas designated as unusable or dedicated to public use.

Net acreage is also applied to all residential zones as a development standard under current EMC §30.13.010(B)(2):

> "Net acreage is the slope adjusted gross acreage not including acreage of the flood plains, beaches, permanent bodies of water, significant wetlands, major power transmission easements, railroad track beds, existing and future rights-of-way and easements for public or private streets/roads."

The 2019 update for the 5th Cycle HEU was approved by the City of Encinitas on March 13, 2019 and was approved by the HCD on October 8, 2019. The HEU, Appendix C, uses net acreage to calculate the buildable acreage for each HEU site. Under a Net Acreage Calculations heading for Very Low/Low Income RHNA Candidate Sites in Appendix C:

> "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."

Table C-2 of the 5th Cycle HEU, Net Acreage and Unit Yield Per Site, shows a total net acreage of 9.05 acres and a unit yield of 225 for the sites comprising this project: AD2a, AD2b and AD2c. A screen capture of this table with the applicable sites highlighted is provided as Figure 7.

Table C-2: Net Acreage and Unit Yield Per Site

Site Number	Site Name	Gross Acreage	Net Acreage	Unit Yield (DU)
Vacant[1]				
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**

Figure 7 – Excerpt of Table C-2 from the 5th Cycle Housing Element Update

It should be noted that this calculation was performed before the identification of the wetlands onsite, and does not include buffer zones to protect the historic blue line stream and riparian habitat.

Under a June 10, 2020 memo (provided as Exhibit 8) regarding the Housing Element Site Inventory Guidebook Government Code Section 65583.2 states net acreage should be used for 2020 housing element sites. The memo 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."

Finally, the use of gross acreage in density calculations is occurring outside government authorization.

A public records request (W005734-040224) for legal memos, records, minutes, agendas, notes, memos, legal findings, attendees, and calendars for housing density discussed by city staff at the February 1, 2024 Planning Commission meeting returned a single legal memo. Exhibit 9 provides this memo, originally provided as an attachment to Special Meeting Item #03A – Attachment 6 for the February 16, 2021 meeting.

The legal memo was written on February 1, 2021 by Barbara Kautz, housing attorney for the City of Encinitas, to the incumbent Land Use and Planning Unit Chief with HCD. The legal memo reinforced Encinitas' position on the 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.

Ms. 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 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." (*Exhibit 9*, pg. 5)

The staff report for the project grandfathers the project into the 6th Cycle HEU as the applicable Housing Element, which is inconsistent with SB330.

Neither the General Plan nor municipal code define "grandfathering", and therefore this approach was performed without authorization or guidance from HCD.

The staff report cites several different figures for the project's net acreage, using a total net acreage of 10.62 acres under the Development Standards compliance table as well as calculating the total number of trees required to be planted, and 9.92 slope-adjusted net acreage under the Residential 30 Overlay Zone table, before claiming use of the gross 11.96 acres for base density calculations.

Neither the applicant nor the staff report calculate the potential net acreage of the site accounting for the historic stream, riparian area and existing steep slopes.

The use of gross acreage for this site's density calculations are inconsistent throughout the staff report, and are inconsistent with the SB330, the 5th Cycle HEU, EMC §30.13.010, and the agreed method between HCD and the City of Encinitas for calculating base density.

Conclusion

The project's original application was submitted on May 5, 2020, making the project applicable as a 2013-2021 5th Cycle Housing Element site, as well as laws, city municipal code and agency guidance at that time, which is consistent with California Senate Bill 330 (SB330). SB330 states projects are only subject to the ordinances, policies and standards in effect when a preliminary application is submitted.

The project incorrectly uses gross acreage in calculating the number of dwelling units for this housing element site, which is inconsistent the 2020 5th Cycle Housing Element update (5th Cycle HEU). Additionally, municipal code uses net acreage as the method of determining base density housing for R30 zoning overlays. Further guidance from HCD in 2020 memo states net acreage may be used for 2020 Housing Element sites.

Through the identification of a historic stream and riparian area onsite as well as inconsistent steep slopes analysis, this appeal also argues the calculated net acreage to be inflated.

The project design is inconsistent with the Land Use Element of the General Plan regarding development on hillsides/inland bluffs and steep slopes.

Summary Argument

The project is inconsistent with the Encinitas General Plan Land Use policy and municipal code regulating development on hillsides/inland bluffs and steep slopes.

The staff report erroneously assesses that the existing slopes are disturbed and therefore not subject to the Hillside/Inland Bluff Overlay requirements.

Regardless of staff's assertion that existing slopes are disturbed, the Hillside Overlay Zone (EMC § 30.34.030) applies generally:

> "where site-specific analysis indicates that 10% or more of the area of a parcel of land exceeds 25% slope." (EMC § 30.34.030, subd. A.)

There is no restriction to the applicability of the Hillside Overlay Zone only to undisturbed slopes. Thus there is a failure to evaluate the evidence that the project site contains undisturbed slopes that require application of the Hillside Overlay Zone, and correctly apply EMC § 30.34.030 regardless of the nature of the slopes at the project site.

Evidence

To determine slope modification at a site, a site-specific engineering report would provide:

- Site Diagram/Vicinity Map
- Topographic maps with two foot contour intervals
- Site Photographs
- Questionnaires / User Provided Information
- Regulatory Records
- Historical Records
- Other Documents / Lab Results

The site has experienced significant topological change in the last several years due to multiple storm events and resulting flooding of the site and historic, fluvial erosion leading to an increase in existing steep slopes.

Exhibit 10 provides a manufactured slopes report from the original 2020 Quail Meadows Apartments application[6] which states, with no historical aerials or analysis, that historical aerials showed the site had manufactured slopes. No historical aerials were provided in the file as part of the application, therefore making the analysis incomplete.

[6] File name 3751 Tech Study- 2018 Manmade Slope Memo_v1, submitted as part of the original 2020 application for Quail Meadows Apartments; MULTI-003751-2020.

A single topographic and aerial map was provided as the Existing Conditions Slope Analysis[7], submitted with the original 2020 Quail Meadows Apartments application. This map is provided as Exhibit 11 and shows several portions of lot 2 with over 25% and 40% slopes

According to EMC §30.34.030(B)(1):

> "For proposed projects within the Hillside/Inland Bluff Overlay Zone, a slope analysis shall be submitted by the applicant based upon a topographic map with contour intervals not exceeding two feet."

The Existing Conditions Slope Analysis (Exhibit 11) provides a five-foot contour, making the analysis inconsistent with municipal code.

The analysis in Exhibit 10, Manufactured Slopes Report, shows the parts of Lot 2 with steep slopes were not covered with previous nursery operations by the previous owners of the property and have not been developed. The pictures of greenhouses within this report are located on lots 3 and 4.

Lots 3 and 4 are now part of the conservation agreement between the applicant and the California Coastal Commission. The evidence provided does not suggest the slopes on Lot 2 are manufactured.

Discussions with the historic owners of the site indicate that these slopes have not been modified as argued in the staff report, and rather are part of the natural banks and fluvial erosion due to the identified stream and natural drainage course. Contemporary housing projects provide the Planning Department with slopes analysis conducted by engineering firm specializing in topographic analysis of historical images of the site.

Instead, this project claims manufactured slopes without supporting studies. An historic aerial image from 1986 available for the site, provided as Figure 8, shows no modification of the site on a majority of Lot 2.

Continued next page

[7] File name 3751 Tech Study - Slope Analysis 2023.10.9._v3_v1, submitted as part of the original 2020 application for Quail Meadows Apartments; MULTI-003751-2020

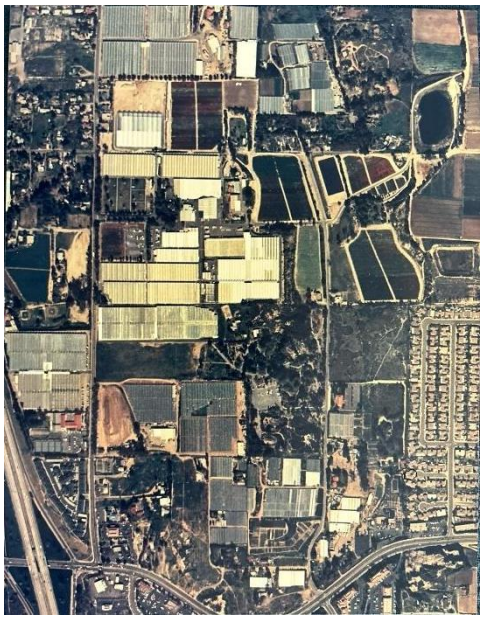

Figure 8 – Historic Aerial from 1986[8]

The project did not provide any regulatory information about site modifications. County and city records for permits for grading of the site are available, however no reports have been provided as attachments to the application nor referenced in the staff report. Additionally, the project did not provide any historical narrative of grading on the site.

The assessment of the site for steep slopes is incomplete and inaccurate.

Conclusion

The steep slope analysis is not provided in a manner that is consistent with the General Plan.

Despite the provision of an existing steep slope analysis as part of original application MULTI-003751-2020 which does report existing steep slopes, adequate analysis of its state have not been provided. This appeal argues that the steep slopes are a result of fluvial erosion due to the presence of a blue line stream and natural drainage channel.

The conclusion of manufactured or disturbed slopes is not supported with good engineering practices nor sufficient evidence and cannot be considered adequate for development. The proposal to build on historic, natural steep slopes over 40% is inconsistent with EMC §30.34.030.

In accordance with the General Plan and EMC, Lot 2 should be excluded from the project's buildable area.

[8] Retrieved from https://www.historicaerials.com/viewer

The 48" corrugated metal pipe is an illegal structure and may not be incorporated into the project's proposed drainage plan.

Summary Argument

The project's drainage plan relies on use of a historic headwall and 48' corrugated metal pipe (CMP) that have no permitting records associated with them. Due to their location within the Coastal Zone and their installation in the 1980's, after the effective date of the CCA, a Coastal Development Permit (CDP) was required for these structures to be legally installed.

As found in *LT-WR, L.L.C. v. California Coastal Com.*, (2007) 151 Cal.App.4th 427:

> "In order to enable the Commission to protect coastal resources, and to avoid condoning unpermitted development, the Commission properly reviewed the application as though the unpermitted development had not occurred." (*Id.* at p. 797.)

***No CDP was issued for the headwall nor the 48" CMP and are therefore unpermitted, illegal structures*.**

The plan to connect this illegal structure to the storm drain system is not permissible under CCA, which would require enforcement action for the 48" CMP and headwall. Use of these structures are is noncompliant with EMC § 20.08.070 which prohibits the connection of illegal structures to the stormwater conveyance system.

The current project's development and drainage plan require revision.

Evidence

The applicant's submitted Drainage Study[9], prepared by Rick Engineering and dated July 22, 2024, describes the pre-project condition as:

> "The topography of the project site consists of a valley aligned in north to south direction (i.e., flow generally drains from north to south)… A wetland area is located north of the project site that receives off-site flow from the north. A headwall is located at the south limits of the wetland and connects to a 48-inch corrugated metal pipe (CMP) that conveys flows from the wetland to the above-mentioned 84-inch RCP located at the south limits of the project site." (*FDraft Drainage Study for Quail Meadows,* pg. 15)

As part of the proposed drainage plan, the report continues (under section 1.2 Drainage Characteristics, Post-Project Condition):

> "The portion of the existing 48-inch CMP located on-site will be demolished, and the upstream segment of approximately 513 feet of the existing 48-inch CMP will remain in place and be

[9] *FDraft Drainage Study for Quail Meadows,* Attachment PC-15 to item 8B of the Planning Commission Hearing dated October 3, 2024

> connected to the proposed on-site 84-inch RCP storm drain system." (*FDraft Drainage Study for Quail Meadows,* pg. 16)

Exhibit 12 shows the proposed post-project drainage plan, retrieved from the Rick Engineering Report's Attachment 1 – Post Project Drainage Exhibit (Addendum No. 1)[10]. The callout on the plan for slip line repair and connection to the storm drain system are bordered in bold red.

Nowhere in the engineering report nor the staff report is a confirmation of the installation date of the headwall and 48" CMP nor its current state of functionality, rather solely refer to it as "existing" or "pre-existing".

Figure 9 shows a photo taken of the 48" in CMP and historic headwall in its current condition, taken in February 2024.

Figure 9 – Photo of the 48" existing pipe and headwall, taken February 2024

According to the installer of the 48" CMP and headwall, as evidenced by the letter signed by the person responsible for installing the structures provided as Exhibit 13, these features were installed during the 1980's.

Under PRC §30106:

> " 'Development' means, on land, in or under water, the placement or erection of any solid material or structure … As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line."

[10] *FDraft Drainage Study for Quail Meadows,* Attachment PC-15 to item 8B of the Planning Commission Hearing dated October 3, 2024

Due to the timing of installation communicated by the installer (refer to letter provided as Exhibit 13), location of the development within the Coastal Zone, and applicability of the 48" CMP and headwall as a structure under CCA, this development required a CDP for lawful installation.

A search of the California Coastal Commission's Public Data Portal[11], a repository of records related to Coastal Commission activities including development permitting, resulted in no records of a permit issued for the installation of neither the 48" CMP nor headwall.

Exhibit 14a provides screenshots of the search results of the database by all parcel numbers comprising the project, and Exhibit 14b provides an export of all records associated with Quail Gardens Drive.

No permit record exists for this structure nor records along Quail Gardens Drive associated with the project area, thereby making the structure unpermitted. Generally, it is the policy of the California Coastal Commission to "require the removal of items, materials, and structures placed without approval under the Coastal Act". In addition, "Frequently, the Commission also demands additional mitigation to offset the impacts of violations, resulting in increased habitat restoration or increased habitat placed in conservation and protected from development."[12].

The use of unpermitted, illegal structured presents a public safety risk as they have not been adequately assessed for structural integrity. Furthermore, under EMC § 20.08.070:

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

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.

The applicant's claim about pre-negotiating avoidance (via wetlands buffer) does not address resource maintenance of the identified blue-line stream, historic riparian area, and current proposal to demolish portions of the existing 48" CMP.

Conclusion

The project's drainage plan relies on the use of a pre-existing headwall and 48" corrugated metal pipe (CMP), which is to undergo slip line repair and be connected to a proposed on-site 84-inch reinforced concrete pipe storm drain system.

The existing headwall and 48" CMP were installed by previous owners of the property in the 1980's, after the implementation of the CCA which required a CDP for all development within the Coastal Zone of the city. CCA and EMC prohibit the use or maintenance of illegal structures, and generally requires their removal and allowance of the development-impacted area to return to its natural state.

[11] The California Coastal Commission's Public Data Portal is accessible at www.coastal.ca.gov/PDP.

[12] California Coastal Commission Website. Quote retrieved from https://www.coastal.ca.gov/enforcement

The project does not accurately model the current public safety risk due to historic flooding on this property.

Summary Argument

The project's current plan to develop over a USGS and FEMA-identified stream throughout the center of the property presents an unmitigated risk to the project itself, its future residents, visitors, business, existing public infrastructure, and surrounding development in addition to being inconsistent with current guidance from FEMA, the American Planning Association (APA), and Land Use Element Policy 8.10.

The lack of design consideration for the historic stream and riparian area, as well as the documented historic observation of flooding, poses not only a financial risk, but a potential risk to property and life.

Both the City of Encinitas and applicant paid damages to a business that closed due to the April 2020 flooding of Sunshine Gardens Nursery for failure to adequately manage flooding. Increased hardscape due to development increases the risk of flooding.

The project requires additional due diligence to adequately manage the true flood risk at this site.

Evidence

The project currently develops over a natural drainage channel, identified in the previous section addressing the blue line stream. A FEMA Flood Insurance Rate Map available for the project site also identifies a stream running north-south through the property (refer to Figure 4 and Exhibit 4). A recent American Planning Association (APA)-issued subdivision development guidance document was authored in 2016, forwarded and hosted online by FEMA[13]. The document acknowledges:

> "FEMA's Flood Insurance Rate Maps (FIRMs) are the most commonly used resource for assessing flood risk in planning practice… Yet they are also quite ***limited tools for assessing true risk***, especially in recently subdivided areas where maps may be far out of date or incomplete." (*Subdivision Design and Flood Hazard Areas,* pg. 4. Emphasis added)
>
> "The probability element of the flood risk equation is commonly expressed through flood maps. In the United States FEMA Flood Insurance Rate Maps (FIRMs) are the most widely available. However, these maps only depict certain flood risk areas—the 100-year flood zone, the 500-year flood zone… ***FIRMs typically do not identify all of the following flood risks***: higher frequency flood zones (such as the 10-year or 25-year flood zones), ***fluvial erosion zones***…" (*Subdivision Design and Flood Hazard Areas*, pg. 13. Emphasis added.)

[13] *Subdivision Design and Flood Hazard Areas*, American Planning Association. Accessible online at https://www.fema.gov/sites/default/files/2020-06/apa_subdivision-design-and-flood-hazard-areas_10-31-2016.pdf

These excerpts highlight that while the stream has been identified on the FIRM on which the project site sits, the true flood risk of this site may not have been characterized.

Furthermore, the same guidance document states:

> "Flooding can result from any number of natural and human-made features. Flooding of rivers and streams and along coastlines is familiar. However, other geographic features are also susceptible to flooding: gulches that are dry most of the year can become raging torrents during heavy rainfalls in the Southwest, alluvial fans can have unpredictable and undefined flow areas, and shallower lakes with large surface areas can have wind-driven flooding due to storms or frontal systems. Additionally, a number of human-made features can result in flooding." (*Subdivision Design and Flood Hazard Areas,* pg. 7)

It is their recommendation within the APA guidance document that to prevent risk of flooding, development planning should:

> "Map waterbodies without identified floodplains (e.g., ditches, ponds, lakes), lower lot or area minimum thresholds to trigger more detailed flood studies, and perform future flood conditions analyses (for both land use and hydrology.)" and;
>
> "Protect, inventory, and restore riparian areas. Maximize riparian buffers" (*Subdivision Design and Flood Hazard Areas,* pg. 7)

While not required under the National Flood Insurance Program (NFIP) regulations, FEMA recommends standard setback distances from 50 to 100 feet, as is consistent with Land Use Element Policy 8.10 which states:

> "…buffer zones to protect riparian areas shall generally be minimum 50 feet in width…"

The current project application has not identified the historic stream and riparian area within the site, despite historic knowledge by the applicant and Planning Department. The project's plan to develop over the historic stream and riparian area conflicts with current guidance for new development and the Land Use Element of the General Plan.

Additionally, the site has a history of flooding recorded both by neighbors living adjacent to the property. An April 2020 storm serious enough to warrant characterization and reporting as a severe weather event by the National Weather Service forced the closure of several tenants to the south of the project site.

Historic photographic evidence of project site flooding observed after storm events in 2024 are provided in the section of this report identifying a blue line stream on the property as Figure 5 and Figure 6. Videos of active stream flow and flooding are provided as Exhibits 5, 6, and 7.

A 2024 National Weather Service report[14] catalogued an April 2020 storm as a severe weather event. This storm resulted in catastrophic flooding to the property formerly occupied by Sunshine Gardens Nursery and their tenants. A photo of this flood event, taken on April 10, 2020 after the storm event subsided retrieved from a North Coast Current article[15], is provided as Figure 10.

Figure 10 - View of Sunshine Gardens facing Encinitas Blvd. Photo taken April 10, 2020 and retrieved from North Coast Current

This same National Weather Service report has documented 12 severe weather events affecting the North County San Diego coastal region since 2008.

The catastrophic flooding event at the Sunshine Gardens Nursery led to a tenant, Vedic Life's Forbidden Juicery, LLC (dba Cuppa Juice Garden Café), to file a complaint for damages against both the City of Encinitas and the applicant for failure to adequately divert surface waters and resulting in their permanent closure.

The City of Encinitas and the applicant, referred to in the settlement agreement as Quail Meadows Properties, LLC ("QMP"), settled with the plaintiff for $100,000 and $180,000 respectively.

The lawsuit and settlement agreement are provided as Exhibit 15.

[14] *A History of Significant Weather Events in Southern California Organized by Weather Type*, National Weather Service. March 2024. . Retrieved from Weather History: https://www.weather.gov/media/sgx/documents/weatherhistory.pdf

[15] *Gardens, Encinitas shops work to recover from flood*., J. Shapiro. April 24, 2020. Retrieved from North Coast Current: https://www.northcoastcurrent.com/coastline/2020/04/sunshine-gardens-encinitas-shops-work-to-recover-from-flood/#

The current drainage plan models data from a 2008 report prepared by Hunsaker & Associates on behalf of the applicant's previous development plans. According to the Drainage Study[16] report prepared for this project, prepared by Rick Engineering and revised July 22, 2024:

> "In order to quantify the exact storm event return frequency and peak flow rate that will result in flow leaving the south boundary of the site, detail[sic] two-dimensional modeling would be required to account for surface storage across the site and is beyond the scope of this project." (*FDraft Drainage Study for Quail Meadows* , pg. 15)

In so stating, the applicant has determined more current modeling unnecessary, despite the increasing frequency of severe weather events since the date of the report, and their recent knowledge of the property's potential for flood risk due as a result of the lawsuit by Vedic Life's Forbidden Juicery, LLC.

In December 2022, the City of Encinitas received a final report from Q3 Consulting[17] on the Leucadia Area Watershed Drainage Feasibility Study, which included Old Encinitas and this project site. The results of this study suggest the flood risk from a 5-, 10-, 100- and 500-year event are greater than what is modeled in the applicant's drainage study.

The increased loss of natural drainage in the form of vegetation and soil and increased impervious surfaces due to development promote surface water runoff increases flood hazard in urban areas, according to a 2019 report from the National Academies of Sciences, Engineering and Medicine[18].

As the applicant and city are aware of the specific flooding risks associated with this property, a more thorough and risk-based approach to development is warranted. The project's proposal to develop over a natural drainage course and historic riparian area presents an increasing risk to the project's residents, existing development at the Quail Gardens Corporate Center, the adjacent Sunshine Gardens Apartments (MULTI-003751-2020) development, and city streets, and is not supported by current development guidance nor the General Plan.

Conclusion

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

The drainage plan provided by Rick Engineering admits to referencing 2008 peak flow rate data and recommended more current analysis be performed, which the applicant determined was out of scope.

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[16] *FDraft Drainage Study for Quail Meadows,* Attachment PC-15 to item 8B of the Planning Commission Hearing dated October 3, 2024

[17] Q3 Consulting. (2022, December). City of Encinitas Leucadia Area Watershed Drainage Feasibility Study. Retrieved from https://www.encinitasca.gov/home/showpublisheddocument/6308/638136922659757582

[18] National Academies of Sciences, Engineering, and Medicine; Division on Earth and Life Studies; Water Science Reand Technology Board; Policy and Global Affairs; Program on Risk, Resilience, and Extreme Events; Committee on Urban Flooding in the United States. (2019, March). Framing the Challenge of Urban Flooding in the United States: https://www.ncbi.nlm.nih.gov/books/NBK541186/

This site has historic evidence of flooding and increasing major storm events since 2008. Current data provided to the City of Encinitas in their contracted Leucadia Area Watershed Drainage Feasibility Study, completed by Q3 Engineering in December 2022 models a greater risk than the project has accounted for.

The City and applicant are also aware of the increasing flood risk, as both paid damages to a business forced to close due to inadequate management of surface water after a heavy rain event.

The presence of a USGS and FEMA-identified stream throughout the center of the property also adds to the argument of a greater flood risk potential, as FEMA acknowledges that not all streams within their database have been modeled for their true flood risk. Encinitas General Plan and CCA also require that all new development minimize risk in areas of high flood hazard.

The project plan has not adequately done so.

The project and co-located project's traffic impacts are inconsistent with the Circulation Element of the General Plan.

Summary Argument

The project's only ingress and egress access is along Quail Gardens Drive.

Quail Gardens Drive is categorized as an "Augmented Local, Limited" road, suggesting there is additional traffic capacity potential along this corridor. Due to the historic and existing development along the road, no potential for lane addition or widening exists.

One intersection, Quail Gardens Drive at Westlake Street/Encinitas Boulevard currently operates at a Level of Service (LOS) E during both the AM and PM peak hours. Proposed mitigation suggests a return of LOS D at this intersection, but was only modeled for the specific impacts of this project. The project is collocated with two other housing element sites that did not provide any mitigation for traffic impacts.

The mitigation's analysis does not consider the cumulative impacts of all increased traffic at this intersection and is therefore insufficient to determine a return to LOS D.

Evidence

The nearest intersection for the project is Quail Gardens Drive at Westlake Street/Encinitas Boulevard, which according to current data already operates at a LOS E during both the AM and PM peak hours.

The Traffic Impact Study[19] for the project, prepared by CR Associates and updated in July 2024, acknowledges that traffic generate by the proposed project will create an inconsistency with the Circulation Element Policy 1.3 at Quail Gardens Drive and Westlake Street/Encinitas Boulevard:

> "Prohibit development which results in Level of Service E or F at any intersection unless no alternatives exist and an overriding public need can be demonstrated."

The staff report for the project notes that Quail Gardens Drive at Westlake Street/Encinitas Boulevard currently operates at a Level of Service (LOS) E during both the AM and PM peak hours.

The same inconsistency for Quail Gardens Drive and Westlake Street/Encinitas Boulevard is mentioned in the staff reports for both Sunshine Gardens Apartments (MULTI-003751-2020) and Moonlight Apartments (MULTI-004979-2021).

A matrix of traffic impacts for all three projects, with information retrieved from the corresponding staff reports, is provided as Table 2.

[19] *Quail Meadows Local Transportation Study*. July 2024. Attachment PC-8 to item 8B of the Planning Commission Hearing dated October 3, 2024

Table 2 – Traffic Impact Matrix for New Development impacting Quail Gardens Dr at Westlake St/Encinitas Blvd

Project	Total Apartment Units	Total Average Daily Trips	Mitigations	Post-Project LOS[1] at QGD at WS/EB[2]
Sunshine Gardens Apartments	140	Increase of 616	None provided	LOS E during AM peak hour
Moonlight Apartments	202	Increase of 1,254	None provided	LOS E during AM peak hour; decrease of 3.7 seconds
Quail Meadows Apartments	448	Increase of 2,688	Optimize signal timing, install a right turn overlap.	LOS D

Notes:
1 – LOS: Level of Service
2 – QGD at WS/EB: Quail Gardens Drive at Westlake Street/Encinitas Boulevard. Data provide was current as of the staff report writing.

This study and proposed mitigation estimates a new LOS D at Quail Gardens Drive and Westlake Street/Encinitas Boulevard, however only considers data for traffic impacts regarding Quail Meadows Apartments. The combination of Sunshine Gardens Apartments and Moonlight Apartments trips increase average daily trips by a total of 1,870 average daily trips, representing 70% of the total average daily trips from the project.

The study goes on to discuss the proposed improvements to this intersection by implementing signal optimization, adaptive signal timing, and a right-turn overlap phase southbound on Encinitas Boulevard.

The report also acknowledges that:

> "signal timing at adjacent intersections located along the Encinitas Boulevard corridor should be considered prior to optimizing signal timing" (*Quail Meadows Transportation Study*, pg. 3)

Encinitas Boulevard remains a major artery and shoreline access roadway under Circulation Element Policy 6.8. The recommendation for signal timing modification of nearby intersections on Encinitas Boulevard, some of which control I-5 freeway intersections, does not identify that those signals are controlled by CalTrans rather than the city of Encinitas. Therefore, this mitigation would be ineffective.

Additionally, the mitigation recommendations are not supported by any traffic engineering or traffic simulations considering co-located developments. As the application and staff report do not consider cumulative impacts with adjacent developments, the impact of any proposed mitigations is diluted.

The most thorough historic analysis of increased traffic to Quail Gardens Drive was analyzed under the Encinitas Ranch Specific Plan, approved and subsequently integrated into the General Plan and Circulation Element in 1994.

Quail Gardens Drive was re-configured as a result of the Encinitas Ranch Plan. At the time Encinitas Ranch completed construction in 2002, Quail Gardens Drive was designated as a LOS Class C, and a Semi-Rural Local 2 lane access road.

Since the completion of the Encinitas Ranch development, additional housing projects have been built off Quail Gardens Drive between Leucadia Boulevard and Encinitas Boulevard such as One Channel Islands, Quail Run, and Quail Pointe, preventing the potential widening of the road to accommodate additional traffic lanes.

These additional developments account for several single-family private development totaling approximately 310 homes and the expansion of businesses: The San Diego Botanic Gardens, Kingdom Hall of Jehovah's Witnesses, Leichtag Foundation, Coastal Roots Farm, FARM Lab, and the San Dieguito Heritage Museum.

Per an interview with the City Traffic Engineering, the current classification of Quail Gardens Drive is now classified as "Augmented Local, Limited":

> "Augmented Local – Any of the last four roadway categories (not Freeways) can have an augmented designation. The intent is to provide a means of increasing the capacity of a given type of arterial by maximizing the utilization of the basic lane configuration. Such augmentation can range from simply adding lanes at intersections to adding or expanding a median and/ or other midblock measures to improve traffic flow and reduce side friction." (*Circulation Element*, pg. C-18)
>
> "Limited - Any of the last four roadway categories above (not Freeways) can have a limited designation. This limited designation is intended to allow the reduction of right- of- way width, while maintaining the same number of lanes and capacity for the respective roadway category" (*Circulation Element*, pg. C-21)

In 2018 Quail Gardens Drive was re-categorized at Augmented Limited, meaning the intent is to provide a means of increasing the capacity of a given type of arterial by maximizing the utilization of the basic lane configuration. The existing developments along this corridor prevent any such increase in capacity at any point between Encinitas Boulevard and Leucadia Boulevard.

This project is thereby inconsistent with the city's General Plan Circulation element Policy 1.3 due to its failure to mitigate impact of traffic on levels of service on nearby streets, and failure to demonstrate need by the project in context with all surrounding development.

Additionally, due to its location in the Coastal Zone, the city has a responsibility to ensure new development does not negatively impact access to critical coastal resources. Under PRC §30252:

> "The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service… (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation...."

Conclusion

Traffic mitigation recommendations do not adequately improve the impact of traffic generated by the project and co-located developments; it is far more likely that the intersection of Quail Gardens Drive at Westlake Street/Encinitas Boulevard will continue to operate with LOS E or worse.

Because all discussed housing element projects at this intersection, Quail Meadows Apartments, Sunshine Gardens Apartments and Moonlight Apartments, depend on the same recommendations for traffic impact mitigation, the amplification of traffic impacts from all sites are likely to result in an unimprovable impact to Encinitas Boulevard. As a major coastal access road, the need for cumulative traffic impact study is warranted to ensure no conflict with the Circulation Element and CCA's goals of equitable access to coastal resources.

A double failure would be catastrophic for the goals of the Circulation Element.

The City has not adequately assessed the risk to coastal resources due to additional hardscape waterflow to Cottonwood Creek and Moonlight Beach.

Summary Argument

The loss of natural drainage in the form of vegetation and soil and increased impervious surfaces due to development promote surface water runoff.

Currently, all runoff within the Old Encinitas watershed, where the project is sited, drains to Cottonwood Creek and is finally received by Moonlight State Beach.

The impact of this of this project increase runoff diverted to Cottonwood Creek, risking negative impacts to Moonlight Beach in the form of increased pollution and potential beach closures from uncontrolled bacterial growth downstream of the UV treatment facility.

The CCA requires that new development should be located and designed "where it will not have significant adverse effects, either individually or cumulatively, on coastal resources."

The City has not assessed the true impact of this project, cumulatively with the other approved projects in this corridor, to Moonlight State Beach and the risk of further impairment.

Evidence

The project is sited in the Coastal Zone and requires a CDP, making it subject to CCA. Under PRC §30250:

> "(a) ***New residential***, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and ***where it will not have significant adverse effects, either individually or cumulatively, on coastal resources***." (emphasis added)

While this site has already been zoned for high-density development, it is the authority of the City of Encinitas to manage the scope of projects to ensure both individual and cumulative impacts of these projects will not further impair coastal resources for projects sited within the Coastal Zone.

Moonlight State Beach is currently listed on the most recent list of impaired water bodies issued by the California State Water Resources Control Board[20], having a history of elevated bacterial issues.

[20] 2018 303(d) List of Impaired Water Bodies, State Water Resources Control Board (SWRCB). Accessed via the web at

An impaired water body has evidence of contamination with pollutants that compromise the use of the water body for "drinking, swimming, fishing, aquatic life protection, and other beneficial uses"[21].

According to the 2022 Leucadia Area Watershed Drainage Feasibility Study prepared by Q3 Engineering:

> "Previous studies showed that Cottonwood Creek is currently undersized and has significant environmental restrictions. Moonlight Beach also has a history of poor water quality, particularly elevated levels of *Enterococci* bacteria." (*Leucadia Area Drainage Study,* pg. 49)

The project will increase flow to Cottonwood Creek via increase hardscape, as modeled in the Drainage Study[22] provided for the project:

> "As a result of widening the parkway, the drainage area will be increased from approximately 0.89 acres to 1.05 acres, which will result in an increase in flow to the existing inlet along Quail Garden Drive near the south limits of the project from approximately 3.3 cfs to 3.8 cfs (*Final Draft Drainage Study for Quail Meadows*, pg. 32)

An increase in stormwater flow of 0.5 cubic feet per second (cfs) equals an increase of 646,317 gallons daily to the stormwater system and flowing to Cottonwood Creek, modeled using 2008 peak flow data.

Runoff from the adjacent Sunshine Gardens Apartments project (MULTI-003629-2020), modeled in their corresponding Drainage Study[23], remain at pre-development conditions due to the mitigations planned for this development. In other words, no additional runoff is expected from the Sunshine Gardens Apartments project.

Similarly, runoff from co-located Moonlight Apartments project (MULTI-004979-2021) modeled in their Drainage Study[24] no additional runoff from the project due to the mitigation measures planned.

In reviewing the impact of the three developments approved at the corner of Quail Gardens Drive and Encinitas Boulevard, only the Quail Meadows project significantly impacts additional flow to Cottonwood Creek, and thereby Moonlight State Beach.

[21] Description provided in *CalEnviroScreen 4.0*, a joint publication of the California Office of Environmental Health Hazard Assessment and the California Environmental Protection Agency, issued in October 2021. Refer to the section on Impaired Bodies. Accessed via the web at https://oehha.ca.gov/media/downloads/calenviroscreen/report/calenviroscreen40reportf2021.pdf#page=134

[22] *Final Draft Drainage Study for Quail Meadows,* Attachment PC-15 to item 8B of the Planning Commission Hearing dated October 3, 2024

[23] *Preliminary Hydrology Study for Sunshine Gardens Apartments*, Attachment PC-19 to Item 8A of the Planning Commission Hearing dated September 2, 2021

[24] *Preliminary Hydrology Study for Moonlight Apartments,* Attachment PC-14 to Item 8B of the Planning Commission Hearing dated June 13, 2023

As warned in the 2022 Leucadia Area Watershed Drainage Feasibility Study report for the City:

> "Discharging additional flows into Cottonwood Creek, could induce additional bacterial growth within the channel (via addition of low flow volume), and wash more of the in-stream bacteria out to the beach. Adding more flows to Cottonwood Creek would not only over capacitate the lower reaches of the flood control system, but it could also adversely impact the water quality at the outfall." (*Leucadia Area Watershed Drainage Feasibility Study*, pg. 49)

An increase in bacterial growth at the Moonlight State Beach has the potential to affect public health due by inducing sickness, and if uncontrolled, may result in beach closures to mitigate contamination to levels that are safe for public use.

Land Use Policy 2.8 of the Encinitas General Plan also states:

> "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."

Without modeling or mitigation from the city, and a lack of mitigation measures in place to prevent additional flow to Cottonwood Creek, the project has the potential to negatively impact a coastal resource precious to all Californians and its visitors: Moonlight State Beach.

Conclusion

Runoff from existing and future development in Old Encinitas, where the project is sited, discharges directly to Cottonwood Creek. The 2022 Leucadia Area Watershed Drainage Feasibility Study warns that no additional runoff should be diverted into the existing UV treatment system at the corner of 3rd and B Street without further study.

It is the responsibility of the City of Encinitas to protect coastal resources from the impacts of development. While the co-located projects do not increase flow to the stormwater system from pre-project conditions due to their mitigation efforts, this project models increased runoff at a rate of 0.5 cfs, or approximately 650,000 gallons per day at peak flow.

Current analysis conducted by an engineering firm contracted by the City of Encinitas indicates that Cottonwood Creek and its current UV treatment station are undersized and increased flow would likely result in additional impacts to Moonlight State Beach, an already impaired water body.

The project's impacts do not conform with the goals of the CCA, which aim to preserve and protect critical coastal resources such as Moonlight State Beach.

The project is inconsistent with California Coastal Act requiring new developments to protect special communities that are popular visitor destination points for recreational uses

Summary Argument

The project site is situated on Quail Gardens Drive, the only access point for several popular destination points including the San Diego Botanic Gardens, the San Dieguito Heritage Museum, and the Encinitas Union School District (EUSD) FARM Lab.

The project's Traffic Impact Study[25] and the staff report analyze the impact from this development alone. The CCA requires that all new development in coastal zones must protect access to popular visitor destination points, and that cumulative impacts within this zone are to be considered.

Evidence

The project is sited in the Coastal Zone, making it subject to the CCA. According to PRC §30253:

> "New development shall do all of the following:…
> (e) Where appropriate, ***protect special communities*** and neighborhoods that, because of their unique characteristics, are ***popular visitor destination points for recreational uses***."
> (emphasis added)

Traffic impacts from this project alone estimate Quail Gardens Drive will absorb 9% of the 2,688 average daily trips, resulting in an approximate increase in 240 daily trips along this road.

A diverse set of visitors from throughout the city, as well as visitors from out of city boundaries, travel to Quail Gardens Drive to take advantage of the San Diego Botanic Gardens, the San Dieguito Heritage Museum, the Leichtag Foundation, Coastal Roots Farm and the EUSD Farm Lab. Most of these properties occupy neighboring spaces on Quail Gardens Drive between Encinitas and Leucadia Boulevards.

The San Diego Botanic Garden is a 37-acre property with 29 unique, themed gardens and a glass conservatory, boasting the largest children's garden on the West Coast and North America's largest public bamboo collection. In their 2023 Annual Report[26], the San Diego Botan Garden showed an increasing guest attendance for a total of 265,000 visitors, exclusive of private events.

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

[25] *Quail Meadows Local Transportation Study*. July 2024. Attachment PC-8 to item 8B of the Planning Commission Hearing dated October 3, 2024

[26] *San Diego Botanic Garden 2023 Annual Report.* Downloaded from https://sdbg.org/2023-annual-report/

The EUSD Farm Lab is facility owned by the Encinitas Union School District, providing sustainability education to visiting students and growing organic produce for student lunches through regenerative agriculture practices. This property serves over 6,000 students annually in addition to hosting public and private events.

Quail Gardens Drive also provides a critical access point to Leichtag Foundation and Coastal Roots Farm, their 300 employees, and numerous other visitors and businesses via Ecke Ranch Road.

Combined, each of these properties attract hundreds of thousands of visitors annually and provide critical resources to students. Even with the absence of cumulative traffic impacts from co-located, approved development, the project poses a threat to access of these community resources.

Conclusion

The project has not sufficiently modeled the impact to recreational destinations located along Quail Gardens Drive in conjunction with the two other approved projects having unmitigated impacts at the intersection of Quail Gardens Drive at Westlake Street/Encinitas Boulevard: Sunshine Gardens Apartments (MULTI-003751-2020) and Moonlight Apartments (MULTI-004979-2021).

Under CCA, municipalities have the responsibility to protect special communities that serve as popular visitor destinations. Further due diligence is required.

The project is inconsistent with Encinitas Design Guidelines

Summary Argument

The project is inconsistent with the Encinitas design guidelines in effect during the project's application date of May 2020. It is inconsistent with the Design Guidelines in the following ways:

- diminish building massing;
- prohibit flat roofs; and
- integrate the project into neighboring communities.

Evidence

The project comprises of two large-footprint residential buildings totaling over 900,000 square feet (roughly the equivalent of nine Home Depots) and do not diminish the visual scale of the buildings when seen from the nearby neighborhoods of Quail Pointe, Quail Run, Pacific Serena and La Playa Apartments.

Additionally, because of the use of fill to raise the buildings above natural grade, the two residential compounds are conspicuous in their size and massing as seen from nearby public streets including Encinitas Boulevard, Quail Gardens Drive, and Westlake Street The visual impact to the hundreds of thousands of residents, visitors and business that drive the nearby streets has not been mitigated by breaking up the buildings into smaller buildings

The roofs of the buildings are flat with minimal sloped architectural pitched facades. The variation of the single roof line by appurtenances or facades are insufficient to conceal the single rooflines of each building that are hundreds of feet in length.

Lastly, the neighboring communities, especially the world-famous San Diego Botanic Gardens have mature, large trees and extensive landscaping that minimizes the visual impact of residences along Quail Gardens Drive.

The sparse planting of landscaping and the potential height of mature landscaping may only sharpen the edge of the surrounding stone/masonry wall and will not eliminate the harsh edge effect of such tall, massive buildings seen from every nearby street, residence, and business.

The design review should reject the building massing, flat roofs and landscape design as insufficient to comply with the Encinitas General Design Guidelines such as EMC§ 7.57(A)(7):

> "Break-up large building masses into several smaller ones to visually diminish the scale of a building. Building massings can be varied in form or divided to express various interior building functions.";

EMC§ 7.5.7(B)(3):

> "Flat roofs are prohibited on multi-family residential structures, unless residential uses are intermingled in the same structure(s) as commercial/office uses."; and

EMC§ 7.5.3(B)(3):

> "To develop landscape edge conditions that integrate the project into the surrounding community."

Conclusion

The project has not been designed in accordance with the standards set forth in municipal code and design guidelines important to retain the character of the community while providing critical new housing options for residents, both current and future.

The City Council has an opportunity to further encourage incorporation of the city's documented standards as part of their authority to ensure conformance with all applicable laws, regulations, standards, and guidance.

List of Exhibits

Exhibits	File Name	Retrieved From
Exhibit 1	Inconsistencies and Legal Irregularities	Report Authors
Exhibit 2	1948 Encinitas, CA USGS 7.5 Minute Topographic Map	USGS National Map Downloader
Exhibit 3	1968 Encinitas, CA USGS 7.5 Minute Topographic Map	USGS National Map Downloader
Exhibit 4	Flood Insurance Rate Map, Quail Meadows Project Site	City of Encinitas FIRM Viewer
Exhibit 5	Video of Active Stream 1	Neighbor to the project site
Exhibit 6	Video of Active Stream 2	Neighbor to the project site
Exhibit 7	Video of Active Streams 3	Neighbor to the project site
Exhibit 8	Housing Element Site Inventory Guidebook Government Code Section 65583.2 Memorandum	Department of Housing and Community Development
Exhibit 9	Legal Memo Excerpt Regarding Net Acreage Density Calculations	Public Records Request Number W005734-040224
Exhibit 10	Project Manufactured Steep Slopes Analysis	Original application for MULTI-003751-2020
Exhibit 11	Project Existing Conditions Slope Analysis	Original application for MULTI-003751-2020
Exhibit 12	Post-Project Drainage Plan Exhibit	Excerpt from Rick Engineering Drainage Report (PC-15 to item 8B, October 3, 2024 Planning Commission Meeting; Attachment 1. Addendum No. 1)
Exhibit 13	Letter Confirming Installation Date of 48" Corrugated Metal Pipe and Headwall	Former resident and installer
Exhibit 14a	Project Parcel Coastal Development Permit Search	California Coastal Commission Public Data Portal
Exhibit 14b	Quail Gardens Drive Coastal Development Permit Search	California Coastal Commission Public Data Portal
Exhibit 15	Vedic Life's Forbidden Juicery Lawsuit and Settlement Agreement	Public Records Request Number W006225-100824