

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
200 Oceangate, Suite 1000  
Long Beach, CA 90802-4302  
(562) 590-5071

August 19, 2009

**W33a****TO:** Commissioners and Interested Persons**FROM:** Peter Douglas, Executive Director  
Sherilyn Sarb, Deputy Director  
Karl Schwing, Supervisor, Regulation & Planning, Orange County Area  
Meg Vaughn, Staff Analyst**SUBJECT:** Concurrence with the Executive Director's determination that the action of the City of Huntington Beach accepting certification with suggested modifications of Major LCP Amendment No. 1-07B ("Cleanup") is legally adequate. For Commission review at its September 9, 2009 meeting in Eureka.**STAFF RECOMMENDATION**

Staff recommends that the Commission concur with the Executive Director's determination that the City's action is legally adequate.

**BACKGROUND**

The City of Huntington Beach submitted Major Local Coastal Program (LCP) Amendment Request No. 1-07B for Commission certification pursuant to City Council Resolution No. 2007-21. Huntington Beach LCPA 1-07B proposed changes to the City's certified Implementation Plan to incorporate changes made by the City over the last few years (2001 -2007). The changes were made by the City via a number of Zoning Text Amendments (ZTAs) and are reflected in the following City Council Ordinances: Nos. 3669, 3673, 3675, 3677, 3679, 3680, 3681, 3705, 3706, 3707, 3708, 3709, 3710, 3711, 3712, 3713 (ZTA 03-02); 3687 (ZTA 04-04); 3724 (ZTA 05-01); 3730 (ZTA 05-02); 3764 (ZTA 06-02); 3763 (ZTA 06-07). The changes proposed included modifications: to streamline the City's entitlement process; affecting affordable housing procedures; to modify City codes to comply with the Religious Land Use and Institutionalized Persons Act (RLUIPA) of 2000; and to standards regarding bicycle parking and privacy gates.

The issues raised by the amendment request related to changes which could have allowed density bonuses and related incentive(s)/concession(s) for projects that include affordable housing that may result in adverse impacts to coastal resources. Adverse impacts to coastal resources, potentially including public access, protection of sensitive habitat, promotion of visitor serving uses, or protection and enhancement of water quality, might have occurred from the lack of a requirement that such bonuses, incentives, and concessions must conform to the certified Land Use Plan as required by the Coastal Act. The Commission approved the affordable housing changes subject to four suggested modifications to bring the Implementation Plan amendment into conformity with the policies of the certified Land Use Plan. Those modifications require a determination that any density bonus, incentive, or concession granted by the City to encourage provision of affordable housing results in a project that is consistent with the coastal resource protection requirements of the City's certified Land Use Plan.

The IP amendment also included a change to Section 231.18.D.8 which re-instated language that allows privacy gates in residential development only when it will not create adverse impacts on public access. A suggested modification added language to assure

City of Huntington Beach LCPA 1-07B  
Executive Director's Determination  
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that privacy gates that deter public access are not allowed. In addition, the suggested modification establishes that, in addition to privacy gates, other controls that restrict public access in conjunction with residential development are prohibited.

On July 6, 2009, the Huntington Beach City Council adopted Resolution No. 2009-35 acknowledging receipt of the Coastal Commission action and accepting and agreeing to the suggested modifications. Also on July 6, 2009, the City Council adopted Resolution No. 2009-36 amending the Local Coastal Program Implementation Plan (Zoning and Subdivision Ordinance) consistent with the modifications suggested by the Commission.

The City has submitted the modifications to the Executive Director for a determination that they are consistent with the Commission's action on April 8, 2009 (see attachment).

As provided in Section 13544 of the California Code of Regulations, the Executive Director must determine whether the City's action is legally adequate and report that determination to the Commission. In this case, the Executive Director has determined that the City's action is legally adequate. Unless the Commission objects to the Executive Director's determination, the certification of Huntington Beach LCP Amendment No. 1-07B shall become effective upon the filing of the required Notice of Certification with the Secretary of Resources as provided in Public Resources Code Section 21080.5(d)(2)(E).

**RECOMMENDATION**

Staff recommends that the Commission **CONCUR** with the Executive Director's determination as set forth in the attached letter (to be sent after Commission endorsement).

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Scott Hess  
Director of Planning  
City of Huntington Beach  
2000 Main Street  
Huntington Beach, CA 92648

Re: Certification of City of Huntington Beach Local Coastal Program (LCP) Major Amendment  
No. 1-07B ("Cleanup")

Dear Mr. Hess:

On April 8, 2009, the Coastal Commission approved the above-described Local Coastal Program (LCP) amendment request with suggested modifications. The City's LCP amendment request affected only the Implementation Plan (IP) portion of the City's certified LCP. The changes proposed included modifications: to streamline the City's entitlement process; affecting affordable housing procedures; to modify City codes to comply with the Religious Land Use and Institutionalized Persons Act (RLUIPA) of 2000; and, to standards regarding bicycle parking and privacy gates. The Commission's modifications addressed the need to assure that any affordable housing density bonus must conform with the certified Land Use Plan as required by the Coastal Act; and that any access controls that restrict public access, including privacy gates, are prohibited.

On July 6, 2009, the Huntington Beach City Council adopted Resolution No. 2009-35 acknowledging receipt of the Coastal Commission action and accepting and agreeing to the suggested modifications. Also on July 6, 2009, the City Council adopted Resolution No. 2009-36 amending the Local Coastal Program Implementation Plan (Zoning and Subdivision Ordinance) consistent with the modifications suggested by the Commission. By its actions adopting Resolution Nos. 2009-35 and 2009-36, the City has formally acknowledged and accepted the Commission's certification of the Local Coastal Program Amendment including all suggested modifications. In accordance with Section 13544 of the Commission's Code of Regulations, the Executive Director has made the determination that the City's actions are legally adequate, and the Commission has concurred at its September 2009 meeting.

Thank you for your cooperation on this project and we look forward to working with you and your staff in the future.

Sincerely,

Teresa Henry  
District Manager

cc: Mary Beth Broeren, Principal Planner

HNBA 1-07B psthrg ltr 9.09 mv

RESOLUTION NO. 2009-35

A RESOLUTION OF THE CITY COUNCIL OF THE  
CITY OF HUNTINGTON BEACH, CALIFORNIA, WHICH ACKNOWLEDGES RECEIPT  
OF THE COASTAL COMMISSION ACTION AND ACCEPTS AND AGREES  
TO LOCAL COASTAL PROGRAM AMENDMENT NO. 1-07B AS MODIFIED

WHEREAS, the California Coastal Commission reviewed and approved Huntington Beach Local Coastal Program Amendment No. 1-07B as modified at the April 8, 2009 Coastal Commission hearing; and

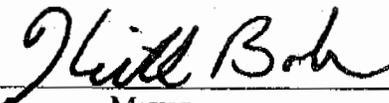
Section 13537 of the Coastal Commission Regulations requires the local government to accept and agree to the modification by resolution within six (6) months, or the certification will expire; and

Upon the City Council action staff will forward Resolution No. 2009-35 for final Coastal Commission certification,

NOW, THEREFORE, the City Council of the City of Huntington Beach does hereby resolve as follows:

1. That the City Council accepts and agrees to the Coastal Commission's approval of Local Coastal Program Amendment 1-07B by modifying Huntington Beach Zoning and Subdivision Ordinance Sections 230.14C, 230.14D, 230.14.I.1.e, 230.14.J.1 and 231.18D.6 as suggested by the Coastal Commission in the letter dated April 14, 2009, attached hereto as Exhibit "A" and incorporated by this reference as though fully set forth herein. Said suggested modification shall become effective 30 days after adoption of Resolution No. 2009-35 or upon final Coastal Commission certification, whichever occurs latest.

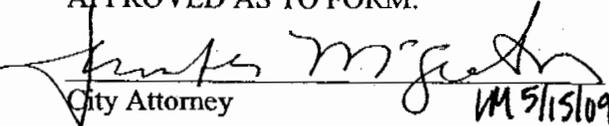
PASSED AND ADOPTED by the City Council of the City of Huntington Beach at a regular meeting thereof held on the 6th day of July, 2009.

  
\_\_\_\_\_  
Mayor

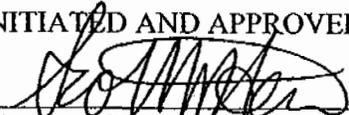
REVIEWED AND APPROVED:

  
\_\_\_\_\_  
City Administrator

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

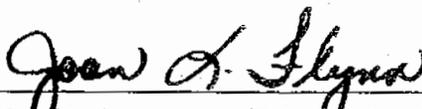
INITIATED AND APPROVED:

  
\_\_\_\_\_  
Director of Planning

STATE OF CALIFORNIA  
COUNTY OF ORANGE                    ) ss:  
CITY OF HUNTINGTON BEACH        )

I, JOAN L. FLYNN the duly elected, qualified City Clerk of the City of Huntington Beach, and ex-officio Clerk of the City Council of said City, do hereby certify that the whole number of members of the City Council of the City of Huntington Beach is seven; that the foregoing resolution was passed and adopted by the affirmative vote of at least a majority of all the members of said City Council at a **regular** meeting thereof held on **July 6, 2009** by the following vote:

**AYES:**       Carchio, Dwyer, Bohr, Coerper, Hansen  
**NOES:**       None  
**ABSENT:**   Green, Hardy  
**ABSTAIN:**   None

  
\_\_\_\_\_  
City Clerk and ex-officio Clerk of the  
City Council of the City of  
Huntington Beach, California

**City of Huntington Beach  
Local Coastal Program Amendment No. 1-07B (Cleanup)  
Coastal Commission Adopted Suggested Modifications (4/8/09)**

**SUGGESTED MODIFICATIONS**

Certification of City of Huntington Beach LCP Amendment Request No. 1-07B is subject to the following modifications.

The Commission's suggested additions are shown in **bold, italic, underlined text**.

The Commission's suggested deletions are shown in **bold, italic, underlined, strike out text**.

**Suggested Modification No. 1**

Modify Section 230.14.C by adding new subsection 4 as follows:

230.14.C

1. Calculation of Density Bonus. The amount of density bonus ...
2. For the purpose of this section, units designated for lower income ...
3. For the purpose of this section, those units designated for very low income ...
4. **Reductions in Density Within the Coastal Zone. In reviewing residential development applications for low- and moderate-income housing, as defined in Government Code section 65589.5(h)(3), the City 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 Government Code section 65915, unless the City 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 the certified local coastal program.**

HNB Local Coastal Program Amendment 1-07B  
Coastal Commission Adopted Suggested Modifications  
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**Suggested Modification No. 2**

Modify Section 230.14.D by adding new subsection 3 as follows:

230.14.D

1. Types of incentives or concessions. The City shall ...
2. Number of Incentives and Concessions. An applicant for a density bonus ...
3. **Requirements for Incentives and Concessions Within the Coastal Zone. Within the coastal zone, any incentive or concession or combination of incentives and concessions must be consistent with the requirements of the certified land use plan.**

**Suggested Modification No. 3**

Modify Section 230.14.I.1.e, as follows:

230.14

I. Required findings for approval.

1. Density Bonus. In granting ...
  - a. The proposed project, which includes ...
  - b. The proposed project, which includes ...
  - c. The proposed project, which includes ...
  - d. The proposed project, which includes ...
  - e. If located within the coastal zone, the proposed project which includes a density bonus **will be consistent with the requirements of the certified land use plan** and will not result in the fill, dredge, or diking of a wetlands.

HNB Local Coastal Program Amendment 1-07B  
Coastal Commission Adopted Suggested Modifications  
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**Suggested Modification No. 4**

Modify Section 230.14.J1 as follows, including the addition of new subsection c:

230.14

J. Required findings for denial.

1. Concessions or Incentives. The city shall grant the concession or incentive requested by the applicant unless the city makes a written finding, based upon substantial evidence, of either one or more of the following:

a. The concession or incentive is not ...

b. The concession or incentive would have ...

**c. The concession or incentive is inconsistent with the requirements of the certified Land Use Plan.**

**Suggested Modification No. 5**

Modify existing Section 231.18.D.6

5. Guest Parking. All guest parking ...

6 Coastal Zone. **The following requirements shall apply to residential development in the Coastal Zone.**

**1) Each dwelling unit located in the Coastal Zone shall have a minimum of 2 on-site parking spaces. If the total coastal parking requirements exceed the total minimum parking as required by this chapter, the additional required parking spaces may be in tandem with enclosed spaces, provided the tandem space is assigned to an enclosed space and complies with the required turning radius.**

**2) The streets of new residential subdivisions between the sea and the first public road shall be constructed and maintained as open to the general public for vehicular, bicycle and pedestrian access. General public parking shall be provided on all streets throughout the entire subdivision. Private entrance gates and private streets shall be prohibited. All public entry controls (e.g. gates, gate/guard houses, guards, signage, etc.) and restriction on use by the general public (e.g. preferential parking districts, resident-only parking periods/permits, etc.) associated with any streets or parking areas shall be prohibited.**