

CALIFORNIA COASTAL COMMISSION

SAN DIEGO DISTRICT OFFICE
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
VOICE (619) 767-2370
FAX (619) 767-2384



W11a

Filed: 05/13/19
SI Found: 09/11/19
Staff: D.Davis-SD
Staff Report: 06/25/20
Hearing Date: 07/08/20

STAFF REPORT: DE NOVO HEARING

Local Government: City of Encinitas

Decision: Approved with Conditions

Appeal No.: 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); construct public access trails and viewpoints; grading/utilities, 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: Approval with conditions on De Novo.

SUMMARY OF STAFF RECOMMENDATION

The proposed project consists of demolition of 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. At the Substantial Issue Hearing for this project,

the Commission found that Substantial Issue exists with respect to the grounds on which the appeal was filed. Specifically, the Commission identified that the siting of the four lots planned for very low-income housing, including the siting of one of the lots over the planned encapsulation areas for contaminated soil and the clustering of the affordable lots in the southeast corner of the site, could discourage affordable housing opportunities. The Commission also expressed concerns over the lack of public access along the northern perimeter of the site.

The project includes remediation of the site through encapsulating pesticide-impacted soil from previous agricultural operations in the southeast corner of the site, pursuant to a plan approved by the County of San Diego Department of Environmental Health (DEH). The burial of impacted soil is a common soil remediation method used across the state, and the burial of the impacted soil on the particular site has been reviewed and determined to be adequate remediation 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. Water quality improvements will protect the waters of Batiquitos Lagoon, and the plan approved by DEH will 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. As approved by the City, all four of the proposed low-income lots were located in the southeast corner of the site, and for one low-income lot, directly over the encapsulated soil area. Although no health effects have been identified or are expected relative to the encapsulated soils, clustering the affordable lots in one corner of the community could be seen as discouraging affordable housing opportunities. Therefore, Commission staff worked with the applicant to disperse the four affordable lots along the southern portion of the property. As revised, none of the affordable lots will be located above the encapsulated soil, and the affordable lots will be better integrated into the subdivision ([Exhibit #5](#)). The four lots are still located fairly close together. The applicant has described that the future units will likely be managed by an affordable housing nonprofit organization that will be responsible for the ongoing maintenance of the units, and keeping the affordable units within proximity of each other maximizes operational efficiency for the organization that will manage the units. As revised, the proposed very low income housing will improve coastal access for low-income Californians, and the burial plan will comply with all applicable state and federal health and safety requirements, thereby ensuring that the burial of the impacted soil on site will not impact any of the future residents.

As approved by the City, the project includes two public neighborhood parks, new sidewalks, and a lagoon overlook. However, the site is located between the sea and the first public road, and whenever feasible, public access should be provided along the shoreline, or in this case, Batiquitos Lagoon. Thus, Commission staff worked extensively with the applicant to provide full access along the north perimeter of the site via an approximately 1,020 ft. long public trail. Because two existing residences are proposed to remain on the site for the time being, construction of the trail will occur in two phases. The first phase will be constructed immediately and yield an approximately 620 ft. long public trail along the north perimeter of the site, extending to the northeast

A-6-ENC-19-0032
DCM Properties, Inc.

corner. The second phase will be constructed as the owners of specified lots either develop or redevelop, triggering a requirement to remove all encroachments into the trail easement and for the permittee to build their respective segments of the Phase 2 trail. Public access signage and trail amenities will also be constructed in both phases. This trail will add an additional public amenity to the site to provide public access but also views of the lagoon located below the site that have historically not been available to the public.

Other conditions include the submittal of revised final site plans, a final landscaping plan, a construction pollution prevention plan and post development runoff plan, a nesting bird survey plan, recordation of a deed restriction and an open space deed restriction.

Commission staff recommends that the Commission APPROVE coastal development permit application A-6-ENC-19-0032, as conditioned. The motion is on page 5. The standard of review is the policies and provisions of the City of Encinitas Local Coastal Program (LCP) and the public access and recreation policies of the Coastal Act.

TABLE OF CONTENTS

I. MOTION AND RESOLUTION ON DE NOVO	5
II. STANDARD CONDITIONS	5
III. SPECIAL CONDITIONS	6
IV. FINDINGS AND DECLARATIONS.....	14
A. Project Description and Background	14
B. Public Access and Recreation.....	15
C. Archaeological/Cultural Resources	25
D. Water Quality and Hazardous Substances	27
E. Biological Resources.....	31
F. Geological Hazards	34
G. Air Quality	35
H. Agricultural Resources	36
I. Community Character/Visual Resources	38
J. Local Coastal Planning	42
K. California Environmental Quality Act.....	43
APPENDIX A – SUBSTANTIVE FILE DOCUMENTS	44

EXHIBITS

[Exhibit 1 – Vicinity Map](#)

[Exhibit 2 – Aerial View](#)

[Exhibit 3 – Site Plan](#)

[Exhibit 4 – Views](#)

[Exhibit 5 – Affordable Lots](#)

[Exhibit 6 – North Trail](#)

[Exhibit 7 – County DEH Approval](#)

[Exhibit 8 – Open Space Boundary](#)

I. MOTION AND RESOLUTION ON DE NOVO

Motion:

I move that the Commission approve Coastal Development Permit 9-19-0858 subject to conditions set forth in the staff recommendation specified below.

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of Commissioners present.

Resolution:

The Commission hereby approves the Coastal Development Permit for the proposed project and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

- 1. Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the applicant or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4. Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
- 5. Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the applicant to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. Revised Final Plans.

- a. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for the review and written approval of the Executive Director, revised final project plans in substantial conformance with the plans prepared by Pasco Laret Suiter & Associates, revised 2/26/18, stamped approved by the City of Encinitas, except that they shall be modified to reflect the following:
 - i. Lots 2, 4, 43, and 45 shall be identified on the plan as affordable lots dedicated for very-low-income (VLI) households.
 - ii. No pedestrian or vehicular gates are permitted at the entrance to the proposed development at the La Costa Avenue/Seabreeze Court intersection. All publicly and privately maintained streets, roads, and public parking areas identified on the revised plans shall be for public purposes including, but not limited to, pedestrian, bicycle, and vehicular access. All streets, roads, and public parking areas shall be open for use by general public 24 hours per day, with the exception of standard limited parking restrictions for street sweeping/maintenance purposes. Long term or permanent physical obstruction of streets, roads, and public parking areas shall be prohibited. All public entry controls (e.g. gates, gate/guard houses, guards, signage, etc.) and restrictions on use by the general public (e.g. preferential parking districts, red-curbing resident-only parking periods/permits, etc.) associated with any streets or parking areas shall be prohibited. Access between the street ends and the public trails shall be provided.
 - iii. All public trails shall be a minimum of 5 feet in width, and constructed of decomposed granite or a similar permeable material appropriate for trail construction. Pedestrian amenities such as benches and interpretive signage shall be provided on all public trails. No structural foundations are permitted on public amenities within the 25-ft wide inland bluff setback. All public trails shall be maintained in good condition for public access.
 - iv. A 620-foot long trail shall be depicted on the northern border of the site as the Phase 1 trail, and a 520-foot long Phase 2 trail on the northeast border of the site, as identified on [Exhibit #6](#).
 - v. All lighting shall be designed to be directed downward onto the project site, be the lowest intensity while still providing for human safety, and be shielded to minimize spillover into the adjacent wetland areas. No lighting may be directed northward towards Batiquitos Lagoon.

- vi. The alignment of the backyard fence for the existing residence located on Lot 14 shall be modified to enclose the portion of the backyard that is south of the north trail easement.
- b. The permittee shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. Final Signage Plan. PRIOR TO ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, a signage plan indicating the type, size, extent, and location of all informational signs around and within the development. Such a plan shall include, at a minimum:

- a. A sign at the entrance of property from La Costa Avenue informing the public that public parking is available. The sign shall also indicate that all community paths and trails are open for public use.
- b. A sign at both the east and west neighborhood parks informing the public that all community paths and trails are open for public use.
- c. A wayfinding sign at the east neighborhood park identifying the direction of travel to reach the north trail.
- d. A wayfinding sign at the west neighborhood park identifying the direction of travel to reach the north trail.
- e. All public access signage shall be no less than 42 inches in height.
- f. The public access signage shall have a text area measuring no less than 18 inches by 24 inches in size.
- g. All public access signage text area shall contain language and symbols consistent with Coastal Commission standard colors and wording that specifically identifies all proposed trails and paths as being open to the public. All public access signs shall include the Commission logo.
- h. A statement that monument signs shall not to exceed eight feet in height and that façade signs are not permitted.
- i. A statement that no tall, free-standing pole or roof signs shall be allowed.

3. Construction Phasing. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit a final development phasing plan for review and approval of the Executive Director.

- a. Phase 1 shall consist of development of the West Neighborhood Park, the East Neighborhood Park, and the Phase 1 portion of the north trail, all as depicted on [Exhibit #6](#). All Phase 1 development shall be completed prior to the City's issuance of the 25th certificate of occupancy for the subdivision.
- b. Phase 2 shall consist of development of the Phase 2 portion of the trail, as depicted on [Exhibit #6](#) and subject to the following timing:
 - i. If and when the existing residence on Lot 14 is redeveloped according to the definition of redevelopment in the certified LCP, the permittee shall develop the Phase 2 trail across Lots 14, 15, and 33, and to the extent feasible, Lot 32. The permittee shall make reasonable efforts to complete the Phase 2 portion of the trail entire. Development of the trail shall be complete at least across Lots 14, 15, and 33 prior to issuance of the certificate of occupancy for the redevelopment of Lot 14.
 - ii. Alternatively, if and when the existing residence on Lot 32 is redeveloped according to the definition of redevelopment in the certified LCP, the permittee shall develop the Phase 2 trail across Lots 32, 33, 15, and to the extent feasible, Lot 14. The permittee shall make reasonable efforts to complete the Phase 2 portion of the trail entire. Development of the trail shall be complete at least across Lots 32, 33, and 15 prior to issuance of the certificate of occupancy for the redevelopment of Lot 32.
 - iii. If it is not feasible to complete the Phase II trail under either subdivision (b)(i) or (b)(ii) of this Special Condition, the permittee shall complete Phase 2 of the trail if and when the remaining existing residence on Lot 14 or Lot 32 is redeveloped. Development of Phase 2 of the trail shall be complete prior to the issuance of the certificate of occupancy for the second redevelopment.
 - iv. The Phase 2 trail shall be developed according to the requirements of Special Condition 1.a.

4. Final Landscape Plans.

- a. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for review and written approval by the Executive Director, two (2) full-size sets of final landscaping plans prepared by a licensed landscape architect or a qualified resource specialist. A landscape architect or other qualified landscape professional shall certify in writing that the final landscape plans are in conformance with the following requirements:
 - i. A plan showing the type, size, extent, and location of all proposed vegetation and any necessary irrigation.
 - ii. Only drought-tolerant native or non-invasive plant materials may be planted throughout the project site. No plant species listed as problematic

and/or invasive by the California Native Plant Society, the California Invasive Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as 'noxious weed' by the State of California or the U.S. Federal Government shall be planted.

- iii. Any existing permanent irrigation system located on the subject site that drains anywhere on or over the bluff-top and face shall be removed or capped.
 - iv. Low-flow efficient irrigation systems shall be utilized. All irrigation systems shall be designed with: drip lines, where feasible; check valves at low points to reduce excess drainage; automatic controllers; rainy weather shut off controls; and, if rotor heads are used, minimal head coverage overlap.
- b. The permittee shall undertake the development in accordance with the approved final landscape plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Coastal Commission approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

5. Construction Pollution Prevention Plan (CPPP).

- a. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the permittee shall submit for the review and approval of the Executive Director, two (2) sets of a CPPP prepared and signed by a licensed engineer that, at a minimum, includes the following:
- b. Best Management Practices (BMPs) designed to prevent spillage and runoff of construction-related materials, sediment, or contaminants associated with construction activity shall be implemented prior to the on-set of such activity. Selected BMPs shall be maintained in a functional condition throughout the duration of project. Such measure shall include:
 - i. No demolition or construction materials, equipment, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain or tidal erosion and dispersion;
 - ii. Any and all debris resulting from demolition or construction activities, and any remaining construction material, shall be removed from the project site within 24 hours of completion of the project;
 - iii. Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the

- accumulation of sediment and other debris that may be discharged into coastal waters or storm drains;
- iv. Erosion control/sedimentation BMPs shall be used to control dust and sedimentation impacts to coastal waters during construction. BMPs shall include, but are not limited to: placement of sand bags around drainage inlets to prevent runoff/sediment transport into coastal waters; and
 - v. All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.
 - vi. The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction;
 - vii. Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a Coastal Development Permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required;
 - viii. All construction materials stockpiled on site shall be covered and enclosed on all sides to ensure that the materials are not discharged to a storm drain inlet or receiving waters;
 - ix. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. If thinners, petroleum products or solvents must be used on site, they shall be properly recycled or disposed after use and not be discharged into storm drains, sewers, receiving waters or onto the unpaved ground.
 - x. The discharge of any hazardous materials into any receiving waters shall be prohibited;
 - xi. Spill discharge and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction material. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The designated area shall be equipped with spill control materials and located to minimize the risk of spills reaching receiving waters, storm drains, sewers or unpaved ground;
 - xii. BMPs and Good Housekeeping Practices (GHPs) designed to prevent spillage and runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity; and

- xiii. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.
- c. The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the plans shall occur without an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

6. Post Development Runoff Plan (PDRP)

- a. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicants shall submit for the review and written approval of the Executive Director a Post Development Runoff Plan (PDRP) that includes a map, drawn to scale, showing the property boundaries, building, footprint, runoff flow directions, relevant drainage and water quality features, impervious surfaces, permeable pavements, and landscaped areas. The PDRP shall demonstrate that the project:
 - i. Minimizes disturbance of coastal waters and natural drainage features; minimizes removal of native vegetation; and avoids, to the extent feasible, covering or compaction of highly permeable soils.
 - ii. Preferentially uses Low Impact Development (LID) techniques to retain and disperse runoff on site.
 - iii. Uses infiltration to the greatest extent feasible to retain runoff; minimize the addition of impervious surfaces; disconnect impervious surfaces from the storm drain system by interposing strategically-located pervious areas. Where infiltration is not appropriate or feasible, uses alternative BMPs to minimize changes in the runoff flow regime (e.g., direct roof runoff into rain barrels or cisterns for later use, evaporate roof runoff, employ a green roof, construct a rain garden, and/or plant trees).
 - iv. Unless specifically prohibited by conditions as documented in a detailed site analysis certified by a licensed engineer, runoff from the development, up to and including the 85th percentile, 24-hour runoff event, shall be infiltrated on-site.
 - v. Minimizes pollutants associated with landscaping and building materials.
 - vi. Directs drainage from all parking areas and driveways, roofs, walkways, patios, and other impervious surfaces to, in order of priority, a) landscaped areas or open spaces capable of infiltration, b) earthen-based infiltration BMPs, c) flow-through bio-filtration BMPs designed to treat, at a minimum, twice the 85th percentile one-hour storm event volume, accompanied by supporting calculations, d) proprietary filtration systems designed to treat, at a minimum, twice the 85th percentile one-hour storm event volume, accompanied by supporting calculations and product documentation.

- vi. Conveys excess runoff off-site in a non-erosive manner.
 - vii. Where flow-through BMPs are used, includes supporting calculations and product documentation.
 - viii. Includes all maintenance and operating procedures that will be conducted to keep the water quality provisions effective for the life of the development.
- b. The permittee shall undertake development in conformance with the approved PDRP. No changes to the plan shall occur without an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

7. Nesting Bird Survey Plan.

- a. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, in a form and content acceptable to the Executive Director, a plan for a Breeding/Nesting Bird Survey to be conducted by a qualified biologist prior to construction of the proposed improvements, which shall substantially conform to the following requirements:
- i. Should vegetation or tree removal be planned to occur during the bird nesting season, February 1 to September 15, a qualified biologist with experience in conducting bird surveys shall conduct a bird survey no more than 72 hours prior to construction to detect any protected native birds in the habitat to be disturbed and any other such habitat within 300 feet of the construction area.
 - ii. If any active nests are detected, the area shall be flagged and mapped on the construction plans along with a minimum 300-foot buffer and up to 500 feet for raptors, as determined by the project biologist, and shall be avoided until the nesting cycle is complete or nests abandoned. Subject to consultation with and the prior written approval of the Executive Director, the project biologist may reduce the avoidance buffer if a reduced buffer maintains protection of the nesting cycle of the avian species.
- b. The permittee shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

8. **Deed Restriction. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT**, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the landowner has executed and recorded against their respective parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating

that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

9. Open Space and Conservation Deed Restriction.

- a. No development, as defined in Section 30106 of the Coastal Act, shall occur in the open space area consisting of naturally vegetated steep slopes in the northeast portion of the project, depicted on [Exhibit #8](#) except for:
 - i. Construction and ongoing maintenance of the storm water outlet structure at the base of the slopes.
- b. **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT**, the applicant shall execute and record a document(s) in a form and content acceptable to the Executive Director, reflecting the above restrictions on development in the designated open space area, irrevocably offering to dedicate to a public agency or private entity approved by the Executive Director, an open space and conservation easement for the purpose of conservation and protecting steep, naturally vegetated slopes in perpetuity. Such conservation area shall be located in the northeast portion of the project as shown in [Exhibit #8](#). The recorded document(s) shall include a legal description and corresponding graphic depiction of the legal parcel(s) subject to this permit and a metes and bounds legal description and a corresponding graphic depiction, drawn to scale, of the designated open space area prepared by a licensed surveyor based on an on-site inspection of the open space area.
- c. The deed restriction shall be recorded free of prior liens and any other encumbrances that the Executive Director determines may affect the interest being conveyed.
- d. The deed restriction shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicant or landowner in perpetuity.

10. Area of Archaeological Significance. The applicant shall comply with all recommendations and mitigation measures for cultural resources contained in the Final EIR (SCH # 2017121068), dated December 2018.

- 11. Conditions Imposed by Local Government.** This action has no effect on conditions imposed by the City of Encinitas pursuant to an authority other than the Coastal Act. The permittee shall be responsible for satisfying all terms and conditions of this coastal development permit in addition to any other requirements imposed by other local government permit conditions. In the event of conflict between terms and conditions imposed by the local government and those of this coastal development permit, the terms and conditions of this coastal development permit shall prevail

IV. FINDINGS AND DECLARATIONS

A. Project Description and Background

The project site is a roughly rectangular shaped parcel located on an inland bluff-top site composed of three contiguous lots, totaling 13.94 acres, on the south side of Batiquitos Lagoon, located approximately 500 ft. east of Interstate 5 (1-5), in the City of Encinitas ([Exhibit #1](#)). The site is located approximately 60 to 70 ft. above the lagoon and the majority of the developable portions of the site are located at least 100 ft. away from any wetlands, except for a small sliver in the northwest corner that is located as close as 90 ft. from wetland vegetation. 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 ([Exhibit #2](#)). Two existing single-family residences and several detached accessory structures are sited on the northern portion of the site. The applicant is proposing to demolish all the structures on site, except for the two existing single-family residences and detached accessory structures that will remain, and subdivide the three existing lots into 48 residential lots and a private street. The residential lots will range in size from 4,738 sq. ft. to 56,845 sq. ft. Two public neighborhood parks, a community garden, viewpoints, and trails overlooking the lagoon will be incorporated into the project ([Exhibit #3](#)).

Other work includes grading for 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 an 8-ft. high sound wall along the northeast portion of the site facing 1-5, constructing a 6-ft. high fence along the northern portion of the site to limit intrusion of domestic pets into the lagoon, constructing the street and pedestrian paths/sidewalks, an entry monument sign not to exceed 6-ft. in height, utility and drainage improvements, and landscaping including 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. The four lots dedicated for the affordable dwellings are dispersed throughout the southern portion of the site. Although the project does not include the construction of the residences at this time, the Environmental Impact Report for the project analyzed potential impacts associated with full build-out of the community. Future construction will

require approval of a new coastal development permit from the City, which would be appealable to the Commission.

The site was used for agricultural purposes until 1958 when the site was converted to a greenhouse operation that ceased approximately four years ago. The existing homes, located at 510 and 514 La Costa Avenue, were constructed 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 residence was never constructed; the art studio was constructed and exists on the site today as an accessory structure to the existing 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 second existing residence.

On May 13, 2019, the subject project was appealed to the Coastal Commission and the applicant waived its right to a hearing within 49 working days after the appeal was filed. At its September 11, 2019 hearing, the Commission found Substantial Issue exists with respect to the grounds on which the appeal was filed. Since that time, the applicant has made several revisions to the project. The location of the four future affordable housing lots, which were previously planned to be sited together in the southeast corner of the site, are now dispersed throughout the southern portion of the site ([Exhibit #5](#)). An approximately 1,020-ft. long public trail is proposed along the north perimeter of the site, starting near the proposed west neighborhood park and extending north, parallel to the property line, to the northeast corner of the site.

In its “de novo” review of this application, the Commission’s standard of review for the proposed development is whether it conforms to the policies and provisions of the City of Encinitas Local Coastal Program (LCP), which was certified by the Commission in November 1994, and the public access and recreation policies of the Coastal Act.

B. Public Access and Recreation

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.

Although not the standard of review, 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.

The City of Encinitas Certified LUP states:

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 . . . [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 . . .

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 . . .

The City of Encinitas Certified IP states:

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). [. . .]

EMC Section 30.54.030.A:

The number of off-street parking spaces required for automobiles shall be no less than that set forth in the following table:

Dwelling, single-family . . . 2 enclosed parking spaces for each unit up to 2,500 square feet of floor area. 3 spaces for dwelling units in excess of 2,500 square feet. Any parking space over 2 spaces may be enclosed or unenclosed.

Affordable Housing

The Commission adopted an Environmental Justice Policy in March 2019, which recognizes that the elimination of affordable residential neighborhoods has pushed low-income Californians and communities of color further from the coast, limiting access for communities already facing disparities with respect to coastal access and may contribute to an increase in individuals experiencing homelessness. 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. The provision of new

affordable housing opportunities for persons of low and moderate income in the coastal zone increases access opportunities to the shoreline.

The subject project designates four lots in the proposed subdivision as affordable lots, reserved for the future construction of four affordable homes for very-low-income (VLI) households 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. The project originally clustered all four affordable lots in the southeast corner of the development for affordable housing (Lots 41, 43, 44, and 45) ([Exhibit #5](#)). The applicant has indicated that the lots will likely be managed in the future by an affordable housing nonprofit organization that will be responsible for the qualification and selection of the future affordable unit occupants and ongoing maintenance of the units. According to the applicant, placing affordable units within proximity of each other maximizes operational efficiency for affordable housing nonprofit organizations that manage the units. As affordable units are more spread out throughout a community, the operational efficiencies are diminished, making management more difficult for affordable housing nonprofit organizations.

However, in order to assure that the affordable units are well integrated into the community, the applicant has modified the project to disperse the affordable lots along the southern portion of the project site (Lots 2, 4, 43, and 45) ([Exhibit #5](#)). The modified siting of the affordable lots will disperse the units without eliminating the operational efficiencies needed by affordable housing nonprofit organizations to manage the future units. The future affordable units are required to be comparable in all regards to market-rate units, including having access to the same community amenities as the market-rate units. Although no hazards have been identified associated with the proposed soil encapsulation, none of the affordable lots will be located over the encapsulation area for the pesticide impacted soils described in further detail under Section D. Water Quality and Hazardous Substances. **Special Condition #1** requires the applicant to submit revised plans depicting the new location of the affordable lots.

Approval of the project will increase the amount of affordable housing located in Encinitas, encouraging low-income housing opportunities in the Coastal Zone, and as a result, providing coastal access for low-income Californians. 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 City's LCP and the Coastal Act.

Density

The certified LCP designates the 13.94-acre site as residential (R-3), which allows a maximum of 42 lots on the site; however, the certified LCP also requires that for sites containing sensitive lands such as steep slopes, the density otherwise established for the site be "adjusted" downward. The northeast portion of the site contains steep slopes in excess of 25% grade, and therefore, based on a detailed formula contained in the LCP, the net acreage used to calculate density is adjusted down to 12.91 acres. As a result, the maximum base density allowed on the site is 38 units.

However, the certified LCP allows residential projects consisting of 5 or more lots to receive a maximum density bonus of 30% if the project constructs 9% of the total lots for VLI households. To qualify for the density bonus the applicant is only required to provide 3 affordable lots to meet the minimum 9% requirement ($38 \times 9\% = 3.42$ rounded down to 3 lots). Since the project includes construction of 4 affordable lots, resulting in 9.5% of the total lots being reserved for as affordable for VLI households, the project qualifies for the 30% density bonus. A 30% density bonus yields 11 extra lots ($38 \times 30\% = 11.4$ rounded down to 11 lots), which when added to the base density allows for a maximum of 49 lots on-site.

The project proposes 48 lots, including 2 lots for the 2 existing units, 4 lots for the future VLI households, and 42 new market-rate units. Thus, the proposed density is consistent with the maximum density permitted by the certified LCP.

State density bonus law, which is incorporated in the City's LCP, would potentially allow for build-out of the site with an even greater density than the proposed project, if a mix of multi-family and commercial were constructed rather than single-family residences. However, the site is zoned for single-family detached residential units, and impacts to community character, traffic and circulation would have to be analyzed in detail if the site were developed with commercial or multi-family uses. Furthermore, the California Department of Fish and Wildlife (CDFW) provided comments on the draft EIR for the current proposal and recommended adoption of a reduced density alternative which would have allowed a maximum of 22 residential units, including the two residences proposed to remain. While CDFW's concerns were addressed via mitigation measures in the Final Environmental Impact Report (FEIR) to protect biological resources (see Section E. Biological Resources), any option proposing for more significantly greater density than the current proposal could potentially result in impacts to biological and visual resources. Thus, only development scenarios involving single-family residences were pursued for the subject site.

Public Trails

There are formal public trails along the lagoon's north shore; however, there are no public trails along the lagoon's south shore, below the subject site. The future 1-5 North Coast Bike Trail, a planned improvement under the North Coast Corridor Public Work Plan and Transportation and Resource Enhancement Program (NCC PWP/TREP), will be constructed east of the site at the time that Caltrans replaces the 1-5 Batiquitos Lagoon Bridge, expected to occur within the next 10-20 years. There is currently no public sidewalk on La Costa Avenue adjacent to the site's entry point at the La Costa Avenue/Seabreeze Court intersection.

The project as approved by the City included several access improvements including a sidewalk along La Costa Avenue, public paths running parallel to the internal street of the subdivision, public parking, and two community parks. The five-foot wide public paths are proposed with a decomposed granite surface and will connect to a new approximately 560 ft. long sidewalk fronting the site, facilitating public access to the site from La Costa Avenue. The public paths will extend north, following the perimeter on both sides of the internal street, and provide access to both the west and east

neighborhood parks. The east neighborhood park will contain public amenities such as a picnic table area while the west neighborhood park will contain a community garden and a public viewing platform. Another decomposed granite path extending east from the west cul-de-sac connects to the east neighborhood park, providing a convenient shortcut for members of the public to quickly travel between the two parks ([Exhibit #3](#)). The public paths also will run adjacent to all public parking spaces, providing members of the public that drive to the site direct access to the neighborhood parks. All decomposed granite paths and will be constructed through this permit.

These will be amenities available to the public, and will substantially improve public access and recreational opportunities for the community and visitors. However, 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 and the rights of private property owners. Whenever feasible, public access should be provided along the shoreline, or in this case, Batiquitos Lagoon. While the project as approved by the City included several public access improvements throughout the project site, it did not provide public access along the northern portion of the site. The subject site is an inland bluff overlooking the lagoon, and redevelopment of the site represents an opportunity to provide a trail along the bluff top which could eventually be part of a larger continuous public trail system on the southern side of the lagoon.

A trail in this location will not provide expansive views, as dense vegetation along the northern portion of the site limits public views of the lagoon below the site. Because the trees are within the 100-ft wetland buffer from the lagoon, they could not be removed to improve the view to the lagoon along the north perimeter of the site. Nevertheless, some views through the trees are available in various locations along the north perimeter of the site, and a trail in this location will be a significant public amenity.

The LCP requires a 25-foot setback from the inland bluff edge and the project incorporates a 25-foot setback from the edge of inland bluff. A 25-ft. wide inland bluff setback is required for all structures requiring a foundation in the future build-out of the community. This setback should allow sufficient area for construction of a decomposed granite trail with public amenities running parallel to the inland bluff; however, the existing residences that are proposed to remain on the site have encroachments that extend into the setback area, preventing construction of the entire perimeter trail at this time. Some of these encroachments are fairly minor, such as a fence enclosing the backyard of the existing residence closest to the northeast corner of the site, but others are more substantial, including the private driveway serving this residence, a shed, and a portion of the other residence located closest to the east neighborhood park.

The applicant has indicated that it is anticipated that at some point in the future these two sites will be redeveloped with new single-family residences located entirely out of the bluff setback. The owner has agreed to the City's requirement to remove everything within the 25-ft wide inland bluff setback when the existing residence is redeveloped in the future. However, at this time, existing development proposed to remain is located in the area where a trail could otherwise be constructed ([Exhibit #6](#)).

Therefore, since the Commission found the local approval raised a substantial issue, the applicant and staff have worked closely to develop a plan to modify the project to provide access along the northern perimeter of the site during the initial phase of project development, with the final continuous path to be provided when, among other things, the two existing houses are redeveloped. As now proposed, construction of an approximately 620 ft. long public trail along the northwest portion of the site, starting near the proposed west community park and extending north, parallel to the property line, and terminating at the northeast corner of the site ([Exhibit #6](#)) will be constructed as “Phase 1” of the perimeter trail. Providing public access in this location will have some impact on the existing homeowner, as an existing fence and various private items belonging to the homeowner will have to be removed and relocated in order to accommodate construction and public use of a trail. However, in consultation with staff, the applicant has agreed to remove the existing encroachments to allow construction of the trail to proceed. The owner will still retain the majority of their backyard and must reconfigure their fence to enclose the portion of the backyard that is south of the trail easement. **Special Condition #1** requires the applicant to submit final plans depicting the fence as enclosing the portion of the backyard on Lot 14 located south of the trail easement. This approach will ensure for construction of Phase 1 of the trail as part of the initial development of the site.

Phase 2 of the trail will consist of the construction of an approximately 500 ft.-long public trail extending parallel to the property line from the end of the Phase 1 trail in the northeast portion of the site, south until it links up with the neighborhood park proposed on the east side of the project area ([Exhibit #6](#)). The Phase 2 trail will span four lots (14, 15, 32, and 33). Lots 14 and 32 contain the existing residences to remain and encroachments into the 25-ft wide inland bluff setback that prevent construction of the trail. When the existing residences on these two lots are redeveloped, the properties will be required to conform to the 25-ft wide inland setback, requiring the removal of any encroachments into the setback area and thus creating an area for construction of part of the Phase 2 trail.

Lots 15 and 33 are located between the two existing residences and do not contain any building or hardscape encroachments into the inland bluff setback. While construction of the trail on Lots 15 and 33 could technically occur now since there are no encroachments into the inland bluff setback for these lots, this portion of the Phase 2 trail will not be publicly accessible until the either portion of the Phase 2 trail on Lot 14, north of this trail segment, or Lot 32, south of this segment, is constructed. Construction now of the segment of the Phase 2 trail spanning Lots 15 and 33, without the expectation of a timely connection to the rest of the proposed public paths, would not provide the public will access along the northeast perimeter of the site. It is unknown exactly when Lots 14 and 32 will redevelop, but during consultation with staff, the applicant implied that the owner of Lot 14 had plans to redevelop his site around the same time that the build-out of the future community would occur. Redevelopment of either Lot 14 or 32 would provide a connection allowing the public to reach the portion of the Phase 2 trail on Lots 15 and 33. Thus, the applicant has two options: (1) development of the Phase 2 trail across Lots 14, 15, and 33, and to the extent feasible, Lot 32 when the existing residence on Lot 14 is redeveloped or (2) development of the

Phase 2 trail across Lots 32, 33, and 15, and to the extent feasible, Lot 14 when the existing residence on Lot 32 is redeveloped. If it is not feasible to complete the Phase 2 trail under either of the above options, the permittee will be required at a minimum to complete the entire Phase 2 trail prior to the issuance of the certificate of occupancy for the remaining existing residence on either Lot 14 or Lot 32. **Special Condition #3** requires the applicant to submit a construction phasing plan including the above triggers for the development of the Phase 2 trail.

Both of the newly proposed gravel trails will be similar to the other trails, including public amenities such as benches and public access signage. The applicant will record an easement, held by the City, over the proposed north trail to ensure it remains open to the public. **Special Condition #1** requires the applicant to submit revised plans that incorporate these public access enhancing features.

No construction of the residences is proposed at this time and future build-out of the community will require approval of a new appealable coastal development permit from the City. Nevertheless, this project is consistent with the public access and recreation policies of the Coastal Act only with the inclusion of the public paths and parks. To ensure the public improvements are constructed in a timely manner, **Special Condition #3** requires the public paths and parks, except for the Phase 2 trail, be completed prior to the City's issuance of the 25th certificate of occupancy for the future residences. The 24th certification of occupancy represents 50% occupancy of the future community; thus, this condition allows the applicant some flexibility in the phasing and construction of the future community while still ensuring that the community does not exceed 50% occupancy (i.e. receive the 25th certificate of occupancy) before the trail is constructed.

To ensure that future property owners are properly informed regarding the terms and conditions of this approval, **Special Condition #8** requires a deed restriction to be recorded against the properties involved in the project. Upon future build-out of this community, members of the public will have access to not only the proposed community parks but also access along the north perimeter of the site that provides views of the Batiquitos Lagoon, neither of which have historically been available to the public. **Special Condition #11** requires the City to adhere to the conditions of local approvals.

The appellants argue that the project should have included a connection to the future 1-5 North Coast Bike Trail, a planned improvement under the North Coast Corridor Public Works Plan and Transportation and Resource Enhancement Program (NCC PWP/TREP). In the next 10-20 years, Caltrans plans to replace the I-5 Batiquitos Lagoon Bridge, at which the trail will be constructed over Batiquitos Lagoon and roughly parallel to the 1-5 highway. 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. Ideally, there could be a direct connection from the site trails to this future trail; however, to connect to the proposed 1-5 trail from the subject site, which sits at an elevation of approximately 60 to 70 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 could potentially 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. The construction of the proposed sidewalk fronting the

project site will likely be able to provide members of the public a linkage to the future 1-5 trail if the trail connects to the existing public sidewalks near the 1-5/La Costa on/off ramps which are located approximately 0.2 miles from the site. However, nothing with the proposed project would prevent the future construction of a connecting trail, were one determined to be feasible and appropriate for the site. Therefore, the project will provide a public amenity that not only increases the accessibility for the project site for the public, but also facilitates the linkage of the site's public amenities to future trails and amenities within the vicinity of the site.

Traffic

The subject site fronts on La Costa Avenue, a major coastal access route. The proposed intensification and densification of the site could impact public access to the shoreline if it resulted in significant delays in traffic. The EIR for the project analyzed 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 traffic report concluded 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 City required the applicant 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. 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 look out for bicyclists before turning left into the site. 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-ft. wide sidewalk will be constructed to provide safe pedestrian access to the site. The EIR determined that with 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.

Gates, Red Curbing, Public Parking Restrictions

The project site will be open to members of the public to access the two neighborhood parks and to enjoy views of Batiquitos Lagoon from the north trail. The public will be allowed to enter the residential community either by walking into the community from

the new sidewalk fronting the site on La Costa Avenue or by parking in any of the 47 unrestricted parking spaces located on the street or in the parking bay at the east neighborhood park. The development will only have one vehicular and pedestrian entryway at the La Costa Avenue/Seabreeze Court intersection.

All 47 spaces are unrestricted and will be protected by a parking easement to prevent private landowners from usurping these spaces. To further ensure that the 47 unrestricted parking spaces always remain available to the public, **Special Condition #1** requires the applicant to submit revised final plans that acknowledges that the 47 unrestricted parking spaces shall remain open for use by the general public and that also prohibits any obstructions including red curbing or time restricted parking limitations on the unrestricted parking spaces.

The Commission has historically prohibited the installation of both vehicular and pedestrian entry gates in coastal development located between the sea and the first public road (ref. CDP Nos. 6-99-043, A-6-OCN-02-121-A1/6-03-23-A1, 5-06-145, 6-15-0003). Most coastal property between the first public road and the sea throughout much of Southern California is developed. Without provision of public access through these coastal developments, public access would be severely restricted due to a walling off of the coast from the public (such as in Broad Beach, Carbon Beach, and elsewhere). Additionally, according to the applicant, the City of Encinitas no longer permits new gated communities in Encinitas. As such, the project as approved by the City did not include either a vehicular or pedestrian and the project has not been modified to include either. To ensure that a gate is not erected in the future, **Special Condition #1** requires the applicant to submit revised final plans that acknowledges all public entry controls are prohibited.

Neighborhood Parks and Amenities

The Coastal Act encourages lower cost visitor and recreational facilities where feasible. The project proposes dual use of the proposed water quality basins located on Lots 50 and 51 to allow the basins to also be used as neighborhood parks. The parks will include picnic table areas, cultural education monuments, a community garden, and a viewing platform that provides views of Batiquitos Lagoon from the east side of the project site that is not currently accessible for the public. The parks are intended to be used for passive recreational purposes (e.g. picnicking and gathering) that do not adversely impact the underlying water quality basins. Members of the public will have unrestricted access to both of the parks. Thus, approval of the project will result in the creation of lower cost visitor and recreational facilities for public use.

Therefore, as conditioned, the proposed development can be found consistent with the public access and recreation policies of the Coastal Act and the certified LCP.

C. Archaeological/Cultural Resources

The City of Encinitas Certified LUP states:

Resource Management Goal 7:

The City will make every effort to ensure significant scientific and cultural resources in the Planning Area are preserved for future generations. (Coastal Act/30250)

Resource Management Policy 7.1:

Require that paleontological, historical and archaeological resources in the planning area are documented, preserved or salvaged if threatened by new development. (Coastal Act/30250)

Resource Management Policy 7.2:

Conduct a survey to identify historic structures and archaeological/cultural sites throughout the community and ensure that every action is taken to ensure their preservation. (Coastal Act/30250/30253(5))

Resource Management Policy 7.4:

The City will encourage the development of cultural facilities to be made available to the public, such as performing arts theaters, museums, and libraries. (Coastal Act/30250)

In August 2018, the Commission adopted its Tribal Consultation Policy to improve tribal consultation on projects submitted to the Commission that could adversely impact tribal cultural resources. In accordance with the policy, Commission staff provided notice to the representatives of the San Luis Rey Band of Mission Indians for early notification of the project.

The FEIR included a variety of cultural resource mitigation measures including requiring the applicant to provide monitoring through a qualified archaeologist and a traditionally and culturally affiliated (TCA) Native American monitor for any on-site and off-site ground-disturbing activities, developing a Cultural Resource Mitigation Monitoring Program that addresses how identification, evaluation, treatment, and protection of any cultural resources will be handled during the construction of the proposed project, and conducting a Phase II archaeological assessment to determine the boundaries of the two historical resources and to identify any additional potential negative impacts to subsurface tribal cultural resources that have not yet been identified. Cultural resources mitigation monitoring must be noted on all applicable construction documents and the qualified archaeologist and TCA Native American monitor shall attend all applicable pre-construction meetings with the selected contractor or associated subcontractors. The qualified archaeologist and TCA Native American monitor may halt ground-disturbing activities if archaeological artifacts or cultural resources are discovered. The applicant will also be required to enter into a Pre-Excavation Agreement with the San Luis Rey Band of Mission Indians, or other TCA tribes.

Commission staff confirmed that the San Luis Rey Band of Mission Indians were consulted by the City during the drafting of the FEIR and agree with the cultural resource mitigation measures included in the FEIR. **Special Condition #10** requires

the applicant to comply with all cultural resources recommendations and mitigation measures contained in the FEIR for this project. Therefore, as conditioned, the proposed development is consistent with the certified LCP.

D. Water Quality and Hazardous Substances

The City of Encinitas Certified LUP states:

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 . . .

The City of Encinitas Certified IP states:

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 . . .

Soil Remediation

According to the Site Assessment Report from the project EIR, the subject 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. These pesticides include Toxaphene, DDE, and DDT and other types of organochlorine pesticides, referred to collectively in this report as “pesticides.” 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 per 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) Voluntary Assistance Program, which provides technical assistance and oversight for properties impacted with hazardous substances. Per the County’s Site Assessment and Mitigation Manual, which guides handling hazardous materials, the applicant prepared a Property Mitigation Management Plan (PMMP) for the remediation of the impacted soil before 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 thoroughly 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 #7](#)). The approved PMMP requires the applicant to excavate the pesticide-impacted soil and stockpile it onsite for reuse as fill material in the south-east portion of the site, away from the lagoon and inland bluff ([Exhibit #5](#)). The PMMP requires the impacted soil to be buried at a depth not less than 7 ft. below the designed finished grade, covered with a geotextile fabric, and then covered with 7 ft. 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 Commission's water quality staff reviewed the approved soil remediation plan and notes 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 to 70 ft. below the site's existing grade. Since the maximum depth of the buried soil will be 11 ft. below the existing grade, the contaminated soils will be placed more than 50 ft. above the groundwater elevation. Additionally, the PMMP reports and Commission water quality staff have verified that the pesticides in the impacted soil are 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 by the local approval 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. As originally approved by the City, the parcels designated for very low-income residences were all located on the southeast corner of the site, near the approved location of the buried soils, and one of the lots was above the encapsulated soils. Since then, the location of the VLI lots has been revised such that none of the lots will be above the encapsulated soils ([Exhibit #5](#)). 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. As required by the LCP, the toxic soil remediation plan is in compliance with the California Hazardous Substance Act, 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 ft. 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.

Proposed Site Drainage

The existing site topography allows runoff to drain over the top of the inland bluff in the northeast corner of the site, discharging sediment and pollutants such as pesticide-impacted soil into the Batiquitos lagoon located below the site. 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 both the Regional Water Quality Control Board and 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.

As proposed, the amount of impervious cover on the site will be minimized with large areas proposed for landscaping and the use of pervious pavers and decomposed granite, allowing further infiltration on the subject site and thus preventing most runoff from entering the lagoon. Infiltration of stormwater is not expected to mobilize any of the pesticides identified in the contaminated soil because these pesticides are not water-soluble and therefore are not capable of impacting groundwater. Additionally, the elevation of the groundwater table is so deep that it is unlikely that pollutants from the surface will be able to reach it.

After build-out, most stormwater will be retained on site 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 infrastructure for the storm water outlet will be horizontally directionally bored behind the face of the steep slopes on the northeast portion of the site to avoid impacts to the vegetation steep slopes. The horizontal directional boring method will allow the applicant to avoid erosion of the bluff when installation of the site's storm water drainage infrastructure. **Special Condition #9** requires the applicant to record an open space deed restriction, covering the steep slope area to limit development in the steep slope area that could result in erosion of the slopes. 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. The proposed improvements will treat and prevent pollutants from entering the groundwater table and the surface water of Batiquitos Lagoon and will improve the current drainage conditions of the site. **Special Condition #5** requires the applicant to submit a Construction Pollution Prevention Plan, prepared by a licensed engineer, that incorporates BMPs designed to address contaminants associated with construction activity. **Special Condition #6** requires the applicant to submit a Post-Development Runoff Plan implementing BMPs to reduce runoff from the various impervious surfaces on the site. Therefore, as conditioned, the proposed development is consistent with the water quality policies of the certified LCP.

E. Biological Resources

The City of Encinitas Certified LUP states:

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.

The City of Encinitas Certified IP states:

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 above 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. The steep slopes north of the site located in the City of Carlsbad are naturally vegetated with dense, mature eucalyptus trees and Torrey pines.

The CDFW 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-ft. buffer upland of the wetland areas of the lagoon. The project site is located approximately 70 ft. 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 vegetated 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 ft. from the northern boundary of the project site. The limits of the wetland are approximately 20 ft. 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 ft. between the wetlands below and the flat portion of the site above where the approved development will occur ([Exhibit #3](#)).

The City of Encinitas LCP requires a 100-ft. wide buffer be maintained around all identified coastal lagoon wetland areas, where no development can occur. As noted, the boundary of the 100-ft. 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. No development, including the north trail, is proposed within the 100-ft. wide wetland buffer or now or in the future build-out of the site. As approved by the City, both the steep slopes and the wetland buffer area will be protected by an open space easement that will be maintained by the future HOA, consistent with the LCP requirements. As concluded in the applicant's biological assessment report prepared for the project, there were no sensitive habitats or plants

observed on the site other than the four Torrey pines that will be preserved and protected in the open space easement. **Special Condition #9** requires the applicant to record an open space deed restriction, covering the steep slope area that includes the four Torrey pines and the portion of the wetland buffer on the site, to ensure these resources are protected.

The project site is located within the City's Special Study Overlay Zone and the Cultural/Natural Resource Overlay Zone. The Cultural/Natural Resource Overlay Zone identifies parcels containing ecologically sensitive plant and animal habitats and requires the submittal a survey by a qualified professional biologist to determine the significance of the habitats and whether mitigation measures are needed to protect the identified habitats. The Special Study Overlay Zone is used to indicate those areas where development standards may be more stringent to minimize any potentially adverse impacts from development. The applicant prepared a biological assessment for the site that 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 are required prior to construction and active nests found must be avoided. In addition, 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 runoff must be directed away from the open space easement. Lighting from either the construction activities or the future community could potentially illuminate the lagoon at night, adversely impacting nocturnal wildlife in the lagoon. Construction lighting and lighting associated with the development must utilize the lowest illumination necessary for human safety, 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. **Special Condition #7** requires the applicant to submit a nesting bird survey plan to ensure that nesting birds are not adversely impacted. **Special Condition #4** requires submittal of final landscaping plans to ensure that only non-invasive (or native), drought-tolerant plants area planted on-site and to demonstrate that any existing irrigation systems on the inland bluff-top site have been removed. **Special Condition #1** requires that the final project plans state that the project will utilize the dimmest lighting while still providing for human safety and that all lighting be shielded and directed away from the adjacent habitat areas.

The appellants have suggested that a lower density alternative would be more protective of the surrounding natural resources; however, the EIR prepared for the project analyzed impacts from other alternatives including one that would have reduced density on the subject site; however, the impacts to biological resources would have been similar to those resulting from the proposed project. The project will 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 on site, and imposing predator control measures. No development will occur within the 100-ft. wide wetland buffer and the buffer will be preserved in an

open space easement. Therefore, as conditioned, the proposed development is consistent with the biological resource policies of the certified LCP.

F. Geological Hazards

The City of Encinitas Certified LUP states:

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.

The City of Encinitas Certified IP states:

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. . . .

Onsite elevations range from approximately 60 to 70 ft. above mean sea level, and, along the north and northeast boundaries of the site, inland coastal bluffs descend downward to Batiquitos Lagoon and toward the I-5. The inland coastal bluffs are approximately 70 ft. in height over a horizontal distance of approximately 100 ft. and are vegetated with eucalyptus trees and other dense vegetation. 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 project would implement a 25-ft. inland bluff setback for all structures requiring a foundation. The EIR prepared for the project addressed 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. No active faults run through the site and 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). All new development must 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 applicant’s geotechnical report and the Geology and Soils section of the EIR and agrees with the analysis and conclusions regarding the site stability.

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 D. 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 the 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-ft. 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. 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-ft. 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. This shed will be removed when the second phase of the proposed trail development is implemented. 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. Therefore, the proposed development is consistent with the geological hazards policies of the City’s LCP.

G. Air Quality

The City of Encinitas Certified LUP states:

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 proposed project will result in approximately 16,800 cubic yards of cut and 18,300 cubic yards of fill; an additional 25,000 cubic yards of remedial grading is needed to encapsulate the contaminated soils onsite. The project appellants claim that the grading and/or disturbance of the pesticide-impacted soil on-site 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 law. 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 dwelling 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 D, 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. Therefore, the project is consistent with the air quality policies of the City's LCP.

H. Agricultural Resources

The City of Encinitas Certified LUP states:

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).

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 LCP encourages the preservation of “prime” agriculture lands within its sphere of influence. The subject site is not classified as “prime” lands, but 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, and thus is not subject to agricultural preservation as required in the LCP. Additionally, the EIR for the project determined 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. The site has not been used for agricultural purposes since 1958, when the site was converted to a greenhouse operation for a commercial flower nursery. According to the applicant, 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 five years ago. In addition, 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 has been previously used for agricultural uses but is currently zoned for and anticipated to be developed with visitor-serving commercial uses. The subject site has historically been used for both residential and light agriculture uses such as a commercial flower nursery, but is designated as residential (R-3) in the certified LCP; thus, the site has long been planned for development with residential use. A small scale urban agricultural use in the form of a community garden is proposed in the park on the east side of the site, so minor agricultural activities will continue to occur on the site. Therefore, the project is consistent with the agricultural resource protection policies of the City's LCP.

I. Community Character/Visual Resources

The City of Encinitas Certified LUP states:

Resource Management Goal 4:

The City, with the assistance of the State, Federal and Regional Agencies, shall provide the maximum visual access to coastal and inland views through the acquisition and development of a system of coastal and inland vista points. (Coastal Act/30251)

Resource Management Policy 4.6:

The City will maintain and enhance the scenic highway/visual corridor viewsheds. (Coastal Act/30251)

Resource Management Policy 4.7:

The City will designate the following view corridors as scenic highway/visual corridor viewsheds: [. . .]

– La Costa Ave. from west of I-5 to El Camino Real

[. . .]

Resource Management Policy 4.8:

The City will designate Scenic/Visual Corridor Overlay and scenic Highway viewshed areas as illustrated on the Visual Resource Sensitivity Map (Figure 3).

Resource Management 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:

- 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.

Land Use Policy 6.6:

The construction of very large buildings shall be discouraged where such structures are incompatible with surrounding development. The building height of both residential and non-residential structures shall be compatible with surrounding development, given topographic and other considerations, and shall protect public views of regional or statewide significance

Land Use Goal 7:

Development in the community should provide an identity for the City while maintaining the unique identity of the individual communities.

Land Use 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.

The City of Encinitas Certified IP states:

EMC Section 30.34.080:

A. APPLICABILITY. The Scenic/Visual Corridor Overlay Zone regulations shall apply to all properties within the Scenic View Corridor, along Scenic Highways

and adjacent to Significant Viewsheds and Vista Points as described in the Visual Resource Sensitivity Map of the Resource Management Element of the General Plan.

B. DEVELOPMENT STANDARDS. When development is proposed on any properties within the Scenic/Visual Corridor Overlay Zone, consideration will be given to the overall visual impact of the proposed project and conditions or limitations on project bulk, mass, height, architectural design, landscaping, grading, and other visual factors may be applied to Design Review approval, and shall be applied to Coastal Development Permit approval.

[. . .]

The proposed development will be located on a north-facing upland area overlooking Batiquitos Lagoon in the community of Leucadia and is zoned for residential use (R-3). The property to the east of the site is zoned visitor-serving but is currently vacant. The properties to the south and west are zoned (R-3). According to the City's General Plan, the R-3 is intended to provide for single-family detached residential units. The entire site is screened from the I-5 by dense, mature eucalyptus trees and Torrey pines growing on the north and east-facing slopes. As cited above, the City's LCP requires that any development within a designated viewshed must be designed to preserve existing views and be compatible with its surroundings. The LCP designates La Costa Avenue from just west of I-5 to El Camino Real as a visual corridor/viewshed. Very limited views of the lagoon are available looking east on La Costa Avenue from in front of the project site, but no views of the lagoon are available from La Costa Avenue looking north towards the project site ([Exhibit #4](#)).

La Costa Avenue is identified in the City's certified LCP as a visual corridor. The northeast vegetated steep slopes on the subject site are visible from the portion of La Costa Avenue between Saxony Road and the 1-5. The project site's vegetated steep slopes help to maintain the LCP goals of providing a sense of spaciousness and semirural living within both the 1-5 and La Costa Avenue view corridors, and therefore must be protected to prohibit future development that would degrade the topography of the slopes. The only development that is proposed within in the open space area is the construction and ongoing maintenance of a storm water outlet structure that will discharge at the base of the steep slopes. The hole for the drainage pipe will be created using horizontal directional boring that will allow the applicant to bored behind the inland bluff face. A small hole will have to be created at the base of the bluff to allow stormwater to discharge from the site; however, due to the topography of the area and existing vegetation, the storm water outlet is unlikely to be visible from any visual corridor's identified in the City's LCP. Therefore, the outlet will not result in any visual impacts to the steep slopes. To ensure that the steep slopes are protected as a visual resource against any other development, **Special Condition #9** requires the applicant to record an open space deed prohibiting development in the steep slope area, with the exception of the storm water outlet structure.

The site is located within the LCP's Scenic/Visual Corridor Overlay; thus, the future build-out of the community must not obstruct, limit or degrade existing view through

building height, bulk, roofline, color or scale. This project will facilitate the future construction of 46 single-family residences ranging from one to two stories but none exceeding 30 ft. in height. State density bonus law requires the City to approve a request for a waiver or modification of a development standard that would physically preclude the construction of a housing development with a density bonus, unless the request violates state or federal law, has a specific health or safety impact, or has an impact on a historic building. A development standard is a site or construction condition, such as a height limit or setback requirements or parking standards reduction. The applicant requested and received the following waivers of development standards: minimum lot area, lot width, lot depth, panhandle width, setbacks (not including the inland bluff setback), lot coverage, the method for measuring building height, and a private street to reduce the required street width but including public easement over it.

Of the waivers received from the City, the waiver of the development standard for measuring building height has the potential to impact visual resources. The LCP allows residential structures in the R-3 zone to be a maximum of 22 ft. with a flat roof or 26 ft. including a minimum 3:12 pitched roof. There is also a citywide height limit of 30 ft. or two stories for residential development. All heights are required to be measured from the lower of the natural or finished grade.

None of the proposed building facades will exceed the height limitations imposed by the LCP for the R-3 zone as the tallest buildings will be either 22 ft. tall with a flat roof or 26 ft. tall with a 3:12 pitched roof. The City in its local approval granted a concession to allow the applicant to measure the building height from the created pads instead of from the lower of the natural or finished grade. The reason for the request is to allow placement of fill material below 25 of the proposed lots, raising the building pad no more than 3.5 ft., to accommodate gravity drainage and sewer connections. If the height of the tallest building proposed at 26 ft. was measured from the lower of the natural or finished grade and the maximum amount of fill was placed under the building, the building height would be 29.5 ft. tall. While the tallest buildings on the site would not exceed the 30-ft. citywide height limit when measured from the lower of the natural or finished grade, they would exceed the allowable height limit for residential structures zoned R-3 (29.5 ft. > 26 ft.). By granting the concession to allow the height for the future buildings to be measured from the created pad, technically none of the future homes would exceed the R-3 height limitations because the height from the added fill would not be factored into the building height. The concession request does not include the calculation for determining whether the development exceeded the 30-ft. height limitation since the future development would not exceed the 30-ft. height limit when measured from the lower of the natural or finished grade. More importantly, the concession on calculating building height would not impair the existing limited views of the lagoon that are available looking east on La Costa Avenue from in front of the project site, as none the future buildings will encroach into the La Costa Avenue right of way. Thus, the height of any future community buildings will be compatible with the height limit for other buildings in the City of Encinitas and will not significantly impact any public views identified in the certified LCP.

The applicant also proposes a 6-ft. high masonry sound wall along La Costa Avenue views of which will be softened by landscaping. An entry monument sign is proposed at the entry of community (the La Costa Avenue/Seabreeze Court intersection) but, as proposed and conditioned, will not exceed 6-ft in height. Neither the wall or entry sign will not impair public views since there are no views of the lagoon across the project site, and these features will not be visible from any lagoon trails. **Special Condition #2** requires the submittal of a sign plan documenting that only monument signs not exceeding eight feet in height or façade signs will be installed.

A public viewing area of the lagoon is proposed in the easternmost of the two future neighborhood parks that will be privately maintained by an HOA. Members of the public will be able to access the neighborhood parks from La Costa Avenue via gravel pedestrian pathways and access vista points along the north perimeter of the site (see Section B. Public Access and Recreation above). The views provided from the new trail to be constructed leading to the northeast corner of the site includes views of the Batiquitos Lagoon framed by eucalyptus and Torrey pine trees. The north view at the northeast corner also provides a view of the lagoon that is less dominated by the 1-5 compared to the view from the proposed public viewing platform on the east side of the property ([Exhibit #4](#)). Thus, the future build-out of the community will create several public viewing opportunities not historically open to the public.

The City's certified LCP requires that the special character of communities such as the community of Leucadia, where the underlying project is proposed, be preserved. As discussed in detail above under Section B. Public Access and Recreation of this report, the proposed density is consistent with the R-3 land use designation site so that the future development of the community will match the bulk, scale, and mass of the surrounding community, which is composed primarily of single-family residences.

Therefore, as conditioned, the project is consistent with the visual resources policies of the City's LCP. The project is also consistent with the community character policies of the City's LCP.

J. Local Coastal Planning

Section 30604(a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, such a finding can be made.

The City of Encinitas received the approval of its LCP in November of 1994 and began issuing coastal development permits on May 15, 1995. The City of Encinitas Planning Commission approved the project with conditions on March 14, 2019. The site falls within the Commission's appeal jurisdiction because the site is located between the inland extent of the sea (Batiquitos Lagoon) and the first public road paralleling the sea (La Costa Avenue). The standards of review are the policies and ordinances of the certified LCP and the public access and recreation policies of the Coastal Act.

Based on the above findings, the subject development is consistent with the coastal resource protection policies of the LCP. The lots designated for low income housing will contribute to the variety of housing opportunities for all socioeconomic sections. As conditioned, the proposed development is consistent with the City's certified LCP and the public access and recreation policies of the Coastal Act and approval would not prejudice the ability of the City to continue to implement its certified LCP.

K. California Environmental Quality Act

Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. The City of Encinitas adopted a Final Environmental Impact Report in March 2019 (SCH #2017121068) for the proposed project.

The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures, including conditions designed to maximize public access and protect tribal cultural resources, will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

- Final Environmental Impact Report and Attachments ([SCH #2017121068](#))
- A-6-ENC-19-0032 DCM Properties NSI staff report
- DCM Properties Signed 49-day Waiver
- 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