

CALIFORNIA COASTAL COMMISSION

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**W19a**

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**STAFF REPORT AND RECOMMENDATION ON APPEAL
 SUBSTANTIAL ISSUE DETERMINATION**

Local Government: City of Encinitas

Decision: Approved with Conditions

Appeal Number: A-6-ENC-19-0032

Applicant: DCM Properties, Inc.

Location: 510 & 514 La Costa Avenue, Encinitas, San Diego County
 (APN Nos. 216-030-10, -45, -46)

Project Description: Demolish former greenhouses and associated structures on the site and subdivide 3 existing lots into 48 residential lots (with 4 lots dedicated for 4 affordable dwellings); grading/utilities, storm water improvements, and landscaping on a 13.94 acre lot. Two existing residential units to remain.

Appellants: Dolores Welty and Fred Sandquist (Batiquitos Lagoon Foundation)

Staff Recommendation: No Substantial Issue

IMPORTANT HEARING PROCEDURE NOTE

This is a substantial issue only hearing. Testimony will be taken only on the question of whether the appeal raises a substantial issue. Generally and at the discretion of the Chair, testimony is limited to 3 minutes total per side. Please plan your testimony accordingly. Only the applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify. Others may submit comments in writing. If the Commission determines that the appeal does raise a substantial issue, the de novo phase of the hearing will occur at a future Commission meeting, during which it will take public testimony.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission, after public hearing, determine that NO substantial issue exists with respect to the grounds on which the appeal has been filed.

The proposed project consists of demolition of the existing structures on the site, subdivision of the site into 48 residential lots, grading, and utilities. No construction of the residences is proposed at this time. The appellants raise nine main issues: (1) the proposed water quality improvements are insufficient to prevent the release of pollutants and hazardous materials into the environment; (2) the burial of pesticide-impacted soil on the site will unfairly burden the future owners of the proposed affordable lots, and, in general, affordable housing opportunities should not be provided through density bonus projects in Encinitas; (3) a connection to a planned public trail that will run parallel to the 1-5 located below the site should be required; (4) the City did not sufficiently analyze the effect of cumulative traffic impacts on La Costa Avenue; (5) the mitigation measures proposed in the EIR are insufficient to protect the wildlife in Batiquitos Lagoon; (6) no mitigation measures relating to bluff erosion were included in the EIR and the City failed to address a nearby fault line; (7) the grading of pesticide-impacted soil on the site will create an airborne hazard for the surrounding community; (8) no mitigation measures are included in the EIR to address the loss of agricultural land; (9) the applicant should have sought a permit from the City of Carlsbad for development occurring within the City's permit jurisdiction; and the project EIR is not consistent with CEQA.

However, the City's approval adequately addressed all coastal resource concerns. Pesticide-impacted soil located on the project site from previous agricultural operations will be buried in the southeast corner of the site pursuant to a plan approved by the County of San Diego Department of Environmental Health (DEH), consistent with the requirements of the LCP. The burial of impacted soil is a common soil remediation method used across the state. Additionally, the burial of the impacted soil on the site has been vetted and determined to be adequate by DEH, San Diego Regional Water Quality Control Board (RWQCB), California Department of Toxic Substances Control (DTSC), the City of Encinitas, and Commission water quality staff. The project will also include several water quality improvements that meet municipal stormwater permit requirements of the San Diego RWQCB, to protect the waters of Batiquitos Lagoon, consistent with the LCP. The EIR also includes a plan approved by DEH to prevent impacted soil from becoming airborne during grading activities.

The LCP encourages affordable housing opportunities by allowing for a density bonus when a project includes an affordable component. The proposed VLI lots will improve coastal access for low-income Californians. The encapsulation area for the impacted soil will include the building pads of 3 affordable lots and 11 market-rate lots located in the southeast corner of the site, not just the affordable lots. The burial plan will comply with all applicable state and federal health and safety requirements, thereby ensuring that the burial of the impacts soil onsite will not impact future residents.

Construction of a trail extending from the project site down to the planned 1-5 trail would potentially require significant development into the inland bluff-face, inconsistent with the LCP, which seeks to protect natural bluffs and discourage defacement and erosion of

the bluff face. The project includes public access in the form of public parks, new sidewalks, and a lagoon overlook. The EIR lists the nearby proposed and approved developments considered by the City for cumulative traffic analysis, which include projects that the appellants assert were not considered by the City.

Three mitigation measures were included in the EIR and incorporated into the CDP to preserve the function of Batiquitos Lagoon as a viable wetland, including requiring a qualified biologist to perform a preconstruction bird survey and imposing specific restrictions to reduce indirect “edge” effects on Batiquitos Lagoon for both current and future development of the site. Consistent with the biological resource policies of the LCP, a 100-foot wide wetland buffer will be maintained from wetland areas in Batiquitos Lagoon and preserved in perpetuity by an open space easement.

The LCP requires the project to comply with a 25-foot wide inland bluff-top setback and several water quality BMPs are proposed to reduce bluff erosion, which was included as a condition of approval in the CDP. No additional mitigation measures relating to bluff erosion were deemed necessary in the EIR. Natural steep slopes on the site will be preserved in perpetuity by an open space easement. The “La Costa Fault” is not a mapped active fault line on the California Department of Conservation Fault Activity Map, suggesting that the fault is either too small or has a low-risk assessment. Regardless of the proximity of the site to any nearby faults, the future construction of the community will be required to comply with state regulations regarding structural seismic safety. The Commission geologist reviewed the geotechnical information and EIR and agrees with the analysis and conclusions regarding the site stability.

The LCP encourages the preservation of prime agricultural land; however, the site does not contain prime agricultural lands, and is designated as Residential (R-3) in the certified LCP; thus, the land use is planned for residential development. The project meets the requirements of the R-3 zoning, and some minor urban agricultural activities will continue on the project site. Thus, the site is not subject to agricultural preservation under the LCP.

Lastly, no development is proposed in the City of Carlsbad, and thus, no separate permit is required. Even if development was proposed in the City of Carlsbad’s permit jurisdiction, the requirement to obtain a permit from the City of Carlsbad would not serve as the basis of an appeal of the City of Encinitas’ approval of the project.

Because there are no identified inconsistencies with the LCP and the Coastal Act, staff recommends that the Commission determine that the project raises no substantial issue regarding conformance with the certified LCP and Chapter 3 policies of the Coastal Act.

Standard of Review: Certified City of Encinitas Local Coastal Program and the public access and recreation policies of Chapter 3 of the Coastal Act.

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EXHIBITS

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[Exhibit 3 – Site Plan](#)

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[Exhibit 8 – Offsite Project Impacts](#)

[Exhibit 9 – Preliminary Grading Plan](#)

[Exhibit 10 – Future I-5 Trail](#)

[Exhibit 11 – Appeal Requests](#)

I. APPELLANTS CONTEND

The project as approved by the City does not conform to the City of Encinitas' certified Local Coastal Program (LCP), concerning water quality, public access, biological resources, geological hazards, air quality, agricultural resources, and permit jurisdiction. The appellants also contend that the project does not conform to the public access and recreation policies of the Coastal Act.

II. LOCAL GOVERNMENT ACTION

The project was approved with conditions by the Encinitas Planning Commission on March 14, 2019. Specific conditions were attached which, among other things, prohibit alterations to the approved bioretention basins and the use of pesticides and herbicides within the basin areas; require the future HOA to ban pets from the basin/park area; require a deed-restricted Stormwater Quality Facility Open Space Easement be recorded over the bioretention basin; require the applicant to enter into and record an Affordable Housing Regulatory Agreement and Covenant for the 4 lots approved as very-low income lots; require the building footprint for all future residences to substantially conform to the building envelopes established pursuant to the approved Tentative Map for the project; require the applicant to dedicate additional right-of-way along the property frontage and construct several improvements including curbs, gutters, and a sidewalk; and require the applicant to record an open space easement over the steep slopes of the inland bluff.

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.

Section 30603(b)(1) of the Coastal Act states:

The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.

Coastal Act Section 30625(b) states that the Commission shall hear an appeal unless it determines:

With respect to appeals to the commission after certification of a local coastal program that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.

If the staff recommends "substantial issue" and no Commissioner objects, the Commission will proceed directly to the de novo portion of the hearing on the merits of the project, then, or at a later date. If the staff recommends "no substantial issue" or the Commission decides to hear arguments and vote on the substantial issue question, those allowed to testify at the hearing 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 then, or at a later date, reviewing the project de novo in accordance with sections 13057-13096 of the Commission's regulations. If the Commission conducts the de novo portion of the hearing on the permit application, the applicable standard of review for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program (LCP).

In addition, for projects located between the sea and the first public road paralleling the sea, Section 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 of the Coastal Act. In other words, in regard to public access questions, the Commission is required to consider not only the certified LCP, but also applicable 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 portion of the hearing, any person may testify.

The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it "finds that the appeal raises no significant question as to conformity with the certified local coastal program" or, if applicable, the public access and public recreation policies of Chapter 3 of the Coastal Act (Cal. Code Regs., tit. 14, § 13115(b)). In previous decisions on appeals, the Commission has been guided by the following factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and

5. Whether the appeal raises only local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing a petition for a writ of mandate pursuant to the Code of Civil Procedure, section 1094.5.

The City of Encinitas has a certified Local Coastal Program (LCP), and the subject site is located in an area where the Commission retains appeal jurisdiction because it is located between the first public road and the sea. Therefore, before the Commission considers the appeal de novo, the appeal must establish that a substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603. In this case, for the reasons discussed further below, the Commission exercises its discretion to determine that the development approved by the City does not raise a substantial issue with regard to the appellant's contentions regarding coastal resources.

IV. SUBSTANTIAL ISSUE MOTION AND RESOLUTION

The staff recommends the Commission adopt the following resolution:

MOTION: *I move that the Commission determine that Appeal No. A-6-ENC-19-0032 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

STAFF RECOMMENDATION:

Staff recommends a **YES** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

RESOLUTION: *The Commission hereby finds that Appeal No. A-6-ENC-19-0032 does not present a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.*

V. SUBSTANTIAL ISSUE FINDINGS AND DECLARATION

The Commission finds and declares as follows:

A. PROJECT DESCRIPTION/HISTORY

The project site is an inland bluff-top site composed of three contiguous lots, totaling 13.94 acres on the south side of Batiquitos Lagoon, located approximately 500 feet east of Interstate 5 (I-5), in the City of Encinitas (Exhibit #1). The majority of the site is covered with the remnants of an abandoned commercial greenhouse operation including dilapidated greenhouses, flower processing structures, sheds, offices, and packing facilities. Two existing single-family residences, with detached accessory structures, are sited on the northern portion of the site. The City-approved permit allows for the demolition of all the structures onsite, except for the two existing single-family residences and detached accessory structures that will remain, and subdivision of the three existing lots into 48 residential lots. Other work includes grading of building pads, removing three onsite underground storage tanks and the existing septic system, constructing a 6-ft. high sound wall along the street frontage and a 6-ft. high wooden fence along the western property line, constructing the subdivision street and pedestrian paths/sidewalks, an entry monument sign not to exceed 6-ft. in height, utility and drainage improvements, two neighborhood public parks which will serve as biofiltration basins, and landscaping such as street trees.

The project is intended to accommodate the future construction of 46 new single-family residential units, four of which will be dedicated for very-low income (VLI) households. Other future improvements planned include an 8-ft. high sound wall along the east side of site facing the I-5 highway. The park on the east side of the site is planned to include both a community garden and a public viewing platform that will provide views of the lagoon (Exhibit #3). Although the project does not include construction of the residences, the Environmental Impact Report for the project analyzed potential impacts associated with full buildout of the community, and several of the appellants' contentions relate to future construction. Future construction will require approval of a new appealable coastal development permit from the City.

The site was used for agricultural purposes until 1958 when the site was converted to a greenhouse operation that ceased approximately four years ago. Both existing homes, located at 510 and 514 La Costa Avenue, were constructed prior to the enactment of the Coastal Act in 1930 and 1958, respectively. Coastal development permit history on the site consists of a City-issued coastal development permit to construct a 2,935 sq. ft. single-family residence and detached art studio on the project site at 510 La Costa Avenue (No. 6-ENC-05-146). The property owner of 514 La Costa Avenue did not construct the approved 2,935 sq. ft. single-family residence. The art studio was constructed and exists on the site today as an accessory structure to the pre-coastal residence. A 2008 City permit for construction of a detached ADU on the site was approved for 510 La Costa Avenue (No. 6-ENC-08-224). The detached ADU exists on the site today as an accessory structure to the pre-coastal residence.

The standard of review is the certified LCP for the City of Encinitas and the public access policies of the Coastal Act.

B. WATER QUALITY/HAZARDOUS SUBSTANCES

City of Encinitas Certified LUP:

Resource Management Goal 1:

The City will conserve, protect, and enhance the water resources in the Planning Area. (Coastal Act/30231)

Resource Management Goal 2:

The City shall make every effort to improve ocean water quality. (Coastal Act/30231)

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; pursue measures to monitor the quality of such contaminated waterways, and pursue prosecution of intentional and grossly negligent polluters of such water ways.

Resource Management Goal 14:

The City shall stringently control erosion and sedimentation from land use and development to avoid environmental degradation of lagoons and other sensitive biological habitat, preserve public resources and avoid the costs of dealing with repair and sedimentation removal. (Coastal Act/30231/30240/30250/30253)

Public Safety Policy 1.6:

The City shall provide for the reduction of unnatural causes of bluff erosion, as detailed in the Zoning Code, by . . . [improving] local drainage systems to divert water away from the bluff . . .

City of Encinitas Certified IP:

EMC Section 23.24.020:

The provisions of this chapter shall be administered to achieve, to the extent possible, appropriate goals and policies of the General Plan/LUP as well as the following goals:

[. . .]

D. Ensuring that soil erosion, sedimentation, and stormwater runoff are regulated to reduce, to the maximum extent practicable, pollutants entering wetlands, the stormwater conveyance system and Waters of the State to protect water quality;

EMC Section 30.40.010.D:

All storage, use, transportation and disposal of toxic . . . materials shall be performed in compliance with the California Hazardous Substance Act and in accordance with guidelines issued by the County of San Diego Department of Health Services, Hazardous Materials Division on Hazardous Waste Requirements. All activities involving toxic . . . materials shall be provided and conducted with adequate safety . . .

The appellants raise several contentions regarding the project's consistency with the water quality policies of the City's certified LCP.

Soil Remediation

The Site Assessment Report from the EIR states that the site was used for agricultural purposes until 1958 when the site was converted to a greenhouse operation that ceased approximately four years ago. Many pesticides that were used on the site for agricultural operations are still present in the soil today. Soil samples detected concentrations of pesticides that exceed the allowable threshold for residential development, and therefore must be remediated before the future construction of the residential community.

The water quality policies of the LCP require the storage of toxic materials be performed in compliance with the California Hazardous Substance Act and in accordance with guidelines issued by the County of San Diego Department of Health Services, Hazardous Materials Division on Hazardous Waste Requirements. For this project, the applicant entered into the County of San Diego Department of Environmental Health (DEH) 's Voluntary Assistance Program, which provides technical assistance and oversight for properties impacted with hazardous substances. In accordance with the County's Site Assessment and Mitigation Manual, which provides guidance for handling hazardous materials, the applicant prepared a Property Mitigation Management Plan (PMMP) for the remediation of the impacted soil prior to the construction of the future community. The California Department of Toxic Substances Control (DTSC) and the San Diego

Regional Water Quality Control Board (RWQCB) reviewed the project through and provided comments that were incorporated into the final PMMP.

The County of San Diego DEH approved the proposed PMMP on August 20, 2017 (Exhibit #5). The approved PMMP requires the applicant to excavate the pesticide-impacted soil and stockpile it onsite for reuse as fill material. The fill material will be placed under 14 of the approved lots (3 of the lots designated for affordable housing, and 11 of the market-rate lots) in the south-east portion of the site. The PMMP requires the impacted soil to be buried at a depth not less than 7 feet below the designed finished grade, covered with a geotextile fabric, and then covered with 7 feet of clean fill to encapsulate the impacted soil. All impacted soil must be placed in inaccessible locations such as under the concrete slab footprints of the future residences. No impacted soil can be placed in areas where future grading may occur such as the street or backyards of any of the residential structures.

The appellants allege that the proposed project will release hazardous materials located on the subject site into the environment. Specifically, the appellants claim that organochloride pesticides found in the soil onsite pose a serious risk of harm to human health and that the impacted soil will migrate into the lagoon and groundwater. The appellants state that the City's approval of this project does not sufficiently address the impacts that the burial of these impacted soil could have on the future community or environment and that removing the impacted soil from the site would be an environmentally superior alternative. The appellants also assert that depositing pesticide-impacted soil under any VLI lot constitutes economic discrimination, implying that the burial of the impacted soil would pose an unfair burden on lower-income households because of potential health risks from the impacted soil.

The Commission's water quality staff have reviewed the approved soil remediation plan, and note that it is common to dispose of contaminated soil in this manner proposed by the applicant rather than hauling it to a toxic waste disposal facility. The PMMP indicates that according to soil borings taken at the project site, groundwater is located from 62 feet to 70 feet below the site's existing grade. Since the maximum depth of the buried soil will be 11 feet below the existing grade, the contaminated soils will be placed more than 50 feet above the groundwater elevation. Additionally, the PMMP reports that the impacted soil is not water-soluble and therefore is not capable of impacting groundwater or by extension the lagoon through entrainment in surface or groundwater.

All of the applicable provisions of the PMMP must be incorporated as part of the grading plans and implemented to the satisfaction of both the City of Encinitas Development Services Department (DSD) and the San Diego County DEH, and the applicant must submit a remediation summary report and closure request to the San Diego County DEH and the City of Encinitas DSD for review and approval. The San Diego County DEH must issue a "Closure Letter" demonstrating to the City that the remediation process is complete.

In addition, the applicant is required to record a covenant against all parcels on the project site with buried impacted soil that both identifies the location of the buried soil and prohibits the disturbance of the soils without prior approval from the San Diego County DEH and the City of Encinitas. The approved remediation summary report and closure letter must be included in the covenant and the covenant must be reviewed and approved by the City before recordation. Thus, the CDP was conditioned to implement the required mitigation measures to prevent any significant release of hazardous materials from the project site. As required by the LCP, the toxic soils remediation plan is in compliance with the California Hazardous Substance Act, and has been approved by the County of San Diego Department of Health Services, and there are no less environmentally-damaging feasible alternatives. The Commission water quality staff agrees that the proposed on-site remediation is appropriate, and that a depth of 7 feet would be adequate to encapsulate the impacted soil and prevent surface water from discharging the impacted soil into the lagoon. Since the PMMP was prepared per the guidelines prepared by County and DTSC did not raise any concerns regarding the PMMP's consistency with the state hazardous waste control law, the storage of the soil is consistent with the certified LCP.

The appellants also assert that the storage of the impacted soil under any of the VLI lots is an act of economic discrimination against future property owners of these lots. The LCP policy governing the storage of impacted soil does not restrict the location of the storage of the soil onsite other than the restrictions that may result from following the County's guidelines or state law. The LCP policy does not restrict the storage location of the impacted soil based on economic factors such as socioeconomic status. Nevertheless, the issue of economic parity is an important consideration in the review of projects in the Coastal Zone, and the Commission may consider environmental justice issues when evaluating permit matters. (See Pub. Resources Code, § 30604(h)) .

According to the EIR, the location of the encapsulation areas in the southeast portion of the site was chosen based on where the most amount of grading of the site was anticipated, in order to reduce the overall labor and expense of encapsulating the soil. The soil encapsulation will not occur only until VLI lots; both VLI lots and market-rate lots are located in the southeast section of the site. The encapsulation area will include 3 of the 4 affordable lots sited in the south-east portion of the site, but 11 market-rate lots will also be included in the encapsulation area.

Critically, as documented in the project EIR and as incorporated by the CDP, the approved burial plan will comply with all state and federal health and safety requirements intended to minimize hazardous materials risk to the public, such as Cal/OSHA, the California Hazardous Waste Control Act, and the California Health and Safety and Safety Code. The burial of impacted soil is a common remediation practice across the state and is subject to stringent requirements to ensure that the remediation process is conducted safely and that future residents will also be safe. The storage of the impacted soil have been vetted and determined to be adequate by the County DEH, San Diego RWQCB, DTSC, the City of Encinitas, and Commission Water Quality staff. Future property owners of the lots containing the impaired soil will be put on notice through a covenant recorded against the property. No adverse impacts are anticipated to any property owners.

Thus, the storage of impacted soil under the VLI lots does not raise a substantial issue with regard to consistency with the LCP.

Proposed Site Drainage

The appellants further contend that the proposed site drainage design is inconsistent with the certified LCP's goals and policies mandating the protection of preserving the Batiquitos Lagoon. Specifically, the appellants state that the project fails to address how the applicant intends to treat and prevent priority and common household pollutants from draining and entering the groundwater table and the surface water of the Batiquitos Lagoon preserve. Additionally, the appellants assert that a bio-treatment system is not being proposed; just an accumulation of surface water and contaminants residing the surface water and stormwater basins that drain through the soil, to the groundwater and then to the surface of the Batiquitos Lagoon.

Currently, drainage conditions on the site allow runoff to drain over the top of the inland bluff in the north corner of the site, discharging sediment and pollutants such as pesticide-impacted soil into the lagoon. The applicant prepared a Storm Water Quality Management Plan (SWQMP) that includes the design work for two biofiltration basins and a connected drainage system that with future build-out of the site will discharge at the base of the northwest slope of the site, into Batiquitos Lagoon. The Hydrology and Water Quality section of the EIR concludes that storm water runoff from the site would not increase in rate or volume with the project. The storm water system would include the use of biofilters, onsite storage of storm water in basins with outlets to regulate the flow rate and duration of storm water released, and two bioretention basins to slow and sequester runoff. Two biofiltration basins would provide hydro-modification management flow control and storm water pollutant control to meet municipal storm water permit requirements of the Regional Water Quality Control Board and of the City of Encinitas. The SWQMP also recommends several BMPs including but not limited to repairing/reseeding/replanting eroded areas and adjusting the irrigation system. Additionally, proposed pervious pavers and decomposed granite walkways will allow further infiltration on the subject site, preventing most runoff from entering the lagoon. Thus, contrary to the appellants' assertions, a bio-treatment system has been proposed for the site.

After build-out, most stormwater will be retained onsite by the proposed improvements, but flows exceeding the infiltration capacity of the new improvements will discharge at the base of the inland slopes on the north portion of the site. The EIR concludes that the proposed water quality improvements would significantly improve existing drainage conditions through the capture and treatment of stormwater before it is released in the lagoon. The improvements will also divert runoff that currently drains untreated over the inland bluff edge. The City of Encinitas Stormwater Department reviewed and accepted the project SWQMP as adequate to ensure potential pollutants of concern are reduced to the maximum extent practicable, in accordance with federal, state, and local laws. The Commission's water quality staff have also reviewed the SWQMP and confirmed that the proposed improvements are adequate to address pollutants that potentially will result

from the future community. As for the appellants' assertion that pollutants will enter into the groundwater, the elevation of the groundwater table is so deep that it is unlikely that pollutants from the surface will be able to reach it. Future construction of the community would also be required to apply with the San Diego RWQCB for an NPDES permit, which would include best management practices to prevent water quality impacts during and after construction.

Thus, the project adequately addresses how the applicant intends to treat and prevent pollutants from entering the groundwater table and the surface water of the Batiquitos Lagoon. In conclusion, the City action does not raise a substantial issue with regard to conformity with the water quality policies of the City's LCP.

C. PUBLIC ACCESS

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211 of the Coastal Act states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212 of the Coastal Act states, in part:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby . . .

Section 30213 of the Coastal Act states, in part:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred. . . .

Section 30221 of the Coastal Act states:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30252 of the Coastal Act states, in part:

The location and amount of new development should maintain and enhance public access to the coast by . . . (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation

Section 30604 of the Coastal Act states, in part:

(f) The commission shall encourage housing opportunities for persons of low and moderate income. In reviewing residential development applications for low- and moderate-income housing, as defined in paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code, the issuing agency or the commission, on appeal, may not require measures that reduce residential densities below the density sought by an applicant if the density sought is within the permitted density or range of density established by local zoning plus the additional density permitted under Section 65915 of the Government Code, unless the issuing agency or the commission on appeal makes a finding, based on substantial evidence in the record, that 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.

(g) The Legislature finds and declares that it is important for the commission to encourage the protection of existing and the provision of new affordable housing opportunities for persons of low and moderate income in the coastal zone.

City of Encinitas Certified LUP:

Circulation Element Goal 1:

Encinitas should have a transportation system that is safe, convenient and efficient, and sensitive to and compatible with surrounding community character. (Coastal Act/30252)

Circulation Element Goal 2:

The City will make every effort to develop a varied transportation system that is capable of serving both the existing populations and future residents while preserving community values and character. (Coastal Act/30252/30253)

Circulation Element Policy 3.3:

Create a safe and convenient circulation system for pedestrians. (Coastal Act/30252)

Circulation Element Goal 6:

The City will make every effort to provide public access and circulation to the shoreline, through private dedications, easements or other methods, and public transportation or other facilities. (Coastal Act/30211/30212/30212.5/30221)

Circulation Element Policy 6.1:

The City will continue to defend the public's constitutionally guaranteed right of safe physical access to the shoreline.

Public Safety Policy 1.6:

The City shall provide for the reduction of unnatural causes of bluff erosion, as detailed in the Zoning Code, by . . . [only] permitting public access stairways and no private stairways, and otherwise discouraging climbing upon and defacement of the bluff face . . .

Recreation Element 2.2:

Provide and maintain an inter-linking network of trails for horseback riding, hiking, and bicycling; and minimize the cost of the trail system by encouraging the use of drainage channels, flood plains, existing trails, public lands, excess street rights-of-way, and major utility rights-of way. (Coastal Act/30212.5/30252)

Recreation Element 4.5:

Design and construct attractive bike paths and pedestrian ways along existing freeway overpasses and underpasses. Discourage separate pedestrian overpasses. (Coastal Act/30252)

Land Use Element Goal 9:

Preserve the existence of present natural open spaces, slopes, bluffs, lagoon areas, and maintain the sense of spaciousness and semirural living within the I-5 View Corridor . . .

City of Encinitas Certified IP:

EMC Section 30.16.020.C.8.a:

Eligibility for Density Bonus, Incentive(s), Parking Reduction, and/or Waiver(s) for a Housing Development. To ensure that an application for a housing development conforms with the provisions of State Density Bonus Law and the Coastal Act, the staff report presented to the decision-making

body shall state whether the application conforms to the following requirements of state law:

- i. The housing development provides the affordable units or senior housing required by State Density Bonus Law to be eligible for the density bonus and any incentives . . . as required by Government Code Section 65915(c)(3). [. . .]*

The appellants raise several contentions regarding the project's consistency with the public access policies of the Coastal Act. Specifically, the appellants state that while they support the affordable housing component of the project, Encinitas will never have a sufficient quantity of affordable homes through density bonus projects implying that affordable housing opportunities should be provided through another avenue.

The appellants also assert that the City should have conditioned approval of the project upon the construction of a public trail from the project site that would connect to a future public trail proposed by the California Department of Transportation for I-5. The appellants also assert that the City's approval did not sufficiently analyze the effect of future traffic on La Costa Avenue as a result of this project because it failed to consider the traffic impacts from the Encinitas Beach Resort and Surfers Point projects; that the proposed mitigation measure that requires the applicant to install a center, two-way left-turn lane in the La Costa Avenue right-of-way, will not sufficiently mitigate the traffic congestion that will result from this project; that the development will result in a Level of Service of E or F inconsistent with the City's LCP policies of endeavoring to maintain Level of Service C; and that not providing an signalized exit from the project onto La Costa Avenue, will exacerbate safety issues on La Costa Avenue and interfere with safe and convenient access to nearby beaches.

Very Low Income Lots Create Affordable Housing Opportunity in Coastal Zone

The project site is located between the sea and the first public road, and thus must also be consistent with the public access and recreation policies of the Coastal Act. The Commission also adopted an Environmental Justice Policy in March 2019, which recognizes the role that affordable housing opportunities in the coastal zone play with respect to coastal access for low-income Californians.

Lots 41, 43, 44, and 45 of the approved development will be designated for Very Low Income housing through a recorded Affordable Housing Regulatory Agreement and Affordable Housing Covenant. These documents will restrict the affordability term of the future units to 55 years and provide requirements for the marketing and occupancy of the affordable lots. Future affordable units are required to be comparable in all regards to market-rate units. A density bonus was granted by the City for the VLI lots to accommodate 48 residential lots on the site, which under the R-3 land use designation would otherwise allow 42 units.

The inclusion of VLI housing in this project will create affordable housing opportunities in a prime coastal area. While Chapter 3 of the Coastal Act does not authorize the Commission to regulate or require affordable housing, Section 30604(f) of the Coastal Act directs the Commission to encourage low- and moderate-income housing opportunities in the Coastal Zone. Allowing this project to proceed as approved by the City of Encinitas will increase the amount of affordable housing located in Encinitas, encouraging low-income housing opportunities in the Coastal Zone, and as a result, also provide coastal access for low-income Californians. Additionally, the certified LCP encourages the construction of affordable housing in the coastal zone by granting a density bonus, consistent with state law, for projects proposing affordable housing. While the proposed project may only represent small progress towards the City's affordable housing goals, the provision of affordable housing in the approved project is consistent with the requirements and goals of the LCP and the Coastal Act.

Public Trail Construction

The project site is located between the sea and the first public road, and thus must also be consistent with the public access and recreation policies of the Coastal Act. The Coastal Act requires that maximum access be provided consistent with the need to protect natural resources areas from overuse. The appellants content that the project should have included a connection to the 1-5 North Coast Bike Trail, which is a planned improvement under the North Coast Corridor Public Works Plan and Transportation and Resource Enhancement Program (NCC PWP/TREP). The future trail, which will provide access over Batiquitos Lagoon for both bicyclists and pedestrians, will run roughly parallel with the 1-5 highway and be located partially within the I-5 highway right-of-way and partially on adjacent local streets. Caltrans plans to replace the I-5 Batiquitos Lagoon Bridge in the next 10-20 years, at which time the NCC PWP/TREP requires that a bicycle and pedestrian trail will be built along I-5 on the bridge. At this time, there are no plans showing the exact alignment of the trail but it is expected to be constructed on the west side of the I-5 Batiquitos Lagoon Bridge (Exhibit #9).

The City considered the possibility of a direct connection from the site to the trail; however, as a future planned trail that does not have a final design or alignment, project connection to the 1-5 trail could not be required at this time, and no other public trails are present in the project vicinity to allow for linkage to a larger trail system. Additionally, to connect to the proposed 1-5 trail from the subject site, which sits at an elevation of approximately 77 feet above mean sea level, a connecting trail would have to be constructed down the inland bluff on the north end of the site. Such a trail would likely alter and potentially destabilize the inland bluff, inconsistent with the certified LCP, which promotes providing public access but also strongly discourages the defacement of any bluff face. Furthermore, pedestrians and bicyclists will be likely able to access the future trail near the 1-5/La Costa on/off ramps which are located approximately 0.2 miles from the site.

The project will provide some public access amenities when the future built-out occurs. Future construction of the community will include a 5-foot wide decomposed granite pathway, running parallel to the internal street of the subdivision, which will connect to two proposed neighborhood parks. The pathway will be accessible from the new 5-foot

wide sidewalk proposed along the frontage of the site from La Costa Avenue (Exhibit #6). The pathway will also cross over several residential lots to provide a shortcut between the two parks, so that members of the public can easily access both parks without having to follow the pathway paralleling the future road just to reach the other park (Exhibit #3). The park on the east side of the site will include a viewing platform, providing views of the lagoon, as a public amenity. The applicant will record an easement, held by the City, over the proposed pedestrian accessways to ensure they remain open to the public. Additionally, 47 unrestricted street parking spaces will be provided which members of the public can use to access the two neighborhood parks. Thus, even without a connect to the future I-5 trail, the project is consistent with the public access and recreation policies of the LCP and the Coastal Act.

Cumulative Impacts Analyzed for Traffic on La Costa

The City CDP was conditioned to require the applicant to provide a traffic improvement to La Costa Avenue that is designed to mitigate traffic impacts on La Costa Avenue as a result of this project. The EIR analyzes the proposed project relative to the existing regional and local transportation network, potential project traffic impacts, and includes required mitigation measures to reduce potentially significant impacts. A traffic analysis was prepared for the project that evaluated the level of service for both intersection and street segment operations, with and without the project. The report also looked at cumulative traffic impacts from future growth of the area with a LOS D or higher being deemed acceptable. The appellants asserts that the EIR ignores future cumulative impacts of the proposed and approved developments in the surrounding area; however, Table 2-3 of the EIR lists the nearby proposed and approved developments considered for all the cumulative analyses in the EIR (Exhibit #7). This table includes both the Encinitas Beach Resort and Surfer's Point projects that the appellants allege are missing from the traffic analysis.

The traffic report finds that the only significant impact to existing traffic conditions would occur at the La Costa Avenue/Seabreeze Court intersection as a result of future project traffic exiting the site. The report anticipates that the intersection, which currently operates at LOS A, would fall to LOS F as a result of the proposed project and the cumulative impacts. To mitigate the project traffic impacts to less than significant, the applicant is required to improve the section of La Costa Avenue between Seabreeze Court and the 1-5 by restriping this roadway segment with a center, two-way left-turn lane. The roadway is currently a two-lane street (one eastbound and westbound lane) with a dedicated bicycle lane on both sides of the street. To make additional space for the proposed lane, a right-of-way dedication will be made along the entire frontage of the subject site on La Costa Avenue. The dedicated bicycle lanes will be preserved and buffered from vehicle traffic and a new 5-foot wide sidewalk will be constructed to provide safe pedestrian access to the site. The EIR concludes that the addition of the proposed center, two-way left-turn lane, the La Costa Avenue/Seabreeze Court intersection will operate at a LOS C, including the cumulative impacts from the nearby proposed and approved projects. Thus, La Costa Avenue will operate at an acceptable LOS and will not adversely impact vehicular access to nearby beaches.

The appellants also assert that the project fails to provide a signalized exit from the project site onto La Costa Avenue, which will exacerbate unsafe conditions on La Costa. The CDP approval was conditioned to require the submittal of the final design of the traffic-mitigation improvement to the City's Traffic Division for approval, prior to issuance of the grading and improvement permit for the site. EIR requires the project to implement the center, two-way left-turn lane in the La Costa Avenue right-of-way to reduce the potential for hazards at the La Costa Avenue/Seabreeze Court intersection. The center turn lane will allow vehicles to queue up in the center lane until there is a safe opportunity to merge into the eastbound travel lane or to enter the site. The center lane will also reduce the chance of collisions between vehicles and bicyclists by giving vehicles more time to lookout for bicyclists before turning left into the site. Furthermore, the new sidewalk along the frontage of the site will create a safe accessway for pedestrians to reach the site. Thus, safe access will be provided on La Costa Avenue.

In conclusion, the City action does not raise a substantial issue with regard to conformity with the public access and recreation policies of the Coastal Act.

D. BIOLOGICAL RESOURCES

City of Encinitas Certified LUP:

Resource Management Goal 3:

The City will make every effort possible to preserve significant mature trees, vegetation and wildlife habitat within the Planning Area. (Coastal 30240)

Resource Management Goal 10:

The City will preserve the integrity, function, productivity, and long term viability of environmentally sensitive habitats throughout the City, including . . . lagoons and their up-lands . . .

Resource Management Policy 10.9:

The City will encourage the preservation and the function of San Elijo Lagoon and Batiquitos Lagoon and their adjacent uplands as viable wetlands, ecosystems and habitat for resident and migratory wildlife, by prohibiting actions . . . [that] adversely affect existing wildlife habitats.

City of Encinitas Certified IP:

EMC Section 30.34.040.B.3:

In all areas, a buffer of 100 feet in width shall be maintained around all identified coastal lagoon wetland areas. . . . All buildings or other improvements proposed to be placed or erected, and all grading activities proposed to be undertaken adjacent to a wetland shall be located so as not to contribute to increased sediment loading of the wetland, cause disturbance to its habitat values, or otherwise impair the functional capacity of the wetland.

EMC Section 30.34.050.C:

[. . .]

Biotic Resources. For proposed projects within the C/NRO (Cultural/Natural Resources Overlay) Zone which involve parcels containing ecologically sensitive plant and animal habitats, a survey by a qualified professional biologist shall be submitted by the project applicant to determine the significance of the habitats and the need for project impact mitigation by reservation, reestablishment, or other methods.

The proposed development will be located in an urban area in Encinitas on a flat, graded site on the south side of Batiquitos Lagoon. The boundaries of the project range from La Costa Avenue on the south, to the top of a steep inland slope overlooking the lagoon to the north. The west side of the site is bounded by existing residential development and the southeast side is bordered by an existing vacant lot that was previously used for agricultural operations. East of the vacant lot is a gas station. The northeast side of the site overlooks I-5 and the lagoon. The entire site has been impacted by either residential development or greenhouse nursery operations for several decades. A biological assessment prepared for the proposed project determined that there are not sensitive species on the site, although raptors have been historically observed in the vicinity of the site. Several mature trees, including four existing mature Torrey Pines trees, are located in the steep slope area and will be preserved in a City required open space easement.

The California Department of Fish and Wildlife manages the Batiquitos Lagoon as an Ecological Reserve. The Lagoon itself is located within the City of Carlsbad, and is subject to the policies of the Carlsbad HMP through the City's LUP. The lagoon preserve encompasses the lagoon and a 100-foot buffer upland of the wetland areas of the lagoon. The project site is located approximately 70 feet above the lagoon and the project site's northern boundary line is the border between the City of Carlsbad and the City of Encinitas. The steep slopes north of the site are located in the City of Carlsbad while the slopes on the northeast portion of the site are in the City of Encinitas. The site itself is entirely within the City of Encinitas

The limits of the wetlands in Batiquitos Lagoon are located roughly 100 feet from the northern boundary of the project site. The limits of the wetland are approximately 20 feet from the northeast boundary of the site; however, the steep slopes on the northeast side of the site provide a natural barrier, putting well over 100 feet between the wetlands below and the flat portion of the site above where the approved development will occur (Exhibit #3).

The appellants assert that the bird survey mitigation measure required in the EIR does not go far enough to protect wildlife in the lagoon and that the City should have required the applicant to repeat surveys throughout the entire construction phase instead of just at the

beginning of construction. The appellants also allege that the other mitigation measures proposed to address potential edge effects on the lagoon are insufficient to mitigate the adverse impacts to wildlife in Batiquitos Lagoon that will result from ongoing construction activities. The appellants also assert that the applicant should be required to survey portions of Batiquitos Lagoon adjacent to the project site. The appellants claim that no consideration was given to the endangered and threatened bird species that inhabit the lagoon year-round and/or migrate to the Batiquitos Lagoon on an annual basis. Additionally, the appellants allege that the City ignored CDFW's recommendation to reduce residential density to minimize impacts to sensitive adjacent habitats. The appellants also contend that the Preserve Adjacent Assessment, a report addressing potential impacts that could affect the preservation of the offsite Batiquitos Lagoon preserve, prepared for the project as part of the project EIR, does not incorporate mitigation measures required by the Carlsbad HMP.

The City of Encinitas LCP requires a 100-foot wide buffer to be maintained around all identified coastal lagoon wetland areas. The boundary of the 100-foot wetland buffer from Batiquitos Lagoon is mapped as being roughly contiguous with the northern boundary of the site but then cuts inland over the inland slope in the northeast portion of the site (Exhibit #3). No development is proposed within the 100-foot wide wetland buffer or now or in the future built-out of the site. The portion of the wetland buffer that overlays the inland slope will be preserved in an open space easement that will be maintained by the future HOA. As approved by the City, both the steep slopes and the wetland buffer area will be protected by an open space easement, consistent with the LCP requirements.

A biological assessment for the site identified a range of mitigation measures designed to ensure the development preserves the integrity, function, productivity, and long term viability of environmentally sensitive habitat and Batiquitos Lagoon. The site contains mature trees that could potentially be used for raptor nesting. Thus, to reduce potential indirect impacts to raptors, nesting surveys area required prior to construction and active nests found must be avoided. To avoid potential "edge" effects from the community when it is constructed in the future, no invasive landscaping will be permitted on the site and irrigation runoff must be directed away from the open space easement. Construction lighting and lighting associated with the development must utilize the lowest illumination necessary for human safety, be selectively placed, and shielded and directed away from the lagoon and the open space. Permanent fencing located at the top of the slope protecting the required open space area will be maintained in perpetuity by the future HOA to assist with predator control. Thus, contrary to the appellants' assertion, no impacts to sensitive bird or other wildlife area expected to result from the project.

As to the appellants' assertion regarding a reduced density recommendation, the reduced residential alternative was included as an alternative in the EIR. This alternative was considered by the City, but ultimately the subject project at a density of 48 units was approved. The reduced density recommendation would result in development of the project site in a similar manner to the proposed project; however, under this alternative, the number of residential units would be reduced to 22 units (20 new and 2 existing). Additionally, there would be an overall reduction in lot size and the development would be shifted slightly to the south to increase the distance of the development from the

lagoon. The EIR identified the reduced density alternative as the environmentally superior alternative, after the no project alternative, because it would reduce impacts to cultural resources and generate less traffic on La Costa Avenue. According to the EIR, the impacts to biological resources would be similar to those resulting from the proposed project. The EIR found that the approved project would not result in any significant environmental impacts.

Additionally, according to the City, CDFW reviewed the biological reports and EIR and found no fault with the methodologies, impact determinations, or mitigation measures. The EIR includes CDFW's comment letter on the draft EIR, which suggested anti-perching elements on any fences or light poles located on the north portion of the site to prevent an increase in predation of threatened/endangered bird by predatory birds. The City responded that no light posts are proposed on the lots closest to the lagoon and, while a perimeter fence will be installed along the northern development boundary, the City does not anticipate that the fence would constitute a significant change in the existing environment with respect to the availability of predatory perching locations. The existing trees along the northern steep slope, located in the City of Carlsbad, are located closer to the lagoon than the proposed wall and will provide more convenient perching locations for predatory birds. For these reasons, the City did not incorporate CDFW's suggestion for the additional anti-perching measure.

The appellants also assert that the Preserve Adjacent Assessment, included as Appendix 3.3b to the EIR, should have included mitigation measures from the Carlsbad HMP. While the appellants reference the Carlsbad HMP in their appeal request when describing the various flora and fauna located in the lagoon, they do not specifically state which mitigation measures should apply from the Carlsbad HMP. The project site is located entirely within the City Encinitas and is subject to the biological resources policies/standards of the Encinitas LCP, not the Carlsbad HMP. Nevertheless, the project does address potential indirect edge effects that could result from development on the project site by directing exterior lighting away from the lagoon, ensuring no invasive species are planted anywhere onsite, and imposing predator control measures.

In conclusion, the City action does not raise a substantial issue with regard to conformity with the biological resource policies of the City's LCP.

E. GEOLOGICAL HAZARDS

City of Encinitas Certified LUP:

Public Safety Policy 1.2:

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

Public Safety Policy 1.6:

The City shall provide for the reduction of unnatural causes of bluff erosion, as detailed in the Zoning Code, by . . . [requiring] new structures and improvements to existing structures to be set back 25 feet from the inland blufftop edge . . .

This does not apply to minor structures . . . including temporary accessory buildings not exceeding 200 square feet in area . . . allowed within five feet from the bluff top edge . . .

Land Use Element Policy 8.1:

Require that any improvement constructed in an area with a slope of more than 25% and other areas where soil stability is at issue to submit soils and geotechnical studies to the City for review and approval.

City of Encinitas Certified IP:

EMC Section 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 site is a roughly rectangular shaped parcel located on an inland bluff above Batiquitos Lagoon. The site is located in the Hillside/Inland Bluff Overlay Zone. The site has been previously graded and developed with greenhouse structures and two residences with detached accessory structures. The greenhouse structures and the remnants of the prior commercial flower nursery use cover the majority of the project site. Two single-family residences on the northern side of the site overlook the lagoon. The north portion of the site slopes down steeply towards the lagoon, and there are also steep slopes on the eastern side of the site that slope down towards the freeway.

The appellants contend that the EIR did not either address or mitigate for bluff erosion that would result from water flowing over the bluff edge. The appellants also state that the City and EIR failed to address the “La Costa Fault,” a geological hazard contiguous with Batiquitos Lagoon, which has the potential to impact bluff erosion.

The CDP approval was conditioned to require both a 25-foot inland bluff setback and an open space easement recorded for the natural steep slopes onsite. EIR addresses potential impacts related to geology and soil erosion that may result from the project and concludes that no significant impacts would result from the proposed project related to geology and soil, thus no mitigation measures were provided. The grading plan approved by the City of Encinitas requires the

applicant to implement erosion and runoff control measures including but not limited to the use of geotextiles, silt fences, and erosion control blankets. Additionally, BMPs required by the SWQMP (See Section B. Water Quality/Hazardous Substances above) will ensure that the proposed project would not result in substantial erosion or siltation on- or off-site.

No construction of homes has been approved at this time in the City's action, but future development of the site will include 46 new single-family residences, with two existing homes remaining onsite (48 units total). A geotechnical report was prepared for the site that concludes that the site has global stability factors of safety over 1.5 as long as the minimum 25-foot inland bluff setback required in the LCP is maintained for all structural foundations. As designed, the plan for future build out of the site complies with this requirement (Exhibit #3). One of the two existing single-family residences located on the north side of the property contains a small shed that is partially located within the 25-foot bluff edge setback but is sited more than five feet from the bluff edge and is located at grade, consistent with the LCP setback requirements for accessory structures. Thus, the project includes adequate measures to prevent both natural and unnatural causes of erosion, consistent with the LCP, and no additional mitigation measures are required to address hazards consistent with the LCP. Future construction of the home will require review and approval through a separate coastal development permit from the City.

As for the appellants' assertion regarding the "La Costa Fault," the City has indicated that the fault was not evaluated in the EIR because the fault is not depicted on the California Department of Conservation Fault Activity Map of California (2010), which provides the location of active faults. According to the EIR, active faults are defined as those that have experienced surface displacement within the last 11,000 years or are in a State-designated Alquist-Priolo Fault Earthquake Fault Zone. The geotechnical reports prepared for the site states that the nearest active fault to the project site having the "most significant effect at the site from a design standpoint" is the Rose Canyon fault zone located approximately 4 miles to the west (U.S. Geological Survey National Seismic Hazards Maps, 2008).

According to the City, many faults that traverse Southern California vary in size and magnitude, and it is possible that the La Costa fault was not listed on the Fault Activity Map due to its small size and low-risk assessment. However, regardless of the proximity of nearby faults, the EIR mitigation measures include a requirement that all new development would be required to comply with the requirements of the Alquist-Priolo Fault Zoning Act and the California Building Code (CBC). CBC requirements address structural seismic safety and include design criteria for seismic loading and other geologic hazards, including design criteria for geologically induced loading that govern sizing of structural members, building supports, and materials, and provide calculation methods to assist in the design process. The Commission geologist has reviewed the geotechnical report

and the Geology and Soils section of the EIR and agrees with the analysis and conclusions regarding the site stability. Given that the geotechnical analysis has determined that the project will be safe for the life of the development, the City action does not raise a substantial issue with regard to conformity with the biological resource policies of the City's LCP.

F. AIR QUALITY

City of Encinitas Certified LUP:

Resource Management Goal 10:

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

The appellants claim that the grading and/or disturbance of the pesticide-impacted soil onsite will cause the soil to be released into the atmosphere, thereby creating an airborne hazard for the surrounding and subject residential community in violation of federal and state laws. The appellants assert that a pre-approved plan designed to prevent impacted soil from becoming airborne should be required. Additionally, the appellants assert that a 1,000-foot buffer should be required between heavily used roads and dwellings in order to prevent adverse health impacts to future residents related to airborne pollutants associated with vehicles.

The Property Management Mitigation Plan (PMMP) prepared for this project referenced above in Section B, Water Quality/Hazardous Substances, includes a site-specific Community Health and Safety Plan (CHSP) that outlines the community health and safety procedures to be used during the remedial action activities. The CHSP requires that the site be fenced and access be limited to appropriately trained site personnel. Site personnel will be required to use personal protective equipment and be trained in the safe and proper operation of the equipment. Dust control measures will be implemented to protect the properties adjacent to the site. Dust air monitoring will be conducted during activities that could potentially generate offsite impacts such as excavation, stockpiling, and transporting the impacted soil around the site. The dust control measures are consistent with the County of San Diego Air Pollution Control District requirements. Dust control measures include but are not limited to the application of water spray, use of a perimeter misting system, and application of foam and/or a liquid seal to the open excavation face and stockpile. The PMMP was approved by the County Department of Environmental Health in August 2017.

Air monitoring thresholds for potential dust emissions will align with those required under the US EPA's screening levels for organochloride pesticides. Monitoring equipment will include real-time, data logging, direct read field instruments that will be set to measure and record dust levels every 60 seconds. Monitors will be equipped with visual and audible warning indications to alert site personnel if dust action levels have been exceeded. If dust action levels are exceeded, onsite work will cease and areas of disturbed impacted soils will temporarily be covered with plastic sheeting until onsite dust levels allow work to resume. Additionally, water will also be applied to the area of

excavation to help reduce airborne dust levels. Thus, the project includes a plan to prevent the impacted soil from becoming airborne consistent with the LCP. Lastly, prior to the commencement of any ground-disturbing work involving the impacted soil, the applicant shall provide public noticing per City noticing standards.

As for the appellants' assertion regarding the road buffer, the LCP does not require a 1,000-foot buffer between the proposed development and La Costa Avenue. The EIR concludes that air quality impacts will be less than significant, including on a cumulative level with consideration for current and future development and associated traffic volumes within the study area.

In conclusion, the City action does not raise a substantial issue with regard to conformity with the air quality policies of the City's LCP.

G. AGRICULTURAL RESOURCES

City of Encinitas Certified LUP:

Resource Management Goal 11:

The City recognizes the important contribution of agricultural and horticultural land uses in the local economy and the emphasis of the need to maintain these activities.

Resource Management Policy 11.8:

Preserve and promote the produce unique horticultural crops and gardens in Encinitas

Resource Management Goal 12:

The City will encourage the preservation of "prime" agriculture lands within its sphere of influence. (Coastal/30241)

Resource Management Policy 12.2:

No "prime" agriculture lands are located within the City of Encinitas Coastal Zone. . . .

The City of Encinitas is known for its long history of agricultural production of cut flowers and was once recognized as the flower capital of the world. As such, the Encinitas LCP includes policies that aim to preserve and promote agricultural land uses. In 2016, the Commission approved the City's LCP amendment request to broaden agricultural opportunities throughout the City in part by allowing retail farms and community gardens in additional zones (LCP-6-ENC-16-0032-1).

As previously described, the site was used for agricultural purposes until 1958 when the site was converted to a greenhouse operation for a commercial flower nursery. According to the applicant in discussions with Commission staff, rising costs and increased competition in the cut flower market made it economically infeasible for the property owners to continue agricultural uses on the site and the owners ceased greenhouse operations onsite approximately four years ago.

The appellants assert that the site is mapped as Unique Farmland by the California Department of Conservation and the EIR does not include mitigation measures to address environmental impacts result from the loss of agricultural land in the City.

The LCP encourages the preservation of “prime” agriculture lands within its sphere of influence, but the subject site is classified as Unique Farmland, according to the California Department of Conservation’s (DOC) Farmland Mapping and Monitoring Program. The DOC describes Unique Farmland as lesser quality soil used for the production of the state’s leading crops. The site is not a prime agricultural land and thus is not subject to agricultural preservation as required in the LCP. Additionally, the EIR states that the site is not subject to a Williamson Act contract to preserve farming and the project would not conflict with any Williamson Act contract lands.

Although the conversion of the site to non-agricultural uses would not represent a reduction in prime agricultural lands, the loss of any agricultural land represents a cumulative impact on the region’s agricultural productivity as a whole. However, the area immediately surrounding the project site is developed primarily with single-family residences to the west and south and the proposed project will be consistent with those uses. The vacant lot to the east, currently zoned visitor serving commercial, has been previously used for agricultural uses. The subject site has historically been used for both residential and light agriculture uses such as a commercial flower nursery. The site is designated as Residential (R-3) in the certified LCP; thus, the land use is planned for residential use. Additionally, a small scale urban agricultural use in the form of a community garden was approved in the park on the east side of the site. There is no change of zoning or use being proposed, and minor agricultural activities will continue to be allowed on the site. The EIR found that the project would have no impacts on agricultural resources.

In conclusion, the City action does not raise a substantial issue with regard to conformity with the agricultural resource policies of the City’s LCP.

H. JURISDICTION

City of Encinitas Certified IP:

EMC Section 30.80.040.B.1:

Where a proposed project straddles the boundaries of the City of Encinitas and another local government, or the boundaries of the

City's coastal development permit jurisdiction . . . [the] applicant must obtain separate coastal development permits from each jurisdiction.

The appellants assert that the project proposes .03 acres of grading on the slope of the northwestern corner of the site within the city limits of the City of Carlsbad, and therefore a separate CDP should have been required from the City of Carlsbad for this development.

The EIR prepared for the project includes an exhibit that identifies proposed grading along an existing pipeline that extends from the slope in the northwest corner of the property towards the lagoon (Exhibit #8). This area is within the City of Carlsbad. The City of Encinitas has confirmed that the exhibit showing grading in this area was incorrect and, in the final City-approved version on the project, no grading is proposed in this area. The preliminary grading plan prepared for the project shows the project limit and that no earthwork or construction will occur within the City of Carlsbad (Exhibit #9). Even if a separate CDP was required, it could not serve as the basis of an appeal of the City of Encinitas action on this project, as there is no inconsistency with the LCP or Coastal Act access policies. The applicant would have to obtain a CDP from Carlsbad for the grading, but would still be able to move forward with the part of the project located within the City of Encinitas' permit jurisdiction.

Thus, the City action does not raise a substantial issue with regard to conformance with the permit requirements of the LCP.

I. CALIFORNIA ENVIRONMENTAL QUALITY ACT CONTENTIONS

The appellants allege that there were several issues with the EIR in regards to CEQA. Specifically, that the EIR fails to comply with CEQA Guidelines and related case law by failing to describe feasible measures for the soil remediation that could minimize significant adverse impacts on the site. The appellants also assert that the EIR fails to analyze the cumulative impacts for future traffic on La Costa Avenue which precludes informed decision-making and informed public participation, thereby thwarting the statutory goals of the EIR process. Lastly, the appellants state that CEQA prohibits approving a development to which feasible alternatives or feasible mitigation measures are available that would substantially lessen any significant adverse effect the activity may have on the environment.

Inconsistency with CEQA is not a basis for an appeal to the Commission. However, the EIR does describe two feasible measures for soil remediation including burying the impacted soils onsite, the method chosen for this project, or disposing the soils at a Class III Landfill. The EIR analyzes the cumulative impacts of future traffic on La Costa Avenue by analyzing several proposed projects within the vicinity of the project site. The City Planning Commission and members of the public were informed of these projects and the cumulative impact they could have to traffic on La Costa Avenue at public hearing where this project was approved. The proposed mitigation to abate traffic impacts on La Costa Avenue was specifically discussed by the attendees of the meeting. The EIR

considered several project alternatives and mitigated all significant impacts to less than significant levels.

As the standard of review for the appeal is the certified LCP for the City of Encinitas and the public access policies of the Coastal Act, the appellants' allegations regarding CEQA inconsistencies do not raise valid claims regarding whether a substantial issue exists. Therefore, no substantial issue is raised.

J. SUBSTANTIAL ISSUE FACTORS

Generally speaking, the Commission considers five factors when deciding whether a project raises a "substantial issue." None of the factors support a finding of substantial issue regarding the issues raised in this appeal. As discussed above, there is overwhelming factual and legal support for the City's determination that the proposed development is consistent with the certified LCP. In this case, the proposed project is consistent with the City of Encinitas LCP policies relating to water quality, public access, biological resources, geological hazards, air quality, and agricultural resources. The project also complies with the permit requirements of the LCP and the public access and recreation policies of the Coastal Act.

The objections to the project suggested by the appellants do not raise substantial issues of regional or statewide significance, and the appellants' assertions relating to CEQA are not a proper basis for appeal. The Commission therefore finds that the City's action does not raise any substantial issue with regard to conformity with the LCP.

APPENDIX A

SUBSTANTIVE FILE DOCUMENTS:

- Appeal by Dolores Anne Welty, dated May 13, 2019;
- Appeal by Fred Sandquist (Batiquitos Lagoon Foundation), dated May 14, 2019;
- Final Environmental Impact Report and Attachments (SCH #2017121068)
- City of Encinitas FLAN No. 6-ENC-19-0604
- City of Encinitas FLAN No. 6-ENC-08-224
- City of Encinitas FLAN No. 6-ENC-05-146