

## CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

3111 CAMINO DEL RIO NORTH, SUITE 200

SAN DIEGO, CA 92108-1725

521-8036



# Th 8b

Filed: August 20, 1999  
49th Day: November 8, 1999  
180th Day: March 18, 2000  
Staff: DL-SD  
Staff Report: September 23, 1999  
Hearing Date: October 12-15, 1999

SUBSTANTIAL ISSUE  
STAFF REPORT AND RECOMMENDATION ON APPEAL

LOCAL GOVERNMENT: City of Encinitas

DECISION: Approved With Conditions

APPEAL NO.: A-6-ENC-99-113

APPLICANT: City of Encinitas

PROJECT LOCATION: Within the Highway 101 right-of-way from approximately 360 ft. south of La Costa Ave., north to the Encinitas/Carlsbad City limits.

PROJECT DESCRIPTION: Construction of a network of low flow drainage systems consisting of 18 to 24 inch diameter storm drain pipes (with various catch basins), with ultimate discharge at South Carlsbad State Beach.

APPELLANTS: Commissioners Sara Wan and Paula Daniels

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SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission, after public hearing, determine that substantial issue exists with respect to the grounds on which the appeal has been filed.

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SUBSTANTIVE FILE DOCUMENTS: Certified City of Encinitas Local Coastal Program; Appeal Application dated August 20, 1999; City of Encinitas Initial Study for Leucadia Drainage; City of Encinitas Community Development Department Notice of Decision DCD-99-065; CDP 99-133; Pers. Comm. with Mike Wells, California Department of Parks and Recreation, 10/21/99.

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I. Appellants Contend That:

The appellants contend that the City's decision is inconsistent with several provisions of the City's LCP related to provisions for the protection and enhancement of ground,

surface and ocean water quality, the minimization of harmful pollutants entering the ocean environment; and the preservation of environmentally sensitive habitats including ocean recreational areas, coastal water, beaches, and coastal strand areas.

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## II. Local Government Action.

The coastal development permit was approved by the City of Encinitas Director of Community Development on July 20, 1999. Several special conditions were attached which require that all mitigation measures specified in the negative declaration prepared for the project be complied with. These measures include performing site specific geotechnical soils engineering investigations prior to final design to ensure seismic safety, considering installation point source pollution control structures such as oil/water separators.

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## III. Appeal Procedures.

After certification of a Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. Projects within cities and counties may be appealed if they are located within mapped appealable areas. The grounds for appeal are limited to the assertion that "development does not conform to the certified local coastal program." Where the project is located between the first public road and the sea or within 300 ft. of the mean high tide line, the grounds of appeal are limited to those contained in Section 30603(b) of the Coastal Act. Those grounds are that the development does not conform to the standards set forth in the certified local coastal program or the access policies set forth in the Coastal Act.

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless it determines that no substantial issue is raised by the appeal. If the staff recommends "substantial issue" and no Commissioner objects, the Commission will proceed directly to a de novo hearing on the merits of the project.

If the staff recommends "no substantial issue" or the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project. If the Commission conducts a de novo hearing on the permit application, the applicable test for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program.

In addition, for projects located between the sea and the first public road paralleling the sea, Sec. 30604(c) of the Act requires that a finding must be made by the approving agency, whether the local government or the Coastal Commission on appeal, that the

development is in conformity with the public access and public recreation policies of Chapter 3. In other words, in regard to public access questions, the Commission is required to consider not only the certified LCP, but also Chapter 3 policies when reviewing a project on appeal.

The only persons qualified to testify before the Commission at the "substantial issue" stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. At the time of the de novo hearing, any person may testify.

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#### Staff Recommendation On Substantial Issue.

The staff recommends the Commission adopt the following resolution:

Staff recommends that the Commission determine that SUBSTANTIAL ISSUE exists with respect to the grounds on which the appeal was filed, pursuant to PRC Section 30603.

#### MOTION

Staff recommends a NO vote on the following motion:

I move the Commission determine that Appeal No. A-6-ENC-99-113 raises no substantial issue with respect to the grounds on which the appeal has been filed.

A majority of the Commissioners present is required to pass the motion.

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#### Findings and Declarations.

1. Project Description/History. The coastal permit approved by the City of Encinitas permits the construction of a network of low flow trunk and collection storm drainage facilities installed at three sites generally paralleling Highway 101 north of Encinitas Boulevard in Encinitas that will discharge into "two detention/percolation basins at South Carlsbad State Beach" within the City of Carlsbad. Only a small segment (approximately 520 lineal feet) of the proposed development is within the Commission's Appeal Jurisdiction. The appealable area is located approximately 360 lineal feet south of La Costa Avenue on the east side of Highway 101 and commences north across to the west side of Highway 101 north of La Costa Avenue ending at the Encinitas/Carlsbad jurisdictional line. That portion of the development where the approved drainage facilities will discharge is on California Department of Parks and Recreation property within the City of Carlsbad. As such, a separate coastal development permit for this portion of the development is required from the City of Carlsbad. However, the City of Carlsbad has indicated that while they have received a permit application, the application is not

complete and additional environmental analysis is required before the application can be heard.

The City's approval will result in the potential for increased discharges of polluted runoff into an existing detention/percolation basin at South Carlsbad State Beach that has been designated as a wetland mitigation site. No study was performed on the amount, quantity, or rate at which discharges would increase. As approved by the City, the development appears to be inconsistent with several policies contained in the certified Local Coastal Program (LCP) that address water quality issues. Specifically:

Land Use Policy 2.8 – Development shall not be permitted where it will result in significant degradation of ground, surface, or ocean water quality, or where it will result in significant increased risk of sewage overflows, spills, or similar accidents.

Resource Management Goal 2 – The City shall make every effort to improve ocean water quality.

Resource Management Policy 2.1 – In that ocean water quality conditions are of utmost importance, the City shall aggressively pursue the elimination of all forms of potential unacceptable pollution that threatens marine or human health.

Resource Management Policy 2.3 – To minimize harmful pollutants from entering the ocean environment from lagoons, streams, storm drains, and other waterways containing potential contaminants, the City shall mandate the reduction or elimination of contaminants entering all such waterways;...

Resource Management Goal 5 – The City will make every effort to participate in programs to improve air and water quality in the San Diego region.

Resource Management Goal 10 – The City will preserve the integrity, function, productivity, and long term viability of environmentally sensitive habitats throughout the City, including kelp-beds, ocean recreational areas, coastal water, beaches, lagoons and their up-lands, riparian areas, coastal strand areas, coastal sage scrub and coastal mixed chaparral habitats.

Although required by the above listed LCP Policies, the City's approval does not specifically address the impacts of the proposed development as it affects water quality and sensitive habitats. While the City's approval does include a statement that some filtering be "considered" in certain (unidentified) areas, there is no requirement that such areas be identified or included. The proposal does not include Best Management Practices (BPM's) or measures at the inlets to the system to eliminate unacceptable pollution of the downstream discharge site. The proposed discharge area within the City of Carlsbad, which is not the subject of this approval, is an identified wetland mitigation area. As such, discharge of increased and potentially polluted runoff could adversely affect this resource area and ultimately ocean water quality. In addition, the discharge area is adjacent to a popular recreational beach, and significant amounts of pollutants

discharged immediately upstream of the beach could have an adverse impact on human health and use of the area for coastal access and recreation.

The discharge area is located on property owned by the California Department of Parks and Recreation. The Department's biologist has indicated the presence of Nuttall's lotus (*Lotus nuttallianus*) on the site, a rare plant listed by the Federal Government as a Species of Concern. The Department has also indicated their intention to improve and restore existing habitat at the discharge area through an exotics-removal program. The City did not consult with the U.S. Fish and Wildlife Service or the California Department of Fish and Game prior to approval of the project.

Furthermore, the City's approval does not address alternative discharge locations that could have less impacts on coastal resources or alternatives such as installation of a low-flow diversion system to allow for treatment prior to discharge.

The City of Encinitas certified LCP requires that an applicant for a proposed development either have the property owner as a co-applicant or get written permission to proceed with the development. In this particular case, the proposed discharge area is on State Parks property and their representative has indicated that they have not yet received an application to allow work to be conducted on Parks property. In addition, because the City of Carlsbad has not yet reviewed that portion of the development within its LCP jurisdiction, the City's action may also prejudice the ability of the City of Carlsbad to implement their Certified LCP regarding this proposal.

In summary, the City's approval is inconsistent with the certified LCP because it does not include provisions to protect water quality or sensitive resources through the minimization or elimination of pollutants that will be discharged, does not address alternatives to the project that may lessen the environmental impact of the project, and because the consent of affected property owners has not been given, the approval may prejudice the ability of the Commission and the City of Carlsbad to implement Carlsbad's certified LCP and the Coastal Act.

**CALIFORNIA COASTAL COMMISSION**

SAN DIEGO AREA  
 3111 CAMINO DEL RIO NORTH, SUITE 200  
 SAN DIEGO, CA 92108-1725  
 (619) 521-8036



APPEAL FROM COASTAL PERMIT  
 DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: Commissioner Sara Wan  
 Mailing Address: 22350 Carbon Mesa Road  
Malibu, CA 90265  
 Phone Number: 310-456-6605

**RECEIVED**

AUG 20 1999

CALIFORNIA  
 COASTAL COMMISSION  
 SAN DIEGO COAST DISTRICT

SECTION II. Decision Being Appealed

1. Name of local/port government: City of Encinitas, Engineering Dept.
2. Brief description of development being appealed: Construction of 18 to 24 inch diameter low flow storm drains, with catch basins along the route, that are proposed to be installed generally parallel to Highway 101 north of Encinitas Blvd. and continuing north that will connect to and discharge onto South Carlsbad State Beach.
3. Development's location (street address, assessor's parcel no., cross street, etc.): The appealable portion of the development (approximately 520 lineal feet) commences at approximately 360 lineal feet south of La Costa Ave. on the east side of Highway 101 and continues north across to the west side of Highway 101 (north of La Costa Ave.) ending at the Encinitas/Carlsbad jurisdiction line, Encinitas, San Diego County.
4. Description of decision being appealed:
  - a. Approval; no special conditions:
  - b. Approval with special conditions:
  - c. Denial:

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-6-ENC-99-113

DATE FILED: 8/20/99

DISTRICT: San Diego

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Page 2

5. Decision being appealed was made by (check one):

a.  Planning Director/Zoning  
Administrator

c.  Planning Commission

b.  City Council/Board of  
Supervisors

d.  Other-Community Development Director

Date of local government's decision: July 20, 1999

Local government's file number (if any): 99-133 CDP

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties. (Use additional paper as necessary.)

Name and mailing address of permit applicant:

City of Encinitas  
Attn: Kipp Hefner  
505 S. Vulcan Avenue  
Encinitas, Ca 92024

Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

Planning Director  
City of Carlsbad  
2075 Las Palmas  
Carlsbad, Ca 92009

State Dept. of Parks and Recreation  
Attn: Paul Webb  
8885 Rio San Diego Drive, Suite 270  
San Diego, Ca 92108

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government coastal permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page.

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 3)

State briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing. (Use additional paper as necessary.)

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ATTACHMENT "A"

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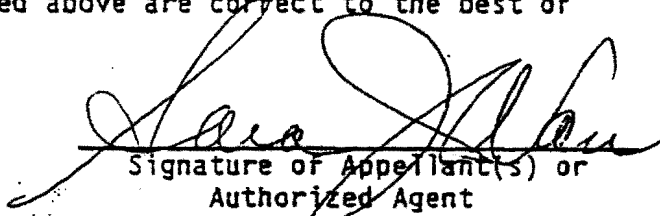
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Note: The above description need not be a complete or exhaustive statement of your reasons of appeal; however, there must be sufficient discussion for staff to determine that the appeal is allowed by law. The appellant, subsequent to filing the appeal, may submit additional information to the staff and/or Commission to support the appeal request.

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

  
Signature of Appellant(s) or  
Authorized Agent

Date 8/19/99

NOTE: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby authorize \_\_\_\_\_ to act as my/our representative and to bind me/us in all matters concerning this appeal.

\_\_\_\_\_  
Signature of Appellant(s)

Date \_\_\_\_\_



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SAN DIEGO AREA

11 CAMINO DEL RIO NORTH, SUITE 200

SAN DIEGO, CA 92108-1725

(619) 521-8036



APPEAL FROM COASTAL PERMIT  
DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: Commissioner Paula Daniels  
 Mailing Address: 12400 Wilshire Blvd., Suite 400.  
Los Angeles, Ca 90025-1023  
 Phone Number: 310-442-7900

**RECEIVED**

AUG 20 1999

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

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APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Page 2

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SEE ATTACHMENT "A"

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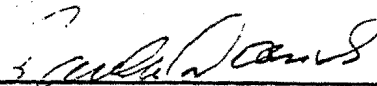
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Signature of Appellant(s) or  
Authorized Agent

Date 8/19/99

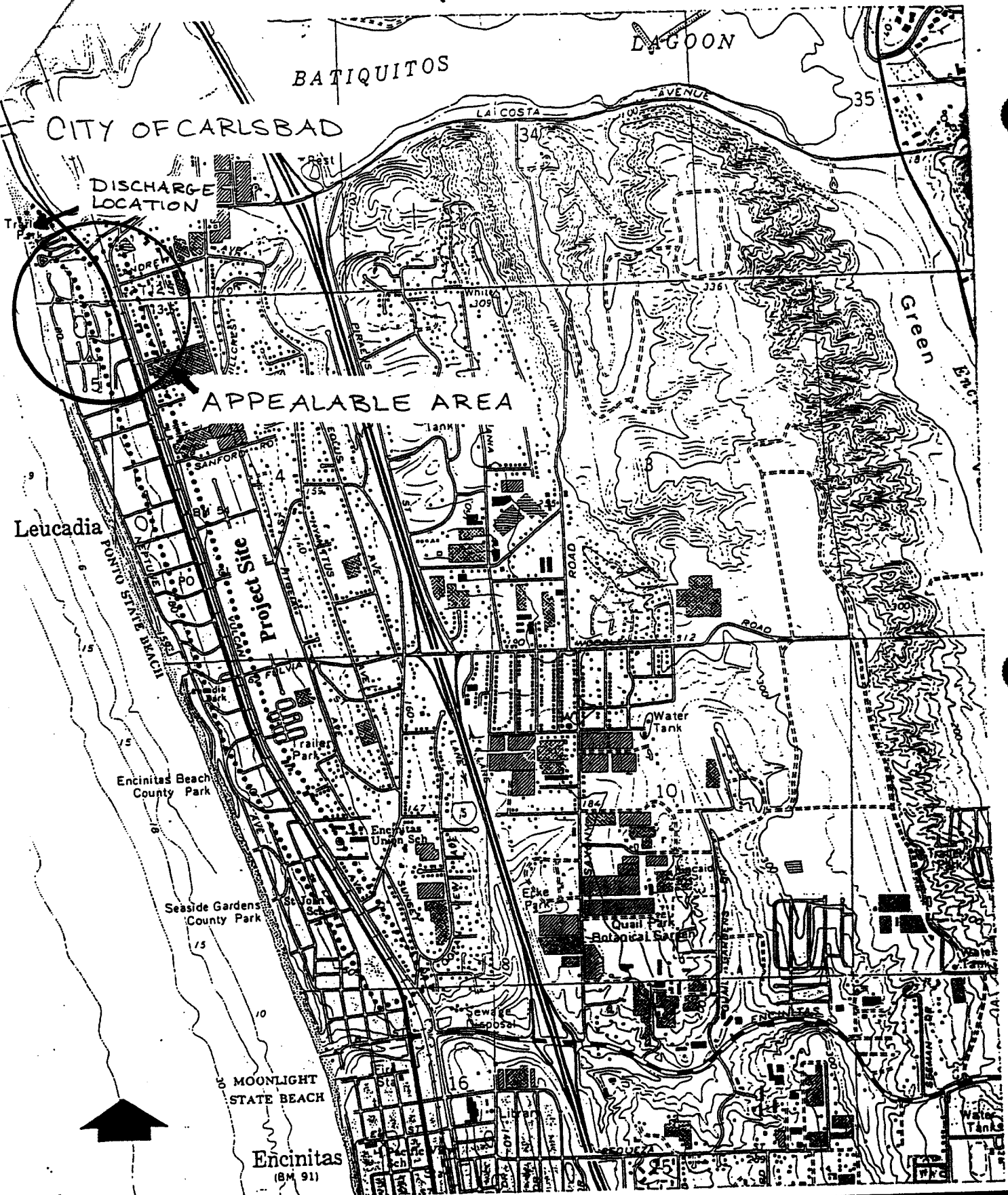
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\_\_\_\_\_  
Signature of Appellant(s)

Date \_\_\_\_\_



**PROJECT VICINITY**

EXHIBIT NO. 1
APPLICATION NO.
<b>A-6-ENC-99-113</b>
Location Map

Encinitas Drainage Appeal  
Attachment A

The coastal permit approved by the City of Encinitas permits the construction of a network of low flow trunk and collection storm drainage facilities installed at three sites generally paralleling Highway 101 north of Encinitas Boulevard in Encinitas that will discharge into "two detention/percolation basins at South Carlsbad State Beach" within the City of Carlsbad. Only a small segment (approximately 520 lineal feet) of the proposed development is within the Commission's Appeal Jurisdiction. The appealable area is located approximately 360 lineal feet south of La Costa Avenue on the east side of Highway 101 and commences north across to the west side of Highway 101 north of La Costa Avenue ending at the Encinitas/Carlsbad jurisdictional line. That portion of the development where the approved drainage facilities will discharge is on California Department of Parks and Recreation property within the City of Carlsbad. As such, a separate coastal development permit for this portion of the development is required from the City of Carlsbad. However, the City of Carlsbad has indicated that they have not yet reviewed the project.

The City's approval will result in the potential for increased discharges of polluted runoff into an existing detention/percolation basin at South Carlsbad State Beach that has been designated as a wetland mitigation site. As approved by the City, the development appears to be inconsistent with several policies contained in the certified Local Coastal Program (LCP) that address water quality issues. Specifically:

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Resource Management Policy 2.3 – To minimize harmful pollutants from entering the ocean environment from lagoons, streams, storm drains, and other waterways containing potential contaminants, the City shall mandate the reduction or elimination of contaminants entering all such waterways;...

Resource Management Goal 5 – The City will make every effort to participate in programs to improve air and water quality in the San Diego region.

Resource Management Goal 10 – The City will preserve the integrity, function, productivity, and long term viability of environmentally sensitive habitats throughout the City, including kelp-beds, ocean recreational areas, coastal water, beaches,

Encinitas Drainage Appeal

lagoons and their up-lands, riparian areas, coastal strand areas, coastal sage scrub and coastal mixed chaparral habitats.

Although required by the above listed LCP Policies, the City's approval does not specifically address the impacts of the proposed development as it affects water quality and sensitive habitats. While the City's approval does include a statement that some filtering be "considered" in certain (unidentified) areas, there is no requirement that such areas be identified or included. The proposal does not include Best Management Practices (BPM's) or measures at the inlets to the system to eliminate unacceptable pollution of the downstream discharge site. The proposed discharge area within the City of Carlsbad, which is not the subject of this approval, is an identified wetland mitigation area. As such, discharge of increased and potentially polluted runoff could adversely affect this resource area and ultimately ocean water quality. In addition, the City's approval does not address alternative discharge locations that could have less impacts on coastal resources or alternatives such as installation of a low-flow diversion system to allow for treatment prior to discharge.

The City of Encinitas certified LCP requires that an applicant for a proposed development either have the property owner as a co-applicant or get written permission to proceed with the development. In this particular case, the proposed discharge area is on State Parks property and their representative has indicated that they have not been consulted. In addition, because the City of Carlsbad has not yet reviewed that portion of the development within its LCP jurisdiction, the City's action may also prejudice the ability of the City of Carlsbad to implement their Certified LCP regarding this proposal.

In summary, the City's approval is inconsistent with the certified LCP because it does not include provisions to protect water quality or sensitive resources through the minimization or elimination of pollutants that will be discharged, has failed to receive the consent of affected property owners and may prejudice the ability of the Commission and the City of Carlsbad to implement Carlsbad's certified LCP and the Coastal Act.