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VIA EMAIL

September 1, 2023

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Re: Appellant Letter in support of APPEAL-006338-2023
Moonlight Apartments Project
City Council Hearing Date: September 13, 2024

Dear Mayor Kranz, Deputy Mayor Lyndes, and Honorable Council Members:

This letter is submitted on behalf of Appellant Supporters Alliance for Environmental Responsibility ("SAFER") in support of their appeal challenging the Planning Commission's decision to approve the Moonlight Apartments Project ("Project") (APPEAL-006338-2023).

As discussed herein, the Planning Commission's decision to approve the Project was improper because:

(1) The Project is not exempt from the California Environmental Quality Act ("CEQA") and must undergo environmental review pursuant to CEQA prior to approval;
(2) Due to inconsistencies with the City's Local Coastal Program, the Project does not qualify for a Coastal Development Permit or for waivers from development standards under the State Density Bonus Law; and
(3) Due to potentially unmitigated environmental impacts, the Project does not qualify for a Coastal Development Permit.

SAFER respectfully requests that the City Council GRANT the appeal and overturn the Planning

Commission's approval of the Project. Such action is necessary to ensure compliance with CEQA, the California Coastal Act (including the City's Local Coastal Program), the California Density Bonus Law, and the City's own ordinances.

PROJECT DESCRIPTION AND BACKGROUND

The Project proposes the development of a 202-unit residential building with related private amenities and common open space at 550-590 and 696 Encinitas Boulevard within the non-appealable area of the Coastal Zone. The building will contain four stories, averaging 46 feet-4 inches in height with a maximum height of 58 feet-4 inches at the top of a rooftop equipment tower, with a minimum setback of 2 feet-8 inches at the narrowest setback near the southeast portion of the site. The Project requires the following approvals: (1) Density Bonus, (2) Design Review Permit, (3) Boundary Adjustment Permit, and (4) Coastal Development Permit.

The Project site is zoned as Residential 30 ("R-30") Overlay. The R-30 Overlay Zone limits residential development to a maximum density of 30 dwelling units per acre ("du/ac") and a maximum height of 35 feet with no more than 3 stories, and requires10-foot front, side, and rear setbacks. (EMC §§ 30.16.010(A)(3), 30.16.010(B)(6)(a).) Using the State Density Bonus Law ("DBL"), the Project proposes to set aside 30 of the 202 units as "low income" units to allow for a density in excess of the 30 du/ac allowed in the R-30 Overlay Zone. Additionally, the Project also requested three waivers under the DBL to allow for the following deviations from the requirements of the R-30 Overlay Zone:

1. Height:
   R-30 Overlay Zone restricts height to 35 feet for a flat roof and 39 feet for a pitched roof. Waiver requested to allow Project to average 46 feet-4 inches with a maximum height of 46 feet-10 inches to the top of the residential portion, 49 feet-10 inches to the parapet that screens the roof mounted mechanical equipment, and 58 feet-4 inches to the rooftop equipment tower.

2. Stories:
   R-30 Overlay Zone restricts residential buildings to 3 stories or fewer. Waiver requested to allow for Project's 4-story building.

3. Setbacks:
   R-30 Overlay Zone requires minimum 10-foot front, side, and rear setbacks. Waiver requested to allow for minimum setback of 2 feet-8 inches.

On June 15, 2023, the Planning Commission considered the Project and adopted Resolution No. PC 2023-14 approving the Density Bonus, Design Review Permit, Boundary Adjustment Permit, and Coastal Development Permit. Additionally, the Planning Commission found that the Project was exempt from CEQA under Government Code Sections 65583.2(h) and (i). (Resolution No. PC 2023-14, p. 1.) On June 22, 2023, SAFER timely appealed the Planning Commission's decision.

DISCUSSION

I. The Project Is Not Exempt from CEQA.

CEQA applies to all discretionary projects approved by public agencies. Unless otherwise exempt, discretionary projects are subject to CEQA's environmental review process, which most commonly takes the form of an environmental impact report ("EIR") or mitigated negative declaration ("MND"). Here, the Project is a "discretionary project" for the purposes of CEQA due to multiple discretionary actions, including a coastal development permit, required for approval. Furthermore, contrary to the Planning Commission's decision, the Project is not exempt from CEQA under Government Code section 65583.2 or any other provision of law. As such, the Project was required to—but did not—undergo CEQA review prior to approval.

A. The Project qualifies as a "discretionary project" subject to CEQA.

CEQA applies to "discretionary projects proposed to be carried out or approved by public agencies." (Pub. Res. Code § 21080(a).) The CEQA Guidelines define "discretionary projects" as:

> [A] project which requires the exercise of judgment or deliberation when the public agency or body decides to approve or disapprove a particular activity, as distinguished from situations where the public agency or body merely has to determine whether there has been conformity with applicable statutes, ordinances, or regulations.

(14 CCR §15357.)

The CEQA Guidelines further explain that "[w]hether an agency has discretionary or ministerial controls over a project depends on the authority granted by the law providing the controls over the activity. Similar projects may be subject to discretionary controls in one city or county and only ministerial controls in another." (14 CCR § 15002(i)(2).) If a project's approval involves both discretionary and ministerial acts, the project is subject to CEQA review. (14 CCR § 15258(d).)

The Courts apply a "functional" test for distinguishing ministerial from discretionary decisions. (*Protecting Our Water & Env't Res. v. Cty. of Stanislaus* (2020) 10 Cal.5th 479, 493; *Friends of Westwood, Inc. v. City of Los Angeles* (1987) 191 Cal.App.3d 259, 272.) That test examines whether the agency has the power to shape the project in ways that are responsive to environmental concerns. (*Friends of Westwood*, 191 Cal.App.3d at 267; *Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 117.) Under this functional test, a project qualifies as ministerial "when a private party can legally compel approval without any changes in the design of its project which might alleviate adverse environmental consequences." (*Friends of Westwood*, 191 Cal.App.3d at 267) "Conversely, where the agency possesses enough authority (that is, discretion) to deny or modify the proposed project on the basis of environment consequences the EIR might conceivably uncover, the permit process is 'discretionary' within

the meaning of CEQA." (*Id.* at 272.) "[I]f the agency is empowered to disapprove or condition approval of a project based on environmental concerns that might be uncovered by CEQA review, the project is discretionary." (*Protecting Our Water*, *supra*, 10 Cal.5th at 494.) In short, discretion exists where the approving agency can impose "reasonable conditions" based on "professional judgment." (*Natural Res. Def. Council v. Arcata* (1976) 59 Cal.App.3d 959, 971.)

Here, the Project requires four discretionary approvals from the City: (1) Density Bonus, (2) Design Review Permit, (3) Boundary Adjustment Permit, and (4) Coastal Development Permit. (Staff Report, p. 1.) Because the Coastal Development Permit ("CDP") grants the City the power to shape the Project in ways that are responsive to environmental concerns, the Project qualifies as a discretionary project subject to CEQA.

Per the City's Municipal Code, approval of the CDP requires three discretionary findings:

(1) The proposed project is consistent with the certified Local Coastal Program of the City of Encinitas;
(2) The proposed development conforms with Public Resources Code Section 21000 and following (CEQA) and that there are no feasible mitigation measures or feasible alternatives available which would substantially lessen any significant adverse impact that the activity may have on the environment.
(3) For projects involving development between the sea or other body of water and the nearest public road, approval shall include a specific finding that such development is in conformity with the public access and public recreation policies of Section 30200 et seq. of the Coastal Act.

(EMC § 30.80.090(A).) When applying for a CDP, the municipal code requires an applicant to submit "***all information necessary to complete environmental review of the proposed project in accordance with state and local guidelines for the implementation of the California Environmental Quality Act*** as well as information sufficient to determine whether the project complies with all policies and standards contained in the certified Local Coastal Program." (EMC § 30.80.030(C) [emph. added].) Furthermore, in approving a CDP, the Municipal Code grants the City "the authority to impose such conditions and safeguards as it deems necessary to protect and enhance the health, safety, and welfare of the surrounding area, and to insure that the proposed project for which coastal development permit approval is sought, fully meets the criteria set forth in the General Plan, Local Coastal Program, and Zoning Code." (EMC § 30.80.100(A).)[1]

The discretionary findings required for the CDP coupled with the City's authority to impose conditions and mitigation measures on the CDP satisfy the "functional" test for discretionary decisions requiring CEQA review. (See *Friends of Westwood*, *supra*, 191

[1] The Project's Density Bonus similarly confers discretionary authority to the City and also triggers CEQA. The Density Bonus Law grants the City authority to deny requested concessions and waivers if they would result in adverse impacts to health and safety. (Govt. Code §§ 65915(d)(1)(B), (e)(1).)

Cal.App.3d at 272.) The municipal code even assumes that CEQA review will occur by requiring the applicant to submit all relevant CEQA information and requiring the City to make findings regarding CEQA compliance. (EMC §§ 30.80.030(C), 30.80.090(A).) Thus, the Project qualifies as a discretionary project that is subject to CEQA unless otherwise exempt.

The fact that the Project's use is zoned "by right" in the City's municipal code does not necessarily mean that the Project is not subject to any discretionary decisions that trigger CEQA. (*Friends of Westwood, Inc. v. City of Los Angeles* (1987) 191 Cal.App.3d 259, 270 ["a municipality's classification of a certain approval process as ministerial is *not* conclusive"]; *Day v. City of Glendale* 51 Cal.App.3d 817, 822 ["The applicability of CEQA cannot be made to depend upon the unfettered discretion of local agencies, for local agencies must act in accordance with state guidelines and the objectives of CEQA."].) The Project site is located in the R-30 Overlay Zone, which is zoned to allow certain multi-family residential projects "by right." (EMC § 30.09.010, Note 35.) However, the municipal code also explicitly states that "use by right does not exempt projects from design review ***or the requirements of the California Coastal Act***." (EMC § 30.09.010, Note 35 [emph. added].)

The CDP is a requirement of the Coastal Act that is administered at the local level by the City. When a local agency considers a CDP, it acts as the lead agency responsible for completing CEQA review for the project. (Practice Under the California Environmental Quality Act (2d ed. Cal. CEB 2022) §20.18; see Pub. Res. Code § 30519(a) [after certification of LCP, review authority for LCP area is delegated to local government].) Here, the City's decision on the CDP is final and not appealable to the Coastal Commission. Therefore, City is responsible for ensuring that this Project and its discretionary approvals are subject to CEQA's environmental review process.

B. The Project is not exempt from CEQA under Government Code section 65583.2.

The Planning Commission incorrectly concluded that the Project was exempt from CEQA under Government Code section 65583.2. (Resolution No. PC 2023-14, p. 1.) According to the Planning Commission's resolution approving the Project, a project is exempt from CEQA under Section 65583.2(h) and (i) where the following conditions are met: (1) the project site is designated for "by right" approval, (2) twenty percent of units are affordable, and (3) the project does not require a subdivision. (Resolution No. PC 2023-14, p. 1; see also Planning Commission Staff Report, pp. 2, 28-29.) The Resolution also falsely claimed that if the above conditions are met, then the City is barred from requiring any discretionary decisions for the Project other than design review.[2] (Resolution No. PC 2023-14, p. 1; see also Planning Commission Staff Report, pp. 2, 28.) Using that false standard, the Planning Commission found,

[2] The Planning Commission's conclusion that Section 65583.2 limits the City's review of the Project to design review is inconsistent with the three additional discretionary approvals required by the City for this Project (Density Bonus, Boundary Adjustment Permit, and Coastal Development Permit). If the Planning Commission's interpretation of Section 65583.2 were correct (which it is not), then the City would be barred from considering these additional discretionary approvals. Obviously, the City can and must make

> The [P]roject is statutorily exempt from CEQA in that it is located in the R-30 Overlay Zone, which is designated for 'by right' approval by Encinitas Municipal Code Chapter 30.09 (Zoning Use Matrix, Note 35) and proposes that 30 of 202 units (20 percent of 149 base density units) exclusive of additional units provided by a density bonus, will be affordable to lower income households and does not require a subdivision.

(Resolution No. PC 2023-14, p. 1; see also Planning Commission Staff Report, pp. 2, 28-29.) However, there is no basis under Section 65583.2 for the Planning Commission's interpretation. Simply put, ***Section 65583.2 provides no such exemption from CEQA***.

Government Code Section 65583 governs the contents of local housing elements and establishes procedures for local governments to meet their regional housing needs allocation ("RHNA"). Section 655583 requires that local governments "quantify the locality's existing and projected housing needs for all income levels, which includes the locality's proportionate share of regional housing needs for each income level." (*Martinez v. City of Clovis* (2023) 307 Cal.Rptr.3d 64, 78 [citing Govt. Code § 65583(a)(1)].) Then, a valid housing element must contain "[a]n inventory of land suitable and available for residential development, including vacant sites and sites having realistic and demonstrated potential for redevelopment during the planning period to meet the locality's housing need for a designated income level." (Govt. Code § 65583(a)(3).)

If the inventory of sites "do[es] not accommodate the local government's RHNA for each income level," the local government must develop a program that "shall identify the actions that will accommodate those needs, which include rezoning actions to close the gap." (*Martinez*, *supra*, 307 Cal.Rptr.3d at 80.) Section 65583(c)(1)(A) requires that the program rezone an adequate amount of sites to meet the RHNA requirements. (Govt. Code § 65583(c)(1)(A).[3]) That

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these additional discretionary decisions and is in the process of doing so, further underscoring the Commission's faulty interpretation of Section 65583.2.

[3] Government Code section 65583(c)(1)(A) in full:

> Where the inventory of sites, pursuant to paragraph (3) of subdivision (a), does not identify adequate sites to accommodate the need for groups of all household income levels pursuant to Section 65584, rezoning of those sites, including adoption of minimum density and development standards, for jurisdictions with an eight-year housing element planning period pursuant to Section 65588, shall be completed no later than three years after either the date the housing element is adopted pursuant to subdivision (f) of Section 65585 or the date that is 90 days after receipt of comments from the department pursuant to subdivision (b) of Section 65585, whichever is earlier, unless the deadline is extended pursuant to subdivision (f). Notwithstanding the foregoing, for a local government that fails to adopt a housing element that the department has found to be in substantial compliance with this article within 120 days of the statutory deadline in Section 65588 for adoption of the housing element, rezoning of those sites, including adoption of minimum density and development standards, shall be completed no later than one year from the statutory deadline in Section 65588 for adoption of the housing element.

rezoning program is required to "accommodate 100 percent of the need for housing for very low and low-income households" and the sites "shall be zoned to permit owner-occupied and rental multifamily residential use by right for developments in which at least 20 percent of the units are affordable to lower income households." (Govt. Code §65583.2(h).[4])

Government Code section 65583.2(i) explains that, in order to qualify as "by right," the local government "may not require a conditional use permit, planned unit development permit, or other discretionary local government review or approval that would constitute a 'project' for the purposes of [CEQA]." (Govt. Code § 65583.2(i); see *Martinez*, *supra*, 307 Cal.Rptr.3d at 80.) The sole exception is that a local government can still require discretionary design review and such design review does not constitute a "project" under CEQA. (Govt. Code § 65583.2(i).) Section 65583.2(i) also provides that "[a]ny subdivision of the sites shall be subject to all laws, including, but not limited to, the local government ordinance implementing the Subdivision Map Act." (Govt. Code § 65583.2(i).)

The above requirements establish the following rule: In order to have a valid housing element where a city's inventory of sites does not meet its RHNA allocation, the city is required to meet its RHNA allocation for low-income households by zoning an adequate amount of sites to require no discretionary approvals other than design review if 20 percent of the proposed units are affordable to lower income households.

The Planning Commission's interpretation of Section 65583.2 confuses the requirements for the City's Housing Element with the City's obligations under CEQA. Section 65583.2 does not provide a blanket exemption from CEQA for projects zoned as "by right" with no subdivision and 20 percent affordable units. Rather, Section 65583.2 directs the City to ensure that an adequate amount of affordable sites do not require any discretionary decisions that trigger CEQA, other than design review. There is nothing in Section 65583.2 that independently re-

[4]Government Code section 65583.2(h) in full:

> The program required by subparagraph (A) of paragraph (1) of subdivision (c) of Section 65583 shall accommodate 100 percent of the need for housing for very low and low-income households allocated pursuant to Section 65584 for which site capacity has not been identified in the inventory of sites pursuant to paragraph (3) of subdivision (a) on sites that shall be zoned to permit owner-occupied and rental multifamily residential use by right for developments in which at least 20 percent of the units are affordable to lower income households during the planning period. These sites shall be zoned with minimum density and development standards that permit at least 16 units per site at a density of at least 16 units per acre in jurisdictions described in clause (i) of subparagraph (B) of paragraph (3) of subdivision (c), shall be at least 20 units per acre in jurisdictions described in clauses (iii) and (iv) of subparagraph (B) of paragraph (3) of subdivision (c) and shall meet the standards set forth in subparagraph (B) of paragraph (5) of subdivision (b). At least 50 percent of the very low and low-income housing need shall be accommodated on sites designated for residential use and for which nonresidential uses or mixed uses are not permitted, except that a city or county may accommodate all of the very low and low-income housing need on sites designated for mixed use if those sites allow 100 percent residential use and require that residential use occupy 50 percent of the total floor area of a mixed-use project.

zones any property or otherwise exempts a project from CEQA where the project requires discretionary approvals beyond design review.

Here, the Project requires at least two discretionary decisions (coastal development permit and density bonus) that trigger CEQA. Therefore, even though the Project site is zoned as "by right" in the municipal code, the Project requires discretionary approvals in addition to design review. The City's discretionary authority over the Project triggers CEQA regardless of whether the City classifies the Project as "by right." (*Friends of Westwood, Inc. v. City of Los Angeles* (1987) 191 Cal.App.3d 259, 270 ["a municipality's classification of a certain approval process as ministerial is *not* conclusive]; *Day v. City of Glendale* 51 Cal.App.3d 817, 822 ["The applicability of CEQA cannot be made to depend upon the unfettered discretion of local agencies, for local agencies must act in accordance with state guidelines and the objectives of CEQA."].)

Moreover, the municipal code explicitly states that the "by right" designation "does not exempt projects from design review ***or the requirements of the California Coastal Act***." (EMC § 30.09.010, Note 35 [emph. added].) Because the Project requires a discretionary coastal development permit under the Coastal Act, the City has discretionary authority over the Project regardless of whether the site is designated as "by right." CEQA review is therefore required and Section 65583.2 does not provide an exemption from this requirement. As such, the Planning Commission's decision should be overturned and CEQA review of the Project must occur prior to approval.

II. The Project Does Not Qualify for a Coastal Development Permit or Density Bonus Because the Project's Height, Stories, and Setbacks Are Inconsistent with the City's Local Coastal Program.

The Coastal Act (Pub. Res. Code, § 30000, *et seq*.) is a comprehensive scheme to govern land use planning for California's entire coastal zone. The Coastal Act requires local governments to develop local coastal programs ("LCP"), comprised of a land use plan and implementing ordinances to promote the Coastal Act's objectives (Pub. Res. Code, §§ 30004(a), 30001.5, 30500-30526) and requires that any development in the coastal zone obtain a CDP (Pub. Res. Code, §§ 30600(a)). After the California Coastal Commission certifies a local government's LCP, the authority to issue a CDP is delegated to the local government. (Pub. Res. Code § 30519(a).)

The Coastal Commission originally certified Encinitas' LCP in 1995. The LCP consists of (1) a Land Use Plan, which is included within the City's General Plan and (2) an implementation plan, which consists of portions of the City's Municipal Code and the City's various Specific Plan areas. As the General Plan explains,

> The City of Encinitas's LCP will consist of the City's land use, circulation, and other plans and policies included in the General Plan for the coastal zone, zoning ordinances, zoning maps, and other implementing actions such as special zone overlays for sensitive resource areas.

> . . .
>
> The General Plan together with the Zoning Ordinance and other relevant City codes will contain all of the components required by the Coastal Commission to comprise the LCP.

(Encinitas General Plan, Introduction, p. I-16.) Therefore, to be consistent with the LCP, a project must be consistent with the General Plan and the City's zoning ordinance (Title 30 of the municipal code).

The General Plan's Land Use Element describes the Project's R-30 Overlay zoning designation as follows:

> This category of residential land use is an overlay land use designation that offers property owners an incentive to develop attached or detached multi- family housing in connection with the Housing Element. The underlying land use designation remains in place; however, to give property owners more flexibility for future development of their property, the R- 30 OL designation also permits property owners to develop housing at a minimum density of 25 dwelling units per net acre and **a maximum density of 30 dwelling units per net acre**.
>
> To use the provisions of the R- 30 OL land use designation, a project must meet a minimum density of 25 dwelling units per net acre. Development is permitted up to **a maximum density of 30 dwelling units per net acre as a permitted primary use**. Projects meeting at least the minimum density threshold are **eligible to develop up to 35 feet (structures with flat roof lines) or 39 feet (structures with pitched roof lines) to permit three stories**. . . . Specific development standards, including increased density and height limits are further defined in the R- 30- OL Zone in the Zoning Code.

(Encinitas General Plan, Land Use Element, p. LU-35.)

The City's zoning ordinance mirrors the General Plan and limits residential development in the R-30 Overlay Zone to a maximum density of 30 dwelling units per acre ("du/ac") and a maximum height of 35 feet (39 feet if roof is pitched) with no more than 3 stories. (EMC §§ 30.16.010(A)(3), 30.16.010(B)(6)(a).). Projects may exceed the height limit "by a maximum of five feet to accommodate necessary equipment (such as elevator shafts and other mechanical equipment) and screening." (EMC § 30.16.010(B)(6)(a)(iii).) The zoning ordinance also requires 10-foot front, side, and rear setbacks in the R-30 Overlay Zone. (EMC § 30.16.010(A)(3).)

The density, height, story, and setback requirements in the General Plan and zoning ordinance are certified standards of the City's LCP. Although the Project has requested waivers from all of these standards under the Density Bonus Law, the zoning ordinance explains,

> For development within the coastal zone, ***any requested density bonus, incentive(s), waiver(s),*** parking reduction(s), or commercial development

> bonus(es) ***shall be consistent with all applicable requirements of the certified Encinitas Local Coastal Program***, ***with the exception of density***.

(EMC § 30.16.020(C)(7)(b) [emph. added]; see also EMC § 30.16.020(C)(8)(a)(v).) In other words, a project in the City's coastal zone can utilize the Density Bonus Law to exceed *only* the maximum density allowed by the zoning ordinance but not to deviate from any other applicable requirements of the LCP (e.g. height, story, or setback requirements).

Importantly, although the Density Bonus Law can override a local government's development standards, the Density Bonus Law does *not* override the Coastal Act, including the City's obligations under its certified LCP. (*Kalnel Gardens, LLC v. City of Los Angeles* (2016) 3 Cal.App.5th 927, 944 ["[Density Bonus Law] is subordinate to the Coastal Act and that a project that violates the Coastal Act as the result of a density bonus may be denied on that basis."]; see also Pub. Res. Code § 30604(f) [permitting local agencies to override Density Bonus Law where project is inconsistent with LCP].) The Density Bonus Law explicitly states, "This section does not supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976." (Govt. Code § 65915(m).)

In fact, an assembly bill introduced during the current legislative session in Sacramento underscores that, under current law, the Density Bonus Law is subordinate to the Coastal Act. In February 2023, State Assembly Member Alvarez introduced AB 1287, which sought to make several amendments to the Density Bonus Law.[5] As relevant here, AB 1287 sought to amend Government Code section 65915(m) to reverse the pecking order and make the Coastal Act subordinate to the Density Bonus Law as follows:

> (m) ~~This section does not supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code).~~ Any density bonus, concessions, incentives, waivers or reductions of development standards, and parking ratios to which ~~the~~ an applicant is entitled under this section shall be permitted ~~in a manner that is consistent with this section and Devision~~ notwithstanding the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code).[6]

The Legislative Counsel's Digest for AB 1287 explains the amendment as follows:

> The Density Bonus Law provides that its provisions do not supersede or in any way alter or lessen the effect or application of the [coastal] act, and requires that any density bonus, concessions, incentives, waivers or reductions of development standards, and parking ratios . . . be permitted in a manner consistent with the act.

[5] https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240AB1287
[6] https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240AB1287

> This bill would provide that any density bonus, concessions, incentives, waivers or reductions of development standards, and parking ratios to which an applicant is entitled under the Density Bonus Law be permitted notwithstanding the act.[7]

The Assembly Committee on Housing and Community Development's Report on AB 1287, as introduced, explained,

> This bill would remove that requirement and apply DBL in the Coastal Zone notwithstanding the Coastal Act. As a result, the Commission or a local agency implementing the Act would be required to approve a developer's request for density, concessions and incentives, and parking reductions regardless of a conflict with the LCP.[8]

However, the Assembly Committee on Natural Resources' report on AB 1287 noticed that the amendment to section 65915(m) "would skirt the Coastal Act for permitting density bonuses, concessions, incentives, waivers or reductions of development standards, and parking ratios. Notwithstanding the Coastal Act null and voids coastal protections afforded to housing development in the coastal zone."[9] The report then recommended that "[t]o preserve the protections of the Coastal Act, *the Committee may wish to consider* striking the amendments to Sec. 65915 (m) and maintaining that provision of current law as it stands."[10] On April 26, 2023, AB 1287 was amended to remove the proposed amendment to section 65915(m), leaving in place the existing law and reaffirming that the Density Bonus Law is subordinate to the Coastal Act that a project must be consistent with the Coastal Act and LCP.

The Project is patently inconsistent with the City's LCP in three ways:

(1) The Project's average height of 46 feet-4 inches (maximum height of 58 feet-4 inches for rooftop equipment tower) exceeds the LCP's height limit. (EMC § (30.16.010(B)(6)(a).)

(2) With 4 stories, the Project violates the LCP's 3-story limit. (EMC § (30.16.010(B)(6)(a).)

(3) The Project's minimum setback of 2 feet-8 inches violates the LCP's 10-foot setback requirement. (EMC § 30.16.010(A)(3).)

These requirements of the LCP cannot be waived. (EMC § 30.16.020(C)(7)(b) [requiring density bonus projects to be consistent with LCP all standards except for density].)

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[7] https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202320240AB1287
[8] Assembly Committee on Housing and Community Development (April 10, 2023), available at https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202320240AB1287#
[9] Assembly Committee on Natural Resources (April 21, 2023), p. 5, available at https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=202320240AB1287#
[10] *Id*. at p. 6.

However, in approving the Project's CDP, the Planning Commission incorrectly reasoned that, because the development standards of the General Plan and zoning ordinance can be waived under the Density Bonus Law, those same standards can be waived when evaluating consistency with the LCP. (See Resolution No. PC 2023-14, p. 5 ["The project, as conditioned, complies with all Municipal Code requirements and policies of the General Plan and thus is consistent with the Local Coastal Program."]; see also Planning Commission Staff Report, p. 28 [The project is consistent with the [General Plan and zoning requirements], except as modified through the proposed waivers. Therefore, the proposed project is consistent with the requirements of the City's Local Coastal Program."].) However, as discussed above, the Density Bonus Law is subordinate to the Coastal Act (*Kalnel Gardens*, *supra*, 3 Cal.App.5th at 944) and the City's certified LCP (as codified in the zoning ordinance) only allows deviations for maximum allowable density but not height, stories, and setbacks (EMC § 30.16.020(C)(7)(b)).

Due to the Project's inconsistencies with the City's LCP for height, stories, and setbacks, the Project is ineligible for its requested CDP. (EMC § 30.80.090(A) [requiring finding for issuance of CDP that project is consistent with LCP].) Similarly, due to these inconsistencies, the Project is ineligible for its requested waivers for height, stories, and setbacks. (EMC § 30.16.020(C)(8)(a)(v) [project only eligible for density bonus where concessions/waivers "are consistent with all applicable requirements of the certified Encinitas Local Coastal Program, with the exception of density"]; see also Govt. Code § 65915(m) [requiring waivers to be consistent with Coastal Act].) Therefore, the Planning Commission erred in granting the CDP and Density Bonus waivers.

III. The Project Does Not Qualify for a Coastal Development Permit Because the Project Does Not Conform with CEQA and May Have Significant Unmitigated Impacts.

In order to issue a CDP, the City must find that "[t]he proposed development conforms with Public Resources Code Section 21000 and following (CEQA) and that there are no feasible mitigation measures or feasible alternatives available which would substantially lessen any significant adverse impact that the activity may have on the environment." (EMC § 30.80.090(A)(2).) As discussed above, the Planning Commission's conclusion that the Project is exempt is incorrect. As a result, there is no basis for finding that the Project conforms with CEQA and the CDP should be denied for that reason alone. In addition, the CDP should also be denied for the additional reason that the Project may have significant environmental impacts that have not been adequately mitigated.

A. The Project's impacts on biological resources have not been adequately analyzed and mitigated.

SAFER retained wildlife biology expert Dr. Shawn Smallwood, Ph.D., who has reviewed the Project's documentation, including the Biological Resources Report prepared by Dudek dated November 4, 2022 ("Dudek Report"). Dr. Smallwood's comment is attached as **Exhibit A**. Dr. Smallwood found that the Dudek Report failed to accurately analyze and mitigate the Project's potential impacts to biological resources.

1. The Project's Biological Report underestimated the diversity of species using the Project site.

Dr. Smallwood's associate, Noriko Smallwood, conducted a site visit to the Project site for approximately 3.5 hours on June 22, 2023. (Ex. A, p. 1.) During those visits, Ms. Smallwood "detected 24 species of vertebrate wildlife at or adjacent to the project site, including 6 species with special status," including Allen's hummingbird and western gull, both of which are listed as Bird Species of Conservation Concern by the U.S. Fish & Wildlife Service. (*Id*. at pp. 2-3.) Dr. Smallwood estimates that with additional surveys, a total of 98 species would be detected at the Project site, of which 24 would be special-status species. (*Id*., p. 11.)

Based on his review of the Dudek Report and Ms. Smallwood's site visits, Dr. Smallwood concluded that "a much greater survey effort is needed at the site in order to characterize the existing environmental setting with sufficient accuracy to support a sound impacts analysis.." (Ex. A, p. 11.)

2. The Biological Report's field surveys and detection surveys were inadequate**.**

In addition to the Dudek Report failing to adequately disclose the diversity of species that would be impacted by the Project, Dr. Smallwood's review also found numerous other deficiencies in the Dudek Report's analysis of the Project's environmental setting. (Ex. A, pp. 12-28.)

First, the Dudek Report's field surveys lacked critical information, including a list of species detected by Dudek during those surveys (Ex. A, pp. 12, 14.) The Report also claims that no raptor nests were detected on site. Yet, as Dr. Smallwood points out, that conclusion is based on a survey taken on the first day of avian breeding season, which is "is rather early for surveying for raptor nests" and belies the fact that Noriko Smallwood observed both Cooper's hawk and red-shouldered hawk during her site visit. (*Id.*, p. 14.) Furthermore, the Dudek Reports field surveys appear to inappropriately classify 71% of the site's total acreage as "Disturbed Habitat," even though, based on photos from Noriko Smallwood and those included in the Dudek Report, "[m]ost of the project site is covered by vegetation, and therefore most of the site cannot be said to lack vegetation." (*Id*, pp. 14-15.) The Dudek Report also failed to explain how it concluded that the Project site contains only 1.09 acres of sensitive Southern Maritime Chaparral and Coastal Sage Brush habitat when similar surveys from 2019 and 2020 showed a much larger presences of those habitats. (*Id*., pp. 15-16.) The Dudek Report's plant surveys failed to meet most of the standards of the California Department of Fish & Wildlife (2018) by failing "to survey at the times of year when plants will be both evident and identifiable, usually during flowering or fruiting seasons" and failing to "space survey visits throughout the growing season to accurately determine what plants exist in the project area." (*Id*., p. 17.) Lastly, the Dudek Report notes Monarch butterfly was detected on the Project site, but provides no discussion of this sighting or how impacts to the monarch might be mitigated. As a candidate for listing under the federal Endangered Species Act, the impacts to the monarch butterfly must be adequately

analyzed and mitigated. These errors lead to an incomplete habitat assessment and an inadequate characterization of the Project's potential impacts to biological resources.

Second, although Dudek performed detection-level surveys California gnatcatcher, these surveys failed to meet the standards established by the U.S. Fish & Wildlife Service. (Ex. A, p. 17.) Specifically, Dudek failed to take the requisite number of surveys during breeding and non-breeding season and failed to conduct the surveys at the appropriate time of day. (*Id*., p. 18.) By failing to meet these standards, the Dudek Report's conclusion that gnatcatchers were not present cannot be relied upon. This is especially true since previous surveys had positively identified California gnatcatchers on the Project site. (*Id*., p. 17.)_

Third, the Dudek Report's review of available wildlife databases was inadequate. (Ex. C, pp. 19-20.) The Dudek Report relied on the California Natural Diversity Data Base ("CNDDB") to determine which species have potential to occur in the project area. However, when searching that database, Dudek only searched for species with documented occurrences within the nearest CNDDB quadrangles, which "screens out many special-status species from further consideration in Dudek's characterization of the wildlife community." (*Id*., p. 19.) Furthermore, "CNDDB is not designed to support absence determinations or to screen out species from characterization of a site's wildlife community." (*Id*.) Based on available databases and site visits, Dr. Smallwood estimates that "152 special-status species of wildlife are known to occur near enough to the site to warrant analysis of occurrence potential." (*Id*., p. 20.) The Dudek Report analyzed occurrence likelihoods for only 40% of those 152 species. (*Id*.) As a result, "[t]he project site provides much more value to wildlife than Dudek characterizes." (*Id*.)

3. <u>The Biological Report failed to adequately analyze and mitigate the Project's biological impacts due to habitat loss, wildlife movement, window collisions, and vehicle collisions</u>.

Dr. Smallwood found that the Dudek Report failed to address numerous potentially significant impacts that the Project may have on biological resources due to habitat loss, wildlife movement, window collisions, vehicle collisions, and cumulative impacts. (Ex. A, pp. 38-36.)

a. *Habitat Loss and Fragmentation*

Dr. Smallwood found that the Dudek Report "fails to analyze the potential loss of avian productivity as a result of habitat loss." (Ex. A, p. 29.) Dr. Smallwood predicts that development of the Project would result in the loss of 114 bird nest sites and a lost breeding capacity of 376 birds per year. (*Id*.) Despite this potential impact, the Dudek Report "proposes no mitigation for this impact other than to perform preconstruction nest surveys, [which] would do nothing to prevent the loss of avian production." (*Id*.) Dr. Smallwood concludes that this impact should be analyzed and mitigated in an EIR. (*Id*.)

b. *Wildlife Movement*

The Dudek Report's analysis of the Project's impacts to wildlife movement is flawed.

(Ex. A, p. 29-30.). According to the Dudek Report, "the project site is unlikely to serve as a wildlife corridor." (*Id*., p. 29.) However, impacts to wildlife movement can occur regardless of whether the movement is channeled by a corridor. (*Id*.) As Dr. Smallwood explains,

> Dudek's speculation is unsupported by any surveys intended to measure wildlife movement patterns on the project site or in the region. No sampling plots were surveyed and no program of observation was initiated to characterize how wildlife move across or over the site or surrounds. No behaviors were reported that could be used to infer how wildlife make use of the project site. Dudek collected no evidence, and Dudek relies on no evidence in support of its speculation regarding the site's role in wildlife movement.

(*Id*., p. 30.) Contrary to the conclusions of the Dudek Report, there is "ample evidence that the site is important to wildlife movement in the region. . . . The project would cut wildlife off from one of the last remaining stopover and staging opportunities in the project area, forcing volant wildlife to travel even farther between remaining stopover sites." (*Id*.) This impact has been left unanalyzed and unmitigated by the Dudek Report.

c. *Window Collisions*

The Dudek Report fails to account for the impact to bird species from collisions with the Project's glass windows and facades. (Ex. A, pp. 30-33.) The impacts from window collisions are important because such collisions "are often characterized as either the second or third largest source or human-caused bird mortality." (*Id*., p. 30.) Dr. Smallwood calculated that the Project would result in 189 bird deaths per year due to collisions with glass. (*Id*., p. 33.) Because there are 102 special-status species of birds with potential to use the site's aerosphere, such collisions present a potentially significant impact. Yet, the Dudek Report does not anlyze this impact or propose any mitigation measure to reduce the number of bird deaths.

d. *Vehicle Collisions*

The Dudek Report failed to analyze wildlife mortality and injuries caused by Project-generated traffic. (Ex. A, pp. 33-36.) Dr. Smallwood estimates that the Project would result in 1,330-3,991 vertebrates deaths annually due to collisions with Project-generated traffic. (*Id*., pp. 35-36.) Especially due to the special-status species likely to occur at or near the Project, these collisions represent a significant impact to wildlife that has not been addressed, discussed, or mitigated by the Dudek Report.

e. *Cumulative Impacts*

The Dudek Report made no attempt to analyze the Project's cumulative impacts to biological resources. (Ex. A, p. 36.) Without such an analysis, there is no evidence to support a finding that all feasible mitigation measures have been required for all potential impacts.

4. The Project's mitigation measures are inadequate and additional mitigation measures are necessary to reduce the Project's impacts to biological resources.

The Dudek Report concluded that, without mitigation, the Project would result in significant impacts to native vegetation communities, special-status plant species, and special-status wildlife species. (Dudek Report, p. 16-20.) To reduce those impacts, the Dudek Report recommended three mitigation measures, which the Planning Commission included in the Project's conditions of approval. (Resolution No. PC 2023-14, Exhibit B, pp. 4-7.) While the adopted mitigation measures may reduce biological impacts, they are insufficient to reduce those impacts to a less-than-significant level. As such, additional mitigation measures are necessary for the City to issue the CDP. (EMC § 30.80.090(A)(2) [issuance of CDP requires finding that "there are no feasible mitigation measures . . . available which would substantially lessen any significant adverse impact that the activity may have on the environment.)

The first mitigation measure, BIO-1, requires that the applicant to purchase habitat credit or conserve coastal sage scrub at a 1:1 impact-to-mitigation ratio and southern maritime chaparral at a 2:1 impact to- mitigation ratio. (Resolution No. PC 2023-14, Exhibit B, pp. 4-5.) In Dr. Smallwood's opinion, this compensatory mitigation should be expanded to a greater portion of the site "because the entire site is habitat to at least 12 special-status species of wildlife and 3 special-status species of plants" and "California gnatcatchers alone made observed use of about half the site. (Ex. A, p. 37.) Moreover, BIO-1 would not reduce any of the other impacts to biological resources identified by Dr. Smallwood, including interference with wildlife movement, bird deaths from window collisions, and animal deaths animals from collisions with automobiles. (*Id*.)

The second mitigation measure, BIO-2, requires that a City-approved biologist perform biological monitoring during all grading, clearing, grubbing, trenching, and construction activities. (Resolution No. PC 2023-14, Exhibit B, pp. 5-6.) Dr. Smallwood points to "the negligible level of impact avoidance that biological monitoring provides relative to the project-level impacts of grading and construction." (Ex. A, p. 37.) This is not to say that BIO-2 has no value in reducing some impacts to a small degree. However, the Dudek Report "should not have claimed or implied that this measure would adequately avoid impacts, because it would not." (*Id*.) In other words, although BIO-2 will reduce impacts, it will *not* reduce the Project's impacts to a less-than-significant level.

The third mitigation measure, BIO-3, requires pre-construction surveys for sensitive avian species. (Resolution No. PC 2023-14, Exhibit B, pp. 6-7.) If clearing or grading occurs within the breeding season of certain species, BIO-3 requires surveys "to determine the location of any active nests in the area and whether [the] species occur within areas potentially impacted by noise." (*Id*., p. 6.) However, BIO-3 definitions of "breeding season" for the different species—California gnatcatcher (February 15 to August 31), Cooper's hawk and other nesting raptors (January 15 to July 15), and migratory birds (February 15 to August 31)—are too narrow. (Ex. A, p. 38.) The California Department of Fish & Wildlife recognizes a breeding season of February 1 to September 15. (*Id*.) At the very least, BIO-3 needs to be updated to ensure that

surveys are required if any grading or clearing occurs between February 1 to September 15. More importantly, although BIO-3 "might prevent the direct destruction of the few nests found by biologists at the immediate time of the preconstruction survey, . . . it would not prevent the loss of avian breeding capacity and a regional decline of birds." (*Id*.) In fact, based on his personal experience, Dr. Smallwood explains that "it is highly likely that the preconstruction survey would fail to find any of the nests of ground-nesting birds that truly occur on the project site, and few of the shrub- and tree-nesting bird nests." (*Id*.) As a result, "[the] implication that [BIO-3] would avoid potential impacts to nesting birds to a less-than-significant level is ***unsubstantiated and unrealistic***." (*Id*. [emph. added].)

Based on the above, BIO-1, BIO-2, and BIO-3 are insufficient to reduce the Project's impacts to a less-than-significant level. Because potentially significant impacts remain, the City must apply all feasible mitigation measures prior to issuing the Project's CDP. (EMC § 30.80.090(A)(2).) Dr. Smallwood recommends several feasible mitigation measures to reduce the Project's impacts to biological resources. (Ex. A, pp. 39-40.) These measures include: (1) requiring protocol-level detection surveys for special-status species, including burrowing owl, California gnatcatcher, and special-status bats, to inform impact estimates and necessary mitigation; (2) requiring minimal use of rodenticides and avicides; (3) requiring adherence to available Bird-Safe Guidelines, such as those prepared by American Bird Conservancy and New York and San Francisco; (4) requiring compensatory mitigation to offset the wildlife impacts from window and vehicle collisions; and (5) requiring native landscaping. (*Id*.) These mitigation measures are all feasible and must be required for in order for the City to find that "there are no feasible mitigation measures or feasible alternatives available which would substantially lessen any significant adverse impact that the activity may have on the environment" prior to issuing the Project's CDP. (EMC § 30.80.090(A)(2).)

B. The Project's impacts on air quality have not been adequately analyzed and mitigated.

SAFER retained air quality experts Matt Hagemann, P.G., C.Hg., and Paul E. Rosenfeld, Ph.D., of the Soil/Water/Air Protection Enterprise ("SWAPE"), who found that the Project's Air Quality and Greenhouse Gases Analysis prepared by LSA in February 2023 ("LSA Report") underestimated the Project's air quality impacts. SWAPE's comment is attached as **Exhibit B**.

The LSA Report concluded that the Project's air quality and greenhouse gas ("GHG") impacts would be less than significant and that no mitigation measures were required. (LSA Report, pp. 20-26, 39-47.) However, SWAPE found that the LSA Report underestimated the Project's emissions and therefore cannot be relied upon to determine the significance of the Project's air quality or GHG impacts. (Ex. B, p. 1.) To estimate the Project's emissions, the LSA Report utilized the California Emissions Estimator Model Version 2020.4.0 ("CalEEMod"). (Ex. B, p. 1.) CalEEMod relies on recommended default values based on site specific information, such as land use type, meteorological data, total lot acreage, project type and typical equipment associated with project type. (*Id.*) Any changes made to those default values must be justified and accurate to ensure that the Project's emissions are modeled accurately. (*Id*., pp. 1-2.)

In reviewing the LSA Report's CalEEMod output files, SWAPE found that the model's default values had been changed and were inconsistent with information provided elsewhere in the LSA Report. (Ex. B, p. 2.) (*Id*.) Specifically, SWAPE found that the following values used in the LSA Report's model were either inconsistent or otherwise unjustified:

1. Unsubstantiated reduction to architectural/area coating emissions (Ex. B, pp. 2-3.)
2. Unsubstantiated reductions to natural gas energy use values (Ex. B, pp. 3-4.)
3. Unsubstantiated reductions to gas fireplace emissions (Ex. B, pp. 4-5.)
4. Unsubstantiated changes to operational vehicle fleet mix (Ex. B, pp. 5-6.)
5. Inaccurate value for acres of grading (Ex. B, pp. 6-7.)
6. Unsubstantiated changes to construction vendor and worker trips (Ex. B, pp. 7-8.)

As a result of the above errors, the LSA Report underestimated the emissions associated with the Project and cannot be relied upon to find that the Project's potentially significant air quality and GHG impacts have been mitigated to the extent feasible. There are feasible mitigation measures that could be—but have not—been required for this Project, including the use of Tier 4 clean construction equipment to reduce construction emissions and a commitment to rooftop solar beyond the minimum required by Title 24 to reduce operational emissions. Without including such measures in the Project's conditions of approval, the City cannot make the requisite finding to issue the CDP that all potentially significant impacts have been mitigated to the extent possible. (EMC § 30.80.090(A)(2).)

CONCLUSION

The Planning Commission erred by approving the Project without conducting environmental review under CEQA. The Planning Commission made the additional errors of approving the Coastal Development Permit and Density Bonus despite the Project's inconsistencies with the City's Local Coastal Program and the Project's potentially significant, unmitigated impacts. For those reasons, SAFER respectfully requests that the City Council GRANT the appeal to ensure compliance with CEQA, the Coastal Act, the Density Bonus Law, and the City's local ordinances.

Sincerely,

Brian B. Flynn
Lozeau Drury LLP

CITY OF ENCINITAS
505 South Vulcan Avenue
Encinitas, California 92024
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CITY OF ENCINITAS
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Date/Time Received

Information contained in this document is deemed a public record

APPEAL REQUEST - $406 FEE (effective July 1, 2022)

ALL APPEALS MUST BE FILED AT CITY CLERK'S OFFICE

APPELLANT MUST COMPLETE THE FOLLOWING IN DETAIL
(Please type or print)

Appellant's Name Supporters Alliance for Environmental Responsibility ("SAFER"), represented by Lozeau Drury LLP

Mailing Address 1939 Harrison Street, Suite 150, Oakland, CA 94612

Daytime Phone 510-836-4200

Appealing the decision of the:

☐ **Director Of** _____ **To City Council**

☑ **Planning Commission to City Council**

☐ **Other (Please explain)** _____

Relative to the action taken on June 15, **20** 23 **for the project known as:**

Project Name: Moonlight Apartments **Case No.** MULTI-004979-2021, DR-004980-2021; BADJ-004981-2021, CDP-004982-2021

Project Address: 550-590 and 696 Encinitas Boulevard

Cross Streets: _____

Applicant(s): Raintree Partners

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Identify your interest in the challenging determination:

Members of SAFER live and/or work in the vicinity of the proposed Project. They breathe the air, suffer traffic congestion, and will suffer other environmental impacts of the Project unless properly mitigated.

Specify exactly what is being appealed. Identify each issue which you believe was wrongly determined together with every argument and a copy of every item of evidence submitted to the subordinate entity that supports your allegations:

SAFER appeals the Planning Commission's decisions to approve MULTI-004979-2021, DR-004980-2021; BADJ-004981- 2021, and CDP-004982-2021 for the Project (Resolution No. PC 2023-14) and to determine that the Project is exempt from the California Environmental Quality Act ("CEQA") under Government Code Section 65583.2. For the reasons set forth in the attached letter dated June 13, 2023, the City's claim that Government Code section 65583.2 exempts the Project from CEQA is incorrect. CEQA review is required for the Project, and the Planning Commission should not have approved the Project until proper CEQA review was complete.

See attachment.

Action you wish to be taken:

SAFER requests that the City Council overturn the Planning Commission's approvals of the Project (Resolution No. PC 2023-14) and require environmental review of the Project pursuant to CEQA.

(You may attach additional documentation <u>but all blanks on this form must be completed)</u>

NOTE: An incomplete appeal and fee shall be returned to you and considered to be inappropriately filed. The appeal period expires 15 days after the determination and cannot be extended for you to adequately complete the appeal.

Brian B Flynn

Appellant's Signature

6/22/2023

Date

Brian B. Flynn
Lozeau Drury LLP

Once your issue has been scheduled before the City Council, you will be notified of the date and time it will be on the agenda as indicated below.

ADMINISTRATIVE HEARING: Any person who wishes to submit a written position with arguments, documents, exhibits, letters, photos, charts, diagrams, videos, etc., addressing the challenged determination must submit these to the City Clerk by 5:00 P.M. <u>seven (7) calendar days prior to the hearing date. NO NEW INFORMATION WILL BE CONSIDERED BY THE CITY COUNCIL AFTER THIS DEADLINE. NO OTHER MATERIALS SHALL BE RECEIVED OR CONSIDERED AT THE HEARING.</u> Upon filing with the City Clerk, those items will be available to the public. Any questions, please contact the City Clerk at 633-2601.

Filing of an appeal must comply with Chapter 1.12 of the Municipal Code (attached). The following application must be complete or the appeal will be returned to the appellant. An appeal must be delivered to the City Clerk by 5:00 p.m. of the 15th calendar day following the determination.

Note: Pursuant to Section 66452.5 of the State Map Act, a <u>10 day appeal period</u> is required for subdivisions, tentative maps and tentative parcel maps. A public hearing is required to be held within 30 days of the appeal.

PLEASE SEE ATTACHED MUNICIPAL CODE SECTION 1.12 WHICH EXPLAINS THE APPEAL PROCESS.

MEDIATION: The City offers a mediation program as an alternative to appeals. If you are interested in resolving project issues or disputes through mediation, please view the City's Mediation Program webpage at http://www.encinitasca.gov/mediation. You may also contact the Code Enforcement Department at 760-633-2685 or via email at **code@encinitasca.gov**.

PLEASE SEE ATTACHED MUNICIPAL CODE SECTION 1.10 WHICH EXPLAINS THE MEDIATION PROCESS FOR LAND USE AND DEVELOPMENT PROJECTS.

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