

CALIFORNIA COASTAL COMMISSION

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W11a

A-6-ENC-19-0032 (DCM PROPERTIES, INC.)

JULY 8, 2020

EXHIBITS

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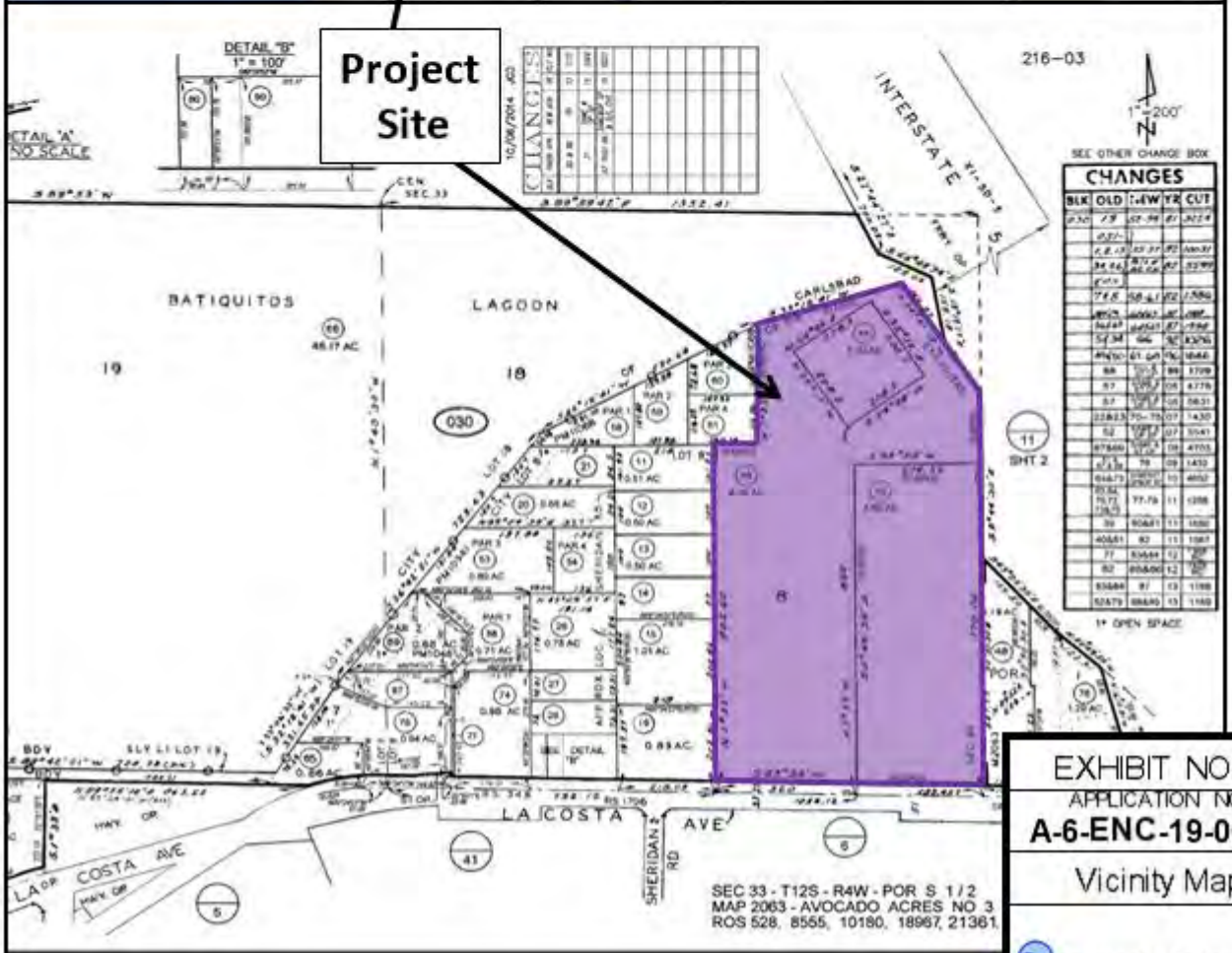
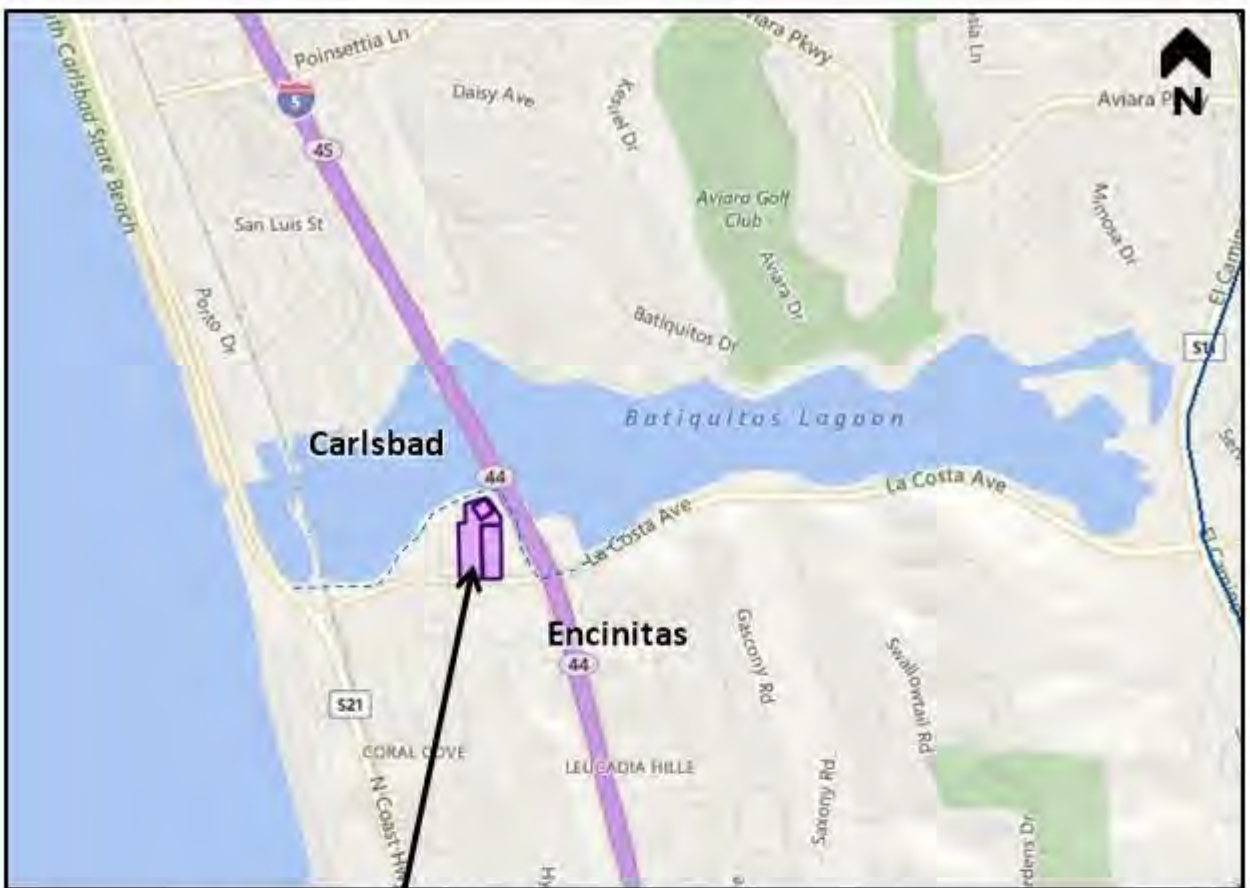




EXHIBIT NO. 2

APPLICATION NO.

A-6-ENC-19-0032

Aerial View



California Coastal Commission

Legend

- 100-ft Wetland Buffer
- 25-ft Inland Buffer Setback
- BMP Basin/Neighborhood Park
- Public Viewing Area
- Affordable VLI Lots
- Pedestrian Access
- General Street Parking
- Encapsulated Soil Area
- Appx. Extent of Two-Way Left Turn Lane
- Steep Slopes/Wetland Open Space Easement

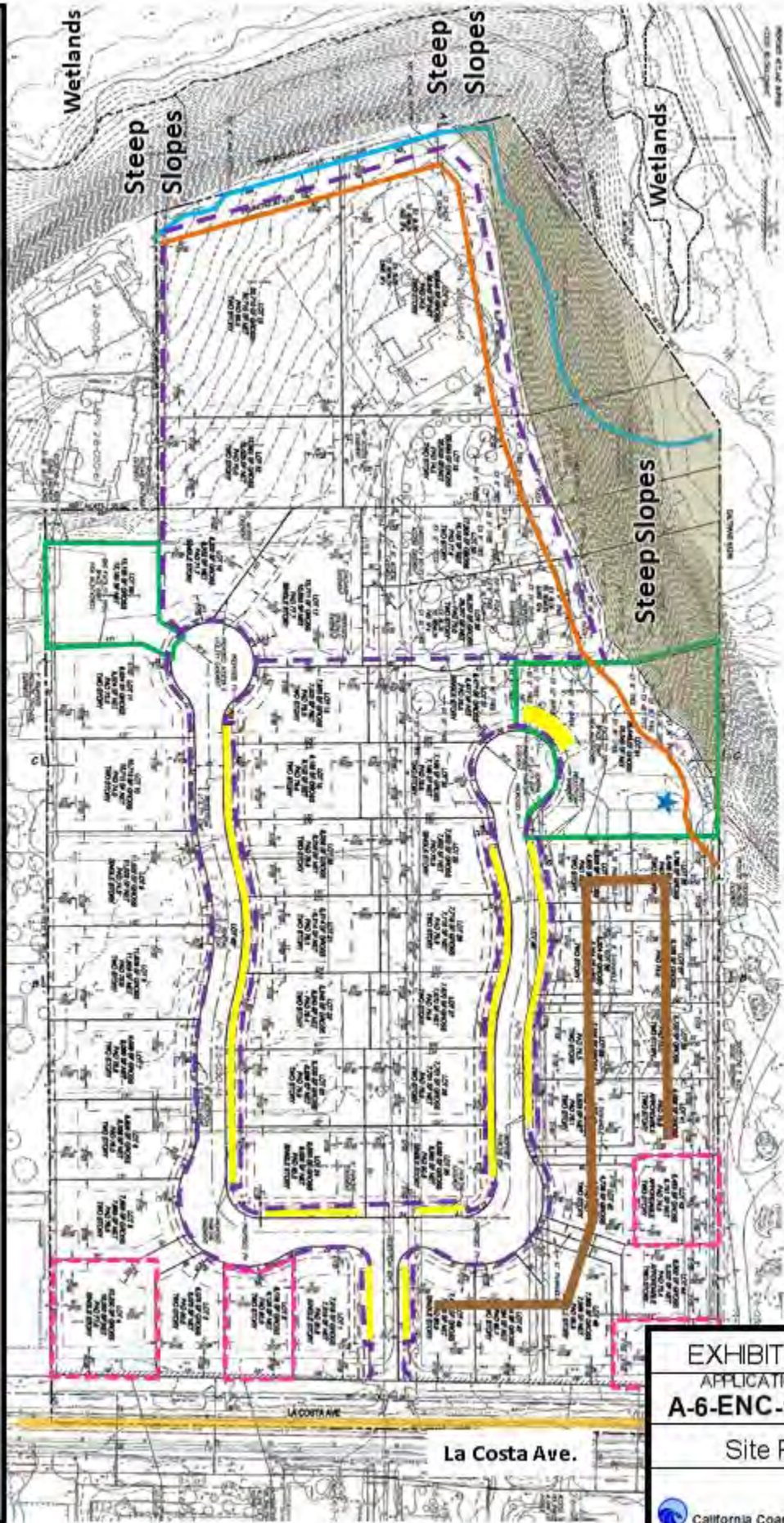


EXHIBIT NO. 3
APPLICATION NO.
A-6-ENC-19-0032
Site Plan



North view from middle of site



North view from north perimeter of the site



East view from east side of the site



East view from northeast corner of the site



North view of site frontage from La Costa



View of steep slopes from southbound I-5

Original Plan

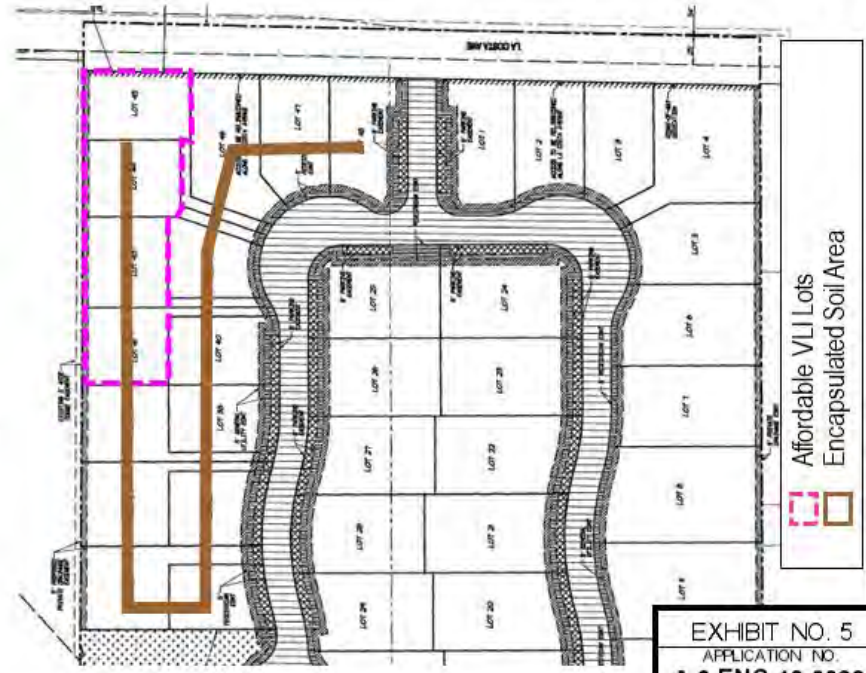


EXHIBIT NO. 5
APPLICATION NO.
A-6-ENC-19-0032
Affordable Lots

Modified Plan

CONCEPTUAL LOT REVISION



Affordable VLI Lots
Encapsulated Soil Area

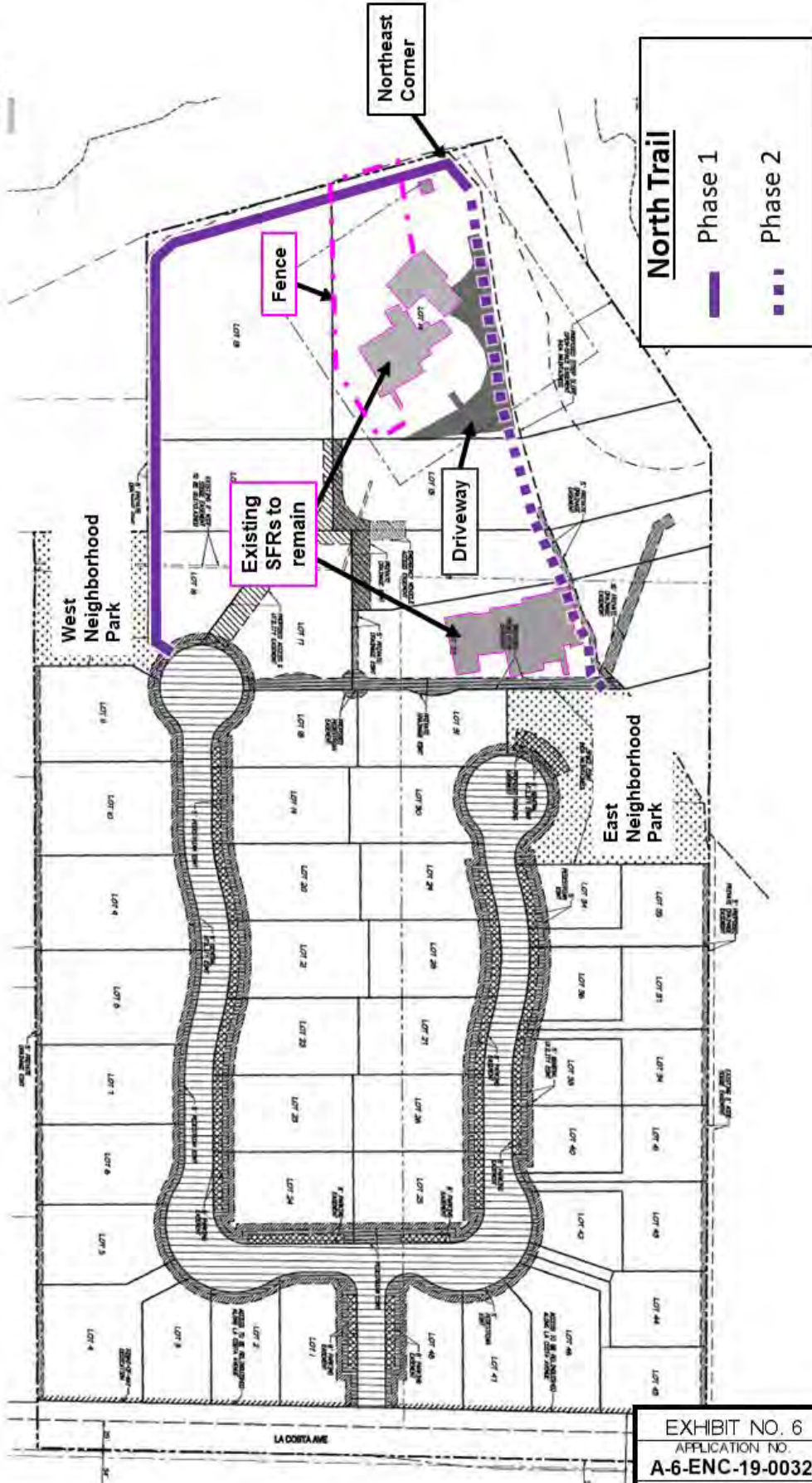


EXHIBIT NO. 6
APPLICATION NO.
A-6-ENC-19-0032
North Trail
California Coastal Commission



County of San Diego

ELISE ROTHSCHILD
DIRECTOR

DEPARTMENT OF ENVIRONMENTAL HEALTH
LAND AND WATER QUALITY DIVISION
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AMY HARBERT
ASSISTANT DIRECTOR

August 30, 2017

Mr. David Meyer
DCM Properties, Inc.
P.O. Box 234293
Encinitas, CA 92024

Dear Mr. Meyer:

VOLUNTARY ASSISTANCE PROGRAM CASE #DEH2017-LSAM-000439
LA COSTA 48
510 AND 514 LA COSTA AVENUE, ENCINITAS, CA 92024

Staff of the Department of Environmental Health (DEH) reviewed the August 20, 2015 *Phase I and Limited Phase II Environmental Site Assessment Report* (Phase I and II ESAs), the February 17, 2016 (Revised July 21, 2017) *Additional Site Assessment Report* (SAR), and the July 31, 2017 *Property Mitigation Plan* (PMP), prepared by Leighton and Associates, Inc.

According to the Phase I and II ESAs, the Site is an 11 acre parcel, developed with two residences and greenhouses. Three underground storage tanks were removed from the Site. The Site was historically used for agricultural and greenhouse purposes. The Proposed project will consist of a 48-lot residential development. Based on site assessment investigations conducted at the Site in 2015 through 2017, the only identified type of soil requiring remediation at the Site is organochlorine pesticide (OCP) impacted fill.

According to the PMP, Leighton proposes that, prior to grading the Site, the OCP-impacted soil above the Regional Screening Level for residential soil (RSL-R) for toxaphene will be excavated. The estimated volume of soils to be excavated and buried under slabs and front yards is 6,911 cubic yards. No OCP-impacted soil will be placed beneath the planned backyards, roadway, or city easements.

DEH approves the SMP as proposed; however DEH also requires that the areas with dieldrin levels above the RSL-R be excavated. Also, advance notification must be made to all adjacent properties and onsite residences. A log of all public contact, comments, and complaints must be maintained. Please confirm with the City of Encinitas that this notification plan is acceptable. If you have any questions, please call me at (858) 505-6969.

Sincerely,

James Clay

Digitally signed by James Clay
DN: cn=James Clay, o=Department of Environmental Health,
ou=County of San Diego, email=james.clay@sdco.org, c=US
Date: 2017.09.05 11:22:49 -0700

JAMES CLAY, Environmental Health Specialist III
Land and Water Quality Division

cc: Mr. Brian Pierce, Leighton and Associates, Inc. (by email)

"Environmental and public health through leadership, partnership and science"

EXHIBIT NO. 7

APPLICATION NO.

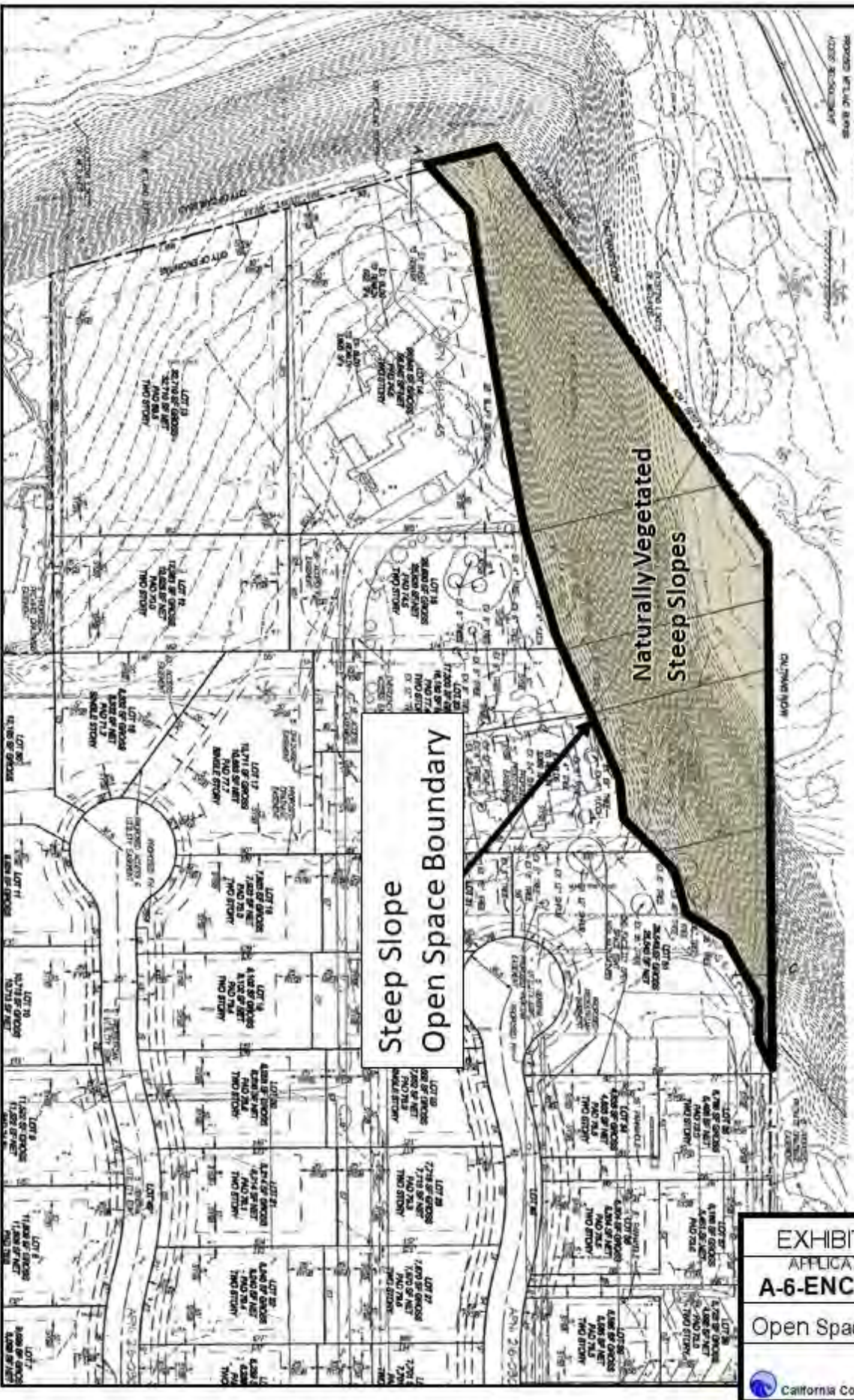
A-6-ENC-19-0032

County DEH Approval



California Coastal Commission

PROPOSED AIRWAYS
 PROPOSED DECK OF HIGHWAY 441
 PROPOSED DECK LAYOUT
 PROPOSED HIGHWAY 441
 PROPOSED TRAILWAY
 ACCESS ROADWAY



Steep Slope
 Open Space Boundary

Naturally Vegetated
 Steep Slopes



EXHIBIT NO. 8
 APPLICATION NO.
A-6-ENC-19-0032
 Open Space Boundary

California Coastal Commission

SPANGLER FIRM

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W11a

July 3, 2020

Hon. Chair Steve Padilla and Commissioners
California Coastal Commission
Via Electronic Submission Only

RE: De Novo Hearing on Appeal No. A-6-ENC-19-0032 / DCM Properties, Inc.

Dear Hon. Chair Padilla and Commissioners:

I represent the Batiquitos Lagoon Foundation (BLF), a non-profit entity dedicated to preserving, enhancing and protecting of the Batiquitos Lagoon open water preserve and associated watershed, as designated by the City of Carlsbad Habitat Management Plan (HMP). The Batiquitos Lagoon is a listed impaired body of water that connects with the Pacific Ocean to the west.

The BLF has reviewed the Staff Report for the July 8, 2020 de novo hearing on Appeal No. A-6-ENC-19-0032, which was posted to the California Coastal Commission's website on June 26, 2020. Please allow this correspondence to provide a summary of BLF's concerns related to Staff's recommendations for approval.

Initially, as a bona fide stakeholder in this development, the BLF should have been contacted by and given an opportunity to consult with the developer throughout the process. Therefore, as a condition of the issuance CDP, this Commission should consider issuing a strong recommendation that the developer consult with the BLF at all stages of this development in the future concerning the Batiquitos Lagoon Ecological Reserve (BLER) area. Moreover, the BLF's concerns for the ecological health and preservation of the precious natural resources in the lagoon should be strongly considered in every aspect of this Project.

EXHIBIT NO. 9

APPLICATION NO.

A-6-ENC-19-0032

Arie Spangler Letter



California Coastal Commission

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California Coastal Commission
RE: Appeal No. A-6-ENC-19-0032 / DCM Properties, Inc.

On May 14, 2019, the BLF timely appealed the City of Encinitas' approval of a Coastal Development Permit (CDP) for a tentative map for a 48-unit density bonus residential subdivision proposed on a 13.944 gross (11.346 net ¹) acre agricultural and residential site consisting of three parcels located between La Costa Avenue, west of the I-5 freeway and the south shore of the Batiquitos Lagoon in Encinitas ("Project"). According to the application for the Project that was submitted to the City of Encinitas by DCM Properties, Inc. and the Weston family (collectively, "Weston"), the Project proposes the following: "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); construct public access trails and viewpoints; grading/utilities, and landscaping on a 13.94-acre lot. Two existing residential units to remain." (See also, Staff Report, page 1.)

For the reasons detailed herein and as will be presented at the public hearing on this matter, as stewards of the Batiquitos Lagoon, the BLF respectfully requests that the Commission deny the issuance of a CDP for the Project. Alternatively, the BLF requests that the Commission continue the hearing on its de novo review and direct Staff to more carefully review the impacts this Project will have on the state's coastal resources, including the Batiquitos Lagoon, the Pacific Ocean and public beaches. While the BLF appreciates Staff's effort to address some of the issues raised in its appeal, additional conditions should be imposed to better mitigate the substantial impacts that this project will have on coastal resources, public access and the surrounding coastal environment, and to ensure consistency with the City of Encinitas' certified Local Coastal Program (LCP) and the Coastal Act.

Objection to Irregularities in Virtual Hearing Procedures and Notice Requirements

Preliminarily, the BLF notes that it was not provided with a copy of the Staff Report for this hearing; nor was it provided with any notice that the Staff Report had been posted to the agenda on the Commission website. Indeed, the BLF was timely notified by Staff that the hearing had been set for the July agenda and the Staff Report would be posted no later than Thursday, June 25, 2020. While members of the BLF routinely checked the website throughout the day on June 25, 2020, the Staff Report was not available until mid-morning on June 26, 2020.

The BLF further objects to Staff's position that any comments would need to be submitted no later than noon on Friday, July 3, 2020 to ensure distribution to the Commission. The Commission website, under the "Rules & Procedures" tab, provides, as follows: "To ensure distribution to the Coastal Commission prior to consideration of the item on the agenda, please

¹ The Project application submitted to the City of Encinitas indicates that the "net site area" is 11.346 acres after subtracting dedications, private streets and slopes, as required by the City's Municipal Code.

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submit comments prior to 5:00 P.M. the Friday before the Coastal Commission meeting.” While the BLF acknowledges that the submission of comments after noon on the Friday before the Independence Day holiday weekend may be inconvenient, where no other rule has been posted, it is unfair for the Commission to attempt to impose new rules without any public notice.

Second, while we understand and appreciate the procedural and practical difficulties imposed by the state’s Covid-19 shelter in place orders and associated necessary virtual hearing procedures, the BLF is concerned that its and the general public’s due process rights have not been sufficiently respected since the Commission’s first virtual hearing in May 2020.

After observing the May 2020 virtual hearing, the BLF is concerned that members of the public may be deprived their opportunity to be heard on important matters before the Commission. The BLF’s members and members of the public who wish to be heard by the Commission may be unfairly, illegally and improperly deprived of that opportunity due to the Virtual Hearing Procedures. As described in its Virtual Hearing Procedures, Commission Staff controls the public’s participation in the virtual hearing through its ability to leave the public in the virtual waiting room (unidentified and silent) during the hearing until Staff invites them in. Staff also has the power to “mute” and “unmute” public speakers. The BLF requests the Commission’s agreement to provide transparency by asking Staff to identify the members of the public who have submitted speaker slips, and those who are in the virtual waiting room, at the beginning of the hearing on each item. This would ensure that the Commissioners will take note of the total number of individuals who have indicated a desire to speak, and will similarly provide the public with the opportunity to be heard.

Substantive Project Issues

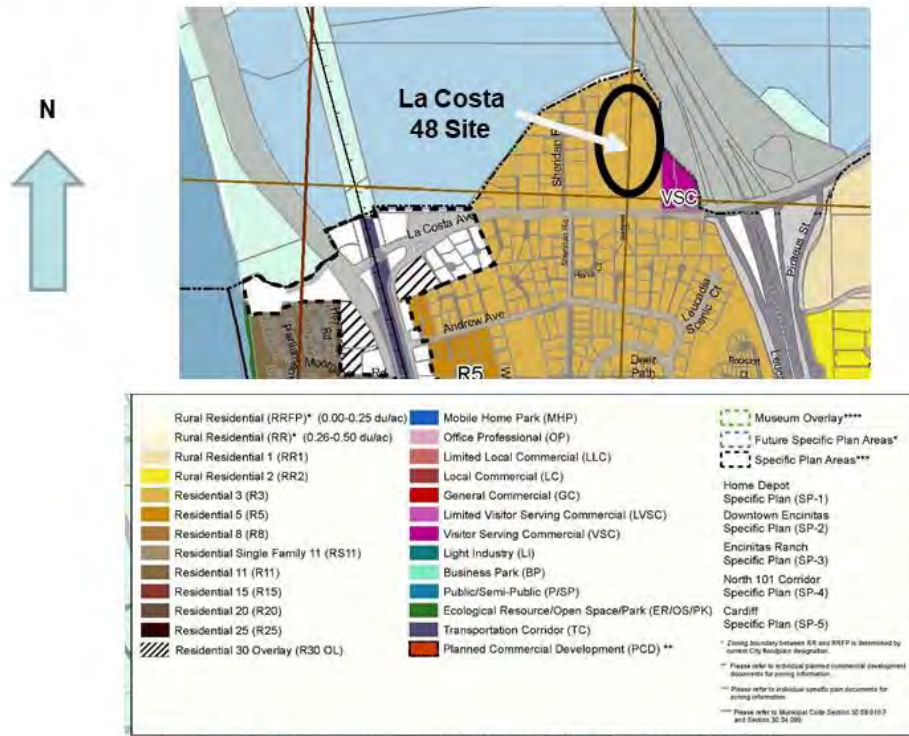
Scenic/Visual Corridor Overlay Zone

The City of Encinitas Special Purpose Overlay Zones, as defined in Chapter 30.34 of the Encinitas Municipal Code, include: the Coastal Bluff Overlay Zone; the Hillside/Inland Bluff Overlay Zone; the Floodplain Overlay Zone; the Cultural/Natural Resources Overlay Zone; the Agricultural Overlay Zone; the Public Facilities Overlay Zone; the Specific Plan Overlay Zone; and the Scenic/Visual Corridor Overlay Zone. The La Costa 48 project site is located within the Scenic/Visual Corridor Overlay Zone.

The graphics below depict the project area zoning, including identifying the Scenic/visual Corridor Overlay Zone. The zoning map legend is also included.

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City of Encinitas Scenic/Visual Corridor Overlay Zone Map



The area surrounding the Project site is often referred to as the “Gateway” between Encinitas and Carlsbad, and represents one of the few remaining scenic areas with views of the Pacific Ocean and the Batiquitos Ecological Reserve and State Marine Conservation Area (No Take). La Costa Avenue and the I-5 offer public views of the lagoon and Pacific Ocean.

The Project site can also be viewed from the high bluff area to the east (i.e., the Skyloft Road). Leucadia is an incredibly unique community with many unique single-family homes on large lots. Many residents have lived in the area for decades. This Project, as well as many other development projects currently under construction and in various stages of planning, will significantly change Leucadia’s unique character. Projects like the hotel being constructed above South Carlsbad Beach (“Ponto”) at La Costa Avenue and Highway 101 to the west, and the widening of I-5 and the North County Bikeway to the east will have an extreme impact upon the visual character of this unique coastal area.

The BLF is extremely concerned with the precedent that will be set, the change in character that will ensue (especially in light of the increased density), the reduction of the visual appeal of the area, and the increased traffic that will be generated if the Project is approved as proposed. The BLF strongly recommends that the Coastal Commission require the developer to address the Scenic/visual Corridor Overlay Zone impacts to the maximum extent possible.

The certified LCP includes the following goals and policies that the Commission must follow and consider in its deliberations:

Land Use Element –

- GOAL 1: Encinitas will strive to be a unique seaside community providing a balance of housing, commercial light industrial/office development, recreation, agriculture, and open space compatible with the predominant residential character of the community.
- POLICY 1.12: The residential character of the City shall be substantially single-family detached housing.
- GOAL 3: To assure successful planning for future facilities and services, and a proper balance of uses within the city, the City of Encinitas will establish and maintain a maximum density and intensity of residential and commercial uses of land within the City which will:
 - Provide a balance of commercial and residential uses which creates and maintains the quality of life and small-town character of the individual communities; and
 - Protect and enhance the City's natural resources and indigenous wildlife.
- GOAL 6: Every effort shall be made to ensure that the existing desirable character of the communities is maintained.
- GOAL 7: Development in the community should provide an identity for the City while maintaining the unique identity of the individual communities.
- 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 and within other view corridors, scenic highways and vista/view sheds as identified in the Resource Management Element.

- POLICY 9.1: Encourage and preserve low-density residential zoning within I-5 Corridor while preserving the best natural features and avoiding the creation of a totally urbanized landscape and maintain I-5 Interchange areas to conform to the specifications of this overall goal. The City will develop an I-5 view corridor plan to implement this policy.
- POLICY 9.2: Encourage retention of buffer zones such as natural vegetation or earth barriers, bluffs, and canyons to protect adjacent areas of freeway corridor from pollutants of noise, exhaust, and light.
- POLICY 9.5: Discourage development that would infringe upon scenic views and vistas within the I-5 corridor.

Resource Management Element –

- GOAL 3: The City will make every effort possible to preserve significant mature trees, vegetation, and wildlife habitat within the Planning Area.
- POLICY 3.6: Future development shall maintain significant mature trees to the extent possible and incorporate them into the design of development projects.
- POLICY 4.5: The City will designate “Scenic/Visual Corridor Overlay” areas within which the character of development would be regulated to protect the integrity of the Vista Points according to the following criteria:

Critical viewshed areas should meet the following requirements:

- extend radially for 2,000 feet (610M) from the Vista Point; and
- cover areas upon which development could potentially obstruct, limit, or degrade the view.

Development within the critical viewshed area should be subject to design review based on the following:

- building height, bulk, roof line and color and scale should not obstruct, limit, or degrade the existing views;
 - landscaping should be located to screen adjacent undesirable views (parking lot areas, mechanical equipment, etc.
- POLICY 4.6: The City will maintain and enhance the scenic highway/visual corridor

viewsheds.

- POLICY 4.9: It is intended that development would be subject to the design review provisions of the Scenic/Visual Corridor Overlay Zone for those locations within Scenic View Corridors, along scenic highways and adjacent to significant viewsheds and vista points with the addition of the following design criteria:
 - Road Design
 - Type and physical characteristics of roadway should be compatible with natural character of corridor, and with the scenic highway function.
 - Development Design
 - Building and vegetation setbacks, scenic easements, and height and bulk restrictions should be used to maintain existing views and vistas from the roadway.
 - Off-site signage should be prohibited, and existing billboards removed.
 - Development should be minimized and regulated along any bluff silhouette line or on adjacent slopes within view of the lagoon areas and Escondido Creek.
 - Where possible, development should be placed and set back from the bases of bluffs, and similarly, set back from bluff or ridge top silhouette lines; shall leave lagoon areas and floodplains open, and shall be sited to provide unobstructed view corridors from the nearest scenic highway.
 - Development that is allowed within a viewshed area must respond in scale, roof line, materials, color, massing, and location on site to the topography, existing vegetation, and colors of the native environment. (Coastal Act/30251/30253)

Density Bonus/Affordable Housing

The proposed Project, situated on approximately 13.944 gross (11.346 net) acres, substantially increases the maximum allowed density that would typically be permitted by the site's R3 zoning, from no more than 33 units, to 48 proposed units. DCM achieves this substantial increase in density through the State Density Bonus law and its agreement to build four "very low income" homes as part of the Project.

As the Commission found during its September 11, 2019 substantial issue hearing on this appeal, as approved by the City, DCM's proposed placement of all four of the "very low income" homes in a cluster in the southeast corner of the subdivision, where DCM also proposes to bury toxic, pesticide laden soil, may violate the Commission's environmental justice policies.

While the BLF is pleased that DCM has revised its site plan and currently plans to scatter the homes throughout the southern boundary of the Project, with none of the "very low income" homes planned to be constructed above toxic soil burial locations, it remains concerned that the City's approval of this project failed to sufficiently address the necessity of the numerous waivers of development standards that have been granted in order to facilitate the design high density subdivision. For example, as the size of and environmental constraints imposed by the Project site would typically be insufficient to accommodate 42 new high-end single family homes, in addition to 4 "very low income" homes and the 2 existing homes on site, the City granted waivers to the developer to reduce required front, side and interior setbacks, construct homes on panhandle lots with shared driveways, provide access to the 6 northernmost lots via a 16' shared private driveway, and to construct only private streets (for a reduction in the width typically required by the City) throughout the Project. While these waivers may be permitted under State Density Bonus Law, the result will be a high density tract subdivision with narrow streets, limited access to light and air, and limited public parking. The Project, as proposed, is simply uncharacteristic of the surrounding coastal community, which is known for its large lots and unique custom homes. The uncharacteristically high density of this Project also exacerbates the impact the Project will have upon the issues identified by the BLF, as discussed in further detail below.

Transportation and Circulation

Given the Project's location off La Costa Avenue – an important and highly traveled corridor providing access to the coast and public beaches along Highway 101 from the I-5 and eastern neighborhoods in Carlsbad and Encinitas and adjacent inland communities (including those within the cities of San Marcos, Escondido, etc.) – a complete analysis of the Project's impacts

upon transportation and circulation is crucial to determining whether the CDP should be approved by the Commission on appeal.

The circulation element of the City's certified LCP addresses transportation and circulation issues, as follows:

- 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 section 30252)
- POLICY 1.2: Endeavor to maintain Level of Service C as a basic design guideline for the local system of roadways understanding that the guideline may not be attainable in all cases.
- POLICY 1.3: Prohibit development which results in Level of Service E or F at any intersection unless no alternatives exist, and an overriding public need can be demonstrated.
- POLICY 1.19: The City will provide for adequate levels of maintenance of all improved components of the circulation system, such as roadways, sidewalks, bicycle facilities, roadway drainage systems, pedestrian, recreational trails, bicycle trails and facilities.
- POLICY 2.4: When considering circulation patterns and standards, primary consideration will be given to the preservation of character and safety of existing residential neighborhoods. Where conflicts arise between convenience of motorists and neighborhood safety/community character preservation, the latter will have priority.
- POLICY 3.3: Create a safe and convenient circulation system for pedestrians. (Coastal Act section 30252)

The Project site is accessed from La Costa Avenue, a two-lane local road that is currently used by more than 14,000 vehicles per day. The certified EIR determined the proposed Project could cause a substantial increase in traffic in relation to the existing traffic load and capacity of the street system (i.e., the increased traffic from residents of the 48 homes and visitors to those homes will result in a substantial increase in either the number of vehicle trips, the volume-to-capacity ratio on roads, and/or congestion at nearby intersections). The Project's traffic impacts will cause the northbound level of service to change from a "D" or "E" to a "D" or "F." The

southbound level of service will change from an “A” to an “F.”² (EIR, Table 3.10- 9.) Thus, the Project’s traffic impacts are inconsistent with the City’s LCP policies of endeavoring to maintain Level of Service C, prohibiting development that results in Level of Service E or F and preserving community character and safety for the existing residential community. Neither the City nor the Commission can make a finding that an overriding public need for this Project justifies the substantial impact to traffic that will result from the addition of 46 new homes on the Project site.

Surprisingly, the City found that any significant traffic adverse impacts would be reduced to “less than significant” with the implementation of mitigation measure TRA-1, which requires the addition of a left turn lane from La Costa Avenue onto Seabreeze Court, and the addition of pedestrian walkways along La Costa Avenue. These measures cannot sufficiently mitigate the traffic congestion and safety hazards that will result from project residents and guests leaving the project, with most expected to turn left out of the Project, toward I-5 and/or El Camino Real to the east. When exiting the project onto La Costa Avenue, vehicles will need to navigate across an uncontrolled lane of busy oncoming traffic traveling toward Highway 101, while also monitoring and safely entering the highly traveled destination lane traveling toward I-5.

The certified EIR and its required mitigation measures also ignore the probable future cumulative impacts³ of other proposed and approved development projects in the surrounding community, including the Encinitas Beach Resort on Highway 101 at the western terminus of La Costa Avenue, Surfers Point timeshare resort on the northeast corner of Highway 101 and La Costa Avenue (recently denied by the City of Encinitas Planning Commission and subject to appeal to the City Council) and Ponto Beach/South Carlsbad resort and mixed use development in the City of Carlsbad, all of which will add more traffic to La Costa Avenue. The failure to analyze cumulative impacts with probable future projects “precludes informed decision-making and informed public participation, thereby thwarting the statutory goals of the EIR process.” (*Irritated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1391.)

The proposed project area and the area bordering Encinitas and Carlsbad represent one of the last developable areas along the coast of both cities. The border also is considered by many as a “gateway” between both cities. During our review and analysis over the years as this project

² While La Costa Avenue appears to run in an east-west direction (i.e., from I-5 to the east and Highway 101 to the west), the certified EIR references it as running north- south. As the certified EIR describes traffic/circulation impacts as “northbound” and “southbound”, this appeal will reference the same for consistency.

³ “Cumulative impacts” refer to two or more individual effects which, when considered together, are considerable or which compound or increase others.

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was being reviewed and leading up to this de novo appeal hearing, we discovered 13 other, unrelated, projects in the vicinity that are being constructed, in the planning/permitting process or in the early stages of submittal. Included in these projects is the I-5 Widening and linked Environmental mitigation projects, as depicted graphically below:



The list of projects currently under construction or in the planning stages in the vicinity of the Project includes:

- Encinitas Beach Resort (Under construction);
- Rose Nursery (future high density residential project, currently being cleared of greenhouses);
- Cannon Properties (one being considered for high density residential development and the other for open space dedication);

- La Costa Living Estates (senior care facility, in planning stages);
- La Costa Hotel (boutique hotel adjacent to Project site, in planning stages);
- Surfer's Point (recently denied by Encinitas Planning Commission with a possible appeal pending before the Encinitas City Council);
- Encinitas Streetscape Project (reconfiguring Highway 101 in Leucadia by eliminating at least one lane and installing a 60" storm drain system that will drain into Batiquitos Lagoon and extend through the area near the Project site);
- Newage Carlsbad Luxury Hotel (Kam Sang property on the bluff overlooking the lagoon, currently in the planning process in Carlsbad);
- Construction of a bluff-top trail in Carlsbad across the lagoon from the La Costa 48 project site as mandated by a settlement agreement with the Coastal Commission and the Rosalena HOA (plans approved with construction to start soon);
- I-5 widening project (Phase 2) from San Elijo Lagoon through to north of Palomar Airport Road (discussed in further detail in Public Access Trails section, below)
- Replacement of the existing NCTD railroad bridge across the lagoon and double tracking.

The cumulative impacts of all of these proposed projects in the area bordering Encinitas and Carlsbad at the western end of the Batiquitos Lagoon represent a traffic disaster waiting to happen for the community and visitors to the area's coastal resources, including beaches near the Project site. Construction alone in the area will create gridlock. Public safety will be put at significant risk whether driving, biking, or walking. Construction dust will severely impact air quality issues.

DCM has and continues to take the position that the intersection ratings will actually improve and are not significant. The BLF strongly questions whether and to what extent the cumulative impacts of other proposed projects in the vicinity were actually analyzed and considered.

Public Access Trails

At the Commission's September 11, 2019 substantial issue hearing, the Commissioners identified the public access issue as a significant concern with the Project. As a result, Staff is currently recommending a condition requiring the developer to construct a phased 1,200 public access trail along the Project's northern and northeastern edge boundaries, above the lagoon.

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Two passive parks are also proposed. (See Staff Report, page 2.) While the BLF generally supports any condition requiring the addition of public access trails and recreational areas, the BLF has three issues associated with proposed trail and parks.

First, while a welcome addition to the Project, Staff's recommended condition related to the addition of a public access trail along the bluff edge, above the lagoon, permits the developer to construct the trail in two phases. According the Staff Report, Staff agreed to permit the construction of the trail in two phases due to the purported location of existing private improvements on the site – notably, a shed and fence utilized by the Weston family. As no other details related to these improvements are included in the Staff Report or Project application package submitted to the City, the BLF requests that Staff and/or DCM provide verification that these improvements – which currently encroach into the 25' bluff edge setback – should be permitted to remain as legal nonconforming structures. If the improvements are not legal, since they are within the 25' bluff edge setback, any Project approval should be conditioned upon removal of any and all illegal and unpermitted improvements, which would allow construction of the trail to progress in one phase, providing certainty that the public will be provided with access to the complete trail upon completion of the Project.

As proposed by Staff, construction of phase 2 of the trail is contingent on the redevelopment or reconstruction of the two existing Weston family residences on the site. As the Weston family is poised to reap significant financial benefits as a result of the proposed subdivision of their three existing parcels into 48 separate lots, in addition to upgraded site infrastructure (i.e., the elimination of the existing septic system and connection to a new public sewer) that will benefit their two existing residences, the BLF urges the Commission to condition any approval of the Project with a requirement that the entire trail be completed no later than the date upon which more than 75% of the certificates of occupancy are issued for the proposed homes in the Project. Alternatively, the BLF recommends that the Commission condition the construction of phase 2 of the trail by a date certain (i.e., one year after substantial completion of the Project or six months after the close of escrow of more than 60% of the homes) rather than upon the future improvement or demolition of the existing residences, which is uncertain and may not occur for decades.

Second, while DCM previously indicated that it intends to build a link to the proposed North Coast Bikeway from the Project, it has summarily dismissed the idea of linking the Project to the Bikeway, contending that the Bikeway would not be completed for 30+ years. This ignores the fact all I-5 widening environmental mitigation projects (which included the North Coast Bikeway) have already been approved by SANDAG and the Coastal Commission (i.e., Commission Consistency Determination hearing, agenda item W21c-6-2019) and is fully designed and shovel-ready. The Bikeway project is currently only awaiting funding. With the

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post Covid-19 era and another economic stimulus package expected that will likely include federal investment in infrastructure, it is reasonable to assume that the Bikeway will begin construction sometime within the next decade, and most likely within the next 3 to 5 years, not in 30+ years.

Below are CALTRANS diagrams of the proposed North Coast Bikeway Trail project (along additional development projects) that show the Bikeway passing just to the east of the Project site.



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Renderings of the proposed bike and pedestrian trails are provided below:



(Project site in upper left corner.)

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(Connection to Bikeway from north shore/Aviara Batiquitos Lagoon trail.)



(Proposed northbound view of the Bikeway, with Project site below left.)

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Accordingly, if the Commission is inclined to approve the Project, the BLF requests that the Commission condition its approval with a requirement that the Project developer plan for, design and commit to construct access to link the Project with the forthcoming North Coast Bikeway within two years of substantial completion of that project along I-5 between the La Costa Avenue and Poinsettia Lane/Aviara Parkway exits. The BLF further requests that the Project be conditioned upon the requirement that the developer meet with and obtain the CALTRANS and SANDAG approved plans during design, with all actions completed prior to the issuance of a CDP.

Third, the two proposed parks, while a nice community amenity, are sited on the Project's two stormwater retention areas. While DCM proposes that the two sites will usually be dry and will be landscaped, the BLF is concerned that the planned use of these stormwater basins for recreation could be problematic during the rainy season. With climate change and sea level rise, we can also expect to experience an increase in both frequency and intensity of storm events. What used to be 100-, 50- and 20-year rain events can now be expected to occur much more frequently. The BLF is genuinely concerned for public safety and for what could become a community eyesore, may not be used, and may serve as a breeding ground for mosquitos and the diseases they carry. Accordingly, the BLF requests that the La Costa 48 development project be conditioned to make the two parks separate from the Project's stormwater retention system (i.e., locate them elsewhere within the development).

Encinitas' certified LCP includes the following relevant policies that support the BLF's position:

- POLICY 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)
- POLICY 4.5: Design and construct attractive bike paths and pedestrian ways along existing freeway overpasses and underpasses. Discourage separate pedestrian overpasses. (Coastal Act/30252)

Further, the Encinitas Coastal Mobility and Livability Study (updated September 26, 2016) references the possible addition of a public viewpoint at the northeast corner of La Costa Avenue and the I-5 (i.e., the same location as the Project site). The study further contemplates a future public bike trail adjacent to I-5 southbound lanes.

Finally, any approval of the Project, with its proposed public access viewing area, should also be conditioned upon linkage to the future public recreational trail system with adequate signage

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designating the proposed viewing area in the Project as a public access coastal viewpoint as required by Sections 30210 and 30212 of the Coastal Act.

Signage and Public Education Opportunities

If approved, the installation of signage within and adjacent to the Project will present many opportunities for collaboration with the BLF that will make the parks, trails and interior paths and walkways more educationally informative and pleasant for the community, including future residents and the public.

As a 501(c)(3) non-profit organization, the BLF would welcome the opportunity to work with the developer and community HOA to provide signage, informational plaques, and other informative projects. Through the BLF's many contacts, volunteers, and grants, it has access to resources that could be used to assist with design, content and the creation of signage along the Project's publicly accessible trails.

Other opportunities include working with the California Coastal Conservancy; California Ocean Protection Council; California Department of Fish and Wildlife (CDFW and responsible for management of the Batiquitos Lagoon Ecological Reserve and State Marine Conservation Area (No Take), and with which the BLF has a MOA; SANDAG and its Environmental Mitigation Program (EMP); San Diego County; and others.

The BLF is also willing to explore the installation of its existing smart phone and tablet QR code-based self-guided system along the Project's proposed public access trail system. This technology is currently in use along the lagoon's North Shore Trail, and is popular with many trail users. The BLF also hopes to use this system on the proposed North Coast Bikeway.

Accordingly, the BLF encourages the addition of a condition to the approval of the CDP as requiring the Project developer to coordinate with the BLF to explore all educational opportunities that could be implemented along the Project's public access trail system.

Burial of Toxic Soil

The Batiquitos Lagoon is listed and known to the State of California per the MS4 as a watershed that is subject to a U.S. National Pollution Discharge Elimination Permit (NPDES) granted to the State Water Resources Control Board and administrated by Region 9 of the Regional Water Quality Control Board (San Diego RWQCB). The City of Encinitas is a signatory to the regional committee that oversees and enforces such policies as required by the NPDES for the MS4 Discharges and therefore has a duty to protect the lagoon from pollution.

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The certified EIR for the Project notes that significant amounts of known carcinogenic organochlorine pesticide (OCP) impacted soil, including Toxaphene, DDE and DDT and other OCPs have been found on the proposed subdivision site, which was previously occupied by a commercial greenhouse and agricultural operation for 84 years. A Phase I and Limited Phase II Environmental Site Assessment (ESA) Report prepared in 2014 by the applicant's consultant, Leighton and Associates, confirms the detection of a total of eight organochlorine pesticides (OCPs), including DDD, DDE, DDT, Dieldrin, Endosulfane Sulfate, Endrin, Endrin Ketone and Toxaphene in the majority of soil samples obtained from the project site. (EIR Appendix 3.6a, Part 1, pages 28-30.) Detected concentrations of heptachlor epoxide, Toxaphene and dieldrin exceeded the USEPA Region 9 Regional Screening Level (RSL) for residential soil in shallow soils at the project site. Some of the soil samples identified levels of Toxaphene that exceed California's Total Threshold Concentration Limit (TTLC) by more than 20 times. (EIR Appendix 3.6a, Part 1, pages 29-30; EIR Appendix 3.6a, Part 2, Table at pages 3-4.) Finally, multiple Toxaphene "hot spots" of 17,000 ppm (reportable levels >100 ppm) were found at 3 feet below grade. (EIR Appendix 3.6a, Part 1, p. 29.) Toxaphene is a known carcinogen that presents a serious cancer risk for humans and animals from oral exposure and/or inhalation. (U.S. EPA. Integrated Risk Information System Chemical Assessment Summary, CASRN 8001-35-2; see https://cfpub.epa.gov/ncea/iris/iris_documents/documents/subst/0346_summary.pdf.) Leighton concluded that these OCP-impacted soils are suitable for disposal at a Class III landfill. (EIR Appendix 3.6a, Part 1, page 30.)

As noted by the Commission Staff Report, the levels of OCPs found in the soil exceed the permissible thresholds for development of single-family homes. The CDP for the project provides for the removal and use of this toxic soil as site fill material that will be buried on-site, approximately 7 to 11 feet below grade where some of the single-family homes will be constructed. While the Commission Staff Report states that on-site burial is "common" for other residential projects, the impact of this practice where the burial site is contiguous with an existing impaired sensitive protected marine habitat has not been vetted. The on-site burial has been promoted to be a cost saving method of hazardous waste remediation throughout the state. However, it is inconceivable to believe that the on-site burial of this acutely 7,000 cubic yards of this non-degradable toxic soil will never impact the environment – e.g., the Batiquitos Lagoon, the community, or the homeowners and their pets living above this carcinogenic toxic waste pit. Further, the certified EIR fails to provide for any sort of monitoring program or contingency plan in the event of a catastrophe. In light of the low impact development measures proposed for the project, the BLF is concerned that activities such as grading, resulting in airborne particulate plus soil stockpiling, reallocation may ultimately contaminate water in the adjacent Batiquitos Lagoon, harming its fragile ecosystem.

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Policy 2.3 of the certified LCP provides: “To minimize harmful pollutants from entering the ocean environment from lagoons, streams, storm drains and other waterways containing potential contaminants, the City shall mandate the reduction or elimination of contaminants entering all such waterways; pursue measures to monitor the quality of such contaminated waterways, and pursue prosecution of intentional and grossly negligent polluters of such waterways.”

The certified EIR notes that the infiltration and bioretention systems should be reviewed by a geotechnical consultant. However, without soil borings and lithologic logs to classify the site geology, it is impossible to review the site geology. A thorough hydrogeologic study of the site, taking into consideration the impact of 84 years of agricultural operations and the site’s existing waste treatment facilities (i.e., 3 septic tanks and leach-fields = 1.5 acre feet/yr.) must be conducted to fully understand the wastewater and irrigation percolation, soil porosity, permeability, stratigraphy and channelization pathways that permit natural or man-made infiltration water to migrate downward to the groundwater. There is no evidence or available data that any such hydrogeologic investigations have been conducted or that a geotechnical consultant has approved the on-site burial of the noted toxic contaminated soil *after* conducting a Human Health Risk Assessment Protocol (HHRAP), as required by the U.S. EPA.

The BLF notes that the project Applicant’s geotechnical consultant, Leighton & Associates, initially recommended removal and off-site disposal of the OCP contaminated soils. However, the certified EIR fails to sufficiently provide a human health assessment risk and protocol (HHRAP), i.e., Fate and Transport, of burying the acute toxic OCPs and does not address the future environmental impact of on-site burial of this acutely toxic soil. The certified EIR also fails to explain why it is not feasible to remove the contaminated soil and transport it to an off-site disposal facility.

Finally, the certified EIR does not include a Watershed Ecological Risk Assessment to study the impact of the on-site burial of OCPs and wastewater treatment system on the Batiquitos Lagoon in accord with U.S. EPA/600/R-06/037F. The BLF strongly urges the Commission to condition its approval, if any, upon the completion of such an Assessment as required by federal law.

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Conclusion

The BLF appreciates the Commission's further review of the significant issues it has raised on appeal, and strongly believes that the approved CDP warrants the Commission's denial or, alternatively, the imposition of additional conditions. The BLF looks forward to addressing the Commission at its July 8, 2020 virtual hearing. Should you have any specific questions that you would like for the BLF to address, we will be available at the hearing.

Sincerely,



Arie L. Spangler

cc: Batiquitos Lagoon Foundation, Board
Dennis D. Davis, San Diego District, California Coastal Commission

FW: Public Comment on July 2020 Agenda Item Wednesday 11a - Application No. A-6-ENC-19-0032 (DCM Properties, Inc., Encinitas)

Eubanks, Janesse@Coastal <janesse.eubanks@coastal.ca.gov>

Thu 7/2/2020 12:25 PM

To: Davis, Dennis@Coastal <Dennis.Davis@coastal.ca.gov>

Deleting from SD inbox 😊

From: bill <taaprogram@gmail.com>

Sent: Thursday, July 02, 2020 11:54 AM

To: SanDiegoCoast@Coastal <SanDiegoCoast@coastal.ca.gov>

Cc: Bill McGee <wmarblaw@aol.com>

Subject: Public Comment on July 2020 Agenda Item Wednesday 11a - Application No. A-6-ENC-19-0032 (DCM Properties, Inc., Encinitas)

As a former environmental regulator from Connecticut who has recently moved to this area in my retirement years, I must ask the Commission to view this proposed development with the utmost skepticism and concern for the long term health and viability of neighboring precious resources including coastal fish and wildlife communities tidal flats, and lagoon.

My late daughter and I often walked the trails at Batiquitos Lagoon when we visited this area during her childhood on our many vacation trips out here, and we came to appreciate the value of this precious ecological preserve. As I found in my professional experience when regulating wetlands and adjacent developments for the state of Connecticut, developers are long gone once the effects of their unchecked collateral damage appears upon our environment.

In this case, it would appear to me that as part of the permission sought herein is for an already accomplished, apparently permit-less demolition of a longstanding (pesticide strewn) nursery operation, which of course raises many substantial questions for runoff and contamination of soil and water many years down the road, then the rest of this application should be viewed in the light least favorable to a developer whose actions would appear to have compromised its integrity in the eyes of this Commission. All any regulator has to base its decisions upon in the end is the good faith implied by the integrity of any developer's promises for the conduct of its operations and the future impacts of its activities upon the natural environment.

The staff report seems to refer to many such concerns, but upon recent viewing of this site off La Costa Avenue it appears that substantial if not all demolition has already occurred. As we all know, increasing development near or within precious coastal resources are proliferating along this coast. La Costa Avenue already has a gigantic resort going in on the bluffs a short drive from here, and if this project is permitted this narrow two lane road will now house some 48 new families plus whatever else is done with the rest of the subdivided property, and I believe plans are already in the works for a neighboring resort development. I do not address the obvious traffic nightmares all of this engenders but just note it for the salient fact that piecemeal development regulation, considered in narrow focus on single sites alone, will not protect the long term ecology and vitality of our quickly dwindling coastal resources. At some point it would seem the charge of this Commission must be to consider the entire coastal ecology as a whole and not just the impacts of each small degradation. Requiring greater detail as to the environmental impacts of such developments is but one small step; requiring the utmost integrity in developing such plans, is an absolute must.

Experience does matter; so does integrity. Once burned, as we might say, twice shy. Our precious, diverse natural resources need to be scrupulously protected from those who have already shown to be untrustworthy promises, for one thing is absolutely certain-it is the rest of us who will certainly bear the future costs and burdens of trying to correct or remedy the impacts of decisions hastily made for another's short term

EXHIBIT NO. 10

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William McGee Letter



California Coastal Commission

less quantifiable but clearly no less important public benefits offered by the environmental wonders we all own are entitled to protection from unnecessary damage and/or destruction.

In my Connecticut permitting and enforcement experience, a developer's lack of credibility on one issue would require all future reviews to receive the highest levels of strict scrutiny and if permitted, limitations and conditions which would require constant and the highest quality monitoring and control, perhaps with active citizen involvement and oversight, and I would urge this Commission to follow that example in this case should it allow any aspects of this development to proceed.

Respectfully submitted by a local citizen, William S. McGee
Ns Sent from [Mail](#) for Windows 10