

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
(619) 767-2370

RECORD PACKET COPY

September 29, 2004

Fr 10a

TO: COMMISSIONERS AND INTERESTED PERSONS

**FROM: DEBORAH LEE, SOUTH COAST DEPUTY DIRECTOR
SHERILYN SARB, DISTRICT MANAGER, SAN DIEGO AREA OFFICE
GARY CANNON, COASTAL PROGRAM ANALYST, SAN DIEGO AREA OFFICE**

**SUBJECT: STAFF RECOMMENDATION ON CITY OF ENCINITAS MAJOR
AMENDMENT NO. 3-03 (Community Character) for Commission Meeting of
October 13-17, 2004**

SYNOPSIS**SUMMARY OF AMENDMENT REQUEST**

The subject amendment request revises the certified Encinitas Local Coastal Plan (LCP) Implementation Plan (IP) concerning development standards relating to community character issues including: maximum building heights; design review requirements; redefinition of lot coverage; relocation of setbacks for panhandle and corner lots; preferred garage locations; establishment of enclosed parking regulations; subdivision design; reclarification of grading requirements and establishment of a lighting ordinance. On March 30, 2004 the City of Encinitas Local Coastal Program Amendment (LCPA) No. 3-03 was filed in the San Diego District office. At the May 2004 Commission hearing, a time extension (not to exceed one year) on the LCP amendment package was granted by the Commission to allow time for staff review of the potential issues raised by the proposed LCP amendment.

SUMMARY OF STAFF RECOMMENDATION

The text changes to the various ordinances involving community character are relatively minor in nature and will provide more protective standards to assure development will occur consistent with the existing pattern of development and in ways that enhance the visual and aesthetic resources of the community. The proposed amendments do not create any inconsistencies with other sections of the IP or the LCP Land Use Plans (LUP). However, several of the proposed changes relate to standards of review that apply in the Scenic/Visual Corridor Overlay Zone. In addition, the existing Design Review ordinance exempts Design Review requirements for custom homes such that it is unclear whether the scenic and visual resources of the area will be fully protected in the

Scenic/Visual Corridor Overlay Zone when a custom home development occurs within the zone. Staff recommends that in order to assure that the visual resources identified in the Scenic/Visual Corridor Overlay Zone are fully protected, the development standards of the Scenic/Visual Corridor Overlay Zone be revised to assure that all development located within the zone is reviewed in terms of its impact to the scenic/visual resources within the zone. With this revision, the City's proposed IP amendment will be fully consistent with the policies of the LUP.

The appropriate resolutions and motions begin on page 3. The findings for approval of the Implementation Plan Amendment as submitted begin on page 4. The findings for denial of a portion of the Implementation Plan Amendment as submitted and approval if modified begin on Page 9.

BACKGROUND

Encinitas LCP

On November 17, 1994, the Commission approved, with suggested modifications, the City of Encinitas Local Coastal Program (both land use plan and implementing ordinances). The City accepted the suggested modifications and, on May 15, 1995, began issuing coastal development permits for those areas of the City within the Coastal Zone. The subject LCPA will be the thirteenth amendment to the City's certified LCP.

ADDITIONAL INFORMATION

Further information on the Encinitas LCP Amendment No. 3-03 may be obtained from Gary Cannon, Coastal Planner, at (619) 767-2370.

PART I. OVERVIEW**A. STANDARD OF REVIEW**

Pursuant to Section 30513 of the Coastal Act, the Commission may only reject zoning ordinances or other implementing actions, as well as their amendments, on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. The Commission shall take action by a majority vote of the Commissioners present.

B. PUBLIC PARTICIPATION

The City has held Planning Commission and City Council meetings with regard to the subject amendment request. All of those local hearings were duly noticed to the public. Notice of the subject amendment has been distributed to all known interested parties.

- I. MOTION I:** *I move that the Commission reject the Implementation Program Amendment #3-03 for the City of Encinitas as submitted.*

STAFF RECOMMENDATION OF REJECTION:

Staff recommends a **YES** vote. Passage of this motion will result in rejection of the proposed Implementation Program amendment and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DENY CERTIFICATION OF THE IMPLEMENTATION PROGRAM AS SUBMITTED:

The Commission hereby denies certification of the Implementation Program Amendment submitted for the City of Encinitas and adopts the findings set forth below on grounds that the Implementation Program Amendment as submitted does not conform with, and is inadequate to carry out, the provisions of the certified Land Use Plan. Certification of the Implementation Program Amendment would not meet the requirements of the California Environmental Quality Act, as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Implementation Program Amendment as submitted.

- II. MOTION II:** *I move that the Commission certify the Implementation Program Amendment #3-03 for the City of Encinitas if it is modified as suggested in this staff report.*

STAFF RECOMMENDATION:

Staff recommends a **YES** vote. Passage of this motion will result in certification of the Implementation Program Amendment with suggested modifications and the adoption of

the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

**RESOLUTION TO CERTIFY THE IMPLEMENTATION PROGRAM
AMENDMENT WITH SUGGESTED MODIFICATIONS:**

The Commission hereby certifies the Implementation Program Amendment for the City of Encinitas if modified as suggested and adopts the findings set forth below on grounds that the Implementation Program Amendment with the suggested modifications conforms with, and is adequate to carry out, the provisions of the certified Land Use Plan. Certification of the Implementation Program Amendment if modified as suggested 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 Implementation Program Amendment on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.

PART III. SUGGESTED MODIFICATIONS

Staff recommends the following suggested modification to the proposed Implementation Plan amendment be adopted:

30.34.080 Scenic/Visual Corridor Overlay Zone.

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 View Corridor~~ 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.

**PART IV. FINDINGS FOR APPROVAL OF THE ENCINITAS LOCAL
COASTAL PROGRAM IMPLEMENTATION PLAN AMENDMENT
NO. 03-03, AS SUBMITTED**

A. AMENDMENT DESCRIPTION

The amendment involves changes to various ordinances involving development standards relating to "community character". The changes include: allow maximum height of 30 ft. in the RR through RR1 zone and 26 ft. in the RR2 through R25 zones with exceptions for

structures located on slopes; discontinue "Authority to Exceed Standard Height Envelope" process; change definition of "lot coverage" to include not only ground floor but all habitable portions of structure extending out over ground floor; modify definitions involving Floor Area Ratio (FAR); allow panhandle lots when consistent with existing pattern of development in the area; modify setbacks for panhandle and corner lots; require 2 parking spaces for residences and duplexes to be enclosed; require garages in new subdivisions to be located in ways to minimize their visual presence and encourage use of alley or street access to garages; require variation in front yard setbacks of subdivisions of 5 or more lots; require walkways connecting City sidewalk/trail systems; require lot and street designs to follow existing contours of property to the extent possible; modify Planned Residential Development standards to allow dedication of required recreational open space to the City; modify grading ordinance to require grading be more natural in design including retention of natural topography with least disturbance, avoid "stair-stepping" of building pads, avoid use of vertical retaining walls; require applications in the Inland/Hillside Bluff Overlay Zone to include details of existing and future improvements and proposed building envelopes; establish Lighting performance standards.

B. CONFORMANCE WITH THE CERTIFIED LAND USE PLAN

1. Findings for Approval as Submitted

The following LUP Policies relate to protection of scenic and visual resources:

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 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.

Land Use Policy 9.5: Discourage development that would infringe upon scenic views and vistas within the I-5 corridor.

Land Use, pg. LU-45

Scenic/Visual Corridor Overlay

The Coastal Act calls for the identification and preservation of significant viewsheds within the coastal zone. Section 30251 of the Coastal Act states that "the scenic and visual qualities of the coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas....". According to the past actions and precedents set by the Coastal Commission, the primary concern of this

section of the Coastal Act is the protection of ocean and coastal views from public areas (highways, parks, beach accessways, viewpoints, etc.).

This overlay designation identifies those areas of the City where significant aesthetic and visual resources need to be considered before new development proceeds to ensure that significant viewsheds are retained. This overlay will also be used to designate scenic highways and roads in the City.

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.

Resource Management Policy 4.5: The City will designate "Scenic/Visual Corridor Overlay" areas within which the character of development would be regulated to protect the integrity of the Vista Points according to the following criteria:

Critical viewshed areas should meet the following requirements:

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

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

- Building height, bulk, roof line and color and scale should not obstruct, limit or degrade the existing views;
- Landscaping should be located to screen adjacent undesirable views (parking lot areas, mechanical equipment, etc).

Resource Management Policy 4.6: The City will maintain and enhance the scenic highway/visual corridor viewsheds. (Coastal Act/30251)

The following revisions to the City's Implementation Plan which address community character issues in the City of Encinitas are minor and will not result in development that conflicts with these LUP policies.

MODIFY RESIDENTIAL HEIGHT STANDARDS

Background

The certified Land Use Policy 7.10 limits the height of both residential and non-residential development to a maximum height of 30 feet. The City's Implementation Plan currently limits the height of residential structures to 22 ft. with provisions to extend the height to a maximum of 30 ft. through an Administrative Design Review process that

assures preservation of some of the significant private views that exist for nearby residences.

Proposal

The City is proposing to eliminate the Administrative Design Review process and simply authorize an increase in height in the RR through RR1 Zones to 26 ft. for flat roofs and 30 ft. for pitched roofs and in the RR2 through R25 Zones to 22 ft. for flat roofs and 26 ft. for pitched roofs. The proposed amendment also provides ways to determine natural grade and slope of lots in order to make allowances for the height of structures to be located on slopes. A variance would be required to exceed these height limits up to a maximum of 30 ft. The proposed revisions will not allow any additional increases in height than the certified LCP would allow.

MODIFY DESIGN STANDARDS FOR SUBDIVISIONS

Background

The existing subdivision design requirements generally emphasize that each lot conform to the minimum lot size and design standards of the Zoning codes, require each lot to front on a street and restrict the use of panhandle lots and easement access lots. In addition, it includes general requirements that all subdivisions have adequate roadway, sewer, and utility extensions.

Proposal

In order to improve community character, the City is amending Design Requirements for subdivisions to encourage development that is consistent with and reflects the existing pattern of development in the area. Panhandle lots are permitted if they promote a better subdivision design and are consistent with the pattern of existing development in the area. Residences can be sited with their backs sited on collector streets and larger streets if that is the pattern in the developed neighborhood. A variety of lot sizes is encouraged, if consistent with the existing pattern of the surrounding community. Lot and street design are required to follow the existing natural contours of the property, to the extent possible. Finally, the amendment requires walkways be provided that connect to City sidewalk/trail systems.

REVISE DEFINITIONS RELATING TO BASEMENT, BUILDING HEIGHT, FLOOR AREA, FLOOR AREA RATIO, LIGHTING, LOT COVERAGE, AND PANDHANDLE LOTS.

Background

Section 30.04 of the City IP provides definitions of terms utilized within the City's Zoning Ordinance such that terms are applied consistently throughout the City.

Proposal

The various changes to the definitions are proposed to enhance community character concerns throughout the City. The changes will improve existing development standards in the coastal zone and as such are consistent with the certified LUP.

MODIFY APPLICATION REQUIREMENTS FOR DEVELOPMENTS WITHIN THE HILLSIDE/INLAND BLUFF OVERLAY ZONE

Background

The City's development standards within the Hillside/Inland Bluff Overlay Zone serve to protect the natural contours and environment of the area. It is the intent of this zone that the slopes in excess of 25% grade be preserved in their natural state. However, encroachment is permissible when no feasible siting alternative is available and when minimized.

Proposal

The City is proposing that applicants involved with encroachments into slopes in excess of 25% grade be required to submit more detailed information as to existing and future improvements and proposed building envelopes. The information will allow the Planning Commission to more effectively evaluate whether the bulk and mass of the structure has been minimized to the greatest extent feasible in order to preserve the slope characteristics of the site.

MODIFY AND INSTITUTE LIGHTING PERFORMANCE STANDARDS

Background

The City currently does not have city-wide light performance standards with the exception of the Olivenhain community which is simply prohibited from illuminating outdoor recreational facilities. Aside from formatting of the ordinance text, the prohibition in Olivenhain is not proposed to be modified.

Proposal

The City proposes to establish lighting standards for the entire City. These standards require all lighting in residential zones to not exceed one-half (0.5) foot-candles at the property line, outdoor lighting to be shielded. In addition, all commercial lots cannot have a sustained light standard in excess of one (1.0) foot-candle at the property line. Exceptions to each of these standards are made for skylights, greenhouses and agricultural production. In addition, street lighting and public recreational facilities are not subject to these standards but are reviewed for lighting concerns through the use permit process and subdivision process.

SINGLE-FAMILY OR DUPLEX RESIDENTIAL OFF-STREET PARKING

Background

The City currently requires that single-family residences and duplex provide 2 enclosed or unenclosed parking spaces for each unit up to 2,500 gross floor area and 3 parking spaces for dwelling units in excess of 2,500 sq. ft.

Proposal

To improve the community character of single-family and duplex neighborhoods, the City is amending its ordinance to require that the first 2 of any required parking spaces be enclosed. Any required space above 2 will be permitted to be either enclosed or

unenclosed.

MODIFY GRADING ORDINANCE

Background

The City grading ordinance currently establishes minimum requirements for grading, excavation and fill of land, to provide for the issuance of grading permits and to provide for the enforcement of the requirements. Its intent is to protect life and property and promote the general welfare; enhance and preserve the physical environment of the community and maintain the natural scenic character of the City.

Proposal

The City proposal involves strengthening its ordinance in order to require grading be designed to retain natural topography and vegetation and to minimize disturbance of the natural terrain. Measures include avoidance of "stair-stepped" building pads, encourage use of existing building pads and avoid or minimize use of vertical retaining walls. The proposal also lowers the threshold where slopes must be rounded and blended from 15 ft. to 10 feet.

SUMMARY.

Each of the above-described revisions involve improvements to the overall community character of the City. The changes will result in development that is more in character with existing pattern of development as well as more protective of existing scenic and visual resources of the area. The proposed changes to the City's Implementation Plan conforms to the certified land use plan in that it will serve to strengthen existing regulations that protect the visual resources of the area and, thus, the proposed ordinances can be found in conformance with and adequate to implement the certified LUP.

PART V. FINDINGS FOR DENIAL OF A PORTION OF THE CITY OF ENCINITAS IMPLEMENTATION PLAN AMENDMENT #3-03 AS SUBMITTED AND APPROVAL IF MODIFIED

A. AMENDMENT DESCRIPTION

In addition to the LUP Policies identified in Part IV of the staff report, the following LUP Policies relate to the subject Part V:

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:

- Road Design

- Type and physical characteristics of roadway should be compatible with natural character of corridor, and with the scenic highway function.
- Development Design
 - Building and vegetation setbacks, scenic easements, and height and bulk restrictions should be used to maintain existing views and vistas from the roadway.
 - Off-site signage should be prohibited and existing billboards removed.
 - Development should be minimized and regulated along any bluff silhouette line or on adjacent slopes within view of the lagoon areas and Escondido Creek.
 - Where possible, development should be placed and set back from the bases of bluffs, and similarly, set back from bluff or ridge top silhouette lines; shall leave lagoon areas and floodplains open, and shall be sited to provide unobstructed view corridors from the nearest scenic highway.
 - Development that is allowed within a viewshed area must respond in scale, roof line, materials, color, massing, and location on site to the topography, existing vegetation, and colors of the native environment.

MODIFY DESIGN REVIEW REQUIREMENTS

Background

The City requires that all new buildings, landscaping and construction projects be subject to Design Review. Its purpose is to protect the natural beauty of the City and create an attractive environment. Exception to the requirements of Design Review includes, custom homes, satellite antennas, walls and fences of 6 ft. or less in height, minor alterations of buildings, accessory buildings, tennis courts, swimming pools, decks, balconies and temporary facilities.

Proposal

The City is proposing to revise several sections of its Design Review regulations. Currently projects subject to Design Review must be found to be consistent with specific "Regulatory Conclusions" identified in the sections titled "Design and Site Layout", "Building Design", "Landscape Design", "Signage", and "Privacy and Security" found in Sections 23.08.074 through 23.08.078 of the Design Review Ordinance (ref. Exhibit No. 2). The City proposes to simplify the Design Review ordinance by eliminating each of these "Regulatory Conclusions" and instead rely on the general Regulatory Conclusions listed in Section 23.08.080 of the Design Review Ordinance. Projects subject to Design Review are required to be approved unless, as delineated in Section 23.08.080:

- A. The project is inconsistent with the General Plan, Specific Plan or the provisions of the Design Review Ordinance;

B. The project is substantially inconsistent with the Design Review Guidelines;

C. The project would adversely affect health, safety or general welfare of the community;

D. The project would tend to cause the surrounding neighborhood to depreciate materially in appearance or value.

This proposal raises some concern related to whether the changes will result in any potential adverse impact to the scenic and visual resources of the City.

Another modification to the Design Review ordinance proposed by the City is to exempt certain grading projects from Design Review. To be exempt from Design Review, grading must be consistent with Grading Ordinance Section 23.24.490 (which will also be amended by the subject LCPA as cited above in the Modify Grading Ordinance section). The intent of the revised Section 23.24.490 is to assure more natural appearing contours and retain natural topography and vegetation. Since these visual protection measures for these grading proposals will be consistent with the development standards of the grading ordinance, their exemption from Design Review requirements should not raise any adverse visual concern and is adequate to carry out the policies of the LUP.

A final revision to the Design Review ordinance requires that utility installations above 4 ft. in height be subject to Design Review unless appropriately screened through landscaping or colorizing. Currently utility installations are not subject to Design Review and this revision assures that large utility installations above 4 ft. in height will be effectively screened or colored. Since this measure is more protective of existing scenic and visual resources of the area than currently exists, it is adequate to carry out the policies of the LUP

B. ADEQUACY TO CARRY OUT THE LAND USE PLAN

The proposed amendments deal almost exclusively with local concerns relating to community character. The visual appearance of most developments does not raise state-wide or regional concerns unless they have the potential to impact public views or vistas. One of the proposed changes within the Design Review ordinance raises a concern relating to whether public views will be as fully protected as currently occurs. The Regulatory Conclusions for Design and Layout, currently includes a reason for denial of the project if:

The project does not preserve significant public view to the extent possible, nor does it offer mitigation for lost views.

The City proposes to eliminate this Regulatory Conclusion, along with many others referenced above, and replace it with the general regulatory conclusions cited above in Section 23.08.080. The concern is whether removal of this regulatory conclusion in any

way lessens the visual protection regulations required by the LUP. In addition, the current IP provides that custom homes are exempt from Design Review. This exemption allows custom homes that involve no more than one single-family detached dwelling, is dissimilar in building footprint, orientation, elevations, architectural features and exterior materials from any other proposed dwelling to be exempt from requirements of Design Review. This means that custom homes proposed along scenic corridors, scenic highways, significant viewsheds or vista points are not subject to Design Review; however, this, by itself, is not a concern as long as the visual impact of development is reviewed against the applicable LUP policies and the Scenic/Visual Corridor Overlay Zone through Coastal Development Permit processing. To meet the Coastal Act requirements, development must be sited and designed in ways most protective of the scenic visual resources of public importance as required by Resource Management Policy 4.9 of the Certified LUP.

The City has indicated that in most cases custom homes will be subject to other discretionary action such as a Coastal Development Permit or be located in other overlay areas subject to development standards such as Coastal Bluff, Hillside/Inland Bluff or Floodplain Overlay Zones and, therefore, visual design standards would be applied through those processes. In terms of the most valuable scenic areas of the City such as coastal bluffs and inland hillsides surrounding Batiquitos and San Elijo Lagoon, the City will require additional discretionary action for custom home developments and could potentially examine the developments in terms of their visual impact. However, a review of the development standards for the other Special Purpose Overlay Zones indicates that only the Coastal Bluff Overlay Zone has development standards relating to protection of scenic and visual resources:

Coastal Bluff Overlay Zone, Section 30.34.020B(7) and (8):

7. Buildings and other structures shall be sited, designed and constructed so as not to obstruct views to and along the ocean and other scenic coastal areas from public vantage points.
8. The design and exterior appearance of buildings and other structures visible from public vantage points shall be compatible with the scale and character of the surrounding development and protective of the natural scenic qualities of the bluffs.

These development standards or similar measures do not occur in the Hillside/Inland Bluff or Floodplain Overlay Zones. In addition, the City's Coastal Development Permit regulations do not explicitly require all projects to be reviewed in terms of their impacts to scenic or visual resources, although this is the intent identified in Resource Management Policy 4.9 of the LUP. Therefore, the City is not currently required through its Implementation Plan to evaluate the visual impacts associated with the development of custom homes in the Hillside/Inland Bluff or Floodplain Overlay Zones, or in review of Coastal Development Permits for custom homes.

The Commission is concerned that the combination of the proposed changes to the Design Review regulations and the exemption from Design Review currently afforded to custom homes developments makes it less clear that the visual resource protection policies and standards of the LUP and the Scenic/Visual Corridor Overlay Zone will be applied to all development in the viewsheds of scenic corridors and vista points identified in the LUP. Therefore this portion of the amendment request must be denied as submitted.

To remedy this inconsistency with the LUP, staff is recommending that the Scenic Visual Corridor Overlay Zone be revised to require its development standards be applied whenever a Coastal Development Permit is required. In addition, the current Scenic/Visual Corridor Overlay Zone ordinance that is designed to carry out Resource Management (RM) Policy 4.9 appears to be inconsistent or misworded such that it does not conform to the requirements of the LUP. RM Policy 4.9 requires that the design standard of the Scenic/Visual Corridor Overlay Zone apply to "Scenic View Corridors, along scenic highways and adjacent to significant viewsheds and vista points". However, the current code only applies to Scenic View Corridors in both its applicability and for development standards. To rectify this apparent incongruity and address the concern raised by the revisions to the Design Review ordinance and the current exemption of custom homes from Design Review, staff is recommending that Section 30.34.080 be revised in both its applicability and development standards sections to more accurately reflect the requirements of Resource Management Policy 4.9.

30.34.080 Scenic/Visual Corridor Overlay Zone.

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 View Corridor~~ 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.

With this modification, custom homes as well as any other development located within the Scenic/Visual Corridor Overlay Zone will be required to be reviewed for their visual impact if they are subject to Design Review or a Coastal Development Permit.

Therefore, the Commission finds that without changes to the policies addressing the development standards in the Scenic/Visual Corridor Overlay Zone the proposed LCP amendment does not conform to the certified LUP and would be inadequate to carry out its protections. The proposed amendment, if modified as suggested to revise the Scenic/Visual Corridor Overlay Zone ordinance, conforms to the certified land use plan,

and the proposed ordinances can be found in conformance with and adequate to implement the certified LUP.

PART IV. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 21080.9 of the California Public Resources Code – within the California Environmental Quality Act (CEQA) – exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its activities and approvals necessary for the preparation and adoption of a local coastal program. Instead, the CEQA responsibilities are assigned to the Coastal Commission and the Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under CEQA Section 21080.5, the Commission is relieved of the responsibility to prepare an EIR for each LCP.

Nevertheless, the Commission is required, in approving an IP submittal or, as in this case, an IP amendment submittal, to find that the approval of the proposed IP, or IP, as amended, does conform to CEQA provisions, including the requirement in CEQA section 21080.5(d)(2)(A) that the amended IP will not be approved or adopted as proposed if there are feasible alternative or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. 14 C.C.R. §§ 13542(a), 13540(f), and 13555(b). In the case of the subject LCP amendment, the Commission finds that approval of the subject LCP amendment, if modified as suggested, would not result in significant environmental impacts under the meaning of the California Environmental Quality Act.

For the most part, the proposed amendment to the City of Encinitas' Implementation Plan is consistent with and adequate to carry out the policies of the certified land use plan. Suggested modifications have been added to assure that any development within the Scenic View Corridor which requires discretionary review shall fully assess, condition or mitigate the visual impact of the development. If modified as suggested, no impacts to coastal resources will result from the amendment.

Any specific impacts associated with individual development projects would be assessed through the environmental review process, and, an individual project's compliance with CEQA would be assured. Therefore, the Commission finds that no significant inmitigable environmental impacts under the meaning of CEQA will result from the approval of the proposed LCP amendment as modified.

ORDINANCE 2003-10

**AN ORDINANCE OF THE CITY OF ENCINITAS, CALIFORNIA
AMENDING TITLE 30 AND TITLE 24 OF THE ENCINITAS MUNICIPAL
CODE AND CERTIFIED LOCAL COASTAL PROGRAM, INCORPORATING
AMENDMENTS ASSOCIATED WITH THE COMMUNITY CHARACTER
IMPLEMENTATION PROGRAM.**

(CASE NO. 02-178 LCPA/ZOA/EIA)

The City Council of the City of Encinitas, California does ordain as follows:

SECTION ONE:

The City Council, has reviewed the Environmental Initial Study (SCH #2002101021) prepared for these amendments to the Municipal Code, and, based upon its independent judgement, has determined that (1) the aforesaid environmental documentation is complete and sufficient for the consideration of this Ordinance, and (2) that the project will not result in any significant adverse environmental impacts, and a Negative Declaration is therefore adopted in conjunction with approval of the amendments in accordance with the provisions of the California Environmental Quality Act (CEQA) Guidelines.

SECTION TWO:

The Encinitas Municipal Code is amended to read as follows:

See Attachment "A"

SECTION THREE:

This ordinance was introduced on September 17, 2003.

SECTION FOUR:

The City Clerk is directed to prepare and have published a summary of this ordinance no less than five (5) days prior to consideration of its adoption, and again within fifteen (15) days following adoption, indicating the votes cast. This ordinance will become effective upon approval of these amendments to the City's certified Local Coastal Program by the California Coastal Commission or December 31, 2004, whichever is later.

EXHIBIT NO. 1

**ENCINITAS LCPA #3-03
COMMUNITY CHARACTER**

**CITY OF ENCINITAS
RESOLUTION**



California Coastal Commission

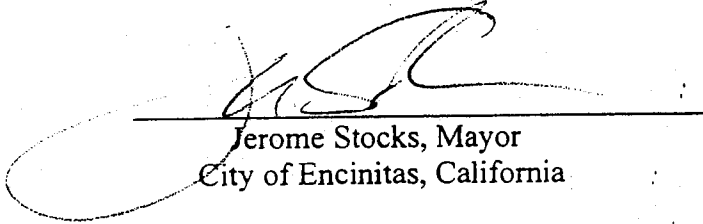
PASSED AND ADOPTED this 12th day of November, 2003 by the following vote, to wit:

AYES: Bond, Dalager, Guerin, Houlihan, Stocks.

NAYS: None.

ABSTAIN: None.

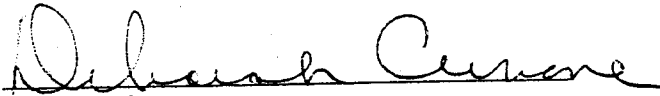
ABSENT: None.



Jerome Stocks, Mayor
City of Encinitas, California

ATTESTATION AND CERTIFICATION:

I hereby certify that this is a true and correct copy of Ordinance 2003-10 which has been published pursuant o law.



Deborah Cervone
City Clerk/Director of Legislative Services

Attachment "A" to Ordinance 2003-10

The Attachment is divided into the following topics for amendment in the Encinitas Municipal Code:

1. Lighting Standards
2. Lot Coverage
3. Panhandle Lots
4. Corner Lots
5. Garage Location and Enclosed Parking Requirements
6. Subdivision Design
7. Floor Area Ratio (FAR)
8. Grading
9. EMC Chapter 23.08 - Design Review Regulations
10. Building Height

1. Lighting Standards

Chapter 30.04 – Definitions

FOOT-CANDLE shall mean a quantitative unit measuring the amount of light cast onto a given point, measured as one lumen per square foot.

FULLY SHIELDED shall mean an outdoor light fixture shielded or constructed so that light rays emitted by the fixture are projected below the horizontal plane passing through the lowest point on the fixture from which light is emitted.

LAMP shall mean a light bulb.

LIGHT SOURCE shall mean the element of a lighting fixture that is the point of origin of the lumens emitted by the fixture.

LUMEN shall mean a quantitative unit measuring the amount of light equal to the amount of light emitted in a unit solid angle by a uniform point source of one candle intensity.

OUTDOOR LIGHT FIXTURE shall mean an outdoor artificial illuminating device, outdoor fixture, lamp, and other similar devices, permanently installed or portable, used for flood lighting, general illumination or advertisement.

Section 30.40.010H

H. OUTDOOR LIGHTING REGULATIONS

1. For what is known as the Olivenhain Community area, the following standards shall apply:
 - a. The purpose of these regulations is to preserve the quality of the night sky by minimizing light and glare nuisances to adjacent properties.
 - b. The provision of this Section shall apply to what is known as the Olivenhain Community.
 - c. Outdoor Recreational Facility shall mean any public or private facility providing recreational opportunities including, but not limited to, tennis courts, equestrian uses, public and private parks where lighting is necessary for night time use of the facility.
 - d. The illumination of outdoor recreational facilities shall be prohibited.

Section 30.40.010I Performance Standards

- I. Residential Lighting Standards. The following standards shall apply to all residential and commercial zones:
1. All light sources shall be shielded in such a manner that the light is directed away from streets or adjoining properties.
 2. All residential zones and commercial uses adjoining residential zones shall not have a measured sustained light standard in excess of one-half (0.5) foot-candle at the property line. Outdoor lighting fixtures shall be fully shielded so as to cause all emitted sustained light to be projected below an imaginary horizontal plane passing through the lowest point of the luminary, lamp or light source used in the fixture. The luminary, lamp, or light source shall not be directly visible from any adjoining residential property. The shielding requirement shall not apply to decorative landscape lighting fixtures of 50 watts or less, holiday lighting, fossil fuel lighting, or lighting within front yard areas intended to illuminate pedestrian and vehicular entries, landscaping/architectural accents, and the like. Skylights, greenhouses, and agricultural production activities are exempt. Public recreational facilities are not subject to the performance standards, but shall be reviewed through the use permit process for minimizing lighting impacts to surrounding properties, and may be subject to restrictions on operating hours and/or the number and type of lighting fixtures.
 3. All interior commercial lots shall not have a measured sustained light standard in excess of one (1:0) foot-candle at the property line. Outdoor lighting fixtures shall be fully shielded so as to cause all emitted sustained light to be projected below an imaginary horizontal plane passing through the lowest point of the luminary, lamp or light source used in the fixture. Skylights, greenhouses, and agricultural production activities are exempt. Permitted lighting structures and fixtures in place as of December 31, 2004 associated with commercial uses shall be considered legal nonconforming pursuant to Chapter 30.76 of the Municipal Code, and as such may remain in place as long as they are not altered in any matter increasing light trespass onto adjoining properties.
 4. Street lighting is not subject to the performance standards, but shall be evaluated through proposed subdivision/projects and street design projects consistent with the modification process to street standards in order to preserve dark sky character of the community, while still maintaining the necessary lighting for safety purposes.

2. Lot Coverage

Chapter 30.04 – Definitions

LOT COVERAGE is that percentage of a lot, exclusive of the ultimate street right-of-way, which when viewed directly from above, would be covered by the floor area of the building or buildings. Minor accessory structures such as patio covers, porches, open exterior decks and balconies, roof overhangs, pools, spas, freestanding open air gazebos and patios/decks shall not count toward the lot coverage requirement.

3. Panhandle Lots

Chapter 30.04 – Definitions

LOT LINE, PANHANDLE shall mean a lot where a portion of the lot is less than 35 feet wide for a distance of 50 feet or more and which is designed or used to provide pedestrian or vehicle access to the part of the lot which is designed for use as a building site. In the case of an irregularly shaped lot, the authorized agency shall have the authority to determine whether a lot shall be considered a panhandle lot for purposes of applying the zoning standard.

LOT LINE, REAR shall mean a lot line not abutting a street and which is opposite and most distant from the front lot line. For panhandle shaped lots and lots at the terminus of a private road or easement the Director of Planning and Building shall determine which property line shall be the rear lot line for purposes of compliance with yard and setback provisions of this ordinance. This would typically be the shortest lot line most distant from the terminus of the panhandle or private road easement. The Director shall consider the existing envelope of development onsite when making such a determination, and, where no clear indication is present from existing development or historic building records, the Director shall have discretion to designate the rear lot line for a panhandle lot. In the case of an irregular-shaped lot, a line within the lot, parallel to and at a maximum distance from the front lot line, having a length of not less than ten (10) feet shall be considered the rear lot line for purposes of measuring the rear setback. A lot, which is bounded on all sides by streets, may have no rear lot line.

Chapter 24.12.030 – Subdivision Design Standards

6. Panhandle-shaped lots and easement access lots shall be permitted in subdivisions when consistent with the existing pattern of development within the area, as determined by the authorized agency.

7. Panhandle-shaped and easement access lots, if permitted, shall have the minimum panhandle/easement widths specified by the Zoning Ordinance.

5. **Garage Location and Enclosed Parking Requirements**

Section 30.54.030 Schedule of required Off-Street Parking

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

Use	Parking Spaces Required
Residential Dwellings, single-family or two family (attached or detached)	2 enclosed parking spaces for each unit up to 2500 square feet of floor area. 3 spaces for dwelling units in excess of 2500 square feet. Any parking space over 2 spaces may be enclosed or unenclosed.

Section 30.16.010B12

12. For single family residential zones, the following development standards shall apply:
- a. Front yard setbacks within subdivisions of 5 or more lots should vary in a manner consistent with the pattern of development in the surrounding neighborhood and consistent with the provisions of the underlying zoning.
 - b. Garage placement/design standards for single-family subdivisions:
 - (1) Garages shall be located to minimize or reduce their visual presence, to the extent practical.
 - (2) In RR to R-3 Zones, the placement of garages on a single-family lot shall vary, e.g., (a) located in the rear of the lot but accessed from the front, (b) located in the front portion of the lot with either direct access or side loaded, or (c) accessed from the alley or side street, or combination. In R-5 to RS-11 Zones, the placement of garages on the lot is encouraged to vary, to the extent practical.
 - (3) To the extent practical, access to the garage shall be from the alley or side street, if available.
 - c. For a new tract front yard setbacks may be reduced up to 25 percent on a maximum of one-half of the dwelling units within a residential tract; however, no street setbacks shall be less than twenty (20) feet to the garage for front-entry garages, and fifteen (15) feet to the garage for side-entry garages.

6. Subdivision Design

Section 30.16.010B12

12. For single family residential zones, the following development standards shall apply:
- a. Front yard setbacks within subdivisions of 5 or more lots should vary in a manner consistent with the pattern of development in the surrounding neighborhood and consistent with the provisions of the underlying zoning.
 - b. Garage placement/design standards for single-family subdivisions:
 - (1) Garages shall be located to minimize or reduce their visual presence, to the extent practical.
 - (2) In RR to R-3 Zones, the placement of garages on a single-family lot shall vary, e.g., (a) located in the rear of the lot but accessed from the front, (b) located in the front portion of the lot with either direct access or side loaded, or (c) accessed from the alley or side street, or combination. In R-5 to RS-11 Zones, the placement of garages on the lot is encouraged to vary, to the extent practical.
 - (3) To the extent practical, access to the garage shall be from the alley or side street, if available.
 - c. For a new tract front yard setbacks may be reduced up to 25 percent on a maximum of one-half of the dwelling units within a residential tract; however, no street setbacks shall be less than twenty (20) feet to the garage for front-entry garages, and fifteen (15) feet to the garage for side-entry garages.

Section 30.16.010C

- C. SINGLE-FAMILY RESIDENTIAL ZONES (RR-2/R-3/R-5/R-8/RS-11). In the single-family residential zones, the following development standards shall apply in addition to A & B of this Section:
- 1. Residences shall be oriented with the rear of the residence toward collector and larger streets where possible, consistent with the pattern of development in the neighborhood.
 - 2. Walkways connecting with City sidewalk/trail systems shall where practical be provided in new residential developments.

3. Driveway or other concrete or asphalt concrete areas available for parking shall not exceed fifty (50) percent where practical of the required front yard area.
4. The front yard setback for R-11 zones may be reduced to 15 feet provided that the subject parcel is substandard in either size or the depth of the lot, and an alley abuts the rear of the parcel where the required parking is to be located. No paving (impervious surfaces) shall be permitted in the front yard other than a pedestrian sidewalk to the front entry with the rest of the front yard being landscaped when the front setback is so reduced.
5. To the extent practical, access to the garage shall be from the alley or side street, if available.

30.16.010 (B2)

2. Net acreage is the slope adjusted gross acreage not including acreage of the flood plains, beaches, permanent bodies of water, significant wetlands, major power transmission easements, railroad track beds, existing and future right-of-way and easements for public or private streets/roads, and the area contained within the panhandle portion of a panhandle lot in a zone where the minimum required lot size is 10,000 square feet or less. The portion of access roadways or easements internal to a project that are used exclusively to provide access to rear-loaded garages are not required to be deducted from gross acreage. Driveways providing access to dwelling unit(s) on one lot are not deducted from gross acreage. Environmental constraints may reduce density.

Section 24.12.030 – Subdivision Design Requirements

A. Purpose and Intent. The design of the subdivision (tentative maps and tentative parcel maps) is to reflect the existing pattern of development and be consistent with the character of the surrounding community, to the extent practical, while being consistent with density provisions of the underlying zone of the subdivision.

B. Subdivision Design Standards. The following design standards shall apply to all subdivisions (tentative maps and tentative parcel maps).

1. No lot shall include land in more than a single tax code area unless provisions are made with the County assessor to modify the tax code area for the lot. (Ord. 92-39)

2. Every lot shall contain the minimum lot area and conform to the minimum lot dimensions and design standards specified in Chapter 30 of the Municipal Code (the Zoning Ordinance) for the zone in which said lot is located at the time the final map is submitted to the authorized agency for its approval.
3. Every lot shall front on a dedicated street, a street offered for dedication, or a private road easement, as required by this Title or the conditions of approval of the tentative map.
4. Whenever practicable, side and rear lot lines shall be located along the top of man-made slopes instead of at the toe or at intermediate locations on said slopes.
5. Panhandle-shaped lots and easement access lots shall be permitted to promote better subdivision design or in subdivisions when consistent with the existing pattern of development within the area, as determined by the authorized agency.
6. Panhandle-shaped and easement access lots, if permitted, shall have the minimum panhandle/easement widths specified by the Municipal Code.
7. Through lots shall not be allowed unless vehicular access rights are relinquished to one of the abutting streets.
8. Whenever practicable, subdivision of residential property abutting streets shown on the Circulation Element of the City of Encinitas General Plan, railroads, transmission lines and open flood control channels shall be designed so that the lots do not face on such rights-of-way.
9. Lot design shall allow for residences to be oriented with the rear of the residence toward collector and larger streets where possible, consistent with the pattern of development in the neighborhood.
10. Walkways connecting with City sidewalk/trail systems shall, where practical, be provided in new residential developments.
11. If reflected in the existing pattern of the surrounding community, a variety of lot sizes are encouraged within the density provisions of the underlying zone.
12. The lot and street design shall follow the existing natural contour of the property, to the extent practicable.

Section 30.16.020 B5 Planned Residential Developments

5. Open Space. A PRD shall contain developed and undeveloped open space areas. Developed open space areas are intended to provide recreational facilities for either the common use and enjoyment of the residents and guests of the PRD, or public use, while undeveloped open space is intended to preserve the site's natural features. Land occupied by buildings, streets, driveways, vehicle parking spaces and/or storage, and trash and recycling storage may not be counted toward meeting this requirement.

- a. Amount of Required Open Space. A minimum of 40% of the site area shall consist of open space for all portions of a PRD.
- b. Developed (Recreational) Open Space. From the required open space as determined in (a) above, developed open space shall be provided at a minimum ratio of three hundred sixty-five (365) square feet for each single family unit, and two hundred sixty (260) square feet for each multi-family unit. This requirement may be satisfied with active and/or passive recreational facilities including, but not limited to the following: spas, saunas, swimming pools, cabanas, recreation rooms, ball courts, athletic fields, barbecue areas, "tot lots", and flat grassy play areas with an average slope of less than fifteen (15) percent.

As provided in Section 23.98.050(E), the developed (recreational) open space may be credited toward the City requirements for parkland dedication.

- c. Undeveloped Open Space. The remainder of the required open space may be either improved or left in its native state to preserve significant natural features such as steep slopes, sensitive biological habitat, rock outcroppings, water courses, drainage areas, and the like. Areas devoted to natural or improved flood control channels and those areas encumbered by flood control or drainage easements, as well as riding and hiking trails designated on a community or sub-regional plan map, may be counted toward satisfying this portion of the open space requirement.

That portion of the required open space the City deems worthy of preserving in its native state shall be protected by a recorded open space easement (or other instrument satisfactory to the City) to which the City is a part.

- d. To increase its functionality, open space areas shall have a minimum dimension of at least ten (10) feet in width, and should be linked together to the extent feasible.

- e. All parts of the required developed (recreational) open space shall be reserved for use in common by the residents and guests of the PRD. Alternatively, an applicant may elect to dedicate the open space to the City for public use, if such dedication is acceptable to the City. Areas designated for permanent open space shall be reserved for the use and enjoyment of the residents and their guests in a manner, which makes the City a party to and entitled to enforce the reservation. If the developed open space is dedicated to the City for public use, adequate provisions for public use shall be made to the satisfaction of the Planning and Building Department and Parks Department. This is not to exclude public use of riding and hiking trails located within undeveloped open space as identified in subsection 5c above.
- f. Phasing. If the PRD is to be developed in phases, the PRD plan shall coordinate improvement of the open space, construction of buildings, and other improvements so that each development stage achieves a proportionate share of the total open space and recreational amenities.

7. Floor Area Ratio

Chapter 30.04 – Definitions

BASEMENT shall mean a level of a building partly or wholly underground where more than one-half (1/2) of its perimeter is less than or equal to 4' above the lower of natural or finished grade as defined in Section 30.16.010 B7 of the Municipal Code.

FLOOR AREA shall mean the area included within the surrounding exterior walls of a building or portion thereof, exclusive of vent shafts, courts and architectural projections not utilized as livable area.

FLOOR/AREA RATIO is the numerical value, expressed as a decimal fraction, obtained by dividing the total floor area by the gross lot area of the lot or lots on which one or more structures are located.

For purposes of determining FAR, the following floor area is excluded:

- A. Up to 400 square feet per dwelling unit for a garage or carport.
- B. Floor area covered by a roof of open construction, such as a trellis, sunscreen or lattice work, where the total square footage of the open spaces of the covering is fifty percent (50%) or more of the total square footage of the floor area below.
- C. Floor area whose walls are of open construction, such as a trellis, sunscreen or lattice work, or partial wall where fifty percent (50%) or more of the total square footage of the vertical planes of the perimeter of the bulk floor area is open. Columns to support structure above shall not count toward this 50%, such that typical open building recess areas and patios are not counted as floor area.
- D. Floor area which has less than five feet of headroom between the floor and the ceiling.
- E. That portion of the floor in the basement.
- F. Floor area used solely for the capture, distribution or storage of solar energy.

STORY shall mean that portion of a building included between the surface of any floor and the surface of the floor next above it, or if there be no floor above it, then the space between such floor and the ceiling next above it.

8. Grading

Section 23.24.490 - Rounding and Blending of Slopes.

Grading plans shall be reviewed to insure compliance with all of the following:

- A. All slopes greater than 10 feet high shall be rounded into the existing terrain to create an undulated condition and to produce a naturally appearing contoured transition from slope face to natural ground and abutting cut or fill surfaces where conditions permit.
- B. In order to avoid a man-made appearance and avoid straight, uniform slopes, every effort shall be made to construct slopes that appear natural in character. In order to accomplish this, the steepness of slopes should vary and slope faces should undulate in an effort to produce a more natural appearing slope and avoid sharp, angular changes in the direction of slope faces.
- C. Grading shall be designed to retain natural topography and vegetation and cause the least amount of disturbance while allowing development consistent with the density provisions of the underlying zone of the subdivision.
- D. Uniform "stair-stepping" of building pads shall be avoided where feasible. Diversity in building and subdivision design solutions, including but not limited to pad shape and location/offsets and the shape of slopes, which add to the variety of hillside development, shall be encouraged.
- E. Whenever possible, use of existing building sites and pads shall be encouraged. Proposed development shall be designed to conform to the existing site conditions and terrain where feasible.
- F. Use of engineered vertical walls, including keystone and other block or masonry walls, shall be avoided where possible and minimized where necessary in order to avoid visual impact. Consideration should be given to rounding of walls and use of offset walls softened with landscape treatment. This provision is not intended to apply to sea walls regulated pursuant to Chapter 30.34 of the Municipal Code.

Section 30.34.030 B2. - Inland/Hillside Bluff Overlay Zone

- 2. Where development is proposed on slopes of greater than 25 percent grade, the following standards shall apply:
 - a. Slopes of greater than 25 percent grade shall be preserved in their natural state. Encroachment into slope areas, as specified below, shall be allowed when it is found that there is no feasible alternative siting or design which eliminates or substantially

reduces the need for such construction or grading, and it has been found that the bulk and scale of the proposed structure has been minimized to the greatest extent feasible commensurate with preserving the physical slope characteristics of the site. An application proposing encroachment into slopes greater than 25% shall include, at a minimum, details as to the location of existing and future improvements, as well as the proposed building envelope for any future improvements, in order to enable the Planning Commission to assess bulk and scale. Complete architectural drawings are preferred. (Within the Coastal Zone and for purposes of this section, encroachment shall be defined as any area of greater than 25 percent slope in which the natural landform is altered by grading, construction, placement of structures or materials, removal of native vegetation, including clear-cutting for brush management purposes, or other operations which would render the area incapable of supporting native vegetation or being used as wildlife habitat due to the displacement required for the proposed building, accessory structures, paving or native vegetation clearance. Said encroachment shall be approved by the authorized agency and shall be a discretionary action based on the application).

9. Design Review Regulations

CHAPTER 23.08

DESIGN REVIEW

23.08.010 Purpose.

A. This Chapter is adopted pursuant to, and to implement provisions of, the Encinitas General Plan and certified Local Coastal Program Land Use Plan (LUP). It is the purpose of this Chapter to protect the natural beauty of the City of Encinitas as well as create an attractive and functional man-made environment. These are both essential assets for the welfare of the City's residents and visitors. It is a further purpose of this Chapter to accomplish the following: (Ord. 94-06)

1. Determine compliance of development projects with the provisions of this Chapter and the Design Review Guidelines of the City of Encinitas as well as other regulations regarding the physical development of the City.
2. Assure a high degree of aesthetic and functional excellence in the physical development of the City of Encinitas through the prudent and timely review of development projects.
3. Encourage the preservation of the distinct and individual character of the various neighborhoods and communities through the prudent administration of this Chapter and the Design Review Guidelines.

B. For purposes of this Chapter "Director" shall mean "Director of Planning and Building".

23.08.015 Amendment. An amendment to any portion of this Chapter constitutes a proposed amendment to the implementing regulations of the City's Local Coastal Program (LCP). A proposed LCP amendment shall comply in form, content and procedure with the provisions of Chapter 30.82 of the Municipal Code. An amendment to this Chapter shall not become effective until certified by the Coastal Commission pursuant to California Public Resources Code Section 30514. (Ord. 94-06)

23.08.020 Prohibitions.

A. Without first having obtained a Design Review Permit, it shall be unlawful for any person to construct, grade for, relocate, alter, remodel or otherwise modify the exterior of any structure, when such activity is required by this Chapter to have a Design Review Permit.

B. No building permit, grading permit or other development permits shall be issued relating to a structure or site development for which a Design Review Permit is required until the Design Review Permit is obtained.

23.08.030 General Scope and Exemptions.

A. All buildings, grading, landscaping or construction projects, whether they require any other City permit or not, are subject to design review unless exempted by this Chapter.

B. When in compliance with all other City ordinances and regulations, the following projects are exempted from the other provisions of this Chapter:

1. Walls and fences of 6 feet or less in height. (Ord. 90-26)
2. Construction underground, which will not leave any significant, permanent marks on the surface after completion. Utility boxes, pipes and poles shall be considered "significant permanent marks", unless 48 inches in height or less and appropriately screened and color compatible with buildings or landscaping. Street furniture shall be exempt unless part of a development proposal or City streetscape project requiring discretionary approval.
3. Maintenance work on buildings, landscaping or grounds which does not significantly alter the appearance or function of the building, landscaping or grounds;
4. Minor exterior alterations to buildings which do not result in an increase in floor area of more than 20% or 500 sq. ft (whichever is less) and are substantially consistent with the existing building design and character. This includes commercial building awnings which are consistent with established design and color criteria for the commercial district or center; (Ord. 93-19)
5. Signs which are exempted from the provisions of the Municipal Code change of message/copy, and signs attached to a building for single uses or within a commercial center with 6 or fewer tenants that are compatible with other signs in the commercial district; (Ord. 93-19)
6. Interior remodeling work on any existing building. (Ord 90-26)
7. Custom Home exemption. The construction or landscaping of a project consisting of not more than one single-family detached dwelling submitted for plan check on the same application which is substantially dissimilar in design to any other proposed dwelling within the immediate neighborhood. A dissimilar design shall include different building footprints, orientation and elevations; architectural features; and exterior materials. (Ord. 92-13)

8. Accessory buildings and additions for existing attached and detached single family homes and duplexes on a separate legal lot provided that it is substantially consistent with the existing building, color, design and character; (Ord. 9026)
9. All new or replacement landscaping unless part of a development proposal requiring design review. (Ord 90-26)
10. Swimming pools, spas, patio covers, lath houses, decks, and balconies provided that zoning standards are met. (Ord. 90-26)
11. Temporary facilities as defined in the Uniform Building Code.
12. Tennis courts (including permitted fencing) and similar recreational facilities. (Ord. 93-19)
13. Satellite antennas adequately screened pursuant to Section 23.08.090 of the Municipal code. (Ord. 93-19)
14. Grading provided it is consistent with Municipal Code Section 23.24.490, Rounding and Blending of Slopes, consistent with the topography of adjacent property, and the proposed pad elevation is not more than 4' higher or 8' lower than the natural or existing grade unless it is determined by the Director that such slopes will not have significant visibility from adjoining properties or the public right-of-way. New grading associated with public or private streets shall be subject to such review. Design review for graded slopes shall not subject other aspects of the project otherwise exempt from design review (e.g. a custom single-family home) to design review. Grading solely for basements is exempt.

23.08.040 Authority to Grant Permit.

- A. The Director has authority to render a final determination on applications for a Design Review Permit for the following categories of projects:
1. Fences, walls, and landscaping projects not exempted by this chapter. (Ord. 90-26)
 2. Outdoor storage facilities of less than one thousand (1,000) square feet in area. (Ord 93-19)
 3. Agricultural buildings which are the primary use of the parcel two-thousand (2,000) square feet or less; (Ord. 93-19).

4. Exterior additions to existing buildings and structures where the proposed project will involve less than five-hundred (500) square feet in area and which are otherwise not exempted by this chapter. (Ord. 93-19)
5. Signs and awnings which are placed under the Design Review jurisdiction of the Director by other provisions of this Code (Chapter 30.60) and not otherwise exempted by this chapter. Said review shall be without notice. (Ord. 93-19).
6. Satellite antennas. However satellite antennas which are visually screened, per section 23.08.090, shall be exempt from Design Review.
7. Grading unless otherwise exempted by Section 23.08.030B14.

B. The Planning Commission is authorized to render a final determination on an application for a Design Review Permit for a project that does not contain a component which requires a final determination by the City Council. (Ord. 96-07)

1. That is outside the jurisdiction of the Director;
2. That has one or more components that require a final determination by the Planning Commission and does not contain any component, which requires a final determination by the City Council.

C. Upon receipt of an advisory recommendation from the Planning Commission, the City Council is authorized to render a final determination on an application for Design Review Permit for a project which contains one or more components that require a final determination by the City Council. (Ord. 96-07)

23.08.050 Notice. When the provisions of this Chapter require notice, notice shall be made in accordance with Chapter 30.01 as modified by the following: (Ord. 92-13)

A. If the Director is authorized to render a final determination, the notice shall indicate the time prior to which written objections must be filed and notice shall be made to adjacent property owners in accordance with Chapter 30.01 as modified by this section. (Ord. 92-13)

B. An application for a Design Review Permit for a project which requires an application for a tentative map, zone change, conditional use permit or any other planning permit, shall be noticed as part of the noticing procedures required by this Code for such other applications.

C. If the date, time and place of a subsequent hearing or a continued hearing is announced at the noticed time and place, no additional notice is required for the second or

continued hearing, unless required by law. If no such announcement is made at the noticed time and place, the second or continued hearing shall be noticed in accordance with Chapter 30.01 as modified by this section. (Ord. 92-13)

23.08.060 Procedure.

- A. The owner, or the owner's authorized agent, of the real property on which the construction activity is proposed shall make application for a Design Review Permit to the Director on a form approved by the Director. The application must be accompanied by a filing fee in an amount set, from time to time, by resolution of the City Council, together with whatever additional plans and information the Director deems necessary to accomplish the purposes of this Chapter. Application shall include the necessary sets of plans, maps, and displays in sufficient detail to explain the proposed project's compliance with the regulations contained in this Chapter. (Ord. 92-13)
- B. Any application for a new nonresidential project in excess of two-thousand (2,000) square feet of building area and any residential project resulting in five (5) or more units, shall submit a traffic study to the satisfaction of the Public Works Director. The traffic study shall be completed by a City approved traffic engineer. (Ord. 89-17)
- C. When the application has been received and properly noticed, the Director shall render a final determination or the Director shall place the matter on the agenda of the Planning Commission. (Ord. 96-07)
- D. Following the public hearing, the Planning Commission may, by majority vote, approve, disapprove in accordance with the provisions of this Chapter or conditionally approve or continue the application for Design Review Permit. A maximum of two hearings may be held, but additional hearings can be held if requested or agreed to by the applicant.
- E. If the Planning Commission is required to make an advisory recommendation to the City Council or render a final determination on the application for Design Review Permit, the Director shall submit the matter to the Planning Commission at a noticed, public hearing.
- F. Upon receipt of the advisory recommendations from the Planning Commission, the Director shall set the application for Design Review Permit as a noticed, public hearing for the next available meeting of the City Council. Following the public hearing, the City Council may, by majority vote, approve, disapprove in accordance with the provisions of this Chapter or conditionally approve the application for Design Review Permit.

23.08.070 Final Determination.

- A. A final determination by the Planning Commission or the City Council on the application for a Design Review Permit shall be made by written resolution, setting forth the facts which support the action. A final determination by the Director for design review shall be by written notice of determination setting forth the facts to support the action. (Ord. 96-07)
- B. An application for Design Review Permit shall be approved unless findings of fact are made based upon the information presented in the application or during the deliberations which support one or more of the regulatory conclusions contained in this Chapter. The decision maker shall elaborate on each of the regulatory conclusions made in support of a denial in sufficient detail to explain as clearly as possible the reasons for the denial. (Ord. 90-26)
- C. The final determination shall be mailed by first class mail or delivered in person to the applicant and shall become final fifteen (15) calendar days after the date of the final determination unless an *appeal is filed. (*See Chapter 1.12.010 through 1.12.060).

23.08.080 Regulatory Conclusions Generally.

- A. The project design is inconsistent with the General Plan, a Specific Plan or the provisions of this Code.
- B. The project design is substantially inconsistent with the Design Review Guidelines.
- C. The project would adversely affect the health, safety, or general welfare of the community.
- D. The project would tend to cause the surrounding neighborhood to depreciate materially in appearance or value.

23.08.100 Guidelines. The City Council shall adopt by resolution Design Review Guidelines setting forth the policies and criteria for this Chapter. The person or body authorized to render a final determination shall comply with these Guidelines when reviewing applications for permits and shall ensure that the spirit and intent of the Guidelines are upheld in all design review actions. The City Council may amend the Design Review Guidelines by resolution to keep the Guidelines in compliance with the latest City policies.

23.08.140 Conformance with Design Review Permit.

- A. Prior to the issuance of a building permit or any other permit required for the construction of a project for which a Design Review Permit has been issued, the

Director shall determine whether the plans submitted for such construction permit are in substantial conformance with the Design Review Permit.

B. The Director shall find project plans in substantial conformance if:

1. No project condition is changed or deleted;
2. No feature, facility or amenity is deleted or substantially altered which had been considered essential to the project's quality, safety or function by the decision making body;
3. The area of any residential floor plan or any non-residential building is not decreased or increased by more than five percent (5%);
4. No additional lots or dwelling units are added;
5. No private or public open space is reduced in area or in its potential for use and enjoyment;
6. The shape and bulk of structures, exterior building materials, landscaping, parking and access are substantially in conformance with the spirit and intent of the Design Review decision;
7. The grading plan will not increase or decrease the final grade on any part of the site by more than three (3) feet over or under the plan approved by the Design Review decision, unless the Director finds that (1) the design is substantially altered by the grading change, (2) the Design Review Approval specifically prohibits variation to the elevation of the pads, or (3) the change in pad elevation impacts surrounding views and/or substantially increases the bulk and mass of a building; and
8. No significant changes are made which, in the opinion of the Director, should be reviewed by the body which approved the original Design Review application.

C. A final determination made under this Section shall be effective fifteen (15) calendar days thereafter, unless an *appeal is filed. The Planning Commission and City Council shall be notified of the final determination. If the determination is that the construction is in conformance, the proponent may proceed, at the proponent's own risk, during the appeal period. The proponent or any aggrieved person may appeal, or may apply for a modification of the Design Review Permit. (*See Chapter 1.12.010 through 1.12.060).

10. Building Height

Chapter 30.04 - Definitions

BASEMENT shall mean a level of a building partly or wholly underground where more than one-half (1/2) of its perimeter is less than or equal to 4' above the lower of natural or finished grade as defined in Section 30.16.010 B7 of the Municipal Code.

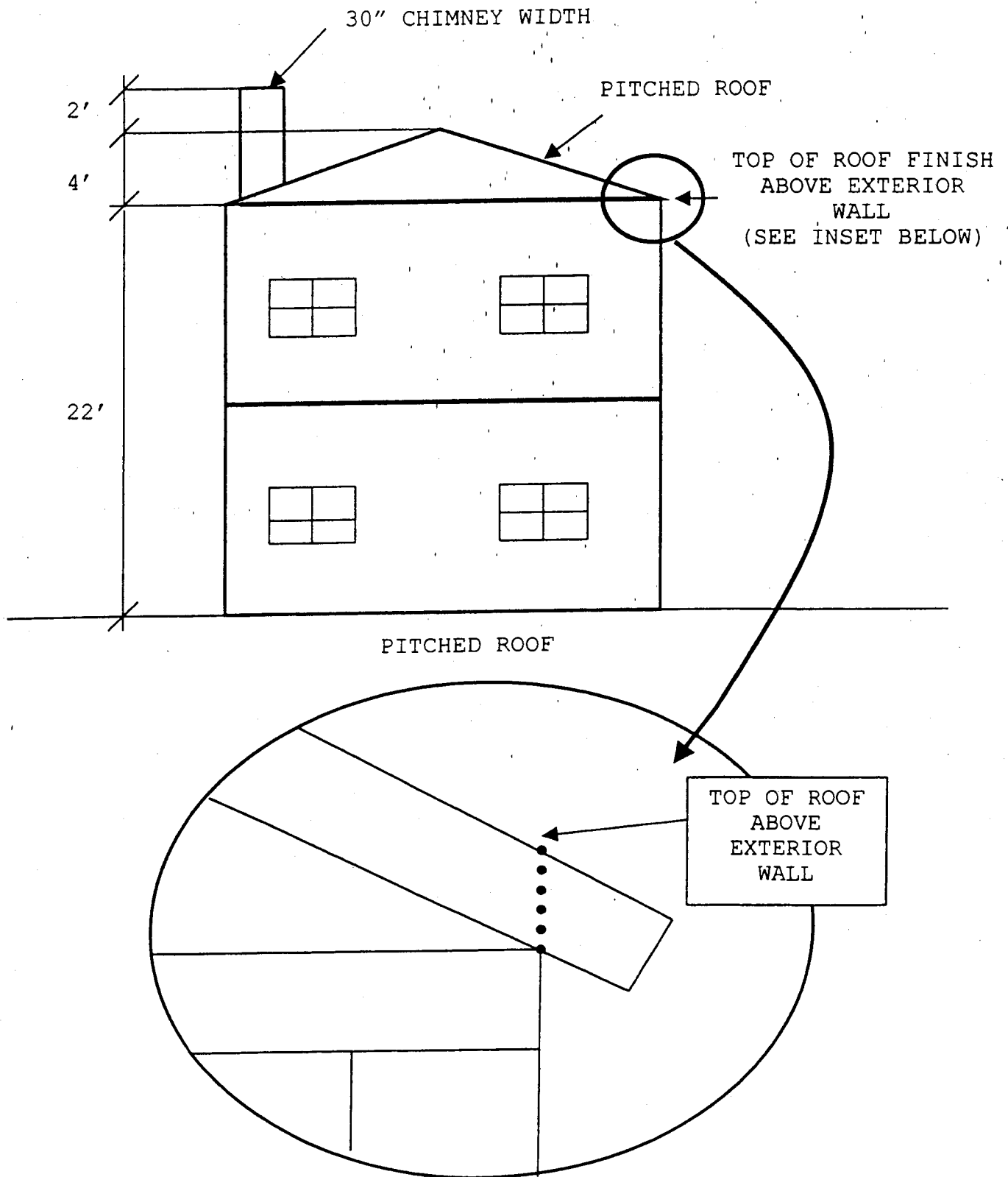
BUILDING HEIGHT shall mean the vertical distance from the lower of the natural or finished exterior grade adjacent to the structure, to the highest portion of the structure immediately above. When a basement element or underground structure exists or is proposed, height is measured from the finished grade (above the underground parking or basement element) provided the finished grade is at or below the previous natural grade, to the highest portion of the structure immediately above. (See section 30.16.010B7)

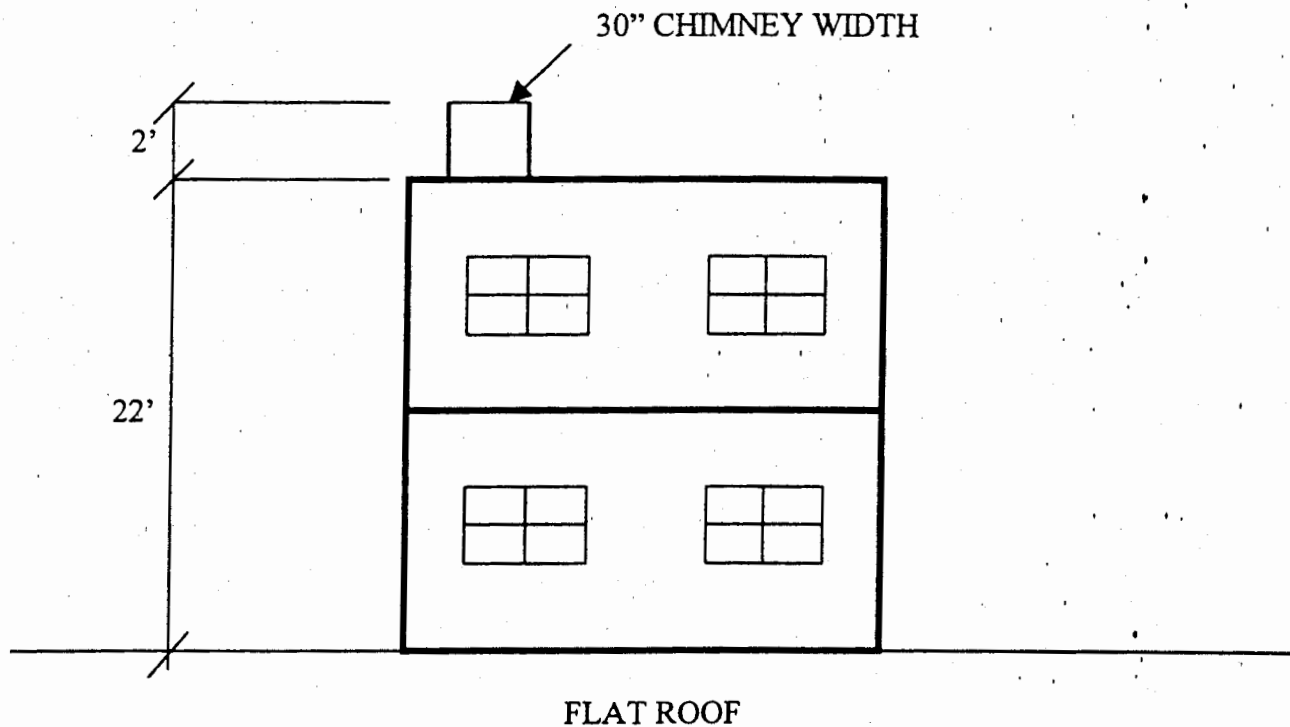
Chapter 30.16 - Residential Development Standards

30.16.010B7. The following standards shall apply to building height limits for residential buildings.

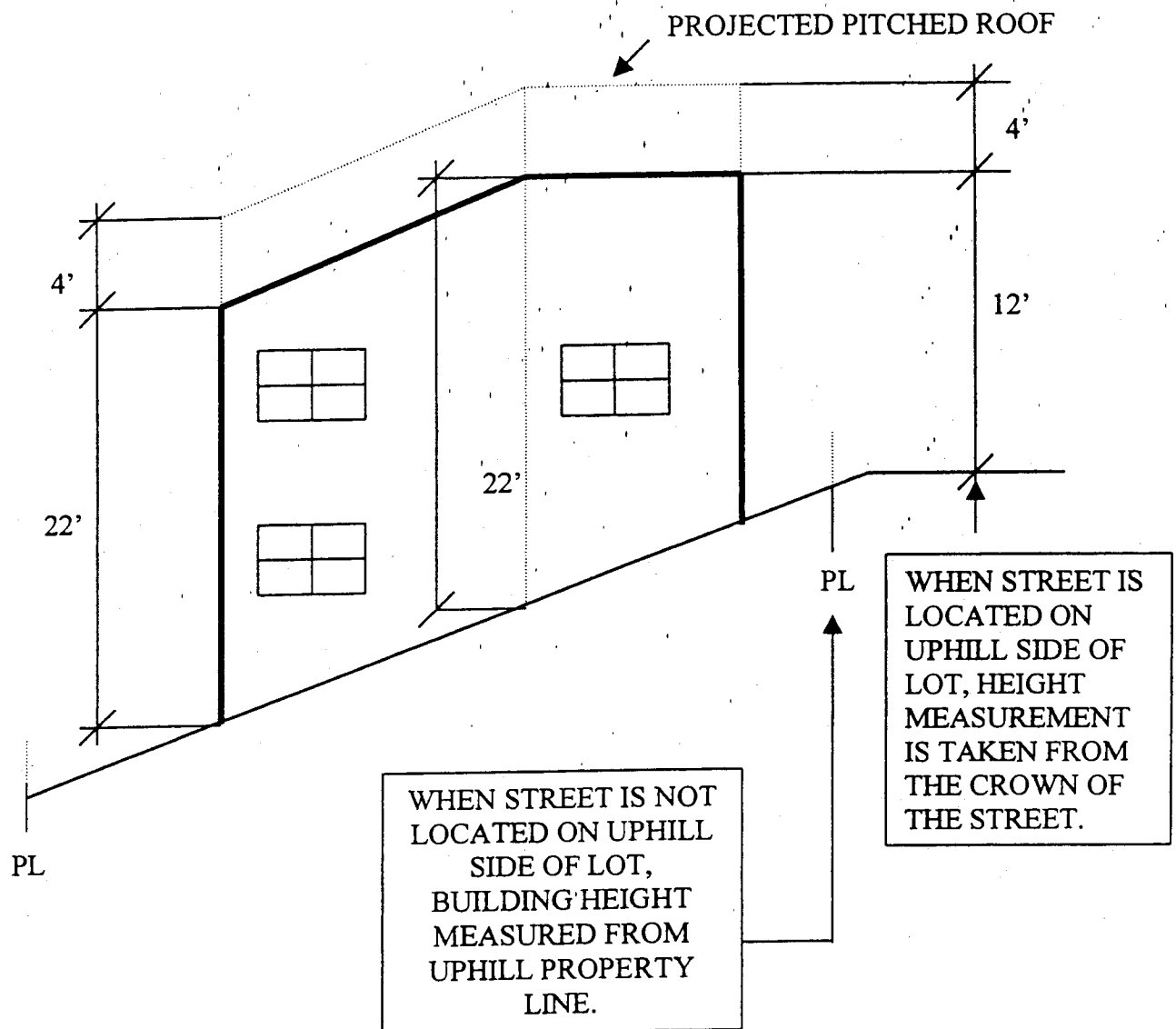
- a. The standard height limit for residential buildings shall be the lesser of two stories or the following height, all as measured to the top of a flat roof (or in the case of a pitched roof to the top of the roof immediately above the exterior plane of the wall below, including roofing material):
 - **26 feet** - RR to RR-1 zones citywide, RR through RR-2 in the Olivenhain Community.
 - **22 feet**- RR-2 (except Olivenhain Community) and higher zones, and substandard lots in the Olivenhain Community.

This height standard is subject to the following exceptions:





- (1) On lots in R-3 to R-25 zones with greater than ten (10) percent slope, the building height at the uphill side of the lot shall not exceed twelve (12) feet above the crown of the right of way. Where a street does not abut the uphill side of the sloped lot or a panhandle portion of a lot exists, this measurement shall be made at the property line located at the uphill side of the lot (excluding the panhandle of a lot) except as provided below. In no case shall the building exceed the applicable standard height limit at any point unless provided by the Code. Lot slope shall be determined in accordance with 30.16.010B7a2 below.

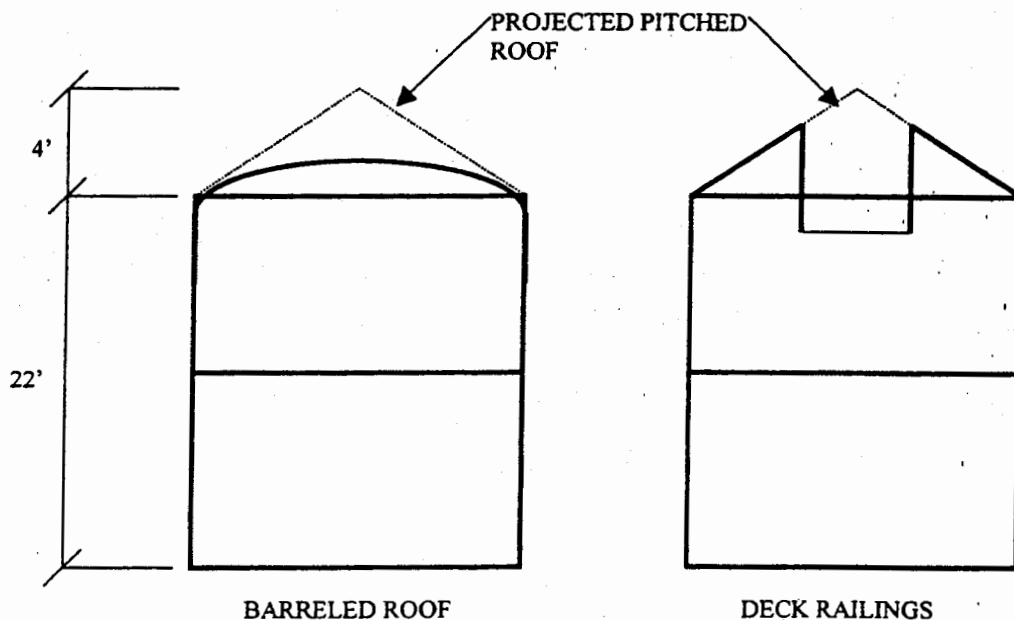


LOTS EXCEEDING 10 % SLOPE

- (2) In all zones, pitched roof elements such as towers (maximum diagonal dimension of 12 feet), hips, gables, and spires may extend no more than 4' above the permitted standard height limit. A roof that extends above the permitted standard height limit shall have a minimum 3:12 pitch. Barreled roofs and roof decks shall be permitted provided the design of the roof or deck railings do not extend beyond the envelope of a projected pitch roof as authorized by this Section. An additional maximum of a 2' projection (beyond the elements extending up to 4 ft. listed above) may be permitted by staff for chimneys, provided the width of the chimney does not exceed 30"

in any dimension, and building height plus projections do not exceed 30 feet in height.

- (3) Existing residential structures in the New Encinitas Community constructed at a height exceeding the aforementioned 22 ft./26 ft. height may be remodeled or added to at the height of the existing structure. The height of the existing structure shall be documented through a height survey or other manner found satisfactory by the Director, and the proposed addition/remodel must also maintain substantially the same design character as the existing structure, also to the satisfaction of the Director.



- b. All building permit applications for residential buildings shall provide building height information at a sufficient number of locations to substantiate that no point of the structure exceeds the standard building height limit, projections do not exceed the height restrictions, and the structure contains no more than two (2) stories.
- c. Natural grade shall be determined as follows:

Natural grade may be determined by the Planning and Building Director, or authorized agency when a discretionary application is being reviewed, with consideration given to:

- (1) The prevailing topography of the site which has existed for some period of time prior to review of a project under consideration. Documentation of the grade shown on photographs, historical topographic surveys and/or in

geotechnical reports prepared by certified professionals may be utilized on a case by case basis to determine the natural grade for purposes of development. The review shall take into account the vegetation on the site, the existing earth forms at the time of the review and the expectation that a reasonable person would consider the grade to be natural. Small earth form irregularities in topography, such as pits or mounds and similar features may be disregarded;

- (2) Grading or other modifications of earth forms which result in gaining an advantage for future development, shall not be considered natural grade when substantial evidence can reasonably document that the grading or modifications of earth forms have resulted in circumvention of the regulations in the Municipal Code

d. Finished pad elevation shall be determined as follows:

An approved subdivision map may establish the finished building pad elevation from which building height is measured with consideration given to on-site and surrounding uses and terrain. Where the property is located significantly below the level of existing streets (as determined by the Planning and Building Director) a pad elevation, from which the building height is measured, may be approved subject to a Use or Design Review Permit.

e. The slope of a lot shall be determined as follows:

- (1) For the purpose of determining whether a lot has a greater than 10% slope, the average lot slope within the building envelope (setback lines) must be established. The average lot slope is determined by calculating the total change in elevation from setback line to setback line (rise/run), and is established by placing three run-lines across the property and taking the combined average slope of the three lines. The lines are to follow the slope of the property, i.e. are to be placed at right angles to the contour lines.
- (2) For properties in which the run-lines parallel the property lines, two run-lines shall be placed along the peripheral setback lines, with the third line placed down the center of the property. For situations in which the slope crosses the property at an angle, the three run-lines shall be placed in such a way as to reveal average slope of the entire building envelope, to the satisfaction of the Director of Planning and Building. For properties of an irregular shape and topography, additional run-lines may be required on the site plan to the satisfaction of the Director of Planning and Building.
- (3) Bluff-top properties with one property line located at the lower portion of the bluff shall not be subject to a designation of greater than 10% lot slope,

unless, using the method of measurement described above, the portion of the property between the edge of bluff and the opposite setback line is determined to exceed 10%. A bluff exists when the vertical elevation between the top and the toe of the bluff is ten feet or more.

- (4) All building permit applications for new residential construction or additions on which slope determination is an issue must provide topographic information in order for lot slope to be determined. For properties with an average slope of 5% or less, and for properties on which the owner is not disputing the degree of slope being greater than 10%, the topographic information may be provided by a note on the site plan indicating percentage of slope. For lots sloping greater than 5% on which slope determination is an issue, topographic information based on a permanent assumed benchmark shall be depicted on the site plan. The topographic information can be provided by the property owner, contractor, architect, designer, land surveyor or civil engineer. If substantial evidence is presented which indicates that the topographic information is inaccurate, a certified survey shall be provided from a professional land surveyor or civil engineer.

CHAPTER 23.08DESIGN REVIEW23.08.010 Purpose.

A. This Chapter is adopted pursuant to, and to implement provisions of, the Encinitas General Plan and certified Local Coastal Program Land Use Plan (LUP). It is the purpose of this Chapter to protect the natural beauty of the City of Encinitas as well as create an attractive and functional man-made environment. These are both essential assets for the welfare of the City's residents and visitors. It is a further purpose of this Chapter to accomplish the following: (Ord. 94-06)

1. Determine compliance of development projects with the provisions of this Chapter and the Design Review Guidelines of the City of Encinitas as well as other regulations regarding the physical development of the City.
2. Assure a high degree of aesthetic and functional excellence in the physical development of the City of Encinitas through the prudent and timely review of development projects.
3. Encourage the preservation of the distinct and individual character of the various neighborhoods and communities, ~~previously known as Community Advisory Board Districts~~, through the prudent administration of this Chapter and the Design Review Guidelines. (Ord. 96-07)

B. For purposes of this Chapter "Director" shall mean "Director of Planning and Building". (Ord. 2003-08).

23.08.015 Amendment. An amendment to any portion of this Chapter constitutes a proposed amendment to the implementing regulations of the City's Local Coastal Program (LCP). A proposed LCP amendment shall comply in form, content and procedure with the provisions of Chapter 30.82 of the Municipal Code. An amendment to this Chapter shall not become effective until certified by the Coastal Commission pursuant to California Public Resources Code Section 30514. (Ord. 94-06)

23.08.020 Prohibitions.

A. Without first having obtained a Design Review Permit, it shall be unlawful for any person to construct, grade for, relocate, alter, remodel or otherwise modify the exterior of any structure, when such activity is required by this Chapter to have a Design Review Permit.

B. No building permit, grading permit or other development permits shall be issued relating to a structure or site development for which a Design Review Permit is required until the Design Review Permit is obtained.

23.08.030 General Scope and Exemptions.

A. All buildings, grading, landscaping or construction projects, whether they require any other City permit or not, are subject to design review unless exempted by this Chapter.

B. When in compliance with all other City ordinances and regulations, the following projects are exempted from the other provisions of this Chapter:

1. Walls and fences of 6 feet or less in height. (Ord. 90-26)
2. Construction underground, which will not leave any significant, permanent marks on the surface after completion. Utility boxes, pipes and poles shall be considered "significant permanent marks" unless 48 inches in height or less and appropriately screened and color compatible with buildings or landscaping. Street furniture shall be exempt unless part of a development proposal or City streetscape project requiring discretionary approval. (Ord. 90-26)
3. Maintenance work on buildings, landscaping or grounds which does not significantly alter the appearance or function of the building, landscaping or grounds;
4. Minor exterior alterations to buildings which do not result in an increase in floor area of more than 20% or 500 sq. ft (whichever is less) and are substantially consistent with the existing building design and character. This includes commercial building awnings which are consistent with established design and color criteria for the commercial district or center; (Ord. 93-19)

5. Signs which are exempted from the provisions of the Municipal Code change of message/copy , and signs attached to a building for single uses or within a commercial center with 6 or fewer tenants that are compatible with other signs in the commercial district; (Ord. 93-19)
6. Interior remodeling work on any existing building. (Ord 90-26)
7. Custom Home exemption. The construction or landscaping of a project consisting of not more than one single-family detached dwelling submitted for plan check on the same application which is substantially dissimilar in design to any other proposed dwelling within the immediate neighborhood. A dissimilar design shall include different building footprints, orientation and elevations; architectural features; and exterior materials. (Ord. 92-13)
8. Accessory buildings and additions for existing attached and detached single family homes and duplexes on a separate legal lot provided that it is substantially consistent with the existing building, color, design and character; (Ord. 9026)
9. All new or replacement landscaping unless part of a development proposal requiring design review; (Ord 90-26)
10. Swimming pools, spas, patio covers, lath houses, decks, and balconies provided that zoning standards are met.(Ord. 90-26)
11. Temporary facilities as defined in the Uniform Building Code.
12. Tennis courts (including permitted fencing) and similar recreational facilities. (Ord. 93-19)
13. ~~_____~~ 13. Satellite antennas adequately screened pursuant to Section 23.08.090 of the Municipal code.(Ord. 93-19)
14. Grading provided it is consistent with Municipal Code Section 23.24.490. Rounding and Blending of Slopes, consistent with the topography of adjacent property, and the proposed pad elevation is not more than 4' higher or 8' lower than the natural or existing grade unless it is determined by the Director that such slopes will not have significant visibility from adjoining properties or the public right-of-way. New grading associated with public or private streets shall be subject to such review. Design review for graded slopes shall not subject other aspects of the project

otherwise exempt from design review (e.g. a custom single-family home) to design review. Grading solely for basements is exempt.

06-96

23.08.040

23.08.040 Authority to Grant Permit.

A. The Director has authority to render a final determination on applications for a Design Review Permit for the following categories of projects:

1. Fences, walls and landscaping projects not exempted by this chapter. (Ord. 90-26)
2. Outdoor storage facilities of less than one-thousand (1,000) square feet in area. (Ord 93-19)
3. Agricultural buildings which are the primary use of the parcel two-thousand (2,000 square feet or less); (Ord. 93-19).
4. Exterior additions to existing buildings and structures where the proposed project will involve less than five-hundred (500) square feet in area and which are otherwise not exempted by this chapter. (Ord. 93-19)
- ~~5. Satellite antennas not otherwise exempted by this chapter. (Ord. 93-19)~~
- ~~5.~~ ~~6.~~ Signs and awnings which are placed under the Design Review jurisdiction of the Director by other provisions of this Code (Chapter 30.60) and not otherwise exempted by this chapter. Said review shall be without notice. (Ord. 93-19).
- ~~6.~~ ~~7.~~ Satellite antennas. However satellite antennas which are visually screened, per section 23.08.090, shall be exempt from Design Review.

7. Grading unless otherwise exempted by Section 23.08.030B14.

B. The Planning Commission is authorized to render a final determination on an application for a Design Review Permit for a project that does not contain a component which requires a final determination by the City Council. (Ord. 96-07)

1. That is outside the jurisdiction of the Director;

06-96

23.08.040/B2

2. That has one or more components that require a final determination by the Planning Commission and does not contain any component which requires a final determination by the City Council.

C. Upon receipt of an advisory recommendation from the Planning Commission, the City Council is authorized to render a final determination on an application for Design Review Permit for a project which contains one or more components that require a final determination by the City Council. (Ord. 96-07)

23.08.050 Notice. When notice is required by the provisions of this Chapter, notice shall be made in accordance with Chapter 30.01 as modified by the following: (Ord. 92-13)

A. If the Director is authorized to render a final determination, the notice shall indicate the time prior to which written objections must be filed and notice shall be made to adjacent property owners in accordance with Chapter 30.01 as modified by this section. (Ord. 92-13)

B. An application for a Design Review Permit for a project which requires an application for a tentative map, zone change, conditional use permit or any other planning permit, shall be noticed as part of the noticing procedures required by this Code for such other applications.

C. If the date, time and place of a subsequent hearing or a continued hearing is announced at the noticed time and place, no additional notice is required for the second or continued hearing, unless required by law. If no such announcement is made at the noticed time and place, the second or continued hearing shall be noticed in accordance with Chapter 30.01 as modified by this section. (Ord. 92-13)

06-96

23.08.060

23.08.060 Procedure.

A. The owner, or the owner's authorized agent, of the real property on which the construction activity is proposed shall make application for a Design Review Permit to the Director on a form approved by the Director. ~~To be received, the~~ The application must be accompanied by a filing fee in an amount set, from time to time, by resolution of the City Council, together with whatever additional plans and information the Director deems necessary to accomplish the purposes of this Chapter. Application shall include the necessary sets of plans, maps, and displays in sufficient detail to explain the proposed project's compliance with the regulations contained in this Chapter. (Ord. 92-13)

B. Any application for a new nonresidential project in excess of two-thousand (2,000) square feet of building area and any residential project resulting in five (5) or more units, shall submit a traffic study to the satisfaction of the Public Works Director. The traffic study shall be completed by a City approved traffic engineer. (Ord. 89-17)

C. When the application has been received and properly noticed, the Director shall render a final determination or the Director shall place the matter on the agenda of the Planning Commission. (Ord. 96-07)

D. Following the public hearing, the Planning Commission may, by majority vote, approve, disapprove in accordance with the provisions of this Chapter or conditionally approve or continue ~~the an~~ application for Design Review Permit. A maximum of two hearings ~~can~~ may be held—, but ~~Additional additional~~ hearings can be held if requested, or agreed to by the applicant. (Ord. 96-07)

E. If the Planning Commission is required to make an advisory recommendation to the City Council or render a final determination on the application for Design Review Permit, the Director shall submit the matter to the Planning Commission at a noticed, public hearing. (Ord. 92-13)

~~F. Following the public hearing, the Planning Commission may, by majority vote, approve, disapprove in accordance with the provisions of this Chapter, conditionally approve or continue the application for further consideration. However, if the Planning Commission has advisory jurisdiction, the Planning Commission will render an advisory recommendation to the City Council. (Ord. 92-13)~~

06-96

23.08.060G

FG. Upon receipt of the advisory recommendations from the Planning Commission, the Director shall set the application for Design Review Permit as a noticed, public hearing for the next available meeting of the City Council. Following the public hearing, the City Council may, by majority vote, approve, disapprove in accordance with the provisions of this Chapter or conditionally approve the application for Design Review Permit. (Ord. 96-07)

23.08.070 Final Determination.

A. A final determination by the Planning Commission or the City Council on the application for a Design Review Permit shall be made by written resolution, setting forth the facts which support the action. A final determination by the Director for design review shall be by written notice of determination setting forth the facts to support the action. (Ord. 96-07)

B. An application for Design Review Permit shall be approved unless findings of fact are made based upon the information presented in the application or during the deliberations which support one or more of the regulatory conclusions contained in this Chapter. The decision maker shall elaborate on each of the regulatory conclusions made in support of a denial in sufficient detail to explain as clearly as possible the reasons for the denial. (Ord. 90-26)

C. The final determination shall be mailed by first class mail or delivered in person to the applicant and shall become final fifteen (15) calendar days ~~thereafter~~ days after the date of the final determination unless an *appeal is filed. (Ord. 92-13). (*See Chapter 1.12.010 through 1.12.060).

23.08.08072 Regulatory Conclusions - Generally.

- A. The project design is inconsistent with the General Plan, a Specific Plan or the provisions of this Code.
- B. The project design is substantially inconsistent with the Design Review Guidelines.
- C. The project would adversely affect the health, safety, or general welfare of the community.
- D. The project would tend to cause the surrounding neighborhood to depreciate materially in appearance or value.

06-96

23.08.074

~~23.08.074 Regulatory Conclusions - Design and Site Layout.~~

- ~~A. The project design fails to take into account the constraints and opportunities of the site.~~
- ~~B. The project design does not minimize the disturbance of the existing topography and/or vegetation.~~
- ~~C. The project design fails to preserve, as far as practical, existing natural assets, such as rock outcroppings, valuable trees or riparian habitats.~~
- ~~D. The project design fails to prevent excessively high graded slopes and retaining structures, to the detriment of future project residents and neighboring properties.~~
- ~~E. The project design fails to blend the proposed grading with the contours of adjacent property.~~
- ~~F. The project design does not preserve significant public views to the extent possible, nor does it offer mitigation for the lost views.~~
- ~~G. The project circulation system fails to minimize conflicts between vehicular, bicycle, and pedestrian traffic.~~

~~_____ H. _____ The project ingress, egress or internal circulation would have an adverse affect on traffic conditions on adjacent streets.~~

~~_____ I. _____ The project design fails to reflect the topography of the site by adjusting the design of buildings, parking areas and circulation systems to the constraints of the site.~~

23.08.076 Regulatory Conclusions - Building Design.

~~_____ A. _____ The project design does not coordinate the elements of exterior building design, such as color, materials, form, texture and detailing to create harmony and continuity among all elements.~~

~~_____ B. _____ The project design does not limit the selection of exterior materials resulting in disharmony and discontinuity of the exterior elevations.~~

06-96 _____ 23.08.076C

~~_____ C. _____ The project design does not minimize roof penetrations by grouping vent ducts and mechanical equipment together and/or does not adequately conceal these features from the public and private view.~~

~~_____ D. _____ The various buildings and building elements are not in proportion with one another.~~

~~_____ E. _____ The project is not harmonious with or is functionally incompatible with the adjacent property in one or more of the following aspects:~~

~~_____ 1. _____ Color scheme;~~

~~_____ 2. _____ Location of structures on the site;~~

~~_____ 3. _____ Architectural features or ornaments;~~

~~_____ 4. _____ Type and quality of exterior materials; and~~

~~_____ 5. _____ Location and use of open space.~~

~~_____ F. _____ The project would adversely affect the quality of lighting and noise environment on adjacent properties.~~

~~—— G. —— The project design is substantially out of scale with the predominant scale of structures in the adjacent neighborhood.~~

~~—— 23.08.077 Regulatory Conclusions Landscape Design.~~

~~—— A. —— The landscape design fails to screen, to the extent practical, trash and storage areas, service yards, loading docks and ramps, and utility equipment from view of the neighboring properties and from the public streets.~~

~~—— B. —— The landscape design fails to screen, to the extent practical, parking areas from view of neighboring properties and from the public streets.~~

~~—— C. —— The landscape design fails to provide that all landscape materials will obtain a mature appearance within three years after planting.~~

~~—— D. —— The landscape design fails to preserve and incorporate into the design valuable natural features to the greatest extent possible.~~

06-96

23.08.078

~~—— 23.08.078 Regulatory Conclusions Signs.~~

~~—— A. —— The project design fails to assure that the size and shape of all signs are in scale with the buildings to which they are attached.~~

~~—— B. —— The building design does not provide for adequate space and locations on the building, in harmony with the architectural design, for the display of signs.~~

~~—— C. —— The project signing fails to relate well to the buildings of the project and to the neighborhood in general in terms of size, shape, color, texture, materials and lighting intensity, creating a visually incompatible appearance.~~

~~—— D. —— The project signing does not show subtlety, is obtrusive or does not convey the message legibly and clearly.~~

~~—— E. —— The proposed signing is not weather resistant or durable.~~

~~—— 23.08.079 Regulatory Conclusions Privacy and Security.~~

~~—— A. —— The project will cause an unreasonable intrusion on privacy of neighboring properties.~~

~~_____ B. _____ The project design fails to minimize the noise impact on neighboring properties caused by the project.~~

~~_____ C. _____ The project design fails to minimize the noise impact from exterior sources on the project.~~

~~_____ D. _____ The project design fails to avoid the creation of unsafe areas which lack the security of public surveillance.~~

~~_____ E. _____ The project design precludes observance of fire safety regulations, due to the layout of the site or the buildings, or due to the selection of the building materials.~~

~~_____ F. _____ The proposed project and landscaping would potentially contribute to the spreading of fire to adjacent properties.~~

06-96

23.08.090

23.08.090 Satellite Antennas.

The intent of this section is provide locational criteria for the placement of satellite antennas, and to regulate their placement so as to minimize the potential visual impacts associated with the antennas. It is not the intent of this section to prohibit the use of satellite antennas, nor to add excessive additional expense to their installation.

The installation of a satellite antenna is permitted either by right, or by the approval of an administrative design review permit application, depending upon the antenna's location and screening, as discussed below.

A. A satellite antenna shall be defined as any system of wires, cables, amplifiers, reflecting discs or other devices which are used for the transmission or reception of satellite related signals.

B. An Administrative Design Review permit shall be required for a satellite dish antenna unless it is screened from adjacent properties and public streets with a wall, fence, hedge or other material such that no more than 25% of the satellite antenna is visible (from any of the antenna's functional positions), as viewed from the ground level of any adjacent property or public right-of-way, as determined by the Director of Planning and Building. The screening material shall be kept in good condition so long as the antenna is in place. The screening material shall be visually compatible with the main structure and with other fences or materials which occupy the

property. Any fences and walls used for screening purposes shall comply with standard fence height requirements. (Ord. 2003-08).

C. Should an administrative design review permit be required, the proposed satellite antenna will be approved so long as the location, size, design and operating characteristics of the antenna are compatible with and do not adversely affect, in a material manner, adjacent uses, residences, structures or natural resources, with consideration given to, among other things, the following:

1. The effect upon the character of the neighborhood;
2. The effect upon views from public and private vantage points;

06-96

23.08.090/C3

3. The effect upon environmental quality or natural resources; and
4. Any other relevant impact of the proposed use on the surrounding area.

D. The following setback limitations shall apply to satellite antennas (residential and commercial zones):

1. The satellite antenna may be located to within three feet of an interior side or rear property line, as measured from the outer edge of the antenna dish, as measured from any of its functional positions. This setback may be reduced to zero through the design review process.
2. Satellite antennas proposed to be located within a front or street side yard setback shall require an Administrative Design Review permit, unless the antenna is completely (100%) screened from any adjacent property and from any adjacent public right of way, as viewed from ground level.

E. The following height limitations shall apply to satellite antennas:

1. Residential Zones: Outside of the standard building envelope (i.e. within the front, side, or rear yard setbacks), the maximum height of a satellite antenna

shall be (12) feet in height. Property owners may request greater heights through the Administrative Design Review process.

Satellite antennas located within the standard building envelope (i.e. outside of the front, side, or rear yard setbacks) shall not exceed the standard residential height limit of (26) feet (unless average lot slope exceeds 10% - See residential height regulations in Section 30.16.010B-7 of the Municipal Code). Property owners may apply to erect a satellite antenna to a maximum height of 30 ft. via the review process cited in Section 30.16.010B7-b of the Municipal Code.

06-96

23.08.090/E2

2. Commercial Zones: The maximum height of a satellite antenna in a commercial zone is (30) feet.

In any case, a design review permit will be required for any satellite antenna unless visually screened in accordance with paragraph B above.

F. Design Review shall be required if more than one satellite antenna is proposed on any given lot.

G. Some antennas require building permits for their foundation or mounting, and electrical permits may be required for power driven dishes. The applicant shall be responsible for securing all necessary building permits prior to the installation of a satellite antenna.

H. Notwithstanding the above, the regulations of this section shall not be administered so as to:

1. Prevent the reception of satellite delivered signals from major communications satellites that, when viewed on a conventional television set, are at least equal in picture quality to those received from local commercial television stations; or

2. Impost costs on the potential user of the antenna that are excessive in light of the purchase and installation costs of the equipment.

I. If an applicant claims that an imposed regulation violates the stated intent of the provisions of the City's satellite regulations, the applicant may deposit with the City a sum determined by the Director of Building and Planning to obtain an independent expert evaluation and opinion of the claim. (Ord. 2003-08).

23.08.100 Guidelines.

The City Council shall adopt by resolution Design Review Guidelines setting forth the policies and criteria for this Chapter. The person or body authorized to render a final determination shall comply with these Guidelines when reviewing applications for permits and shall ensure that the spirit intent of the Guidelines are upheld in all design review actions. The City Council may amend the Design Review Guidelines by resolution to keep the Guidelines in compliance with the latest City policies.

06-96

23.08.110

23.08.110 Imposition of Conditions.

A. The person or body authorized to render a final determination shall have 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 design review approval is sought, fully meets the criteria as set forth in this Chapter.

B. No Design Review Permit shall require a condition which is not reasonably related to the project for which the Design Review Permit is requested.

23.08.120 Posting of Security. Whenever a Design Review Permit is granted upon any condition or limitation, the person seeking the Design Review Permit may be required to furnish security in a form satisfactory to the Director in an amount sufficient to insure compliance with the conditions and limitations upon which such Design Review Permit is granted. Every such form of security shall be in a form satisfactory to the Director, shall be payable to the City, and shall be conditioned upon compliance with the conditions and limitations upon which the Design Review Permit is granted. (Ord. 90-26)

23.08.125 Landscape Security Deposit. Where a landscape plan has been approved for a project, a security deposit may be required for a period not to exceed one year after final inspection

approval to insure plant material has adequate time to become established and that the approved landscape design is not altered. (Ord. 90-26)

23.08.130 Covenant. At the discretion of the Director, to accomplish the purposes of this Chapter, the Design Review Permit may be issued in the form of a covenant to be signed by the permittee and recorded with the County Recorder.

23.08.140 Conformance with Design Review Permit.

A. Prior to the issuance of a building permit or any other permit required for the construction of a project for which a Design Review Permit has been issued, the Director shall determine whether the plans submitted for such construction permit are in substantial conformance with the Design Review Permit.

B. The Director shall find project plans in substantial conformance if:

06-96

23.08.140/B1

1. No project condition is changed or deleted;
2. No feature, facility or amenity is deleted or substantially altered which had been considered essential to the project's quality, safety or function by the decision making body;
3. The area of any residential floor plan or any non-residential building is not decreased or increased by more than five percent (5%);
4. No additional lots or dwelling units are added;
5. No private or public open space is reduced in area or in its potential for use and enjoyment;
6. The shape and bulk of structures, exterior building materials, landscaping, parking and access are substantially in conformance with the spirit and intent of the Design Review decision;
7. The grading plan will not increase or decrease the final grade on any part of the site by more than three (3) feet over or under the plan approved by the Design

Review decision, unless the Director finds (1) that the design is not substantially altered by the grading change; and (2) the Design Review Approval specifically limits prohibits variation to the elevation of the pads, and or (3) the change in pad elevation impacts surrounding views and/or substantially increases the bulk and mass of a building; and

8. No significant changes are made which, in the opinion of the Director, should be reviewed by the body which approved the original Design Review application.

C. A final determination made under this Section shall be effective fifteen (15) calendar days thereafter, unless an *appeal is filed. The Planning Commission and City Council shall be notified of the final determination. If the determination is that the construction is in conformance, the proponent may proceed, at the proponent's own risk, during the appeal period. The proponent or any aggrieved person may ~~request a meeting of the Arbitration Committee, may~~ appeal, or may apply for a modification of the Design Review Permit. (Ord. 96-07). (*See Chapter 1.12.010 through 1.12.060).

06-96

23.08.150

23.08.150 Modification of Design Review Permit. A proponent may apply for a modification of a valid Design Review Permit. The application procedures, hearings and notifications for any modification shall be the same as for a new application. If the Director finds that the modification is minor, and is required due to circumstances beyond the proponent's control, the application for modification shall be given priority in scheduling for public hearings.

23.08.160 Expiration and Extension of Permit.

A. The Design Review Permit approval shall be valid for two (2) years after the effective date of the permit. A building permit and any other permit required for the construction of the project shall be obtained within the two-year period. If construction has not started within the time period specified in the Uniform Building Code, and is not diligently pursued thereafter, the Design Review Permit shall be deemed null and void. (Ord. 92-13)

B. The Director may, upon written request by the proponent, grant reasonable extensions of up to a total of two (2) years for the Design Review Permit; provided no change in

City policies has occurred which would be in conflict with the project. A request for such an extension shall be filed with the Director at least fifteen (15) days prior to the expiration of the Design Review Permit, together with the required application fee. Upon proper filing of an application of extension, public notice shall be made according to the provisions of Chapter 30.01 as modified by this Chapter. A public hearing is not required. (Ord. 92-13)

23.08.170 Suspension of Design Review Permit.

A. The Director shall suspend any Design Review Permit and issue no certificate of occupancy if the project is not constructed in compliance with the Design Review Permit. The notice of suspension shall be mailed to the proponent by certified mail and posted on the project site.

B. The proponent or any aggrieved person may request a meeting of the Arbitration committee to settle any dispute regarding the suspension, may appeal, or may apply for a modification of the Design Review Permit.

06-96

23.08.170C

C. The suspension of the Design Review Permit and the suspension of all related permits shall be lifted by the Director if:

1. The applicant has completed all necessary changes to bring the project into compliance with the original Design Review Permit, or with the Design Review Permit as amended by an appeal or modification; or
2. The Arbitration Committee or the final appeals body has determined that no violation of the original Design Review Permit exists.

23.08.180 Reapplications. At least one (1) year shall have elapsed since the effective date of a disapproval of an application before filing a new application seeking substantially the same Design Review Permit for any of the same property.

CHAPTER 30.34SPECIAL PURPOSE OVERLAY ZONES30.34.010 Specific Plan Overlay Zone.

A. The Specific Plan Overlay Zone is derived from Section 65450 et seq., of the California Government Code which provides for the preparation and adoption of specific plans for all or any part of the area covered by the General Plan to insure its systematic implementation. Each specific plan must be consistent with the General Plan and the specific plan may not allow more intensive land uses than those described in the General Plan for each land use designation.

B. The Specific Plan is intended to regulate development within the City in accordance with the General Plan by allowing the creation of specific development criteria for certain areas and properties to promote more functional use of land, revitalization of existing development, and greater compatibility with surrounding land uses and environmental conditions.

30.34.020 Coastal Bluff Overlay Zone.

A. **APPLICABILITY.** The Coastal Bluff Overlay Zone regulations shall apply to all areas of the City where site-specific analysis of the characteristics of a parcel of land indicate the presence of a coastal bluff.

B. **DEVELOPMENT STANDARDS.** In addition to development and design regulations which otherwise apply, the following development standards shall apply to properties within the Coastal Bluff Overlay Zone. In case of conflict between the following standards and other standards, regulations and guidelines applicable to a given property, the more restrictive shall regulate. (Ord. 91-19)

1. With the following exceptions, no principal structure, accessory structure, facility or improvement shall be constructed, placed or installed within 40 feet of the top edge of the coastal bluff. Exceptions are as follows:

- a. Principal and accessory structures closer than 40 feet but not closer than 25 feet from the top edge of the coastal bluff, as reviewed and approved pursuant to subsection C "Development Processing and Approval" below. This exception to allow a minimum setback of no less than 25 feet shall be limited to additions or expansions to existing principal structures which are already located seaward of the 40 foot coastal blufftop setback, provided the proposed addition or expansion is located no further seaward than the existing principal structure, is setback a minimum of 25 feet from the coastal blufftop edge and the applicant agrees to remove the proposed addition or expansion, either in part or entirely, should it become threatened in the future. Any new construction shall be specifically designed and constructed such that it could be removed in the event of endangerment and the property owner shall agree to participate in any comprehensive plan adopted by the City to address coastal bluff recession and shoreline erosion problems in the City. (Ord. 95-04)
- b. Minor accessory structures and improvements located at grade, including landscaping, shall be allowed to within 5 feet of the top edge of the coastal bluff. Precautions must be taken when placing structures close to the bluff edge to ensure that the integrity of the bluff is not threatened. For the purposes of the Coastal Bluff Overlay Zones, "minor accessory structures and improvements" are defined as those requiring no City approval or permit including a building or grading permit, and not attached to any principal or accessory structure which would require a permit. Grading for reasonable pedestrian access in and around a principal or accessory structure may be permitted by the City Engineer following review of a site specific soils report. (Ord. 92-31)
- c. Essential public improvements providing coastal access, protecting natural resources, or providing for public safety, as reviewed and approved pursuant to subsection C "Development Processing and Approval" below, including but not limited to, walkways leading to approved public beach access facilities, open fences for safety or resource protection, public seating benches, lighting standards, and signs. (Ord. 91-19)

- d. Drainage improvements within 5 feet of the top edge of coastal bluff as required to satisfy Section 30.34.020(B)5 of this Code. (Ord 91-19)
 2. With the following exceptions, no structure, facility, improvement or activity shall be allowed on the face or at the base of a coastal bluff. Exceptions are:
 - a. Public beach access facilities, as reviewed and approved pursuant to paragraph C "Development Processing and Approval" below. (Ord. 91-19)
 - b. Preemptive measures, as defined, justified and approved pursuant to paragraph C "Development Processing and Approval" below. (Ord. 91-19)
 - c. Landscape maintenance, as provided by paragraph 3 of this paragraph Section 30.34.020(B)3 of this Code. (Ord. 91-19)
 3. Except as a part of approved pre-emptive measures pursuant to paragraph "C" "Development Processing and Approval" below, no grading or scraping shall be allowed on a bluff face, nor shall naturally occurring drought tolerant vegetation be voluntarily removed from the bluff face. Removal of nonnative vegetation in order to enhance the stability of the bluff face shall be allowed provided that the vegetation removal does not result in a bluff devoid of erosion protective vegetation. In order to preserve the bluff face in its then existing condition as much as reasonably necessary to prevent erosion, planting, trimming, removal of vegetation and other landscape related maintenance is allowed when accomplished by hand methods (i.e. no mechanical devices, other than customary hand tools). (Ord. 91-19)

All proposed grading and fill shall comply with the City's Grading, Erosion and Sediment Control Ordinance, Chapter 23.24 of the Municipal Code.
 4. Existing legal structures and facilities within 40 ft. of a bluff edge or on the face of a bluff may remain unchanged. Interior remodeling of existing buildings that does not involve changes to the existing foundation is allowed, but no expansion of building square footage or addition of stories within the 40 ft. area shall be allowed except as permitted pursuant to Section 30.34.020(B)1a of this Code. Routine maintenance of existing facilities is allowed. (Ord. 95-04)

5. With development of any new building or expansion of the floor area of an existing building, all drainage and run-off on the property shall be collected and delivered to approved drainage facilities. Unless otherwise approved by the Planning Commission following recommendations from the City Engineer, all drainage shall be diverted away from within 5 ft. of the edge and face of the bluff. Drainage improvements provided shall include roof drains. Any existing drainage systems which deliver run-off to or over the edge of the bluff shall be removed. (Ord. 91-19)

6. Landscaping on beach bluff properties shall avoid the use of ice plant, and emphasize native and drought-tolerant plants in order to minimize irrigation requirements and reduce potential slide hazards due to over-watering. Landscaping materials shall be installed and maintained so as to assure that neither during growing stages nor upon reaching maturity will such materials obstruct views to and along the ocean and other scenic coastal areas from public vantage points. Irrigation shall be limited to hose bibs or water saving irrigation systems with automatic timers. No permanent irrigation system shall be permitted within 40 feet of the coastal bluff edge. (Ord. 95-04)

7. Buildings and other structures shall be sited, designed and constructed so as not to obstruct views to and along the ocean and other scenic coastal areas from public vantage points.

8. The design and exterior appearance of buildings and other structures visible from public vantage points shall be compatible with the scale and character of the surrounding development and protective of the natural scenic qualities of the bluffs.

9. The City shall develop and adopt a comprehensive plan, based on the Beach Bluff Erosion Technical Report (prepared by Zeiser Kling Consultants Inc., dated January 24, 1994), to address the coastal bluff recession and shoreline erosion problems in the City. If a comprehensive plan is not submitted to, reviewed and approved by the Coastal Commission as an amendment to the City's Local Coastal Program by November 17, 1996, then no additions or expansions to existing structures shall be permitted on coastal blufftop lots except for minor additions or expansions that comprise no greater than a 10 percent increase above the existing gross floor area or 250 square feet, whichever is greater, provided such additions/expansions are located at least 40 feet or more from the bluff edge, the addition/expansion is constructed in a manner so that it could be removed in its entirety, and the applicants agree to participate in any future comprehensive plan adopted by the City to address coastal bluff recession and shoreline erosion problems in the City. In addition, until such a comprehensive plan is approved by the City of Encinitas and the Coastal Commission as an amendment to the LCP, the City shall not permit the construction of seawalls, revetments, breakwaters, cribbing, or similar structures for coastal erosion except under circumstances where an existing principal structure is imminently threatened and, based on a thorough alternatives analysis, an emergency coastal development permit is issued and all emergency measures authorized by the emergency coastal permit are designed to eliminate or mitigate adverse impacts on local shoreline sand supply, (Ord. 95-21)

C. DEVELOPMENT PROCESSING AND APPROVAL. In addition to findings and processing requirements otherwise applicable, the following establishes specific processing and finding requirements for proposed development within the Coastal Bluff Overlay Zone. The Planning Commission shall be the authorized agency for reviewing and granting discretionary approvals for proposed development within the Coastal Bluff Overlay Zone. Recommendations to the Planning Commission shall come from staff and qualified City Consultants. (Ord. 96-07)

1. Development and improvement in compliance with the development standards in paragraph B "Development Standards", proposing no structure or facility on or within 40 feet of the top edge of the coastal bluff (except for minor accessory structures and improvements allowed pursuant to Section 30.34.02(B)1b, and proposing no preemptive measure as defined below, shall be subject to the following: submittal and acceptance of a site-specific soils report and geotechnical review described by paragraph D "Application Submittal Requirements" below. The authorized decision-making authority for the proposal shall make the findings required based on the soils report and geotechnical review for any project approval. A Second Story cantilevered portion of a structure which is demonstrated through standard engineering practices not to create an unnecessary surcharge load upon the bluff area may be permitted 20% beyond the top edge of bluff setback if a finding can be made by the authorized agency that no private or public views would be significantly impacted by the construction of the cantilevered portion of the structure. (Ord. 92-31)

2. Development proposing principal or accessory structures (other than minor accessory structures and improvements) closer than 40 feet but not closer than 25 feet from the top edge of the bluff, proposing any essential public improvement on or within 40 feet of the top edge of the bluff, and/or proposing any preemptive measure shall be subject to the following requirements. For purposes of the Coastal Bluff Overlay Zone a "preemptive measure" is defined as any structure, device or facility necessary to strengthen a portion of the bluff and/or retard erosion when there is a demonstrated threat to a principal structure at the top of the bluff, as demonstrated in the required geotechnical report. A Second Story cantilevered portion of a structure which is demonstrated through standard engineering practices not to create an unnecessary surcharge load upon the bluff area may be permitted 20% beyond the top edge of bluff setback if a finding can be made by the authorized agency that no private or public views would be significantly impacted by the construction of the cantilevered portion of the structure. (Ord. 92-31)

a. Submittal and acceptance of a site-specific soils report and geotechnical report as required by paragraph D "Application Submittal Requirements" below. Any approval by the Planning Commission or, on *appeal, by the City Council must be able to make the findings below for the proposal based on the soils and geotechnical report. (Ord. 91-19). (*See Chapter 1.12.010 through 1.12.060).

b. When a preemptive measure is proposed, the following findings shall be made if the authorized agency determines to grant approval: (Ord. 91-19)

(1) The proposed measure must be demonstrated in the soils and geotechnical report to be substantially effective for the intended purpose of bluff erosion/failure protection, within the specific setting of the development site's coastal bluffs. The report must analyze specific site proposed for development. (Ord. 91-19)

(2) The proposed measure must be necessary for the protection of a principal structure on the blufftop to which there is a demonstrated threat as substantiated by the site specific geotechnical report. (Ord. 91-19)

(3) The proposed measure will not directly or indirectly cause, promote or encourage bluff erosion or failure, either on site or for an adjacent property, within the site-specific setting as demonstrated in the soils and geotechnical report. Protection devices at the bluff base shall be designed so that additional erosion will not occur at the ends because of the device.

(4) The proposed measure in design and appearance must be found to be visually compatible with the character of the surrounding area; where feasible, to restore and enhance visual quality in visually degraded areas; and not cause a significant alteration of the natural character of the bluff face.

(5) The proposed device/activity will not serve to unnecessarily restrict or reduce the existing beach width for use or access.

- c. No preemptive measure at the base of the bluff or along the beach shall be approved until a comprehensive plan is adopted as Council policy for such preemptive treatment, for at least the corresponding contiguous portion of the coastal bluff. Preemptive measures approved thereafter shall be consistent with the adopted plan.

D. APPLICATION SUBMITTAL REQUIREMENTS. Each application to the City for a permit or development approval for property under the Coastal Bluff Overlay Zone shall be accompanied by a soils report, and either a geotechnical review or geotechnical report as specified in paragraph C "Development Processing and Approval" above. Each review/report shall be prepared by a certified engineering geologist who has been pre-qualified as knowledgeable in City standards, coastal engineering and engineering geology. The review/report shall certify that the development proposed will have no adverse affect on the stability of the bluff, will not endanger life or property, and that any proposed structure or facility is expected to be reasonably safe from failure and erosion over its lifetime without having to propose any shore or bluff stabilization to protect the structure in the future. Each review/report shall consider, describe and analyze the following: (Ord. 95-04)

1. Cliff geometry and site topography, extending the surveying work beyond the site as needed to depict unusual geomorphic conditions that might affect the site;
2. Historic, current and foreseeable-cliffs erosion, including investigation or recorded land surveys and tax assessment records in addition to land use of historic maps and photographs where available and possible changes in shore configuration and sand transport;
3. Geologic conditions, including soil, sediment and rock types and characteristics in addition to structural features, such as bedding, joints and faults;
4. Evidence of past or potential landslide conditions, the implications of such conditions for the proposed development, and the potential effects of the development on landslide activity;
5. Impact of construction activity on the stability of the site and adjacent area;
6. Ground and surface water conditions and variations, including hydrologic changes caused by the development e.g., introduction of irrigation water to the ground water system; alterations in surface drainage);

7. Potential erodibility of site and mitigating measures to be used to ensure minimized erosion problems during and after construction (i.e., landscaping and drainage design);
8. Effects of marine erosion on seacliffs and estimated rate of erosion at the base of the bluff fronting the subject site based on current and historical data; (Ord. 95-04)
9. Potential effects of seismic forces resulting from a maximum credible earthquake;
10. Any other factors that might affect slope stability;
11. Mitigation measures and alternative solutions for any potential impacts.

The report shall also express a professional opinion as to whether the project can be designed or located so that it will neither be subject to nor contribute to significant geologic instability throughout the life span of the project. The report shall use a current acceptable engineering stability analysis method and shall also describe the degree of uncertainty of analytical results due to assumptions and unknowns. The degree of analysis required shall be appropriate to the degree of potential risk presented by the site and the proposed project.

In addition to the above, each geotechnical report shall include identification of the daylight line behind the top of the bluff established by a bluff slope failure plane analysis. This slope failure analysis shall be performed according to geotechnical engineering standards, and shall:

- Cover all types of slope failure.
- Demonstrate a safety factor against slope failure of 1.5.
- Address a time period of analysis of 75 years.

Any newly proposed structure, other than a minor accessory structure or improvement, or a preemptive measure, which is proposed closer than 40 feet to the edge of the bluff shall be demonstrated to be behind the identified daylight line. Analysis methods alternate to a slope failure plane analysis which predict an equivalent level of safety may be proposed, and must be accepted in the City's review of the geotechnical report.

Finally, each geotechnical report for a project including a proposed preemptive measure shall address those points specified in paragraph C above as well as the following: (Ord. 95-04)

1. Maximum expected wave height, design wave height, design constraints and frequency of overtopping;
2. Normal and maximum tidal ranges;
3. Estimated erosion rate with and without the proposed preemptive measure;
4. Percent of beach quality sand within the bluff;
5. Effect of the proposed structure on adjoining properties;
6. Potential/effect of scouring at base of proposed structure;
7. Design life of structure/maintenance provisions;
8. Alternatives to the project design. Project alternatives shall include, but not be limited to, no project, relocation/removal of threatened portions of or the entire home and beach nourishment;
9. Construction area and technique of construction;
10. Certification that the structure is designed to withstand storms comparable to the winter storms of 1982-83.

E. TEMPORARY EMERGENCY PROTECTION DEVICES. Notwithstanding other regulations of the City, the City Manager or his/her designee may permit the installation of temporary emergency protection / retention facilities (such as riprap, walls, erosion control devices, etc.) on or at the base of a coastal bluff if: (Ord. 91-19)

1. Enclosed or principal buildings at the top of an ocean bluff are threatened by a potential bluff failure/collapse. (Ord. 95-04)
2. The threat is imminent. A statement of a State-licensed engineer or engineering geologist establishing an imminent threat may be required if the City Engineer is not able to determine the imminent threat. (Ord. 91-19)

3. The minimum size of rock rip-rap when placed as a temporary protective barrier, shall be three (3) tons. If recommended in writing by a certified engineering geologist, smaller filter rock may be permitted behind and beneath said armor rock rip-rap in order to further cushion the bluff against wave action and to assist in maintaining sand behind the barrier. For placement of rip-rap, a site plan showing the limits of rip-rap to the satisfaction of the City Engineer shall constitute a construction plan. Documentation shall be provided that the proposed temporary protection is the minimum necessary to address the emergency and to assure minimal encroachment onto the sandy beach area. In addition, construction access and staging plans shall be submitted which document that no public beach parking areas will be utilized for the interim storage of materials or equipment and that overnight storage of equipment of materials will not be permitted on the sandy beach. (Ord. 95-04)

4. Construction plans, prepared by a State-licensed civil engineer, are submitted to the City Engineer for review and approval, along with any supporting reports and design calculations as required by the City Engineer to verify the adequacy of the design. (Ord. 91-19)

5. A covenant is provided which includes an obligation by the property owner to the City that the property owner will comply with all coastal regulations and conditions imposed by the California Coastal Commission including submitting and processing an application in order to receive a grant of approval for a permanent protection facility as applicable under the Municipal Code and the California Coastal Act. The property owner shall execute the City's covenant prior to the installation of the protective facility, and submit it to the City Manager or his/her designee together with the following: (Ord. 91-19)

a. The covenant must have attached as Attachment "A" a legal description of the ocean bluff property owned by the property owner.

b. The covenant must have attached as Attachment "B" a description of the proposed, protective retention barrier; the description must be to the reasonable satisfaction of the City Engineer. (Ord. 91-19)

c. When the property owner executes the covenant, the property owner's signature must be notarized.

d. Security shall be provided by the owner in the form of a cash deposit, letter of credit or other deposit reasonably acceptable to the City Engineer, in order to guarantee the removal of any debris on the public beach when the debris is reasonably related to coastal bluff failure or construction to repair a bluff failure. The amount of security shall be fixed by the City in order to provide funding for removal of the debris if the applicant or applicant's agents do not remove the debris from the public beach within a reasonable time. (Ord. 91-19)

e. Following the property owner's compliance with the above requirements, the City Manager or designee shall, in accordance with the authority granted to the City Manager by this chapter, authorize the property owner access rights across public property under the control of the City of Encinitas in order to construct the protective facility. When requesting access, the property owner shall submit an access plan showing approximate times of access, frequency of access and type of equipment which will need to access the site. Said access plan shall be reviewed and approved by the designated official authorizing the access over public property. (Ord. 91-19)

f. The amount of the deposit required in Section 30.34.020(e) 5d shall be equal to 25% of the estimated construction cost of the temporary facility. This amount can be reduced by the City Engineer based upon an estimate of the costs to remove the debris furnished to the City Engineer by the property owner's engineer or contractor. If the engineer's estimate is not readily available, the City Engineer may estimate the cost of improvements and debris removal based upon regional construction costs or other data. (Ord. 91-19)

g. The City Engineer may release a portion of the security in conjunction with the acceptance of the performance of the act or work as it progresses upon application therefor by the property owner, provided, however, that no such release shall be for an amount more than twenty-five percent (25%) of the total security given for faithful performance of the act or work and that the security shall not be reduced to an amount less than fifty percent (50%) of the total security given for faithful performance until final completion and acceptance of the act or work. In no event shall the City Engineer authorize a release of the improvement security which would reduce such security to an amount less than that required to guarantee the completion of the act or work and any other obligation imposed by this ordinance or the agreement to remove the debris; nor shall the City Engineer be obligated to make a partial release of security. (Ord. 91-19)

h. Upon the failure of the property owner to complete the removal of the debris on the public beaches within the time specified, the City Council may, upon notice in writing of not less than ten days served upon the person responsible for the performance thereof, or upon notice in writing of not less than twenty (20) days served by registered mail addressed to the last known address of such person, determine that the property owner is in default and may cause the improvement security, or such portion thereof as is necessary to complete the work or act and any other obligations of the property owner secured thereby, to be forfeited to the City. (Ord. 91-19)

i. Upon completion of all obligations of the property owner under the provisions of this Section 30.34.020E, the City shall, upon request of property owner, cause to be recorded in the Office of the County Recorder the release of any covenants recorded against such property required by this section. (Ord. 91-19)

30.34.030 Hillside/Inland Bluff Overlay Zone.

A. **APPLICABILITY.** The Hillside/Inland Bluff Overlay Zone regulations shall apply to all areas within the Special Study Overlay Zone where site-specific analysis indicates that 10 percent or more of the area of a parcel of land exceeds 25 percent slope. The Planning Commission shall be the authorized agency for reviewing and granting discretionary approvals for proposed development within the Hillside/Inland Bluff Overlay Zone. (Ord. 96-07)

B. DEVELOPMENT STANDARDS

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 (2) feet. This analysis will describe the following slope categories in acres and will also graphically depict the location of each category on the topographic map: (Ord. 91-19)

- a. Less than 25 percent slope.
- b. 25 to 40 percent slope.
- c. Greater than 40 percent slope

2. Where development is proposed on slopes of greater than 25 percent grade, the following standards shall apply:

- a. Slopes of greater than 25 percent grade shall be preserved in their natural state. Encroachment into slope areas, as specified below, shall be allowed when it is found that there is no feasible alternative siting or design which eliminates or substantially reduces the need for such construction or grading, and it has been found that the bulk and scale of the proposed structure has been minimized to the greatest extent feasible commensurate with preserving the physical slope characteristics of the site. An application proposing encroachment into slopes greater than 25% shall include, at a minimum, details as to the location of existing and future improvements, as well as the proposed building envelope for any future improvements, in order to enable the Planning Commission to assess bulk and scale. Complete architectural drawings are preferred. -(Within the Coastal Zone and for purposes of this section, encroachment shall be defined as any area of greater than 25 percent slope in which the natural landform is altered by grading, construction, placement of structures or materials, removal of native vegetation, including clear-cutting for brush management purposes, or other operations which would render the area incapable of supporting native vegetation or being used as wildlife habitat due to the displacement required for the proposed building, accessory structures, paving or native vegetation clearance. Said encroachment shall be approved by the authorized agency and shall be a discretionary action based on the application.): (Ord. 95-04)

Percentage of Parcel in Slopes of Greater or Equal to 25 percent Grade	Maximum Encroachment in Areas of Slope Greater or Equal to 25 Percent Grade
--	--

75% or less	10%
76 - 80%	12%
81 - 85%	14%
86 - 90%	16%
91 - 95%	18%
96 - 100%	20%

b. The following uses and/or development features shall be exempt from the encroachment limitations described above:

- (1) Public roadways identified in the Circulation Element of the City's General Plan.
- (2) Public utility systems and system components.
- (3) Where it is determined during the Design Review process that no less environmentally damaging alternative exists, local public or private streets and driveways which are necessary for access to the more developable portions of a site on slopes of less than 25 percent grade. (Ord. 91-19)

c. Where necessary to maintain a minimum development right (total disturbed area) on existing legal parcels, a deviation in the encroachment allowance of up to 20 percent of the entire parcel may be granted through the Design Review process.

3. Where structures and improvements are proposed within any areas of greater than 25 percent slope, a geological reconnaissance report shall also be submitted.

4. Where unstable conditions are indicated, but in the opinion of the City Engineer are not sufficiently defined in the geological reconnaissance report, a preliminary engineering geology report shall also be required. The preliminary engineering geology report shall include the results of subsurface investigations sufficient to identify the nature and magnitude of such unstable conditions; and shall identify alternative mitigation measures that may be needed.

5. No principal structure or improvement or portion thereof shall be placed or erected, and no grading shall be undertaken, within twenty-five (25) feet of any point along an inland bluff edge. Minor accessory structures and improvements located at grade, including landscaping, shall be allowed to within 5 feet of the top edge of any hillside/inland bluff subject to these regulations. For purposes of these regulations, "minor accessory structures and improvements" are defined as those requiring no City approval or permit including a building or grading permit, and not attached to any principal or accessory structure which would require a permit. Precautions must be taken when placing structures close to the bluff edge to ensure that the integrity of the bluff is not threatened. Grading for reasonable access in and around a principal or accessory structure may be permitted by the City Engineer following review of a site specific soils reports. (Ord. 91-19)

6. All slopes over 25 percent grade which remain undisturbed or which are restored or enhanced as a result of a development approval, shall be conserved as a condition of that approval through a deed restriction, open space easement, or other suitable device that will preclude any future development or grading of such slopes.

7. A Second Story cantilevered portion of a structure which is demonstrated through standard engineering practices not to create an unnecessary surcharge load upon the bluff area may be permitted 20% beyond the top edge of bluff setback if a finding can be made by the authorized agency that no private or public views would be significantly impacted by the construction of the cantilevered portion of the structure. (Ord. 92-31)

30.34.040 Floodplain Overlay Zone.

A. APPLICABILITY. The Floodplain Overlay Zone regulations shall apply to all areas within the Special Study Overlay Zone where site-specific analysis of the characteristics of a parcel of land indicate the presence of a flood channel, floodplain, or wetland; and to all areas identified as flood channels and floodplains on maps published by the Federal Emergency Management Agency or the current City and County maps designating the floodway/floodplain areas.

B. DEVELOPMENT STANDARDS

1. Floodway

a. All floodway encroachments for transportation and utility crossings shall be offset by improvements or modifications to enable the passage of a 100-year frequency flood.

b. Channelization or other substantial alteration of rivers or streams shall be limited to the following:

(1) Necessary water supply projects;

(2) Flood control projects where no feasible method of protecting existing public or private structures exists and where such protection is necessary for public safety or to protect existing development;

(3) Other development which has a primary element the improvement of fish and wildlife habitat.

c. Any development which involves the channelization or other substantial alteration of rivers or streams shall comply with all of the following:

(1) Incorporate into the project design and mitigation measures, all relevant findings of hydrological studies for the watershed of the affected stream. Such findings include but not limited to erosional characteristics, flow velocities, and sediment transport.

(2) Incorporate mitigation measures designed to assure that there will be no increase in the peak runoff rate from the developed site as compared to the greatest discharge that would occur from the existing undeveloped site as a result of the intensity of rainfall expected during a six-hour period once every ten years.

(3) Minimize stream scour, avoid increases in and reduce, where feasible, the transport of stream sediment to downstream wetlands and other environmentally sensitive habitat areas. Acceptable techniques to control stream sediment include but are not limited to the planting of riparian vegetation in and near the stream.

(4) If channelization is determined to be necessary, the floodway of the stream shall accommodate 100-year floods. To the extent feasible, all artificial channels shall consist of natural bottoms and sides and be designed and sized to accommodate existing riparian vegetation. Such vegetation shall be maintained at specified levels compatible with the design capacity of the channel.

2. Floodplain. Within the 100-year floodplain, permanent structures, roads and other public improvements consistent with the Land Use Element will only be allowed if the applicant can demonstrate the following:

a. The development is capable of withstanding periodic flooding, and does not require the construction of flood protective works, including but not limited to, artificial flood channels, revetments, and levees. Flood protection works may be permitted to protect new or existing roads which are identified in the Circulation Element.

b. Existing environmentally sensitive habitat areas will not be significantly adversely affected.

c. The development will not result in a net reduction of existing riparian habitat areas within the floodplain.

d. The design of the development incorporates the findings and recommendations of both a site specific area watershed hydrologic study in order that the development assures that there will be no increase in the peak runoff rate from the fully developed site as compared to the discharge that would be expected from the existing undeveloped site as a result of the most intense rainfall expected once every ten years during a six-hour period; and neither significantly increases nor contributes to downstream bank erosion and sedimentation of wetlands, lagoons and other environmentally sensitive habitat areas.

e. There will be no significant adverse water quality impacts to downstream wetlands, lagoons and other environmentally sensitive habitat areas.

3. Wetlands

a. Within the Coastal Zone, the diking, filling, or dredging of open coastal waters, estuaries, and lakes shall be permitted where there is no feasible less environmentally-damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects and shall be limited to the following newly permitted uses and activities:

1. Incidental public service projects.
2. Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.
3. Restoration purposes.
4. Nature study, aquaculture, or other similar resources dependent activities. (95-04)

b. In all areas, a buffer of 100 feet in width shall be maintained around all identified coastal lagoon wetland areas. A buffer of 100 feet in width shall be maintained around all other wetland areas, except riparian wetland areas which shall require a minimum 50 foot wide buffer, unless the applicant demonstrates that a buffer of lesser width will protect the resources of the wetland, based on site-specific information. Such information shall include, but is not limited to, the type and size of the development and/or proposed mitigations (such as planting of vegetation or construction of fencing) which will also achieve the purposes of the buffer. The buffer shall be measured landward from the wetland. Maps and supplemental information submitted as part of the application shall be used to determine the specific boundaries of the wetland and buffer. The California Department of Fish and Game and the U.S. Fish and Wildlife Service, Army Corps or Engineers shall be consulted in such buffer determinations. (Ord. 97-17)

c. 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.

30.34.050 Cultural/Natural Resources Overlay Zone.

A. **APPLICABILITY.** The Cultural/Natural Resources Overlay Zone regulations shall apply to all areas within the Special Study Overlay Zone where site-specific analysis of a parcel of land indicates the presence of important man-made cultural and historic resources, and ecologically sensitive plant and animal habitats.

1. Cultural Resources

a. For proposed projects which involve parcels containing an archaeological site(s), a survey by a qualified professional archaeologist shall be submitted by the project applicant to determine the site's significance and the need for project impact mitigation by preservation (open space easement), further study (excavation/salvage), or other methods.

b. For proposed projects which involve parcels containing historical sites and/or structures, a survey by a qualified professional historian shall be submitted by the project applicant to determine the site/structure's significance and the need for project impact mitigation by preservation, relocation, or other methods.

2. Biotic Resources. For proposed projects within the C/NRO 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, re-establishment, or other methods.

30.34.060 Agricultural Overlay Zone.

A. **APPLICABILITY**

1. The Agricultural Overlay Zone regulations shall apply to all properties presently under a Williamson Act contract and described on the City map delineating the AGO Zone.

2. The Agricultural Overlay Zone shall be removed from the properties subject to a Williamson Act contract by the City upon the expiration of that contract.

B. DEVELOPMENT STANDARDS

1. No development other than that associated with the agricultural operation subject to the Williamson Act contract may occur within the AGO Zone. This may include buildings and structures necessary to conduct the agricultural operation and dwelling units necessary to accommodate the owners and employees associated with that operation.
2. Where buildings, structures, and dwelling units are constructed, they shall conform to the setback and height requirements of the Rural Residential Zones.
3. An open or landscaped buffer of at least 75 feet shall be provided along the boundary between all property subject to the AGO zone and properties not subject to the AGO zone.

30.34.070 Public Facilities Overlay Zone.

A. The Public Facilities Overlay Zone is intended to identify the general areas where public uses and facilities such as schools, fire and police stations, and others will need to be located in the future.

B. The precise location of future public uses and facilities may not be known during initial planning stages, therefore, the PFO Zone is not property-specific and the general future locations of these uses and facilities within the City will be identified with a "P" symbol on the City Zoning Map.

C. When the precise location for a particular public use/facility is determined the City will rezone the parcel(s) to Public/Semi-Public and the associated "P" symbol will be removed from the Zoning Map.

30.34.080 Scenic/Visual Corridor Overlay Zone.

A. **APPLICABILITY.** The Scenic/Visual Corridor Overlay Zone regulations shall apply to all properties within the Scenic View Corridor 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 View Corridor, consideration will be given to the overall visual impact of the proposed project and conditions or limitations on project bulk, mass, height, architectural design, grading, and other visual factors may be applied to Design Review approval.

30.34.090 Southern El Camino Real Museum Overlay Zone. (Ord. 2001-08)

A. Intent. The intent of the Southern El Camino Real Museum Overlay Zone is:

1. To allow museums subject to a Major Use Permit, in a very limited portion of the RR-1 and R-3 zones that is characterized by a growing presence of institutional uses on a Circulation Element road.
2. To supplement the zone regulations applied to museums with additional standards and procedures that will both promote a satisfactory living environment on surrounding residential properties and facilitate museum activities.
3. To permit expanded artistic, scientific, cultural and historical activities for residents and visitors of both the city and region.
4. To provide limited opportunities for on site ancillary housing for a caretaker or guest professional, and his or her family, in order to facilitate the goals of the museum.

B. Applicability. The Southern El Camino Real Museum Overlay Zone regulations shall apply to all properties identified accordingly on the City's Zoning Map.

C. Major Use Permit Required. A museum may be authorized in the Southern El Camino Real Museum Overlay Zone upon issuance of a Major Use Permit as provided by the Use Permit Procedures contained in Chapter 30.74.

D. Development Standards (Applicable on issuance of a Major Use Permit). In addition to a development and design standards which otherwise apply, the following development standards shall apply to all properties within the Southern El Camino Real Museum Special Purpose Overlay. In case of conflict between the following standards and other standards, regulations and guidelines applicable to a given property, the more restrictive shall regulate.

1. Maximum Lot Coverage. 35 percent for buildings. Parking and other impervious surfaces exclusive of buildings shall not exceed 15 percent.
2. Maximum Building Height. Building heights up to 30 feet may be considered if it can be found that the portion of the building outside of the standard 22-foot envelope maintains some of the significant views enjoyed by residents of nearby properties, and that the building is compatible in bulk and mass with buildings on neighboring properties.

3. Residential Uses and Density. If the museum possesses a residential component, not more than any one dwelling unit shall be constructed on the project site. Occupancy of the dwelling unit shall be limited to a 1) caretaker, and his or her family, or 2) a professional of the arts or sciences, and his or her family, whose primary responsibility is to create or participate in the institution's exhibits and programs, and facilitate achievement of the museum's goals.

4. Accessory Commercial Uses. Accessory commercial retail sales shall only be permitted when such sales are related to the museum's exhibits and programs. The area devoted to commercial uses shall not exceed 10 percent of the museum's total floor area or 1,500 square feet, whichever is more restrictive. The authorized agency may reduce the percentage of floor area dedicated to commercial uses, limit the type of commercial use or entirely prohibit any commercial, depending on the characteristics of the project site and surrounding area.

5. Setbacks. Where the museum property is adjacent to a non-residential use, museum structures shall generally conform to the applicable setbacks for the RR-1 and R-3 zones. Where the museum property is adjacent to a residential use, the setback shall be 50 feet from the property line. However, the authorized agency may decrease the setback standards adjacent to residential uses if it finds that a lesser setback is appropriate, based on the site-specific design.

6. On Site Parking. 1 parking space per 500 square feet of gross floor area unless it is determined during the review of the project proposal that greater or fewer spaces are warranted. Modifications to the parking standard must be based on a parking study completed by a qualified traffic engineer. In addition to the parking spaces required for automobiles, suitable space shall be designated for bus loading and parking.

7. Offsite Parking Management Plan. Where the parking demand would exceed the onsite parking supply, an offsite parking program shall be provided that accommodates guests/visitors during special events. The major use permit may limit the number of special events per year. The offsite parking management plan shall include both parking management and transportation program.

8. Other Standards. All other standards not established in this section will be determined through the Major Use Permit.

E. Special Regulations. In addition to development and design regulations which otherwise apply, the following development regulations shall apply to all properties within the Southern El Camino Real Museum Special Purpose Overlay.

In case of conflict between the following regulations and other standards, regulations and guidelines applicable to a given property, the more restrictive shall regulate.

1. Architectural Style, Building Materials, Signs and Landscape Design. The appearance of the developed site in terms of the arrangement, height, scale and architectural style of the buildings, location and design of parking areas, landscaping and other features shall be compatible with the character of the surrounding area. Architectural styles, building materials, signs and landscape designs that detract from the prevailing development character shall be avoided. Signs shall be constructed of natural materials such as wood and stone. Approval of any and all signs for the museum site must be a part of the major use permit.
2. Off Site Directional Signage: One off site directional sign shall be permitted subject to the following:
 - The placement of the directional sign shall be on private property and located at the nearest intersection of the local road that the museum fronts and the Circulation Element Road.
 - The maximum height of the sign shall not exceed eight feet.
3. Traffic Study. A traffic study shall be submitted with the application. A professional transportation engineer must prepare the study according to City guidelines and standards. The following subjects must be evaluated in the study to the satisfaction of the City:
 - Impacts to intersection operations, including changes in levels of service.
 - Project-related and cumulative impacts to traffic load and capacity on affected streets, including changes in levels of service.
 - Potential for increasing street or intersection hazards.
 - Mitigation to reduce any identified traffic impacts to less than significant.
 - Any additional traffic issues identified by the City.
4. Noise. Amplification of music, human voices and other sources of sound are not permitted outside of the museum buildings. Sound from inside the

building must otherwise be in compliance with the performance standards contained in Municipal Code Section 30.40.010.

5. Lighting. Exterior lighting shall be limited to security lighting, parking lot lighting, and lighting required for use of outside courtyards, decks, walkways and stairs. Outside courtyards, decks, walkways and stairs shall only be illuminated during evening events except for minimal lighting required for the safety and security. All lighting sources shall be shielded in such a manner that the light is directed away from streets and adjoining properties. Illuminators should be integrated within the architecture of the building to the extent possible. Freestanding lampposts in the parking lot shall be no taller than 18 feet. A lighting plan with performance standards, prepared to the satisfaction of the City, shall be submitted with the use permit application. Use of motion detection lighting is preferred to lights activated manually or by a timer. The performance standards and other relevant criteria identified in the lighting plan shall be incorporated into the Major Use Permit.
6. Landscaping. Buildings, parking areas and outdoor areas shall be integrated with landscaping consistent with residential development. Landscaping, including plants, patios and decorative walls with plants, may be natural or designed for the site.
7. Grounds Rentals. Rental of the museum grounds for special private and public events is permitted in accordance with the Municipal Code standards for special events and the conditions of the Major Use Permit.

2-13-04

California Coastal Commission
Attention: Gary Cannon
San Diego, CA
619-767-2384 Fax

Re: City of Encinitas CCIP lighting standards

Dear Mr. Cannon:

I spoke to Lee and he mentioned you were processing the above.

In a letter I received from Tom Curriden, in response to a letter I sent complaining about halogen lights glaring into my windows that were recently installed as they light up not only the inside of my house, but the front and rear yards of my neighborhood.

My complaint is: The city wrote language stating a .5 foot-candle limitation on light trespass in residential areas, measured at the common property line. There is no definition clearly defined by .5 candle-foot limitation, thus creating legal interpretation issues in which case could result in unnecessary legal action between neighbors. In other words, it is not perfectly clear to the average person.

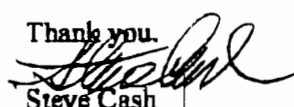
As well, they are proposing an exemption for landscape lights 50 watts or less and front yard lighting used to illuminate pedestrian/vehicular and the like. This is so completely out of line with reality! Here is government with people who are not looking at the issue correctly. Landscape lights with 50-watt bulbs are a tremendous and unnecessary wattage. I can tell you this from decades of construction experience. My landscape lights are 10 watts, save energy, which saves on pollution through the burning of less oil at the generating plant, provide an ample amount of light and help keep our sky dark at night. 50-watt bulbs and front yard lighting brighten an area unnecessarily countering my previous statements.

In the 16+ years I have lived here, it has only been in the last year, birds have begun to nest in my yard and in the surrounding area. It has been only in the last 7 years red tail hawks are nesting along my private road. Before these times, there was nothing!

Dark nights give birds the chance to rest, which I believe helps to contribute to breeding. It also gives people the chance to rest their nervous systems, which we are all entitled to.


Please amend the above language to plan for all this and incorporate motion lights and low wattage bulbs as well as outlawing halogen and other spot and unshielded lights in residential areas as this is to the best interest of all.

Thank you.


Steve Cash
472 Bighton Ave.
Cardiff, CA 92007
760-944-7972

Page 1 of 2

Page 1 of 2

EXHIBIT NO. 4
APPLICATION NO.
Encinitas LCPA #3-03
Community Character
Letter of Opposition
to Lighting Standards
 California Coastal Commission



*City of
Encinitas*

January 26, 2004

Mr. Steve Cash
472 Brighton Ave.
Cardiff, CA 92007

This letter is in response to your correspondence dated January 20, 2004, in which you describe problems you have experienced from light from two sources: (1) halogen-type lights and landscape lights belonging to neighboring homes, and (2) light trespass from a street light and the number of street lights in your area in general. This letter is to address the issue of light from neighboring homes; it is anticipated that you will receive a separate letter from the City's Engineering Services or Public Works Departments regarding street lights.

In the past, the lack of residential lighting limitations/standards in the Encinitas Municipal Code has made it difficult for the City to resolve issues of light trespass between neighboring homeowners through Code Enforcement or other means. For that reason, the City Council adopted a series of Code amendments as part of the Community Character Implementation Program (CCIP) that include lighting standards and limitations in residential zones. Specifically, those amendments include a .5 foot-candle limitation on light trespass in residential areas, measured at the common property line, as well as a requirement that all lighting fixtures be shielded such that the light source is not visible from adjoining properties. Exempted from the shielding requirement are landscape lights of less than 50 watts (e.g. "Malibu" lights) and front yard lighting used to illuminate pedestrian/vehicular entries, and the like.

It should be noted that these Code amendments do require the City to obtain Coastal Commission approval of a Local Coastal Program Amendment before they can become effective, for which the City has submitted an application that is now in process. The Council directed that the amendments take effect at the end of this year (December 31, 2004) by which time all Coastal Commission and City actions are anticipated to be complete.

If you have any further questions, please give me a call at (760) 633-2712.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Curriden", written over a horizontal line.

Tom Curriden
Principal Planner, City of Encinitas

Cc
City Council
City Manager

Page 2 of 2