

**CALIFORNIA COASTAL COMMISSION**

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



RECORD PACKET COPY

September 16, 2005

**Wed 6a**

**TO: COMMISSIONERS AND INTERESTED PERSONS**

**FROM: DEBORAH LEE, SOUTH COAST DEPUTY DIRECTOR  
SHERILYN SARB, DISTRICT MANAGER, SAN DIEGO  
BILL PONDER, COASTAL PROGRAM ANALYST**

**SUBJECT: STAFF RECOMMENDATION ON CITY OF CARLSBAD MELLO II  
LCP SEGMENT MAJOR AMENDMENT NO. #1-05B (Kelly  
Corporate Center), for Public Hearing and Possible Commission Action  
at the Meeting of October 12-14, 2005)**

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**SYNOPSIS**

On April 25, 2005, the City of Carlsbad Local Coastal Program (LCP) Amendment #1-05A-D was filed in the San Diego District office. The amendment involves four separate components and will affect both the land use and implementation plan portions of the certified Carlsbad LCP. LCPA #1-05A (Yamamoto) and C (North Coast Calvary Chapel) have been acted on by the Commission. LCPA #1-05D (Temporary Buildings) will be acted on in the future. LCPA #1-05B (Kelly Corporate Center) is the subject of this staff report. This one component of the LCP Amendment also includes changes to both the land use and implementation plan portions of the LCP, as it involves changing the land use and zoning designations of an approximately 9.5 acre area to Open Space. The overall property involved equals 27.16 acres.

A one-year time extension for Commission action on LCPA #1-05 was approved by the Commission in June 2005. The last day for Commission action is July 25, 2006.

**SUMMARY OF STAFF RECOMMENDATION**

Staff is recommending approval of the proposed LCP amendment as submitted. The proposed land use and zoning designations of Open Space for approximately 9.5 acres include the area of the site that has been encumbered by open space easements through previous discretionary approvals by the City of Carlsbad for the Kelly Corporate Center. Most of the open space contains riparian vegetation within the Encinas Creek drainage. The subject site is developed and the City indicates there is no potential for further subdivision. The proposed LCP amendment is City-initiated as a clean-up measure to bring the certified LCP Land Use Plan and zoning for the property into conformance with each other, and to

acknowledge the "hardline" open space for the property that is shown as such in the certified Habitat Management Plan/Local Coastal Program

The appropriate resolutions and motions begin on Page 4. The findings for approval of the Land Use Plan Amendment as submitted begin on Page 5; the findings for approval of the Implementation Plan Amendment as submitted begin on Page 6.

**ADDITIONAL INFORMATION**

Further information on the submittal may be obtained from Bill Ponder at the San Diego Area Office of the Coastal Commission at 7575 Metropolitan Drive, Suite 103, San Diego, CA 92108-4402, (619) 767-2370.

## **PART I. OVERVIEW**

### **A. LCP HISTORY**

The City of Carlsbad certified LCP contains six geographic segments as follows: Agua Hedionda, Mello I, Mello II, West Batiquitos Lagoon/Sammis Properties, East Batiquitos Lagoon/Hunt Properties and Village Redevelopment. Pursuant to Sections 30170(f) and 30171 of the Public Resources Code, the Coastal Commission prepared and approved two portions of the LCP, the Mello I and II segments in 1980 and 1981, respectively. However, the City did not seek permit authority at that time. The West Batiquitos Lagoon/ Sammis Properties segment was certified in 1985. The East Batiquitos Lagoon/Hunt Properties segment was certified in 1988. The Village Redevelopment Area LCP was certified in 1988; the City has been issuing coastal development permits there since that time. On October 21, 1997, the City assumed permit jurisdiction and has been issuing coastal development permits for all segments except Agua Hedionda. The Agua Hedionda Lagoon LCP segment is a deferred certification area until an implementation plan for that segment is certified. The subject amendment request affects the Mello II LCP segment.

### **B. STANDARD OF REVIEW**

The standard of review for land use plans, or their amendments, is found in Section 30512 of the Coastal Act. This section requires the Commission to certify an LUP or LUP amendment if it finds that it meets the requirements of Chapter 3 of the Coastal Act. Specifically, it states:

#### **Section 30512**

(c) The Commission shall certify a land use plan, or any amendments thereto, if it finds that a land use plan meets the requirements of, and is in conformity with, the policies of Chapter 3 (commencing with Section 30200). Except as provided in paragraph (1) of subdivision (a), a decision to certify shall require a majority vote of the appointed membership of the Commission.

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.

### **C. 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.

## **PART II. LOCAL COASTAL PROGRAM SUBMITTAL - RESOLUTIONS**

Following a public hearing, staff recommends the Commission adopt the following resolutions and findings. The appropriate motion to introduce each resolution and a staff recommendation are provided just prior to each resolution.

### **I. MOTION**

*I move that the Commission certify the Land Use Plan Amendment #1-05B for the City of Carlsbad LCP Mello II Segment as submitted.*

#### **STAFF RECOMMENDATION TO CERTIFY:**

Staff recommends a YES vote. Passage of this motion will result in certification of the land use plan amendment as submitted and adoption of the following resolution and findings. The motion to certify as submitted passes only upon an affirmative vote of a majority of the appointed Commissioners.

#### **RESOLUTION TO CERTIFY LAND USE PLAN AMENDMENT AS SUBMITTED:**

The Commission hereby certifies the Land Use Plan Amendment for the City of Carlsbad certified LCP as submitted and adopts the findings set forth below on grounds that the land use plan will meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the land use plan 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 plan 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 that will result from certification of the land use plan.

### **II. MOTION**

*I move that the Commission reject the City of Carlsbad Implementation Plan Amendment #1-05B as submitted.*

#### **STAFF RECOMMENDATION OF CERTIFICATION AS SUBMITTED:**

Staff recommends a NO vote. Failure of this motion will result in certification of the Implementation Program Amendment as submitted 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 IMPLEMENTATION PROGRAM AMENDMENT  
AS SUBMITTED:**

The Commission hereby certifies the Implementation Program Amendment for the City of Carlsbad certified LCP as submitted and adopts the findings set forth below on grounds that the Implementation Program Amendment conforms with, and is adequate to carry out, the provisions of the certified Land Use Plan, as amended, and certification of the Implementation Program Amendment will meet the requirements of 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 or mitigation measures that would substantially lessen any significant adverse impacts on the environment that will result from certification of the Implementation Program.

**PART III. FINDINGS FOR APPROVAL OF THE CITY OF CARLSBAD  
MELLO II LAND USE PLAN AMENDMENT, AS SUBMITTED**

**A. Amendment Description.** The proposed LCP amendment would affect approximately 9.5 acres of a 27.16 acre site currently developed with the Kelly Corporate Center. The site is located south of Palomar Airport Road on the east and west sides of Hidden Valley Road in the City of Carlsbad. The property, as a whole, has a current LCP land use designation of Residential Medium Density (RM) and Planned Industrial (PI). The land use plan amendment proposes to designate approximately 9.5 acres of the site as open space on the Mello II LUP map to conform to the open space designated areas shown in the City's Habitat Management Plan (HMP), as incorporated into the City's LCP.

The project site is within the Mello II LUP segment. The standard of review for Land Use Plan amendments is the Chapter 3 policies of the Coastal Act.

**B. CONFORMITY WITH CHAPTER 3 OF THE COASTAL ACT**

**1. Environmentally Sensitive Habitat Areas.** The Coastal Act provides:

**Section 30240.**

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

The certified City of Carlsbad LCP land use plan (LUP) has been amended to incorporate the City's HMP. The HMP was developed to meet the requirements of the Coastal Act, the Endangered Species Act and the Natural Communities Conservation Planning (NCCP) process. The 9.5 acres of open space on the Kelly Corporate Center site are shown as "hardline" open space in the certified HMP/LCP as areas encumbered by open space easements. Within the adopted HMP, "hardline" areas were delineated on the maps to specifically identify the habitat preserve areas, as opposed to other properties where the HMP identifies standards for future development of individual properties. The certified LUP includes Coastal Act Sections 30233 and 30240 as applicable standards of review for development within and adjacent to wetlands and other environmentally sensitive habitat areas. In addition, the HMP and certified LUP contain habitat protection requirements and conservation standards applicable to certain properties within the Carlsbad coastal zone (most of which are undeveloped), to concentrate future development adjacent to already-developed areas and protect slopes greater than 25% grade and scenic natural landforms. The Commission certified the HMP/LCP amendment as consistent with Sections 30240 and 30250 of the Coastal Act.

The Kelly Corporate Center site contains the Encina Creek drainage; the drainage course on the subject site is entirely comprised within the existing open space easements and the proposed open space areas. This portion of the site is identified as a Habitat Core and Linkage within the certified HMP/LCP and should remain as open space to meet the habitat protection goals of the Coastal Act. Based on the above, the Commission finds that the proposed designation of open space on 9.5 acres of this site is consistent with the provisions of the certified HMP/LCP and, thus, with Sections 30233, 30240 and 30250 of the Coastal Act.

**PART IV. FINDINGS FOR APPROVAL OF THE CITY OF CARLSBAD**  
**MELLO II IMPLEMENTATION PLAN AMENDMENT #1-05B AS**  
**SUBMITTED**

**A. AMENDMENT DESCRIPTION**

The proposed amendment will replace the current zoning of Residential Density Multiple with a Qualified Development Overlay (RD-M-Q), Residential Single Family with a Qualified Development Overlay (R-1-Q) and Planned Industrial (P-M-Q) on 9.5 acres to Open Space (OS). The OS zone will be applied to those portions of the site that have been identified as containing sensitive coastal resources, are currently encumbered by open space easements and correspond to the proposed Open Space designation in the certified LUP. The remainder of the property will remain zoned P-M-Q to correspond to the existing Planned Industrial use.

**B. FINDINGS FOR APPROVAL**

**1. Purpose and Intent of the Ordinance.**

- a. **Open Space Zone.** To provide for open space and recreational uses which have been deemed necessary for the aesthetically attractive and orderly growth of the community. It is used in conjunction with publicly owned property such as parks, open space, recreation areas, civic centers and other public facilities of a similar nature. The zone also designates high priority resource areas at time of development that, when combined would create a logical open space system for the community.

**2. Major Provisions of the Ordinance.**

- a. **Open Space Zone.** The open space zone allows the following uses and structures: beaches and shoreline recreation, bicycle paths, horse trails, open space easements, public parks, City picnic areas and playgrounds, public access easements, scenic and slope easements, transportation rights-of-way, vista points, agricultural uses (field and seed crops, truck crops, horticultural crops, orchards and vineyards, pasture and rangeland, tree farms and fallow lands). Permitted accessory uses and structures include public restrooms, clubhouses, parking areas, barbecue and fire pits, playground equipment, stairways, patios, changing rooms, pool filtering equipment, fencing and other accessory uses required for the conduct of the permitted uses. Uses allowed by conditional use permit include group or organized camps, marinas, playfields and athletic fields, public facilities, recreational campgrounds, public stables and riding academies, golf courses, swimming pools, tennis courts, private playgrounds and picnic areas, other related cultural, entertainment and recreational activities and facilities and stands for the display and sale of aquaculture products grown on the premises. There is no minimum lot area established for the open space zone. No building or structure in the zone shall exceed thirty-five feet in height unless a higher elevation is approved as a conditional use permit by the Planning Commission.

**3. Adequacy of the Ordinance to Implement the Certified LUP Segments.**

The standard of review for LCP implementation submittals or amendments is their consistency with and ability to carry out the provisions of the certified Land Use Plan (LUP). In the case of the subject LCP amendment, the City's Zoning Code serves as the Implementation Program for the Mello II segment of the LCP.

As stated in the previous findings, the Carlsbad LCP has been amended to incorporate the City's Habitat Management Plan (HMP) which was developed to meet the requirements of the Coastal Act, the Endangered Species Act and the Natural Communities Conservation Planning (NCCP) process. The Commission found approval of the HMP is the most protective option for coastal resources based

on its assurance that the habitat preserve and mitigation areas will be implemented as proposed, and properly maintained in perpetuity as habitat preserve. Should the habitat not be managed and maintained as designed, or if the required mitigation sites are not provided as proposed, the long-term benefits of the HMP for coastal resources would not be realized. To address these concerns, the City has included policies in the HMP and associated LUP which address establishment of the habitat preserve, funding, monitoring and management.

Interim preserve management requirements, as provided in the HMP, will cover the first three years following approval of the HMP, during which time a plan for permanent management will be developed by the City in cooperation with existing reserve managers, private owners, and the wildlife agencies. The preserve management plan must be approved by the City, the wildlife agencies and the Commission, and shall ensure adequate funding to protect the preserve as open space and maintain the biological values of the mitigation areas in perpetuity. Additionally, the preserve management plan is required to be incorporated into the Implementation Plan of the LCP through an LCP amendment within one year of Commission certification of the HMP as part of the certified LCP. Unfortunately, the one-year goal has not been met as the HMP was certified by the Commission in August 2003 and the preserve management plan has not yet been submitted.

One of the major goals of HMP implementation will be to establish an open space conservation mechanism that will ensure protection of coastal resources in perpetuity. It is anticipated this mechanism will include the creation and application of a conservation oriented open space zone or overlay to the habitat preserve areas that will restrict uses of those areas to resource dependent uses which are more restrictive and protective of coastal resources than the current open space zone certified in the LCP. The Commission finds, in the absence of a resource-oriented conservation zone, the habitat preserve will nevertheless be protected as open space through the Open Space land use plan designation, which is controlling, and the conservation easements which have been recorded as a condition of approval by the City of the tentative map. The conservation easements prohibit private encroachment or development in dedicated open space; however, habitat restoration and enhancement is permitted. Therefore, the Commission finds the proposed open space zoning would adequately implement the HMP/LCP in the interim and is consistent with and adequate to carry out the certified LUP.

#### **PART V. 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, those 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 a LCP submittal or, as in this case, a LCP amendment submittal, to find that the approval of the proposed LCP, or LCP, as amended, conforms to CEQA provisions, including the requirement in CEQA section 21080.5(d)(2)(A) that the amended LCP 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). The proposed land use and zoning amendments will not result in adverse impacts on coastal resources or public access. The Commission finds that there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the LCP amendment may have on the environment. Therefore, in terms of CEQA review, the Commission finds that approval of the LCP amendment will not result in any significant adverse environmental impacts.

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MAR 29 2005

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

RESOLUTION NO. 2005-046

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARLSBAD, CALIFORNIA, APPROVING A NEGATIVE DECLARATION, GENERAL PLAN AMENDMENT AND LOCAL COASTAL PROGRAM AMENDMENT TO CHANGE THE RESIDENTIAL MEDIUM DENSITY (RM) AND PLANNED INDUSTRIAL (PI) GENERAL PLAN DESIGNATIONS TO OPEN SPACE ON ROUGHLY 9.5 ACRES OF PROPERTY WITHIN THE KELLY CORPORATE CENTER INDUSTRIAL SUBDIVISION GENERALLY LOCATED ON THE SOUTHWEST CORNER OF PALOMAR AIRPORT ROAD AND HIDDEN VALLEY ROAD AND BETWEEN HIDDEN VALLEY ROAD AND AVIARA PARKWAY, SOUTH OF PALOMAR AIRPORT ROAD, IN LOCAL FACILITIES MANAGEMENT ZONE 5.

CASE NAME: KELLY CORPORATE CENTER GPA/ZC

CASE NO.: GPA 04-09/ZC 04-05/LCPA 04-08

WHEREAS, pursuant to the provisions of the Municipal Code, the Planning Commission did, on January 5, 2005, hold a duly noticed public hearing as prescribed by law to consider a Negative Declaration, General Plan Amendment, Zone Change and Local Coastal Program Amendment; and

WHEREAS, the City Council of the City of Carlsbad, on the 15th day of February, 2005, held a duly noticed public hearing to consider said Negative Declaration, General Plan Amendment and Local Coastal Program Amendment and at that time received recommendations, objections, protests, comments of all persons interested in or opposed to the Negative Declaration and/or GPA 04-09/LCPA 04-08; and

NOW, THEREFORE, BE IT HEREBY RESOLVED by the City Council of the City of Carlsbad as follows:

1. That all recitations are true and correct.
2. That the City Council approves GPA 04-09/LCPA 04-08 and incorporates the findings and conditions of the Planning Commission as set forth in Planning Commission Resolutions No. 5796 and 5798, on file with the City Clerk and made a part hereof by reference, are the findings and conditions of the City Council.
3. That the application for a Negative Declaration and Local Coastal Program Amendment on property located on the southwest corner of Palomar Airport Road and Hidden Valley Road and between Hidden Valley Road and Aviara Parkway south of Palomar Airport Road are approved as shown in Planning Commission Resolutions No. 5795 and 5798.

....

Carlsbad LCPA# 1-051  
resolution 6

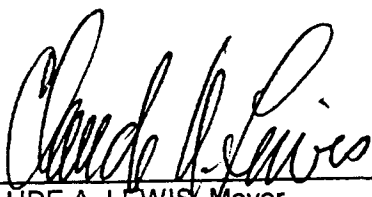
1                   4.       That the application for a General Plan Amendment to change the land  
2 use designation from Residential Medium Density (RM) and Planned Industrial (PI) to Open  
3 Space (OS) and an amendment to the Open Space and Conservation Element on property  
4 generally located on the southwest corner of Palomar Airport Road and Hidden Valley Road  
5 and between Hidden Valley Road and Aviara Parkway south of Palomar Airport Road, as  
6 shown in Planning Commission Resolution No. 5796, is hereby accepted, approved in concept,  
7 and shall be formally approved with GPA Batch No. 1 comprised of GPA 01-03, GPA 03-11,  
8 GPA 04-05, GPA 04-07, GPA 04-09, GPA 04-14, GPA 04-16, and GPA 04-18.

9  
10                   PASSED AND ADOPTED at a regular meeting of the City Council of the City of  
11 Carlsbad on the 15th           day of February           , 2005, by the following vote, to wit:

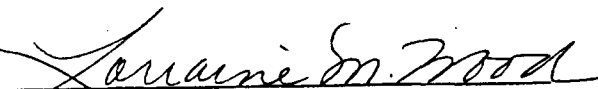
12                   AYES: Council Members Lewis, Hall, Kulchin, Packard, Sigafoose

13                   NOES:

14                   ABSENT:

15  
16                     
17                   \_\_\_\_\_  
18                   CLAUDE A. LEWIS, Mayor

19                   ATTEST:

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21                     
22                   \_\_\_\_\_  
23                   LORRAINE M. WOOD, City Clerk

24                   (SEAL)

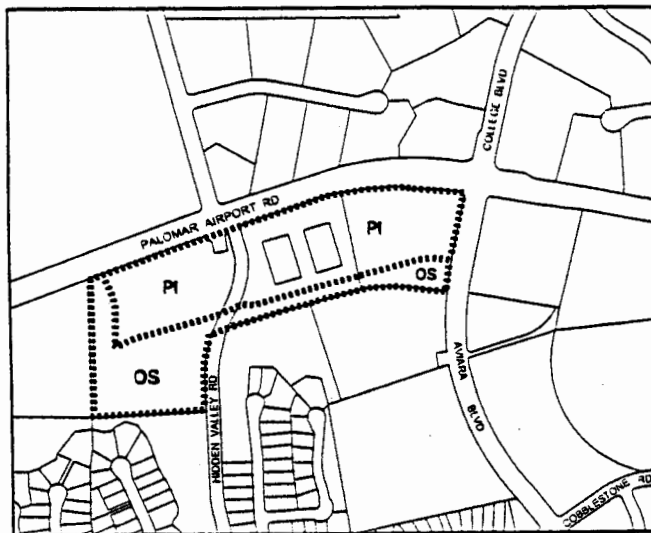
# **LCPA 04-08 – Kelly Corporate Center GPA/ZC LAND USE**

January 5, 2005

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MAR 29 2005  
CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT



**EXISTING**



**PROPOSED**

Related Case File No(s): GPA 04-09/ZC 04-05		
LCP Map Designation Change		
Property	From:	To:
A. 212-040-66-00	PI/RM	PI/OS
B. 212-040-67-00	PI	PI/OS
C. 212-040-70-00	PI/UA	PI/OS

*Carlsted LCPA #1-05B  
Land Use*

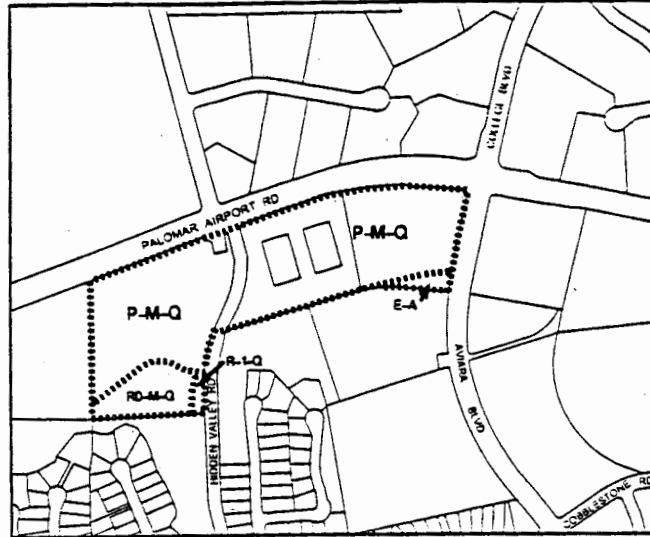
# **LCPA 04-08 – Kelly Corporate Center GPA/ZC ZONING**

January 5, 2005

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MAR 29 2005

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT



**EXISTING**



**PROPOSED**

Related Case File No(s): GPA 04-09 / ZC 04-05		
LCP Map Designation Change		
Property	From:	To:
A. 212-040-66-00	P-M-Q/R-1-Q/RD-M-Q	P-M-Q/OS
B. 212-040-67-00	P-M-Q	P-M-Q/OS
C. 212-040-70-00	P-M-Q/E-A	P-M-Q/OS

*Carlsbad LCPA# 1-05B  
Zoning*



**CALIFORNIA COASTAL COMMISSION**

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



September 29, 2005

**RECORD PACKET COPY****WED 6b**

**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. 2-05 (SHORT TERM VACATION RENTALS) TO THE  
CITY'S LOCAL COASTAL PROGRAM (For Public Hearing and Possible Action  
at the Meeting of October 12-14, 2005)**

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**SYNOPSIS****SUMMARY OF AMENDMENT REQUEST**

The subject LCP implementation plan amendment was submitted and filed as complete on June 9, 2005. A one-year time extension was granted on July 15, 2005. As such, the last date for Commission action on this item is August 8, 2006.

The City is proposing to amend its certified LCP implementation plan to prohibit short-term vacation rentals (30 days or less) within all residential zones. To accomplish that objective, the amendment revises the definition of Transient Habitation Unit to include "short-term vacation rentals". Transient Habitation Units are currently and will continue to be prohibited within all residential zones. In addition, the amendment provides for a definition of "short term vacation rental". "Bed and breakfast type" inns would still be permitted within residential zones subject to existing minor use permit provisions. In addition, pre-existing short-term vacation rentals could continue to exist in residential neighborhoods as a legal non-conforming use.

**SUMMARY OF STAFF RECOMMENDATION**

Staff is recommending denial of the LCP Amendment as submitted because the prohibition on short-term vacation rentals in all residential zones would significantly restrict lodging opportunities for coastal visitors and is in conflict with the LUP requirements for promoting access to the City's beaches. The City has documented that the demand for short-term vacation rentals is high especially in the residential zones west of Highway 101. Since the City has very few Visitor Serving Commercial (VSC) designated properties west of Highway 101, allowing short-term rentals in the

residential areas west of Highway 101 significantly contributes to the availability of coastal lodging near the shoreline.

The appropriate resolutions and motions begin on Page 3. The findings for denial of the Implementation Plan Amendment as submitted begin on Page 4.

## **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 sixteenth amendment to the City's certified LCP.

## **ADDITIONAL INFORMATION**

Further information on the City of Encinitas LCP Amendment No. 2-05 may be obtained from Gary Cannon, Coastal Planner, at (619) 767-2370.

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**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.

**PART II. LOCAL COASTAL PROGRAM SUBMITTAL - RESOLUTIONS**

Following a public hearing, staff recommends the Commission adopt the following resolutions and findings. The appropriate motion to introduce the resolution and a staff recommendation are provided just prior to the resolution.

- I. MOTION I:** *I move that the Commission reject the Implementation Program Amendment for the City of Encinitas LCP Amendment No. 2-05 as submitted.*

**STAFF RECOMMENDATION OF REJECTION:**

Staff recommends a **YES** vote. Passage of this motion will result in rejection of the 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 No. 2-05 for the City of Encinitas certified LCP 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 Encinitas 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 as submitted.

**PART IV. FINDINGS FOR REJECTION OF THE CITY OF ENCINITAS  
IMPLEMENTATION PLAN AMENDMENT, AS SUBMITTED**

**A. AMENDMENT DESCRIPTION**

LCP Amendment No. 2-05 prohibits short-term vacation rentals (30 days or less) within all residential zones. Specifically, the amendment revises the existing definition of Transient Habitation Unit so as include "short term vacation rentals". Transient Habitation Units are currently prohibited within all residential zones. Currently, Transient Habitation Units are defined to include hotel and motel rooms and campgrounds. The inclusion of "short term vacation rentals" as a Transient Habitation Unit will result in the prohibition of short-term vacation rentals in all residential zones. The amendment also provides for a definition of "short term vacation rental" to generally mean rental of any structure or portion of a structure for 30 days or less within a residential zone (see complete definition below). Pre-existing short-term vacation rentals would be allowed to continue as a legal non-conforming use if this amendment were to be approved.

The amendment also revises the Zoning Matrix to prohibit Transient Habitation Units in the Local Commercial Zone (LC), permit them by right in the Visitor Serving Commercial Zone (VSC) and Limited Visitor Serving Commercial Zone (L-VSC) (currently allowed only with a Conditional Use Permit) and allow campgrounds within the Public/Semi-Public Zone (P/SP) with a Conditional Use Permit. The amendment also revises language within the accessory use regulations of the zoning code to clarify that Bed and Breakfast Homes are considered to be compatible in residential areas.

**B. SPECIFIC FINDINGS FOR REJECTION**

The standard of review for LCP implementation submittals or amendments is their consistency with and ability to carry out the provisions of the certified LUP.

a) Purpose and Intent of the Ordinance. The purpose and intent of the proposed amendment is to prohibit short-term vacation rentals in all residential zones throughout the city. The City has identified that residential homes and condominiums near the shoreline are increasingly being rented out for short term vacation use resulting in increased conflicts between residents and visitors involving late night disturbances, excessive noise, parking problems and trash. The amendment proposes to limit these conflicts by preventing any additional residential units from being used as short-term vacation rentals.

b) Major Provisions of the Ordinance.

The proposed ordinance would provide a definition for Short Term Vacation Rental:

Short Term Vacation Rental shall mean the rental of any structure or any portion of any structure for occupancy for dwelling, lodging or sleeping purposes 30

consecutive days or less in a residential zoning district, including single-family residences, condominiums, duplexes, townhomes and multiple-family dwellings.

In addition, the definition of "Transient Habitation Unit" is proposed be revised to include "short term vacation rental" along with its existing list that includes hotel, motel and campground. Transient Habitation Units are currently, and would continue to be, prohibited within all residential zones.

The Zoning Matrix is also proposed to be revised to prohibit Transient Habitation Units within the Local Commercial zone (designated for shopping and retail use for local residents), to allow Transient Habitation Units by right in the Visitor Serving Zone (intended for commercial activities to serve visitors) and the Limited Visitor Serving Zone (intended for primarily hotel/motel use), and to allow campgrounds within the Public/Semi Public Zone pursuant to a conditional use permit.

In addition, to clarify that Bed and Breakfast Inns are a compatible use within residential zones, existing language pertaining to Bed and Breakfast Inns is proposed to be modified within the Accessory Use provisions of the Zoning Code.

Finally, the City resolution approving these proposed ordinances identifies that pre-existing short term vacation rentals will be allowed to remain as a legal nonconforming use consistent with existing non-conforming use regulations.

c) Adequacy of the Ordinance to Implement the Certified LUP Segments.

The Coastal Act promotes and preserves a full range of public access opportunities along the coast, including provision of accessible and affordable visitor-serving commercial facilities which serve and support coastal visitors. These Coastal Act mandates are addressed in the City's certified LUP under several Land Use and Recreation Elements that include:

LAND USE POLICY 1.13: The visitor-serving commercial land use shall be located where it will not intrude into existing residential communities. This category applies in order to reserve sufficient land in appropriate locations expressly for commercial recreation and visitor-serving uses [emphasis added] such as:

- tourist lodging, including campgrounds (bed and breakfast facilities may be compatible in residential areas)
- eating and drinking establishments
- specialty shops and personal services
- food and beverage retail sales (convenience)
- participant sports and recreation

- entertainment (Coastal Act/30250)

The above listed uses and other uses specifically intended to serve the needs of visitors shall be the principal uses allowed within the visitor-serving land use designation. All other permitted or conditionally permitted uses specified in the Zoning Code for areas zoned as visitor-serving commercial, shall be considered as ancillary uses to the allowable principal uses. Ancillary or non-principal uses and required off-street parking shall not occupy or utilize more than 30% of the ground floor area. Policy 1.13 amended 5/11/95 (Reso. 95-32)

LAND USE POLICY 1.14: The City will maintain and enhance the Hwy 101 commercial corridor by providing appropriate community-serving tourist-related and pedestrian-oriented uses. (Coastal Act/30250)

RECREATION POLICY 3.2: The City will designate as "Visitor-Serving Commercial" use areas land in the vicinity of primary coastal access routes, particularly in proximity to higher intensity beach use areas. (Coastal Act/30221/30222/30223)

RECREATION POLICY 5.1: The City recognizes Cardiff Beach State Park, San Elijo Beach State Park, South Carlsbad Beach State Park and Moonlight Beach (future City) State Park, as the major visitor destination beaches in the Encinitas area. The City will work with the State to upgrade and promote access to these State beaches, and will act to upgrade and promote access to Moonlight Beach, in order that they may receive an increased proportion of visitor uses. (Coastal Act/30214)

The Land Use Element also identifies the importance of the Visitor Serving Commercial zone:

The Visitor-Serving Commercial designation specifically applies to those commercial activities that serve persons visiting the City. Land uses within this category are an important source of sales tax revenue for the City. This designation is also important in implementing Coastal Act policies that call for the identification of hotels, resorts, and other establishments that serve visitors utilizing the City's coastal amenities. The maximum permitted floor area ratio for uses in this category is up to 1.0. (Coastal Act/30213) (LU-37a)

The concern with the proposed amendment is the potential impacts to visitors by the elimination of a source of overnight visitor-serving accommodations. When the City's LCP was certified in 1994, the Commission was concerned with the minimal area of the City devoted exclusively to visitor-serving uses. Only approximately 41 acres are zoned for visitor-serving use throughout the approximately 19.4 sq. miles of city area. In addition, only approximately 14.5 acres of the approximately 41 acres zoned for visitor-serving use are located west of Highway 101 close to the shoreline (Ref. Exhibit #3). Of these, approximately 14.5 acres located west of Highway 101, none currently contain hotel/motels although an approximately 130-room hotel has been approved on a 4 acre

Limited-VSC site at the northwest corner of the City, west of Highway 101 (Ref. 6-92-203/Sports Shinko). The Commission found that because of the minimal area of the City's coastal zone devoted to visitor serving zoning, the visitor commercial areas should be reserved for only the highest priority uses. The City does contain hotel and motels, however, almost all of these are located on non-visitor-serving use zones and are, therefore, not protected as a priority use. The City's current request to prohibit short-term vacation rentals thus further restricts lodging opportunities for coastal visitors and raises serious questions with the LUP requirements for promoting access to the City's beaches. In addition, based on the City's amendment request, no information has been provided by the City to demonstrate that sufficient land in appropriate locations have thus far been provided for commercial recreation and visitor-serving uses, particularly near the shoreline west of Highway 101. Highway 101 is a primary coastal route and the areas west of Highway 101 are high intensity beach use areas. Given the limited reservation of Visitor Serving Commercial designated areas in this area, the availability of short-term rentals adjacent to the shoreline serves as an important asset in terms of lodging opportunities. In addition, the City has failed to provide any assessment of the availability and affordability of hotel/motels in the City to assure the adequacy of these existing uses. If anything, the City has demonstrated that the demand for short-term vacation rentals is high and the supply of visitor serving accommodations may need to increase to meet demand.

The City has recently performed a survey that estimates approximately 2.5 million people visit Encinitas' beaches annually. In addition, the survey of beach visitors indicated that approximately 68% of the beachgoers came from outside of Encinitas and of those, 19% indicated they were staying overnight in the City (ref. City Council Staff Report dated May 12, 2004). The City staff report indicated that in response to this demand, many property owners have begun renting their homes as short-term rentals. The City performed an Internet search for vacation rentals and determined that at least 112 residences or condominiums are currently used for short-term vacation rentals throughout the City. The majority of these identified residential units are located on the bluffs overlooking the ocean in the northern section of Encinitas in the community known as Leucadia. Based on that survey, the City estimates short-term vacation rental rates in the city vary from \$750.00 - \$3,750.00 per week in the low season (average \$1,564.00) to \$850.00 - \$6,000.00 per week in the high season (average \$2,414.00). Although the upper limits of these ranges are certainly not lower cost lodging, short-term rentals still offer a more affordable and desirable accommodation for many parties especially families.

In approving the amendment, the City emphasized protection afforded to residential neighborhoods by Goal 1 of the Land Use Element:

Encinitas will strive to be a unique seaside community providing a balance of housing, commercial, light industrial/office development, recreation, agriculture and open space compatible with the predominant residential character of the community.

However, although part of the City's Land Use Element, this particular section of the Land Use Element is not part of the certified LUP. Short-term vacation rentals have been occurring openly for the past several decades and are widely advertised as available for public rental. They have been rented not only by beachgoers but also by visitors attending the Del Mar Racetrack during the racing season. Although the City has provided some evidence of problems with short-term vacation rentals in residential zones, it has not established that short-term rentals significantly degrade the residential character of these residential neighborhoods. In addition, there are no policies within the LUP which would specifically prohibit residential units from being rented as short-term vacation rentals. With a very limited number of visitor-serving use zones within the City and very few located near the shoreline west of Highway 101, short-term vacation rentals provide a significant supplement for visitor accommodations such that a prohibition on short-term rentals could have a significant adverse impact on public access and visitor-serving opportunities.

In approving other Local Coastal Plans and Amendments in other communities, the Commission has found short-term vacation rentals in residential zones can be a valuable and necessary visitor-serving asset. In each case, the Commission must evaluate the availability of existing hotel/motel accommodations in the near shore area, the historic pattern of short-term vacation rentals in the area, the specific visitor serving uses available, the services available to serve the proposed vacation rental use, and the impacts of such vacation rental use in the residential community. Recently, the Commission approved an LCP amendment to allow short-term vacation rentals in the Residential Single Family (RS) and the Mixed Residential Use (R2) zones within the Shelter Cove community in Humboldt County affecting approximately 2,300 lots (Ref. Humboldt County LCPA No. 1-98-C). In balancing the need to increase public access by increasing the availability of visitor-serving accommodations with the need to protect the residential community, the Commission approved suggested modifications to the Humboldt County LCP Amendment request that required specific regulations for vacation rentals in terms of managing the number of occupants, parking and other related impacts and so as to not unduly impact local residents. In addition, a suggested modification was added that required property owners desiring to provide a vacation rental demonstrate proof of adequate sewer and water services to accommodate the increased intensity of use associated with the proposed vacation rental.

In the City of Imperial Beach, the Commission rejected an LCP amendment to ban vacation rentals in all residential zones in 2002 finding that the proposal was excessively restrictive and discouraging toward tourist related uses and visitor accommodations (Ref. City of Imperial Beach LCPA No. 1-02A). In 2004, the Commission approved an amendment to the City of Imperial Beach's LCP to add short-term rentals as a permitted use in the Commercial and Mixed-Use zones adjacent to the shoreline and to phase out any short-term vacation rentals in the residential zone (R-1500) along the shoreline (Ref. City of Imperial Beach LCPA No. 1-03). These Commercial and Mixed Use zones adjacent to the shoreline contained existing residential units. In addition, the phase out of vacation rentals in the residential zone adjacent to the shoreline was found to have an insignificant affect on the supply of short-term vacation rentals (9 affected residences). Unlike the first LCP amendment, the request did not include an explicit prohibition of

short-term vacation rentals in all residential zones throughout the City. In contrast, the City of Encinitas request involves a prohibition of short-term vacation rental in all residential zones. In addition, unlike Imperial Beach, most of the land use designations along the shoreline are residential and the prohibition of short-term vacation rentals would have a significant impact on the supply of visitor serving accommodations. If the City proposed a more narrowly crafted amendment that prohibited residential rentals in low-density areas that are removed from the beach and/or where short-term rentals have not historically occurred, or perhaps placed an upper limit on the number or percentage of vacation rentals in residential areas, the impact to low-cost visitor-serving accommodations would be limited and perhaps could be found consistent with the LUP. However, as proposed, the prohibition on short-term vacation rentals in all residential zones would have a significant adverse impact on visitors and would set an adverse precedent for balancing the needs of residents and visitors. Therefore, as proposed, the amendment cannot be found in conformance with and adequate to carry out, the certified land use plan, and must be denied.

#### **PART V. 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 with 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 impact which the activity may have on the environment. 14 C.C.R. §§ 13542(a), 135440(f), and 13555(b).

The proposed amendment to the City of Encinitas' Implementing Ordinances have been found inconsistent with and inadequate to carry out the policies of the certified land use plan. The amendment would have an adverse impact on visitor-serving accommodations and low-cost recreational facilities. Therefore, the Commission finds that a significant immittigable environmental impacts under the meaning of CEQA will result from the approval of the proposed LCP amendment as modified.



RECEIVED

JUN 9 9 2005

ORDINANCE NO. 2005-06

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ENCINITAS,  
CALIFORNIA, AMENDING MUNICIPAL CODE CHAPTERS 30.04 AND 30.09, AND  
SECTION 30.48.040Z REGARDING SHORT-TERM VACATION RENTALS, BED AND  
BREAKFAST USES  
ZCA/LCPA Case #04-280

WHEREAS, the City Council has determined that short-term vacation rentals in residential zones has caused land use conflicts that are normally associated with residential neighborhoods;

WHEREAS, such land use conflicts have included excessive noise, parking congestion with the neighborhood, traffic congestion, excessive trash, late night disturbances, and overcrowding, impacting established residential neighborhoods;

WHEREAS, in order to address this issue, the Council has determined to prohibit short-term vacation rentals within residential neighborhoods;

WHEREAS, the Council has determined that the adopted Zoning Code and Local Coastal Program amendments are consistent with the General Plan and Local Coastal Plan. The General Plan, LCP and Zoning Map establish various land use categories to ensure compatibility and to reduce conflicts between uses. The residential land use categories are established to protect existing neighborhoods from conflicts with more intensive uses. Short-term vacation rentals have, in some cases, caused conflicts with residential uses. The prohibition of short-term vacation rentals reinforces the purpose of the residential zones and helps to preserve and strengthen their established character.

WHEREAS, Goal 1 of the Land Use Element states that the City is a "unique seaside community providing a balance of housing, commercial light industrial/office development, recreation, agriculture and open space compatible with the predominant residential character of the community." The General Plan considers the predominant residential character of the community important.

WHEREAS, Policy 1.13 of the Land Use Element requires visitor-serving commercial land uses to "be located where it will not intrude into existing residential communities." The policy further clarifies that bed and breakfast facilities may be compatible in residential areas.

WHEREAS, short-term vacation rentals are considered to be a visitor-serving land use. Such uses have, in some cases, caused conflicts in well-established residential neighborhoods. Conflicts include noise, parking, traffic congestion, late night disturbances, excessive trash, and the like. In addition, the proliferation of the short-term rental use can change the overall purpose and character of the residential zone. The prohibition of short-term vacation rentals would preserve the "residential character of the community" by not allowing such visitor serving commercial uses to "intrude into existing residential communities." (Goal 1 and Policy 1.13, Land Use Element)

EXHIBIT NO. 1

APPLICATION NO.

Encinitas LCPA

#2-05

Short-term Rentals

City Resolution



WHEREAS, as such, the City Council determines that the prohibition of the short-term vacation rentals would not have an impact on the visitor-serving uses within the City, since the City has designated areas for visitor-serving commercial uses, which has the specific intent of providing services to visitors of the community. In addition, ample visitor serving uses are allowed within a variety of commercial zones within the City. Also, the existing residential uses that are currently used as short-term vacation rentals will become legal nonconforming uses and may continue to operate as a vacation rental subject to certain operational controls to address any potential nuisances.

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

SECTION 1: That Chapter 30.04, Definitions, is amended as follows:

SEE EXHIBIT A

SECTION 2: That Chapter 30.09, Use Matrix, is amended as follows:

SEE EXHIBIT B

SECTION 3: That Section 30.48.040Z, Bed and Breakfast accessory use, is amended as follows:

SEE EXHIBIT C


SECTION 4: The City Council, in their independent judgement, finds that the adoption of the Zoning Code and Local Coastal Program Amendments will be exempt from Environmental Review pursuant to General Rule 15061 (b) (3) since there would be no possibility of a significant effect on the environment because the amendments will not directly result in development.

SECTION 5: This ordinance will become effective following certification by the California Coastal Commission as being consistent with the Local Coastal Program for the City of Encinitas

SECTION 6: This Ordinance was introduced on April 13, 2005.

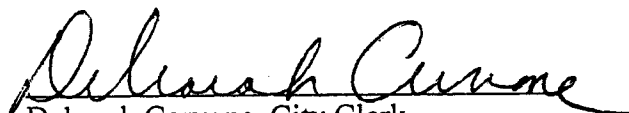
PASSED AND ADOPTED on the 11<sup>th</sup> day of May, 2005, by the following vote to wit:

AYES: Dalager, Bond, Guerin, Houlihan.  
NAYS: Stocks.  
ABSTAIN: None.  
ABSENT: None.

  
\_\_\_\_\_  
Dan Dalager  
Mayor of the City of Encinitas, California

**ATTESTATION AND CERTIFICATION:**

I hereby certify that this is a true and correct copy of Ordinance No 2005-06, which has been published pursuant to law.

  
\_\_\_\_\_  
Deborah Cervone, City Clerk

## EXHIBIT A

### ORDINANCE NO. 2005-06

#### Definitions, Chapter 30.04:

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BED AND BREAKFAST HOME shall mean a single family dwelling which is operated to provide lodging for pay, including overnight sleeping accommodations and breakfast, for one (1) or more guests for 30 consecutive days or less.

HOTEL shall mean a structure or portion thereof or groups of attached guest rooms or suites occupied on a transient basis for compensation.

MOTEL shall mean the same as "hotel".

SHORT TERM VACATION RENTAL shall mean the rental of any structure or any portion of any structure for occupancy for dwelling, lodging or sleeping purposes 30 consecutive days or less in a residential zoning district, including single-family residences, condominiums, duplexes, townhomes and multiple-family dwellings.

TRANSIENT HABITATION UNIT shall mean living quarters used for occupancy by transient persons for a period of 30 consecutive days or less. See Chapter 3.12 of the Municipal Code, Transient Occupancy Tax for applicable regulations. A transient habitation unit may include a hotel or motel room or suite of rooms, a cabin, campground space, or short-term vacation rental unit in residential units.

**ORDINANCE NO. 2005-06**  
**EXHIBIT B**

Use Matrix, Chapter 30.09

Use	Zoning uses														
	RR RR-1 RR-2	RS-11 R-3 R-5 R-8	R-11 R-15	R-20 R-25	MHP	OP	LC	GC	VSC	LI	BP	P/SP	ER/OS	L-LC	L-VSC
Camps (Ord. 95-04)	X	X	X	X	X	X	X	X	X	X	X	C	C*	X	X
Hotel	X	X	X	X	X	X	X	C	P	X	X	X	X	X	P
Motel	X	X	X	X	X	X	X	C	P	X	X	X	X	X	P
Transient Habitation (Ord. 91-03)	X	X	X	X	X	X	X	C	P	X	X	C**	X	X	P

**P = Permitted by Right**

**C = Conditional Use permit Required (Major)**

**Cm = Conditional Use Permit Required (Minor)**

**X = Prohibited**

**\* Not permitted within coastal zone ecological resource areas.**

**\*\* Applies to camps only.**

**ORDINANCE NO. 2005-06**  
**EXHIBIT C**

**Accessory Uses, Chapter 30.48**  
**Section 48.040Z**  
**Bed and Breakfast Home**

---

Z.     Bed and Breakfast Home. A bed and breakfast home is a permitted accessory use upon issuance of a minor use permit provided the following conditions are complied with:

1.     Located in a residential zone or in a designated Historic building, or conducted within a structure which was constructed prior to 1936.
- 2.\*    A maximum of five bedrooms shall be made available for rent.
3.     With the exception of a designated historic building or a structure constructed prior to 1936, no bed and breakfast home shall be located on a lot closer than 200 feet from any other lot containing a bed and breakfast home. The 200 foot distance shall be measured in a straight line connecting the closest points on the lot lines and without regard for intervening structures.
4.     The owner or lessee of the property shall operate the facility and reside in the home.
- 5.\*    One off-street parking space for each room rented and each employee shall be provided in addition to the parking required for single-family occupancy.
6.     Service shall be limited to the rental of rooms and the provision of breakfast for overnight guests. No food preparation or cooking by guests shall be conducted within any bedroom made available for rent.
7.     Signs shall be limited to one on-premise sign not to exceed two square feet.

\*Note: Standard may be modified if the home is a designated historic building or conducted within a structure, which was constructed prior to 1936.

ORDINANCE NO. 2005-06  
EXHIBIT A

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JUN 09 2005

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

Definitions, Chapter 30.04:

BED AND BREAKFAST HOME shall mean a single family dwelling which is operated to provide lodging for pay, including overnight sleeping accommodations and breakfast, for one (1) or more guests for 30 consecutive days or less ~~a less than weekly basis~~.

HOTEL shall mean a structure or portion thereof or groups of attached guest rooms or suites occupied on a transient basis for compensation.

MOTEL shall mean the same as "hotel".

SHORT TERM VACATION RENTAL shall mean the rental of any structure or any portion of any structure for occupancy for dwelling, lodging or sleeping purposes 30 consecutive days or less in a residential zoning district, including single-family residences, condominiums, duplexes, townhomes and multiple-family dwellings.

TRANSIENT HABITATION UNIT ~~Shall mean living quarters intended exclusively for occupancy by transient persons for a period of 30 consecutive days or less and subject to Chapter 3.12 of the Municipal Code, Transient Occupancy Tax. A transient habitation unit may include a hotel or motel room or suite of rooms, a cabin or campground space, but does not include single family or duplex units. (Ord. 97-17).~~ shall mean living quarters used for occupancy by transient persons for a period of 30 consecutive days or less. See Chapter 3.12 of the Municipal Code, Transient Occupancy Tax for applicable regulations. A transient habitation unit may include a hotel or motel room or suite of rooms, campground space, or short-term vacation rental in residential units.

EXHIBIT NO. 2

APPLICATION NO.

Encinitas LCPA

#2-05

Short-term Rentals

Strike-out/Underlined  
Version of Ordinance

**ORDINANCE NO. 2005-06**

**EXHIBIT B**

**Use Matrix, Chapter 30.09**

Use	Zoning uses														
	RR RR-1 RR-2	RS-11 R-3 R-5 R-8	R-11 R-15	R-20 R-25	MHP	OP	LC	GC	VSC	LI	BP	P/SP	ER/OS	L-LC	L-VSC
Camps (Ord. 95-04)	X	X	X	X	X	X	X	X	X	X	X	C	C*	X	X
Hotel	X	X	X	X	X	X	X	C	P	X	X	X	X	X	P
Motel	X	X	X	X	X	X	X	C	P	X	X	X	X	X	P
Transient Habitation (Ord. 91-03)	X	X	X	X	X	X	<del>CX</del>	C	<del>PC</del>	X	X	C**	X	X	<del>CP</del>

**P = Permitted by Right**

**C = Conditional Use permit Required (Major)**

**Cm = Conditional Use Permit Required (Minor)**

**X = Prohibited**

**\* Not permitted within coastal zone ecological resource areas.**

**\*\* Applies to camps only.**

**ORDINANCE NO. 2005-06**  
**EXHIBIT C**

**Accessory Uses, Chapter 30.48**  
**Section 30.48.040Z**  
**Bed and Breakfast Home**

---

Z. Bed and Breakfast Home. A bed and breakfast home is a permitted accessory use upon issuance of a minor use permit provided the following conditions are complied with:

1. Located in a residential zone or in a designated Historic building, or conducted within a structure which was constructed prior to 1936.

2.\* A maximum of five bedrooms shall be made available for rent.—~~A bed and breakfast home having more than five bedrooms available for rent may be approved if the home is designated a Historic Landmark in accordance with the Historic Landmark Designation.~~

3. With the exception of a designated historic building or a structure constructed prior to 1936, No bed and breakfast home shall be located on a lot closer than 200 feet from any other lot containing a bed and breakfast home. The 200 foot distance shall be measured in a straight line connecting the closest points on the lot lines and without regard for intervening structures.

4. The owner or lessee of the property shall operate the facility and reside in the home.

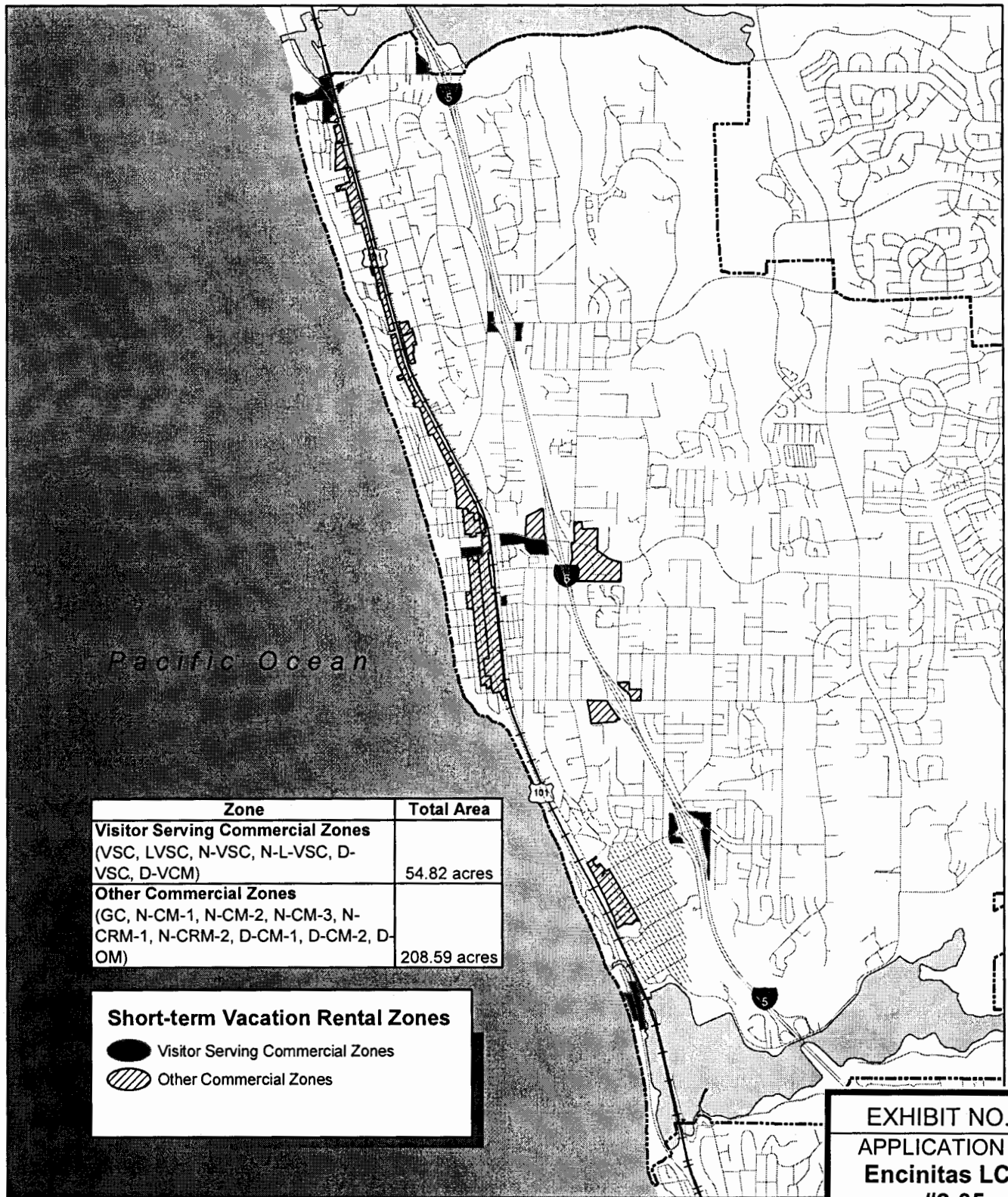
5.\* One off-street parking space for each room rented and each employee shall be provided in addition to the parking required for single-family occupancy.

6. Service shall be limited to the rental of rooms and the provision of breakfast for overnight guests. No food preparation or cooking by guests shall be conducted within any bedroom made available for rent.

7. Signs shall be limited to one on-premise sign not to exceed two square feet.

\*Note: Standard may be modified if the home is a designated historic building or conducted within a structure, which was constructed prior to 1936.





**Short-term Vacation Rental Zone Map**

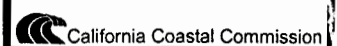


Stateplane NAD83 feet, CA Zone 6  
 Plot Date: September 2005  
 MXD Name: port\_8x11\_bottomvacation.mxd

**DISCLAIMER:**

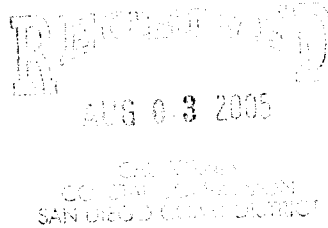
Every reasonable effort has been made to assure the accuracy of the data provided; nevertheless, some information may not be accurate. The City of Encinitas assumes no responsibility arising from the use of this information.

**EXHIBIT NO. 3**  
**APPLICATION NO.**  
**Encinitas LCPA**  
**#2-05**  
**Short-term Rentals**  
**Visitor Serving**  
**Commercial Zones**



July 29, 2005

Mr. Gary Cannon  
California Coastal Commission  
7575 Metropolitan Avenue, #103  
San Diego CA 92108-4402



RE: Encinitas Regulation of Short-Term Vacation Rentals, Ordinances #2005-06, 2005-09

Dear Mr. Cannon:

I support the Encinitas City Council's Ordinances #2005-06, 2005-09 Elimination of Short Term Rental Homes. This new ordinance prohibits future short-term rentals of less than 30 days in all residential areas of Encinitas.

I have always been able to find vacation facilities for my friends and relatives in the nearby hotels, motels, timeshares and campgrounds. This area of the coast has plenty of facilities for vacationing families to enjoy the coast. Many of these facilities are just a few blocks from the beach. More commercial facilities for short term vacations are being planned in the immediate area in the near future.

I request your support of this Encinitas Statute. Thank you.

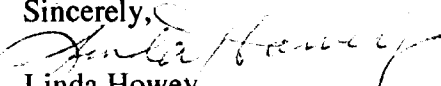

Sincerely,  
  
Linda Howey  
1757 Whitehall Rd  
Encinitas, CA 92024

EXHIBIT NO. 4
APPLICATION NO.
<b>Encinitas LCPA</b>
<b>#2-05</b>
<b>Short-term Rentals</b>
Letters of Support

 California Coastal Commission

**ENCIT**  
**Encinitas Citizens for Residential Stability**  
**P.O. Box 231909**  
**Encinitas, CA 92023-1909**

**June 28, 2005**

**Mr. Gary Cannon**  
**California Coastal Commission**  
**7575 Metropolitan Avenue, #103**  
**San Diego CA 92108-4402**

**RECEIVED**  
**JUN 30 2005**  
CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

**Subject: Encinitas Regulation of Short-Term Vacation Rentals**

**Dear Mr. Cannon**

**Ladies and Gentlemen of the Commission, ENCIT represents over 150 residents of Encinitas who support the City Council's enactment of Statutes #2006, and #2009 regulating short-term vacation rentals in our City.**

**We first call to your attention that the Encinitas City Council in drafting these statutes specifically stated that owners of rental properties who could provide evidence of such past rentals would be covered under a 'legal nonconforming use'. Specifically, their rights to rent would be grandfathered, and which rights could be transferred with the land. In essence therefore, *there would be little or no diminution of visitor access as a result of this action.***

**These ordinances are the result of over 15 months of fact-finding and deliberation, including several public Council meetings, two major forums before the Council's Subcommittee, and countless hours of personal meetings with each of the individual Council members by representatives of both sides of this issue.**

**Dozens of Encinitas citizens have on each occasion during these public sessions, voiced their opinions of how the Council should rule in this matter. All were witness as the Council considered conflicting points of view so that they might arrive at a vision of how a great City should proceed equally for *all of its citizens.***

**Central to the divisiveness between the parties in this debate was the divergent interpretation of 'property rights'. We think it is fair to say that what finally emerged is that there are property rights *on both sides of the fence.* For after all, each piece of property joined together becomes what is called a neighborhood. And each of the neighborhoods together becomes a City.**

In its introduction to this ordinance the City has stated as follows:

**“Whereas short-term vacation rentals are considered to be a visitor-serving land use, such uses have in some cases, caused conflicts in well-established residential neighborhoods. Conflicts include noise, parking, traffic congestion, late night disturbances, excessive trash, and the like. In addition, the proliferation of the short-term rental use can change the overall purpose and character of the residential zone. The prohibition of short-term vacation rentals would preserve the “residential character of the community” by not allowing such visitor-serving commercial uses to “intrude into existing residential communities”.**

Some have suggested that most of the problems stated can be controlled by regulations and increased police enforcement. The key however is the word “proliferation”. What unfolded before the Council during the past year and a half was convincing evidence that through the use of internet advertising, the lure of financial gain, and led by professional management groups, these problems have been propelling beyond control, and that there is no end in sight. In fact, the percentage of such rentals in one residential community alone is exceeding 20%! Further, that the motel-like environment resulting from such accelerating growth was creating an unfair imposition on the property rights of the permanent residents of the community.

At the same time the Council, in recognizing “legal nonconforming use”, acted in complete fairness by conferring grandfathering rights to those property owners who will be able to demonstrate a proven record of substantial past rentals.

*It should be noted in this regard that as a result of such ‘grandfathering’, present access to the beach will not change!*

It is now clear that by these evenhanded actions, this Council is acting in good faith on behalf of all of its citizens. Some may not be aware of a number of decisions made by the California Appellate Court in deciding for the City of Carmel and their relevant statute in this regard.

*In part the Court found that such indiscriminate short-term rentals are simply incompatible with the “essential character of a neighborhood and the stability of the community”. Further, that the City had a legitimate governmental responsibility in maintaining the residential character of its neighborhoods.*

Therefore the Council, because of its resoluteness has insured that Encinitas’s residential communities will continue to flourish so that its residents can continue to enjoy their rights to privacy, tranquility and a neighborhood environment. At the same time the Council through its recognition of a legal non-conforming use, has

assured continued access to the beach. We believe these actions constitute a fair resolution of the problem, and respectfully request your support of this statute.

Thank you.

For the Committee:

For ENCIT

Harry Fund	-Seabluffe	760-436-8958
Irwin Rubenstein	-Seabluffe	760-942-9432
Theresa Vos	-Neptune	760-436-4940
Franz Birkner	-Neptune	760-942-5100

The attached internet addresses are but a sample of website advertising commercial rentals in Encinitas.

<http://www.seabluff.com>

<http://www.beachfrontonly.com>

RECEIVED  
JUL 27 2005

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

July 25, 2005

Mr. Gary Cannon  
California Coastal Commission  
7575 Metropolitan Avenue, #103  
San Diego, CA 92108-4402

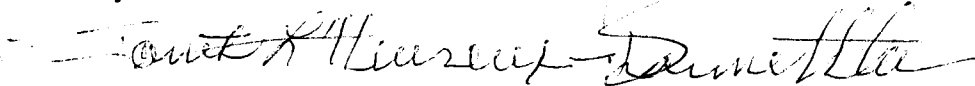
Dear Mr. Cannon:

This letter is in regard to Encinitas City Council's Ordinances #2005-06, 2005-09  
Elimination of Short Term Rental Homes.

I cannot tell you how much time, listening, and thought the Encinitas City Council has put into this issue of Short Term Rentals. The Council has shown consistent intelligence, patience, and understanding to both sides throughout this longtime debate. I have attended many of the Council meetings regarding this issue and I can tell you this has not been an easy situation for the City Council Members. They have been threatened, among other things, by lawsuits from those wanting to create a business atmosphere in our Encinitas residential neighborhoods with short-term rentals. This same group has subjected them to language that has been completely out-of-place and totally disrespectful.

We have an outstanding Encinitas City Council. I urge you to respect their knowledge and confer with the decisions that they have made.

Sincerely,



Janet M. L'Heureux-Barnettler  
Property Owner  
1809 Wilton Road  
Encinitas, CA 92024

RECEIVED

JUN 20 2005

June 13, 2005

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

GARY Cannon  
California Coastal Commission  
7575 Metropolitan Ave. #103  
San Diego CA 92108.4402

Dear Mr Cannon,

I am writing to ask you  
to vote IN FAVOR of the Ordinances  
2005-06 and 2005-07 passed  
and to be passed by the City  
of Encinitas.

These Ordinances were passed  
to maintain the quality of life in  
our City. There will be a few  
who for monetary reasons will  
try to block these Ordinances.

Please listen to the City of  
Encinitas, they are speaking for  
the majority.

Yours truly,

John Hicks  
1872 Parliament Rd  
Encinitas, CA 92024

Irwin Rubenstein  
1838 Parliament Rd.  
Leucadia, CA 92024-1030  
760-942-9432

RECEIVED

AUG 30 2005

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

August 29, 2005

Mr. Gary Cannon  
California Coastal Commission  
7575 Metropolitan Avenue, #103  
San Diego CA 92108-4402

Subject: Encinitas Regulation of Short-Term Vacation Rentals, Ordinance #2005-06,  
2005-09

Dear Mr. Cannon:

I spoke to you last week about a problem I have with the dates of the 2005 October meeting (Wednesday October 12, Thursday October 13 and Friday October 14) in San Diego of the California Coastal Commission. I understand from Pat Murphy, Encinitas Planning, that the above issue on short-term rentals might be on the agenda of that meeting.

I mentioned to you that Thursday October 13 is the Jewish religious high holiday of Yom Kipper and that I would be unable to attend the hearings on that date. Since Yom Kipper starts Wednesday evening, I would appreciate it if you would schedule the Commission's discussion of "Encinitas Regulation of Short Term Vacation Rentals" for either Wednesday or Friday morning.

I have been heavily involved with this issue for almost two years and hope that I could be permitted to appear before the Commission. Thank you for your consideration.

Sincerely,



Irwin Rubenstein



Irwin Rubenstein  
1838 Parliament Rd.  
Leucadia, CA 92024-1030  
760-942-9432

RECEIVED

JUL 20 2005  
CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

July 19, 2005

Mr. Gary Cannon  
California Coastal Commission  
7575 Metropolitan Avenue, #103  
San Diego CA 92108-4402

Subject: Encinitas Regulation of Short-Term Vacation Rentals. Ordinance #2005-06, 2005-09

Dear Mr. Cannon:

The Encinitas City Council recently enacted Ordinances #2005-06, 2005-09 -- Elimination of Short Term Rental Homes. You have or will shortly be receiving information on this ordinance from Mr. Pat Murphy, Director of Planning for the City of Encinitas.

This new ordinance prohibits future short-term rentals of less than 30 days in all residential areas of Encinitas. Properties that have been or currently are being rented on a short-term basis are allowed to continue such rentals provided they register with the City and follow the regulations governing the behavior of renters. This new ordinance was the result of 15 months of discussion and compromise; at least 5 public meetings of the Council and a Council sub-committee were held. This ordinance is a partial return to the *status quo* that existed in Encinitas in 1997.

A little history is in order. Prior to 1997, short-term residential ("transient") rentals was prohibited in all residential areas of Encinitas. While a few rentals of less than 30 days probably occurred illegally, most rentals in residential areas were for 30 days or longer.

At a meeting of the Encinitas Planning Commission in 1997, which had little public attention, the Commission proposed a change in the City's zoning ordinance that had the effect of allowing single family homes and duplexes in residential areas to rent their property for any period of time -- even as short as one day. Shortly thereafter, this recommendation of the Planning Council was adopted by the Encinitas Council -- again with little or no public discussion. Many of us only learned of these decision years later when inquires were made to the City.

Why is a new ordinance necessary at this time? Realtors and developers have begun to exploit, in an ever increasing fashion, the zoning changes made in 1997. They use the

Internet to market worldwide the short-term rentals of Encinitas homes. One has only to look at the Internet to see how large these commercial operations have become and their potential for future growth. See [www.beachfrontonly.com](http://www.beachfrontonly.com) or [www.seabluff.com](http://www.seabluff.com). Many of us in Encinitas that live in residential areas have seen our neighbor's home sold and turned into motel-like operations. The new owner remodels the home to contain the maximum number of people possible and then rents the property to the maximum number of people possible for periods of a week or even as short as one day.

I first call to your attention that the Encinitas City Council in drafting this Statute specifically stated that owners of rental properties who could provide evidence of such past rentals would be covered under a "legal nonconforming use." Specifically, their rights to rent would be grandfathered, and which rights would be transferred with the land. In essence, therefore, there would be little or no diminution of visitor access. These "grandfathered" units will continue to supply the needs of rental families for the foreseeable future.

I next want to note that the City has ample areas designated for commercial use. Numerous motels and hotels are located in the zone extending along Highway 101 from the northern boarder of Encinitas to the old downtown area. These facilities for visitors are located a few short blocks from the beaches. And more are planned. KSL Development is to build and operate a 126-room hotel at the end of La Costa Avenue. The project on the Leucadia bluffs and directly on the beach was originally approved by the City of Encinitas and then the Coastal Commission approximately 7 years ago. In addition, the City of Carlsbad plans to develop about 50 acres just north of Batiquitos Lagoon which is on the northern border of Encinitas. This development will include a hotel, time-shares and other commercial usages. It is located directly across Highway 101 from South Carlsbad State Beach Park.

In its introduction to this ordinance the City has stated as follows:

"Whereas short-term vacation rentals are considered to be a visitor-serving land use, such uses have in some cases, caused conflicts in well-established residential neighborhoods. Conflicts include noise, parking, traffic congestion, late night disturbances, excessive trash, and the like. In addition, the proliferation of the short-term rental use can change the overall purpose and character of the residential zone. The prohibition of short-term vacation rentals would preserve the "residential character of the community" by not allowing such visitor-serving commercial uses to "intrude into existing residential communities."

Once commercialization starts in a neighborhood and reaches the so called "tipping point", your property becomes unattractive to normal home owners. The only people who will buy your home are those that wish to use it as a rental property--thus "tipping" a residential area into commercial usage.

The Council has insured that Encinitas's residential communities will continue to flourish so that its residents can continue to enjoy their rights to privacy, tranquility and a neighborhood environment. At the same time the Council through its recognition of a legal non-conforming use and its extensive commercially zoned areas has assured the public continued access to the beach. I believe these actions constitute a fair resolution of the problem and respectfully request your support of this statute. Thank you.

Sincerely,

  
Irwin Rubenstein

**ENCIT**  
**Encinitas Citizens for Residential Stability**  
**P.O. Box 231909**  
**Encinitas, CA 92023-1909**

July 19, 2005

Mr. Gary Cannon  
California Coastal Commission  
7575 Metropolitan Avenue, #103  
San Diego CA 92108-4402

Subject: Encinitas Regulation of Short-Term Vacation Rentals, Ordinances #2005-06, 2005-09

Dear Mr. Cannon:

I am signing this letter as a supporter of ENCIT- Encinitas Citizens for Residential Stability, and I support the Encinitas City Council's Ordinances #2005-06, 2005-09 -- Elimination of Short Term Rental Homes. This new ordinance prohibits future short-term rentals of less than 30 days in all residential areas of Encinitas.

Please note the following:

- Properties that have been or currently are being rented on a short-term basis are allowed to continue such rentals provided they register with the City and follow the regulations governing the behavior of renters.. Their right to rent would be "grandfathered", and which rights would be transferred with the land. In essence, there would be little or no diminution of visitor access. These "grandfathered" units will continue to supply the needs of rental families for the foreseeable future.
- Encinitas and its neighboring cities have ample areas designated for commercial use. Numerous motels and hotels are located in Carlsbad, Oceanside and the zone extending along Highway 101 from the northern boarder of Encinitas to the old downtown area. Many of these facilities for visitors are located a few short blocks from the beaches. And more are planned.

Therefore, the Council by its resoluteness has insured that Encinitas's residential communities will continue to flourish so that its residents can continue to enjoy their rights to privacy, tranquility in a neighborhood environment. At the same time the Council through its "grandfathering" and its extensive commercially zoned areas has assured continued access to the beach. I believe these actions constitute a fair resolution of the problem and respectfully request your support of this statute Thank you.

Sincerely,

My address: *Julia F. Orso*  
*My 2. Orso*  
*1813 Milbank Rd.*  
*Encinitas, CA 92024*

*The Commission has  
Received 74 other  
copies of this  
letter signed by  
individuals*

Gary Cannon  
California Coastal Commission  
7575 Metropolitan Avenue #103  
San Diego Ca. 92108-4402

RECEIVED

JUN 20 2005

6/12/05

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

Dear Mr. Cannon,

I am writing this letter in response to proposed ordinance 2005-06, 2005-09 Elimination of Short Term Rentals in the City of Encinitas. I am a business owner, and father of a 2 year old. I grew up in Encinitas, attended San Dieguito High School, and served in the US Navy.

I now live in Glendale Ca., but frequent Encinitas as often as time allows. Utilizing short term rentals are the only way for me to do this. Purchasing a second home is not realistic. San Diego County is one of the most expensive counties in America, as I am sure you are aware. For me, it is the only way to bring my wife and boy down to enjoy the life style that I grew up in, and share with him the things I did when I lived there. To me, there is no other place like Encinitas/Leucadia/Del Mar, along our coast. You can get in a car, start driving north on PCH, and see for yourself. That's why we come back.

I find it extremely un-fair for a group of people to simply take that right away from my family, not to mention people who have these properties for this reason. The coast of California belongs to Californians. I would think that the coastal commission was set up to ENHANCE the experiences of people who enjoy the lovely beaches of North County, not RESTRICT them. This will make it that much harder to find quality lodging, near the beach. I personally know of many people who come down for the Pacific Classic at Del Mar. Where would you stay? The Hilton, or on 23<sup>rd</sup> street, looking at the ocean, watching your 2 year old run on the beach.

Please re-consider this ordinance. I am not a transient, and neither is my family. I cannot afford vacations every year. I am a hard working small business owner, who enjoys bringing his family to a beautiful, safe, educational, and affordable getaway, that's 2 hours away. Its our vacation spot, 5 times a year.

Respectfully Yours,

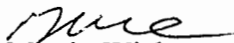

  
Martin Wickman

EXHIBIT NO. 5
APPLICATION NO.
<b>Encinitas LCPA</b>
<b>#2-05</b>
<b>Short-term Rentals</b>
Letters of Opposition
 California Coastal Commission

Petition to the California Coastal Commission

I/We am/are opposed to the proposed changes to the Encinitas Zoning Code and the Local Coastal Program (ZCA/LCPA Case # 04-248). The proposed changes will dramatically affect the ability of citizens to access and recreate in the coastal zone of the City of Encinitas. Short-term vacation rentals of homes and duplexes have been an accepted practice in the community for over 50 years. Those renting short-term vacation rentals of a single-family home or duplex dwelling unit in the City of Encinitas are generally citizens and families that return year after year and feel connected to the city and local coastline.

This goes against the tenets of the Coastal Act guaranteeing access for recreating in the coastal zone. The over 30-day rental period will especially limit families visiting the coast.

Some of the homeowner income obtained from short term rentals helps Encinitas meet the requirements of supporting the maintenance, conservation, and preservation of existing affordable housing in the coastal zone and preserves the unique character of Encinitas' unified coastal communities.

I do support regulations to control noise, late night disturbances, parking and traffic congestion, but these problems exist in all residential neighborhoods and I believe that enforcement of existing laws and ordinances are a better solution than the proposed zoning changes that restricts the property owner rights and public access to the coastal experience in greater Encinitas.

Please reject ZCA/LCPA Case # 04-248 as an excessive restriction for a problem associated with all residential neighborhoods and help protect access and recreational opportunities in the Encinitas coastal zone, which have always been consistent with sound resources conservation principles and constitutionally protected rights of private property owners.

Name: Kathy Peery

Address: 1760 Kennington Rd.  
Encinitas, CA 92024

Signed: Kathy Peery Date: 6-18-05

The Commission  
Received 50 other  
copies of this petition  
signed by individuals.

Gilbert Foerster  
P.O. Box 333  
Cardiff-by-the-Sea, Ca. 92007-0333  
Cell Ph: (619) 887-5749 Office Ph/Fax: (760) 943-8288

DATE: July 5, 2005

TO: City Council/City Attorney/City Staff/Gary Cannon

RE: Ordinance No. 2005-06, 2005-09



I have just recently returned from four days in Carmel, California where I spent time investigating the differences and similarities between the two cities since everyone in the city government of Encinitas seems to think they are alike enough to expect a similar ruling for the elimination of short term rentals in our city. My mother has lived in Carmel for years so the trip also allowed me to visit my family.

To quote one of the speakers that appeared before the city counsel, "The two cities couldn't be more dissimilar. If one were to compare them, it becomes evident that it is as if they were on different planets." So we will spend this letter comparing them.

The road into the City of Carmel is a two lane road most of the way from Salinas on Hwy 68, or two lane much of the way on picturesque Hwy 1. Carmel is a city with a population of 4081 people and 847 dogs. It is approximately 1(one) square mile(634 acres). Initially, the city was primarily comprised of second homes for wealthy families not from Monterey county and small homes that were a mecca for artists, writers, actors and playwrights intent on creating a cultural oasis. The residential district has no sidewalks or streetlights and the entire beach area is unadulterated by commercial development. The homes have no street addresses and are known only by name or their location in relation to Ocean Avenue. The village is home to over 50 inns, numerous Bed & Breakfasts, and a handful of hotel/motels. Many of the shops, galleries, boutiques and restaurants are located in secluded courtyards. Comfortable walking shoes are a must and a city ordinance outlaws high heels. Eating food on public streets is discouraged. In a city with a population of 4081 and approximately 2500 residences, there are 980 transient habitation units in inns, hotels, or bed and breakfast establishments. This is approximately one transient habitation unit per 4 residents or one transient habitation unit per 2 ½ residences.

The City of Encinitas is approximately 20 square miles(13,266 acres) of which 12 ½ square miles(7874 acres) are located in the coastal zone. Initially the city was comprised of residences and agriculture, at one time the 'flower capital of the world'. Additionally, the city coast has five of the best surf breaks south of trestles and is the surf capital of San Diego county. The city has over 24,000 residences and a population of over 58,000 inhabitants. The part of the City in the coastal zone is intersected by historic Hwy 101, a four lane highway, and Interstate 5 an eight lane freeway with six off-ramps emptying into our communities. Hwy 101, our coast highway, is a mix of single family residences, duplexes, triplexes, apartment houses, and mixed commercial uses between the highway and the ocean. Along this coastal corridor highway, which runs for 3 ½ miles, there are 5 small older motels, two newer motels, and two bed and breakfast establishments. There are two freeway off-ramp motels for people passing through the city, providing a total number of visitor housing units of approximately 700. This is one transient habitation unit per 85 residents or one transient habitation unit per 34 residences. Part of the

solution to this woeful lack of available housing for visitors with our city as a destination has always been (since the thirties), short term vacation rental of residential units and duplexes in the immediate coastal corridor for summer vacationers, race track horse owners, trainers and employees and beach enthusiasts coming to enjoy our beaches and surf breaks. This has provided temporary housing for families coming to our beaches and Del Mar race season residents. Much of our older residential housing was built following agriculture, first with cattle and dry farming of lima beans, then as water became available with cut flowers. The newer residential housing is primarily in-fill on discontinued flower fields, the annexed Ecke agricultural properties, or the previously undeveloped Olivenhain back country area. We don't ban high heels. We don't discourage eating on public streets. We are a mecca for citizens with active lifestyles which includes board surfing, wind surfing, jogging, skateboards, bicycling, and other active life activities. We have protected lagoons at the north and south ends of the city which provide short term housing for various migratory birds as well as full time resident species populations. The south lagoon is the start of the wildlife corridor projected to stretch uninterrupted from the coast to the mountains to the east.

The six blocks from Highway 101(Vulcan Ave.) to the ocean is not exclusively a residential area but are a mix of single and multiple family residential units, interspersed with a mish-mash of eclectic businesses, restaurants, bars, fast food restaurants, boutiques, churches, the Self-Realization Fellowship, Santa Fe Railway and NCTD sprinter, convenience stores, surfboard shops, tattoo parlors, veterinarians, grocery store, donut shops, sandal makers, post offices, medical and dental offices, real estate offices, newspaper offices, shopping center, as well as heavier commercial businesses including, glass repair, door and window manufacturing, building materials, auto repair, and lawn-mower repair. These businesses can be found on every street in this area except the street right on the bluff in Old Encinitas and Leucadia. The 250 unit Sea Breeze condominiums were built and sold with full understanding that they could be used as rentals as well as full time residency. The ads in the papers during the initial offering and sales period all made mention of this feature and that if you were unable to rent them yourself, rental management assistance was available. This too may change as the closed Pacific View school is under consideration for a massive office building and parking complex.



Copy 2

GILBERT FOERSTER  
P.O. BOX 333  
CARDIFF-BY-THE-SEA, CA. 92007-0333  
CELL PH: (619) 887-5749 OFFICE PH/FAX: (760) 943-8288

RECEIVED

MAY 16 2005

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

DATE: May 03, 2005  
TO: City Council/City Attorney/City Staff/Gary Cannon, et al.  
RE: Ordinance No. 2005-06

I understand how difficult it was, perhaps impossible for some, to support the delay in the second reading of Ordinance No. 2005-06 at the City Council meeting held April 27, 2005. I appreciate your patience. There should be no harm to the Ordinance, if it is sound, by delaying the second reading for two weeks.

Many times in government, bills, treaties, and all sorts of decisions drag on for what seems like forever; sometimes they are abandoned after decades of work. No rush to judgement is required in this case if the finished package is going to be attached to some future Coastal Commission agenda. If, as Patrick Murphy hinted, some method has been found to bypass or expedite Coastal Commission approval, then this is all the more reason to allow a more thorough examination of the particulars of the legislation.

The undeniable fact that many hours were spent on this issue over the last two years by citizens, public servants, and city staff does not in itself justify continued support if new information or facts expose flaws in the ordinance. Until the fifteenth century everyone believed that the earth was flat, but when new factual evidence surfaced that supported the case for a spherical planet, the accepted doctrine changed.

As I left the council chambers a week ago Wednesday, twelve of the ordinance's most adamant supporters, almost all of whom were from the Sea Bluff condominium complex, were gathered on the quad expressing their frustration at the delay and wondering who or what was responsible. I stepped forward and informed them that I was primarily responsible, and volunteered to explain my actions leading up to the council meeting. As I am sure some of you can well imagine, I was not received with open arms. Of course I was chastised for attempting to upset the apple-cart that they had spent years promoting. After only a few moments most of them had left with bitterness in their hearts, although I was able to convince the remaining two gentlemen to listen to my position and take copies of the petition I had been circulating, along with the petition I had prepared for Coastal if the second reading had gone forward that evening. I convinced them that it was in their best interest to digest my position and arguments, if for no other reason than to parry them. They did not provide me with a name or mailing address so that I could keep them abreast of my 'faulted' arguments, so I will trust that one of the council members or city staff will do that for me.

Please understand that although I am primarily a supporter of the preservation of coastal agriculture, I have also appeared before the Coastal Commission on the preservation of wildlife habitat in the Tijuana estuary. My family has been a proponent of California and its coastal welfare since 1896. I would be remiss to my heritage and upbringing if I did not speak up on occasion on issues basic to my core. Some may wish that I had not relocated to Encinitas 30 years ago this year, but I came here because this was the flower capital of the world, with a unique climate zone replicated in only seven other locations in the world, and I make my living in California agriculture as my great-grandfather did.

Over the next eight days I will write as time permits a number of letters to you as I attempt to present other perspectives on the current legislation. I know that this is unpopular with some of you, especially those who expressed that there was nothing that could be presented in the next two weeks that would influence their position. I accept that, but certainly hope you will read the letters, if for no other reason than to understand the arguments that I will present if this goes to Coastal, as well as some of the potential legal arguments that might be advanced if some of the property owners in the city move this issue to the courts. Maybe you have heard it all and are comfortable with the ordinance in its present form, maybe not.

But enough chit-chat, let's try to get down to the lick-log:

**Today's item: Property Rights**

- As the planning commission noted, the council does have the authority to regulate nuisances and conflicts that may arise between short term rentals and permanent residences. Because these conflicts, which include noise, parking, traffic congestion, trash, late night disturbances, overcrowding and the like are normally associated with all areas of Encinitas residential neighborhoods and are not exclusive to short term rentals, the regulatory process and strict enforcement of existing laws rather than a zoning change is the proper method to control the impacts. To change the zoning in a manner that affects every dwelling unit in Encinitas, potentially impacting property values, ability to finance, and ability to meet financial payment obligations associated with private property, the council is effectively using a hand grenade to kill a mouse.
- Because the changes impact every dwelling unit in every section of the city, a notice should have been mailed to every resident and property owner within the city. It is unreasonable to expect a majority of the population of Encinitas to read the notice in the Coast News and grasp the implications. The action changing the zoning smacks of something you would find in a CC&R. I do not believe that the property owners in the City have been adequately noticed for such a dramatic action. This can not help but affect property values and resale price. The benefit of no rentals in the city of Encinitas may have value for some, but the loss of the ability to rent now or in the future may be devastating for some current and future property owners.
- If you listen to the tapes of the discussion preceding the removal of residential units and duplexes from the definition of Transient Habitation Unit on September 10, 1997, it should become difficult to support redefining them as such in this ordinance.
- The major support throughout the crafting of this ordinance has come from a group of residents of the Sea Bluff condominium complex in Leucadia. This group has been vocal, attended the workshops, and showed tenacity in shepherding this proposal through Council approval. This is all the more impressive, considering that the Council's appointed planning commission members recommended "No Action" on the zoning amendment, preferring to focus on regulatory methods to control the impacts associated with some of the short term vacation rentals.
- The Council decided to disregard the planning commission and move forward and ban short term rentals within all residential neighborhoods, attempting to freeze the natural metamorphosis that may occur within a coastal community.

Gil



GILBERT FOERSTER  
P.O. BOX 333  
CARDIFF-BY-THE-SEA, CA. 92007-0333  
CELL PH: (619) 887-5749 OFFICE PH/FAX: (760) 943-8288

DATE: May 05, 2005

TO: City Council/City Attorney/City Staff/Gary Cannon, et al.

RE: Ordinance No. 2005-06, 2005-9  
Transient Habitation Unit/Short Term Vacation Rental/Non-conforming Use/  
Additional Related Impacts/Tenant Rights

**Transient Habitation Unit**

A transient habitation unit is generally considered to be just what the name implies, living quarters for transient persons and generally includes hotels, motels, cabin or campground space. They are meant to provide temporary housing for individuals or groups *passing through* our city with some other location as their ultimate destination.

**Short Term Vacation Rental**

A short term vacation rental unit is generally considered to be just what the name implies, providing living quarters, including a kitchen, bath, and yard, in a single family residence, guest house, condominium, duplex, townhouse, multiple family dwelling, ranch or estate, with the amenities normally associated with such dwelling units. Short term vacation rentals are generally occupied by families for one to three weeks. Unlike transient habitation units, they provide housing for individuals or groups who have reached their final destination: our city, our beaches, our back country and associated businesses. They are dwelling units for short term residents of our city. Many families that visit as short term residents return year after year to the same dwelling units, some for generation after generation.

**Non-conforming Use**

The abandonment of the staff-recommended changes to Section 30.76.090 concerning "Termination of Nonconformity, General," which proposed allowing 360 days rather the existing 180 days of inactivity for a non-conforming short term rental before becoming inactive, will effectively eliminate short term rentals in the entire City as well as those made exclusively during summer months and the Del Mar race season. Many home owners depend on a series of two week rentals during the "high season" for everything from property maintenance, property taxes, homeowners insurance, to supplemental retirement income. If the property owner decides to skip a year, or doesn't want to rent their home every 180 days, or doesn't want to rent at this time but may at some time in the future, they will not have that option. This change will not eliminate the atypical situation presented by the David Fischbachs of the world, where the financial wherewithal to operate their property at an occasional loss to maintain their eligibility as a short term rental property is an option. Instead, this may force families that have come to depend upon high season rentals, to sell their property sooner, opening the door for more monstrous homes between I-5 and the coast or force a back country estate set up for equestrian use to be subdivided for lack of supplemental income. The Realtors and developers must be salivating. This will also preclude many visiting families unable to make use of hotels, motels, and other lodging from having the opportunity to experience the city of Encinitas, or those familiar with our great equestrian trails to the east from enjoying their use. It would not surprise me if this was viewed by the Coastal Commission as an excessive restriction of access to housing in the coastal

zone of Encinitas, or as an unlawful "taking" from every property owner in greater Encinitas, by the courts. This policy is a direct contradiction of the direction of the LCP as stated at I-13, b.,c.

### **Additional Related Impacts**

The elimination of new short term rentals and the treatment of such rentals as transient housing within greater Encinitas may cripple or eliminate the ability of some ranch, farm, and horticultural operations to capitalize on agricultural and nature tourism, two of the fastest growing segments of the tourism industry. Agriculture and tourism each rank in the top five industries in San Diego county. With many farm and ranch operations struggling to survive in an increasingly difficult environment, the restriction on short term rentals may make the difference to some Encinitas farm and ranch owners. Offering one or two week stays on the surviving working farms and ranches may be another hidden asset that flower growers in the coastal zone or horse ranches in Olivenhain area will no longer be able to tap into. With the potential closing of Hollywood Park and an expansion of Del Mar race dates, as well as the growing jumper and polo equestrian base in the area, short term rental of various large horse properties in Olivenhain or summer riding/training camps might have become a new income stream for many property owners. The elimination of short term rentals may nip development of this potential asset in the bud.

As Goal 1 of the Land Use Element states, the City of Encinitas is a "unique seaside community providing a balance of housing...compatible with the predominant residential character of the community." Although short term vacation rentals may function as a residential zone auxiliary land use, such uses in our City have been an accepted part of this community, for decades prior to incorporation. The short term rentals have helped our city provide maximum access and recreational opportunities without sacrificing sound resource conservation principles, and have still maintained the constitutionally protected property rights of private property owners. Such uses have caused occasional conflicts in established residential neighborhoods, but they are primarily noise, parking, traffic congestion, late night disturbances, excessive trash and other similar problems normally associated with all residential areas of greater Encinitas.

The residential zones west of I-5 have been changing for many decades, and large families on the coast have been declining as the availability of larger more affordable family housing has been developed within the in-fill flower fields and open land to the east. A prime indicator of this trend was the closing of Pacific View elementary school due to a lack of enrollment age children in the immediate coastal zone area.

We often forget that when this city incorporated, we were not a typical bedroom community: we were the "Flower Capital of the World," and perhaps one of the strongest and most vibrant "cottage industry" cities in the United States. An unfavorable zoning code and matrix decimated the Flower Capital part of our unique seaside community, and the current trends may soon morph the eclectic nature of our five communities into a homogenous bedroom community where the "E" on the windows will no longer celebrate Encinitas' diversity, but would better stand for "Elitist".

### **Tenant Rights**

One individual mentioned that although the nuisances associated with rental units were individually minor, it was the combination that bothered him. Outside in the quad after the last council meeting, he asked if I knew what it was like to have a family move in next to you with a dog and children who would occasionally be out on the streets on a bicycle or skateboard, or a

family that decided to have a barbeque and used too much charcoal lighter. I told him that it sounded like any normal 21<sup>st</sup> century residential community. This comment made him upset, and he then told me that he was 85 years old, that he had paid his dues, and what did I know. I explained to him that I had been a member of this community for thirty years, had pushed the agricultural rock up the increasingly steep hill year after year, not to mention having served three tours to Vietnam, and that his paid dues were no more difficult or important than mine. But I digress...

It is the combination of zoning change and regulations that I find so onus and unreasonable. By forcing those that require rental income to balance their yearly budget by renting their property for over thirty days, we are lessening the safe-guards short term rentals provide the home-owner. California law guarantees additional rights to tenants as compared to guests, and thirty days is the demarcation when deciding which is which. When dealing with a guest, the home-owner has the stronger hand should the renter commit acts that violate the residential character of a neighborhood and the owner wants that renter out. After thirty days, the renter is not a guest but a tenant, and as such has certain rights under California law that gives the renter the stronger hand. The legal environment makes it difficult and time consuming when dealing with evictions. There are actually paralegal clinics that search the court records daily and inform the tenant that, for a fee, eviction can be delayed. Another example of the swing in favor of the tenant is the "Arrieta Case," which requires naming all adult habitants on the writ, whether or not their names were on the rental agreement. An Arrieta claim can result in another three to six week delay while unnamed inhabitants are enjoined in the suit.

So by restricting rentals to over thirty days if the 180 day limit does not work for an Encinitas landowner, the City is creating a situation where it is possible for a home-owner to return from *their* vacation to find a "squatter" who refuses to leave, and the home-owner is now out on the streets.

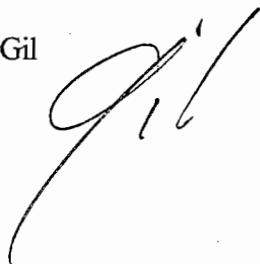
I find it difficult to believe that this is what the City had in mind when it decided on a 30 day minimum. Because the City 'forced' the home-owner into this position in order to meet the financial obligations of continued Encinitas residency the other 10 months of the year, a reasonable person might find the City culpable for this situation.

Well, that's enough for today. I hope that today's letter has exposed continuing flaws in the current drive to end short term vacation rentals. But maybe not. Maybe Cristy Guerin is right on and has considered all the nuances and ramifications of the present ordinances.

Until the next letter,

As always,

Gil

A handwritten signature in black ink, appearing to be 'Gil' with a stylized flourish extending from the end.

GILBERT FOERSTER  
P.O. BOX 333  
CARDIFF-BY-THE-SEA, CA. 92007-0333  
CELL PH: (619) 887-5749 OFFICE PH/FAX: (760) 943-8288

DATE: May 07, 2005

TO: City Council/City Attorney/City Staff/Gary Cannon

RE: Ordinance No. 2005-06, 2005-09  
Housing Element/State Housing Requirements/Coastal Zone Housing Requirements  
Comparative Benefit Analysis of Ordinance 97-17 and Ordinance 2005-6, 2005-9

*NOTE: Everybody take a deep breath. Here we go into the deep end.*

**Encinitas Housing Element**

There are a number of "Housing Element Components" required by the State of California and other guidelines and requirements established under Cal Gov Cd. Section 65590-65990.1. I am not going to site them all. I am sure that council members and staff are familiar with most of the elements I will refer to in this letter.

The City of Encinitas, in assessing housing needs, has reviewed the constraints on the maintenance and improvements of the existing dwellings for all income levels. [H-5, A-6.] The city's Implementation Program has identified, when appropriate and possible, areas for removal of constraints to the maintenance and preservation . . . of affordable housing in Encinitas. [C-3]

One of three issues addressed in the Housing Element sought to "ensure that the existing housing stock is maintained and preserved." [H-8] In a housing condition survey conducted in 1987, pockets of houses in Leucadia and Old Encinitas were identified as areas that could benefit from maintenance and rehabilitation. As part of our Housing Element, methods were sought to assist lower to moderate income property owners and owners of affordable rental units. [H-16] Every effort was to be made to encourage the conservation, preservation, and continued availability of existing affordable market-based units as required by state and coastal housing regulations.

The city's ability to exclusively provide programs for continued affordability and maintenance of existing housing stock was at that time, and continues to be, severely restricted by funding limitations. In an effort to maintain and enhance the city's stock of affordable housing, it is the city's policy to encourage self-help housing programs and to pursue every available means to encourage continued affordability of existing units for all income levels. The city has acknowledged that actual or potential constraints must not affect the maintenance of existing units for all income levels.

So how has our city done in its responsibility under the Housing Element and Gov. Code Sec. 65590-65590.1 to provide assistance and guarantee the maintenance and preservation of existing affordable housing? Not very well. Ever.

Now, let's travel back in time to the planning commission of 1997 and see if we can make some sense of why we removed residences and duplexes from the Transient Housing definition:

We have always been required to do everything we can as a city to preserve and maintain existing affordable housing. It's the law. However, we have, as a city, done a very poor job of providing

any realistic funding programs for the maintenance and preservation of affordable housing in the coastal zone.

**During the planning commission discussions and public input, many homeowners in Cardiff, Leucadia, and Old Encinitas responded that, "the ability to rent their homes for short term summer vacation and race track rentals made the difference in their ability to maintain and remain in their homes."** The extra income made their housing affordable and maintainable. This practice goes back decades. These have not been daily or weekend rentals, but for one, two, or three weeks at a time. In addition, these same homeowners resisted the notion of maintaining or preparing the necessary paperwork for "Transient Habitation" classification. Some were barely able to balance a checkbook; some only rented some years and not during other years; almost all of them put most of the money back into their homes, property taxes, home owner's insurance and the like. The planning commission understood that Encinitas' city coffers were not (and still are not) sufficient to provide City programs to preserve and maintain the required affordable housing required by law. The planning commission of 1997, in its wisdom, removed one of the existing and potential city constraints on the maintenance, improvement, and preservation of existing affordable housing. This was why residences and duplexes were removed from the Transient Housing definition.

Normally, I'd say I rest my case right here, but there's more:

*Q: Why haven't the realtors or developers complained about the elimination of the right to rent?*

A: Because there is more money to be made from the elimination of the existing affordable housing in the coastal zone and the rebuilding of monstrous edifices in their place.

As a realtor, would you rather try to sell an eclectic cottage for \$600,000.00, or a new monster for \$1.8 million? As a builder, would you rather put in a new tile bathroom, kitchen counter-top, or roof, or demolish and rebuild a \$1.8 million monster?

*Q: Why would the city entertain a set of ordinances that may force hundreds of home-owners to sell their cool funky little homes in Cardiff and Old Encinitas?*

A: Because the monsters built in their place will provide much more in property taxes than the cool funky little homes. How do we know monsters will be built in their place? Take a drive down Neptune or through the narrow streets of the Cardiff hills and see what's been built in the last seven years.

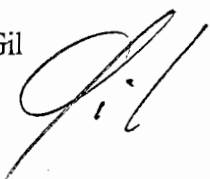
*Q: Again, why would the city entertain a set of ordinances that may force hundreds of home-owners to sell their cool funky little homes in Leucadia?*

A: Because with all the talk of redevelopment and the windfall of redevelopment revenue, it will be cheaper to condemn some of the cool funky little homes, if necessary, if fair market value does not include income or potential income from short term vacation rentals. And because whatever is built in their place will provide much more in property taxes than the cool funky little homes

These ordinances will be the death knell for an undetermined number of homeowners, and will drive another nail in the coffin of what gives our coastal communities character and makes them unique.

That's enough for this letter. Please digest it carefully. The life of our community depends on it.

Sincerely, Gil





DATE: May 09, 2005

TO: City Council/City Attorney/City Staff/Gary Cannon

RE: Ordinance No. 2005-06, 2005-09  
Miscellaneous Items

**Passive Income**

Many of our short term vacation renters are retirees living on fixed incomes. Part of their income stream is from short term vacation rentals. The government requires very little in the way of paperwork for passive income, and the income stream is taxed at the current retiree's income bracket. It is often increasingly difficult for retirees to deal with paperwork as age progresses. Many are overwhelmed just trying to do the paperwork required to keep the doctors, hospitals and pharmacies satisfied. The additional bureaucratic hoops that they will be required to jump through to retain their short term rental rights, and the added risk associated with long term renters, is quite unreasonable.

**Housing Coordinator(Program Administrator)**

David Harris, the Housing Coordinator for the City of Encinitas, in a phone conversation on Monday, May 9, 2005, explained to me that the only city effort currently satisfying the Coastal Commission's requirements for maintaining and preserving the existing housing mix in the Coastal Zone is the requirement for developers to replace like for like. They are allowed to replace the low to moderate income units up to three miles inland, effectively out of the immediate coastal zone. Again, this points out the need to support the existing low to moderate income owners of homes and rental units in the coastal zone. This proposed zoning change will damage the ability of many owners to maintain and preserve their coastal zone property, and it will accelerate the elimination of the community character that the council says it wants to preserve.

**800+ Mailing & Newspaper Notification**

The City of Encinitas Agenda Report for the April 13, 2005, Council meeting, from the Planning and Building Department, and signed by the Director, states at page 11-5 Public Notice that, "Legal notice for the City Council public hearing has been provided within the paper, along with mailing to over 800 individuals / agencies."

This proposed amendment affects 24,000 housing units in the city and untold owned but undeveloped parcels.

The paper that was used to notice the hearings and open the review period has a circulation of approximately 32,000. According to the circulation department, the paper is distributed primarily west of I-5, with few locations along El Camino Real and to the east. The mailing to "over 800 individuals / agencies" was actually only 762, according to documents provided by the City. Of those 762, 248 were out of town or out of state, another 121 were churches, trusts, or LLCs that may not have had a designated spokesman or representative. Some of the remaining 393 were owners inside the 255 unit Sea Bluff complex. These numbers and distribution profile would seem to indicate that, considering the loss of property entitlements proposed by this amendment, adequate notification was not provided.



**City Council Ignores Recommendations from the Planning Commission, and from Public Input given to both the Council Subcommittee and the Planning Commissions:**

<u>Time Line</u>	<u>Options/Recommendations</u>	<u>Decision</u>
Council Goal Setting Jan. 2004	Investigate ways to mitigate impacts of (transient) rental of single family homes.	
Council workshop May 2004	No decision	
Referred to Subcommittee July 2004	C. Guerin/D.Dalager	Hold Public Hearings
Subcommittee Public Hearings October 2004 November 2004	5 Options formulated based on public/staff input.	
Council discusses options December 2004	Council proposes amendment to Zoning Code, LCP, prohibiting Citywide short term rentals in all residential zones. All existing short term rentals would become Non-conforming uses and subject to regulatory operations permit.	Council directs staff to prepare amendment, to change non-conforming ordinance, etc. (4-1) Stocks dissenting
Notification to over 800 <i>See 800+mailing above</i> February 2005		
Planning Commission Hearing March 2005	Recommends NO ACTION on Amendment. Recommends focus on regulatory process to control impacts from short term rentals.	(4-1) Baggs dissenting Opposed to any change of existing uses.
City Council Meeting April 13,2005	Council ignores City Attorney, City staff, Public input, Planning Commission.	Council adopts Zoning change, refuses non-conforming use modifications. (4-1) Stocks dissenting

(Also see memo from Sandy Holder <SHOLDER@ci.encinitas.gov.us> dated July 29,2000.  
 "Then I had my secretary listen to the tape of the actual Planning Commission meeting and transcribe the two page portion pertaining to the definition of Transient Housing Unit. **It is now very clear that the Planning Commission's intent was to exempt all short term vacation rentals from paying the transient occupancy tax and to exclude them from the transient habitation unit definition.** The minutes reflect that the commissioners supported race track rentals for less than 30 days and no one felt that the City should have any control over that. . . . **it is very clear from reading the minutes that the Planning Commission did not want to prohibit single family homeowners and duplex homeowners from renting their units for**

**short term rentals of less than 30 days.** If I can be of further assistance, please let me know.”  
Sandy Holder, Community Development Director.)

Council appear to have decided to disregard the public's input and its own planning commissions. By disallowing any new rentals and with no modifications to the non-conforming uses ordinances, the changes will essentially rapidly eliminate almost all short term rentals of any existing residential property or any future constructed residential property in the City of Encinitas. Evidently, the council members, rather than stiffen and enforce regulatory controls over vacation rental impacts, are willing to sacrifice the constitutionally protected rights of property owners in the entire city. While today they sacrifice the right to rent your home, what about tomorrow? Maybe surfboards should be prohibited on homeowners' properties, or cars that haven't passed smog, or owners can only keep cats as domestic pets - no dogs, no hamsters, no rabbits. Or perhaps all homes should be pastel colored with the mailbox to the right of the door. A nice homogenous, drab, lifeless community. No thank you.

#### **Petition author and originator**

A member of the council commented that the petitions circulated before the April 13 meeting were all from one person. This is not correct. The original petition was indeed written by one person, but it was signed and returned by many. To anyone on the membership list of charitable organizations, as my wife and I are, this is not an uncommon way to solicit support for any number of causes. One person writes the petition and everyone is asked to sign and mail to the appropriate representative. (See attached)

#### **Making Matters Worse**

By not setting the MINIMUM for a short term vacation rental at one week or more, we are allowing the worse offenders of commercialization of vacation rentals in residential areas to continue weekend use, or even worse, daily rentals in residential areas. Under the proposed zoning change and ordinances, one day rentals would be allowed as long as they were started prior to certification of this ordinance. For example, Sea Bluff, which now has one week minimums, could see everyone rent their homes out for weekends or even daily in the next 90 days, and continue on forever as long as they had a one day renter every 180 days. Nice job, City Council.

#### **Regulatory Controls**

The few offending property owners who appear to treat their homes as hotels can easily be brought under control through regulatory means.

- Limit short term rentals to a minimum of one week.
- Limit short term rental use to 93 days per year or owner is treated as a commercial provider of short term habitation and subject to more stringent controls and TOT.
- Inspect all short term rental properties used for over 93 days yearly for violations related to non-permitted additions and modifications.
- Establish stringent parking restrictions based not on bedrooms but legal off-street parking as determined by building department and fire marshal.
- Establish and enforce quieting guidelines related to stereos, late night parties.

The council, planning commission and staff have the tools to control the offending properties without attacking the protected property rights of homeowners. If these means had been employed first and failed then additional restrictions might have made more sense.

Respectfully,

Gil

6/6/2005  
Gary Cannon  
California Coastal Commission  
7575 Metropolitan Ave #103  
San Diego CA 92108-4402

RECEIVED

JUN 20 2005

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

Dear Mr. Cannon

**AGAINST ordinance 2005-06 2005-09 elimination of short-term rental homes in Encinitas**

I bought a Condo in Sea Bluff 5 years ago, based on my ability to rent it out by the week. I have only recently started to rent it out this year and I may not rent it out weekly every year and I still want to maintain my property rights to rent it weekly.

Eliminating short-term rentals hurts all Californians by restricting the access to our local beaches and coastline making it impossible for FAMILY'S to afford to vacation by the beaches

I live in the community of sea bluff where 90% of the weekly rentals in Encinitas are I have no problem with weekly renters and my community is quiet and peaceful

Please do not vote to pass this awful poorly written law

Thank you

  
Kent Plank  
1734 Aldersgate Dr.  
Leucadia CA 92024

RECEIVED  
JUN 20 2005

June 3, 2005

To: Gary Cannon  
California Coastal Commission  
7575 Metropolitan Ave. # 103  
San Diego, Ca. 92108-4402

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

RE: AGAINST Ordinance # 2005 -06, 2005-09 Elimination of Short Term Rental homes, by the City of Encinitas.

I am opposed to the proposed changes to the Encinitas Zoning Code which will eliminate my and other property owner's abilities to rent property on a short-term rental basis. This seems to be a violation of our rights. In addition, this limits the ability of others who are not fortunate enough to live on the coast, from enjoying the area when they are on vacation. The majority of visitors can not afford to take an entire month off thus forcing people to rent a place for a minimum of 30 days when they only have a 14 day vacation seems ridiculous. It is also something that is probably unenforceable. The City Council has no right to dictate to citizens the terms of their rental properties. Summer rentals and short-term vacation rental have been an accepted practice in our community since before it was an incorporated City.

It appear to me that the City Council could have investigated how other cities in the area have resolved the problem with late night disturbances. The City of Solana Beach came up with a plan that requires those property owners who want to rent their properties on a short-term basis to apply to the City for a permit. Once the City issues the permit, a card is provided to the property owner with the permit number printed on it. This card is to be posted in a window during the times when the dwelling is being rented out on a short term basis. Thus supplying a way for the city to monitor and eliminate those who are abusing the peace and quiet of others. If the tenant occupying the property starts to get out of hand, loud or rowdy, then anyone who is being bothered can call the City and file a complaint. The permit # (which must be posted) can be attached to the complaint. Complaints can then be investigated and if need be the permit can be revoked by the city for repeat violations. Repeat violators would then loose the right to rent their property out on a short-term basis. It seems that the City of Encinitas has been very short sided in their investigations of alternative ways to control the few visitors renting here that get out of hand. I have lived in and around short-term rental for years, and I have never found it to be a problem. Visitors should have the same rights to enjoy the coast as those who live here on a permanent basis. Not every short term renter stays up late partying and making noise. It is unfair to punish all short term tenants and property owners because a "few" tenants have been loud in the past.

This issue was originally taken before the City Council by a handful of residents who live in the Sea Bluff development. These same owners tried and were unsuccessful in getting

their own homeowner's association to restrict short-term rentals, so they took their complaints to the City council. It seems ridiculous that the City of Encinitas would change the "rules" for everyone because a "few" Sea Bluff owners found short-term rental to be a problem. I think those citizens need to move to an area where there are no tourists. A little noise now and then is a small price to pay to live in paradise. The public should not be restricted from enjoying the coastal experience of Encinitas.

Please reject ZCL/LCPA Case# 04-248 as an excessive restriction and help us keep the Encinitas Coastal Zone open for everyone to enjoy. Tourism is a good thing!

Janet McCollough  
2477 Montgomery Ave.  
Cardiff, Ca. 92007

Janet McCollough  
6/3/05

June 13, 2005

Mr. Gary Cannon  
California Coastal Commission  
7575 Metropolitan Avenue #103  
San Diego, Calif. 92108-4402

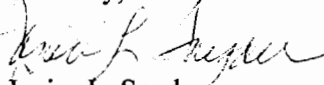
Dear Mr. Cannon,

I am taking the time to do something I ordinarily don't do and that is to speak out about the concern I have over a city ordinance that has recently been passed. Specifically, I'm referring to Ordinance #2005-06, 2005-09, Elimination of Short Term Rental homes by City of Encinitas. I have very strong feelings on this subject, and that's why I felt the need to write to you.

I am a native Californian – I grew up in Corona del Mar, but now live in Arizona. It's difficult to express just how much I miss home and the beach. I grew up a block and a half away from Big Corona State Beach and spent every waking minute of my childhood summers *in* the water. Now that we live in Arizona, it's become imperative that we come back home for a week each summer because to endure the Arizona heat without a getaway just isn't an option! But much more than that, it is so important to my husband and me to be able to take our appreciation for that precious gift of what we as kids enjoyed, and pass that along to our children. We had stayed in rental homes in the Newport Beach area over the past few years, but have been disappointed with the high prices, the traffic and just the overall type of home that is available. That's why I was so pleased to find a website this last winter, and on that website we found a wonderful oceanfront home in Encinitas. We are scheduled to arrive this Sunday and have been counting the days ever since we reserved it last February. I am deeply concerned about this ordinance and the effect it will have on our ability to "go back home" in future summers. If this ordinance is enforced, there will be fewer rentals available to families like ours and subsequently, the price of a week in a summer house could potentially become out of reach for us. I could understand if the reasoning behind this ordinance is to limit those renters who come to the beach with partying in mind and who might disrupt ordinarily quiet neighborhoods. But even as it is, the rent is not cheap and would be prohibitive for a bunch of college kids, so I don't think that concern is really valid. But do you really want to shut the door on families who wait all year to come back to the beach where, each year, precious, lasting memories are made? Because that is what this ordinance would do. Whatever the concerns are that prompted the creation of this ordinance, can you honestly say they are more important than that?

I understand that there are hearings coming up in July and I just hope that you will read this letter and take my plea into consideration. I'm sure that for every person like me who writes to you, there are many more who feel just as strongly but don't. Please reconsider the direction in which this ordinance will take the City of Encinitas, and respond with compassion for its residents who are also in opposition as well as those who have come to call Encinitas their "home away from home".

Sincerely,

  
Janice L. Snyder  
1009 W. Peninsula Drive  
Gilbert, Az. 85233  
(480)813-1306

Dear Gary Cannon,

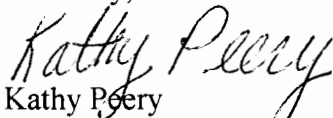
I have lived in Leucadia SeaBluffe for the last three years. My husband and I bought here because it is where we want to retire and because we wanted to live in the San Dieguito School District. Last summer, we rented our home on a weekly basis while we were in the process of putting our home in La Costa up for sale. In the process of renting, we meet wonderful people. A family from New Zealand came while their daughter was getting married. Another couple and their grown sons came and stayed for a couple of weeks. They live in San Diego but wanted a place at the beach to get away from home so their family could be together. They knew that if they were home that there would be things to do around the house and that they would be caught up in the everyday things that come. Another wonderful family with 3 boys came from Utah. We talked about changing residence for a few weeks a year, they could come to the beach and we could go skiing. Every one of the renters took great care with our home and we meet new friends. We also offered to have our family from Texas come to our home and stay while we are on vacation this summer.

The unit next to us is a short term rental. All of our experience with those renters has been wonderful as well. One couple which we came to know comes here every summer. My daughter dog sits when they need to leave for a day or two. It is also nice because most of the year, this rental is vacant as many of the rentals in Sea Bluffe are. This makes most of the year, very quiet and when summer comes, it is great to see family and friends get together and enjoy the beach and weather. A few summers ago, there was a family reunion and they all stayed in Sea Bluffe. Each family took turns preparing breakfast and lunch in the club house. I loved this idea and plan for a similar family reunion next summer. If this ordinance is passed it would eliminate these kinds of gatherings. It would also eliminate the diversity of people that we come to know as part of these short term rentals. Short term renters also become future buyers in our community and future contributors to our community. Many people that live here in Sea Bluffe came here originally as renters.

I am fully aware the when a minority of the Sea Bluffe residences couldn't change the CCC's to their satisfaction which would eliminate the short term rentals, they took this issue to the City of Encinitas. When I first came to Sea Bluffe, I was approached by this group to run for a position on the Board. I received many calls from this group telling me that if I supported their position, that they would get their supporters to vote for me. My response to them was that if I was elected I would do what I thought was best for Sea Bluffe and refused to support any group just to secure votes. This group also sees Sea Bluffe as a retirement community and has little tolerance for children. Being a teacher, I love having kids around to brighten up the day and not as a nuisance as they do. This mentality has to STOP.

I sincerely hope that you will reconsider this opposition to short term rentals. I love my community just the way that it is. One of the reasons that I bought in SeaBluffe was so that I could go on vacation over the summer and have a family come to enjoy my home and community. The beach is a place for families to come to and enjoy but many don't have a full month of vacation from work. I would miss the diversity and uniqueness of Leucadia/Encinitas. It is a wonderful place to live and I feel very lucky for that opportunity.

Sincerely,



Kathy Peery

Leucadia Sea Bluffe Owner, 1760 Kennington Rd., 760-436-2441  
Educational Technology Coordinator, Cardiff School District

TO THE ENCINITAS CITY COUNCIL, MAYOR AND CITY ATTORNEY:

I am a homeowner in Encinitas and I am currently using my home as a furnished weekly rental. I own a large property and use the entire property as a furnished short-term rental and sometimes as a long-term rental as my needs dictate, as well as a part-time vacation residence for my family. We plan to use the home eventually as our retirement residence. I have the support of my neighbors and business owners who I deal with, and have not caused any disturbance by my completely legal activities on a completely fenced and private property with off-street parking, several blocks from the beach. I find any intrusion into my property rights and practices to be illegal on the part of the City or any government body that would attempt to regulate how and to whom I rent my property.

Any zoning changes which intrude on my right to control my home and how I pay my mortgage and taxes would harm me and my family directly. I don't want to be required to rent a certain number of days per year as a vacation rental, as long as I am meeting all of my obligations as a homeowner, neighbor and taxpayer. By the way, I searched for any text as to the details of this proposed ordinance on the City website and could find nothing - I suspect it is being kept very secret for the reason, that it is completely illegal.

I do not know of any other municipality where it is illegal to rent out your home on a short-term basis. For example, my friend just rented a home for the weekend in Ventura, so she could celebrate her birthday on the beach there. Any restrictions on this practice are completely intrusive and if adopted everywhere, no one would be able to rent a house anywhere. How about Big Bear? How about the Riviera or the Amalfi Coast? How about Carmel? Any location which attracts vacationers is a potential target for such strong-handed municipal interference. There are plenty of laws in place which control noise, parking, and other nuisances. Our home and our neighborhood reputation are very valuable and we have many nice furnishings, landscaping etc. which we expect our renters to treat well, and they are pre-screened with large security deposits.

Our decision to buy a rental property which will eventually be our retirement home, was inspired by a former employer, a highly respected attorney in Seattle, Washington, for whom I worked as a paralegal for over eight years. He and his wife bought a home in Carmel, CA, which they elegantly furnished and rented short-term for many years through a property manager, while they only took two or three weeks per year to enjoy their property. After many years, they are now able to spend four or five months there a year, as they always dreamed, and they no longer have to rent the place out to others, as they own it free and clear. This is how I imagine my future retirement, in what I had come to believe was a perfect place for me, Encinitas.

I can't imagine my former boss, who was also President of the Seattle Bar Association during my tenure, would now be looked at as a law-breaker and be subject to City scrutiny for his rental practices. I also can't imagine that any City meddling into homeowners' property rights will ever be held up in court, and I am sure any attempts will be met with the strongest resistance by myself and all other concerned citizens of Encinitas. Please take this to heart and cancel this attack on my property rights and threat to my future financial stability.

homeowner  
Encinitas, CA

cc: to CA Coastal Commission 5-24-05. Original  
e-mailed 5-5-05 to the City Council, Mayor & City Attorney  
from erpro@sbcglobal.net Jacqueline Grad



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JUN - 1 2005

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

**David P. Fischbach**  
**PO Box 1454**  
**Rancho Santa Fe, Ca 92067**  
**858-759-0304** **Fax:858-759-0306**

**May 25, 2005**

Gary Cannon  
California Coastal Commission  
7575 Metropolitan  
San Diego, CA 92108-4402

**RE: AGAINST Ordinance #2005-06, 2005-09 Elimination of Short Term Rental Homes, by City of Encinitas.**

Dear Mr. Cannon,

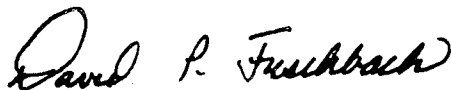
This letter is written to express my strong objection to the current ordinance to eliminate short-term rentals in Encinitas. This proposed ordinance seems to be in direct conflict to the mandate of your commission, which is to preserve the California coastline for all people to enjoy.

The elimination of short-term rentals would restrict the public access to the beach in a direct and very destructive way. There has been a small, but vocal group in Encinitas that has pushed this ordinance forward so that they can swindle the coast away from the public and keep it for their own personal use.

I have rented out my bluff side home in Encinitas for more than 10 years and have had the pleasure of sharing the Pacific Coastline and the beautiful beaches with hundreds of families and their children. Many of these families return year after year, eagerly anticipating their time near the ocean. Without my rental or that of other bluff owners, these families would not have been able to stay and vacation at the ocean. These visitors are NOT transients, as some would have you believe, but hard working, tax paying citizens, who desire to spend their family vacation along the California Coastline.

In conclusion, I oppose Ordinance #2005-06, 2005-09 Elimination of Short Term Rental Homes in the City of Encinitas.

Sincerely,



**David P. Fischbach**  
Owner 952 Neptune Ave,  
Encinitas, Ca 92024

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JUN - 1 2005

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

Gary Cannon  
California Coastal Commission  
7575 Metropolitan Avenue, #103  
San Diego, CA 92108-4402

May 25, 2005

RE: AGAINST Ordinance #2005-06, 2005-09 Elimination of Short Term Rental homes,  
by City of Encinitas.

Dear Gary,

I'm writing to you as a homeowner in Encinitas who has been doing a combination of short-term and long-term renting of my home for the last two years. I'm very concerned that the passing of this Ordinance will limit my property rights as well as those of other homeowners who rent their houses or plan to in the future.

One of the proposed regulations that I find the most disturbing is the 180 days issue. I feel this is a real violation of our property rights when a homeowner loses short-term rental privileges if more than 180 days have passed since they last had a renter. This would eliminate occupying our homes in the winter and doing short-term rentals in the summer. Many others and I have rented this way and it would effectively be eliminated. I'm also worried about other severe restrictions that might be put into place if this Ordinance is approved. Not having the flexibility to rent short-term after 180 days would also make it increasingly difficult for myself and others to afford to live in the coastal area.

The passing of Ordinance #2005-06, and 2005-09 would make it increasingly difficult for tourists to take vacations here. If the Ordinance passes short-term rentals would be difficult to find and most families cannot afford to rent for 30 days at a time nor can most take a 30-day vacation. Staying in a hotel would be much more expensive when you add the increase in food costs due to the lack of a kitchen in a hotel/motel.

I believe that the Coastal Commission exists to preserve, maintain, and enhance access to and enjoyment of our coastal environment. If this Ordinance passes it will negate all of these issues.

On a personnel note, due to a chronic health condition I depend on summer rentals to help make up some lost income since it's difficult for me to hold down a full-time job.

Thanks you for your time and consideration,

Sincerely,

Jill Denver

Mr. Gary Cannon  
California Coastal Commission  
7575 Metropolitan Ave. #103  
San Diego, CA 92108

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JUN - 1 2005  
CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

Dear Mr. Cannon,

I am a home owner at The Seabluff community in Encinitas. I bought there because I felt that this property did not tower over the coast and that the association had the right idea of protecting the cliffs. That said, I am extremely upset with a small group of my neighbors who have convinced the City of Encinitas that they should enact an ordinance limiting my rights as an owner. This is a bad precedent to set.

This small group lost a similar battle in our association because it was proven that short term renting has no more adverse affect on the property than long term renting. What short term renting does provide is more people getting the opportunity to enjoy and appreciate our greatest resource.

This issue will take up a lot of time and money and then get over turned in the courts. If your group would look at the motivation of these few people, you would see that it has nothing to do with protecting the coastal environment and has everything to do with their own selfish desires.

Sincerely yours,

  
Larry Riis

1754 Whitehall Rd  
Encinitas, CA 92024

**JOHN M. DWYER  
ANITA DWYER  
1756 Whitehall Road  
Encinitas, Ca. 91505  
760 436-5446**

**RECEIVED**

JUN - 1 2005

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

May 20, 2005

Mr. Gary Cannon  
California Coastal Commission  
7575 Metropolitan Avenue, #103  
San Diego, Ca 92108-4402

Re: **AGAINST** Ordinance #2005-06, 2005-09 Elimination of Short Term Rental homes, by the City of Encinitas

Dear Mr. Gannon:

We are writing to express our opposition<sup>to</sup> the above ordinance. A tiny but very vocal and well-organized minority of Encinitas residents have convinced the City Council to pass an ordinance prohibiting any new sort-term vacation rentals and setting up such onerous restrictions and regulations on those of us who have rented in the past that even with the 'grandfather clause', many of us might not be able to qualify and therefore could be unable to rent our property in the future.


We are a retired couple, fortunate to live in our beautiful community near the ocean. When we purchased our home in 1997, we counted on being able to rent it from time to time to help us with our retirement income. And indeed, we have rented it out at sometime during the year every year since we purchased it - sometimes for just a few weeks, sometimes for the entire summer. This additional income allows us to keep our home in good condition, as well as permitting us to travel during the time we are renting.

The people that rent from us want to experience 'living at the beach' for a week, or two weeks. The cost of multiple hotel rooms, added to the additional expense of eating out three meals daily is beyond many, many families. And If they have children, and they usually do, the ability to rent our home and others like ours, where they can fix meals, often makes the difference in whether they will be able to experience beach living or not. These people aren't 'transients'. They are short-term residents who treat our home with respect and who are able to enjoy all of the pleasures of the coast while they are on vacation.

The tiny vocal minority which has bulldozed this ordinance through the Encinitas City Council seems to epitomize the phrase, Not In My Backyard. Their grossly exaggerated complaints concerning excessive noise, trash, etc. are simply a smokescreen. The truth of the matter is -- they have their little piece of paradise and are loathe to share it with anyone else. My wife and I strongly feel the beach, and the ability to experience all of the joys of coastal living for whatever short vacation period one has, should be available for everyone and not for the privileged few.

Sincerely yours,

  
John M. Dwyer

  
M. Anita Dwyer

May 23<sup>rd</sup>, 2005

Gary Cannon  
California Coastal Commission  
7575 Metropolitan Avenue #103  
San Diego, California 92108-4402

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JUN - 1 2005

CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICT

Re: Against Ordinance #2005-06, 2005-09 Elimination of Short Term Rental homes, by City of Encinitas.

Dear Mr. Cannon:

We have been owners of a property in Sea Bluffs since 1978, located at 1709 Aldersgate Road. As you know Sea Bluffs is a unique property separated from Highway 101 by a guarded gate, and has always been regulated by its 255 condo owners and not the City of Encinitas.

We have enjoyed living in Sea Bluffs, renting out our property, and having a place for family to gather. Our renters have always enjoyed the beach and the lovely community. Many came back in the summer year after year and some bought property in sea Bluffs.

As this rental controversy has been going on several years now, a few years ago the issue was put to the Sea Bluff community for a vote and they voted to keep the short term rentals. As many of us are retired, elimination of short term rentals would make it difficult for some of us to keep our coastal homes.

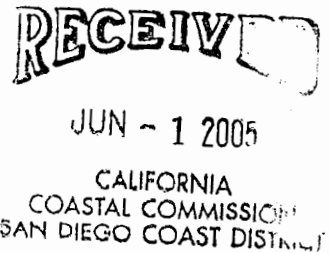
We hope you will consider letting the owners in Sea Bluffs decide their own future.

Thank You,

*Norm Knowlton*  
*Mary D. Knowlton*

Norm and Mary D Knowlton  
35109 Highway 79 #164  
Warner Springs, Calif 92086

May 29, 2005



Gary Cannon  
California Coastal Commission  
7575 Metropolitan Ave. #103  
San Diego, CA 92108-4402

RE: AGAINST Ordinance #2005-06,2005-09 Elimination of Short Term Rental homes  
by City of Encinitas.

Dear Mr. Cannon and members of the California Coastal Commission,

I am writing this letter to express my opposition to the City of Encinitas' plan to ban all short term rentals. My wife and I have been Encinitas residents for 13 years and were lucky enough to be able to purchase an oceanfront home 6 years ago. Not having a high income, we soon discovered we could rent our home out for 4 weeks every summer to generate extra income. This has greatly helped our ability to take nice family vacations and given us some degree of financial security.

Under the city's new proposal, we will no longer be able to rent our own home like this. The city appears to be unfairly targeting people like ourselves by including a 180 day provision in their new law. They have set it up so people who don't rent at least every 180 days will not be grandfathered in to allow current licensing. Taking away our freedom to supplement our income in this way seems to me to be a direct violation of our property rights.

We are very respectful of our neighbors and have a great relationship with them. We certainly understand the need for some regulation of short term rentals but we feel strongly that the city is going overboard in attempting to ban all vacation rentals. Summers are a very busy time in beach cities as people from all over San Diego county make their way to our beaches. We feel strongly that vacation rental tenants are taking too much blame for issues of noise and crowding that comes with summer. These vacationers bring revenue to our city in many ways. With the newly proposed transient occupancy tax, more revenue will be generated to help our city financially. It seems too extreme to go from no regulation to over-regulation and an all out attempt to ban the short term rentals.

We are confident the coastal commission will force the city of Encinitas to come up with a better plan of regulating short term rentals. Thank you for considering this issue.

W. Sean Bohan  
872 Neptune Ave.  
Encinitas, CA 92024  
760-717-1127

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JUN - 1 2006

Jacqueline Grad  
227 Cereus St.  
Encinitas, CA 92024

May 24, 2005

Gary Cannon  
California Coastal Commission  
7575 Metropolitan Avenue, #103  
San Diego CA 92108-4402CALIFORNIA  
COASTAL COMMISSION  
SAN DIEGO COAST DISTRICTRE: AGAINST Ordinance #2005-06, 2005-09 Elimination of Short Term Rental Homes, by  
City Of Encinitas.

Dear Coastal Commission Members:

I am a property owner in Encinitas and am vehemently opposed to the Encinitas City Council's Ordinance 2005-06 and 2005-09, banning short-term rentals and placing massive restrictions on existing short-term rental owners. I believe this is an unlawful action which takes away my property rights and which will cause great harm to the Coastal communities of Encinitas, Cardiff-by-the-Sea, and Leucadia.

The City Council did not inform the property owners of Encinitas of their intent - there are over 22,000 property owners but the City only notified about 800 of the planned action. Our own Planning Commission recommended to NOT adopt this measure, and the City Attorney advised against the action. All citizens I have talked to, including property owners and business owners, knew nothing about the planned action before I told them about it, even though the City states they have been planning this for 15 months. EVERY citizen I have spoken to is opposed to banning short-term rentals. Councilman Jerome Stocks voted against this ordinance.

Last fall when we purchased our property in Old Leucadia, the City Zoning Department counter representatives specifically told us that we could rent our property any way we see fit, either short-term or long-term, and did not inform us of any pending action to take away our rights. I am one of the "lucky" ones that have records to prove I am renting my property short-term, but what about all the other people affected by this ordinance, that don't even know about it? As a long-time homeowner and rental property owner, It is unbelievable to me that four individuals can take away the property rights of 22,000 home owners without notice or ballot action, AND without notifying real estate brokers, or their own Zoning Department, of the need to alert potential home buyers of this pending action during the past year and a half.

We planned to eventually live in Encinitas in the winter (6-7 months a year) and rent the property short-term furnished in the summer. As the proposed ordinance stands, it will be impossible for us to live in our own house for more than 180 days, unless we move out and RENT IT OUT SHORT TERM EVERY 180 DAYS. If we don't do that, we will lose our right to rent short-term, FOREVER. This is incredibly restrictive.

A ban on short-term rentals would only allow the super-affluent to buy property in our beach neighborhood, which is now full of middle-class people and nice "funky" small houses. In fact our property, which is a 1949 historical craftsman hacienda on over 11,000 square feet of mature grounds, was re-assessed by the City after we bought it, with the land now being worth almost the entire purchase price, thereby effectively making our home, which is full of character

May 24, 2005  
California Coastal Commission  
Page Two

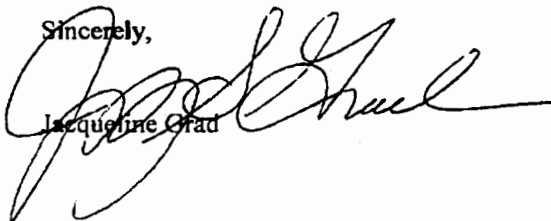
and charm, into a "tear-down". Our neighbors all think we did a wonderful thing to restore our property and the seller was interested in having us buy the property because we were NOT going to tear it down. In the future if we sell our property and it can't be used as a short-term rental (it's currently two units and a guest suite) – the next buyer will probably tear it down and build a huge monstrosity. Another concern, is that we had planned to build an addition of a family room with a second-story master suite above in about five years, turning the entire hacienda into a single-family home by connecting the back units to the front house. If Ordinance 2005-06 is adopted, we would lose our right to ever rent short-term again, if we make any addition to the house which adds a bedroom. This is also incredibly restrictive and ruins our long-term plans for the property, which plans (by the way) are consistent with the current zoning codes in R-1 zoned areas, so this aspect of Ordinance 2005-06 contradicts the City's own zoning code.

I am opposed to adding any kind of "conditional use" permit to my property, which is several blocks from the beach, completely fenced with off-street parking, and we are not impacting anyone by the use of our property. There has to be a better way for the City to deal with the impact caused to neighbors by the overabundance of vacation renters along Neptune and in Sea Bluff, which in my view is the only valid complaint to be addressed by the City. It seems ludicrous that because of the complaints of a minute number of beachfront homeowners in North Leucadia, the City Council can take away the property rights of over 22,000 homeowners over a vast area of land. Those who violate the rights of their neighbors should have sanctions imposed against them that are either already in place or which could be implemented. Ordinance 2005-06 and 2005-09 is a drastic measure that will certainly result in protracted lawsuits if it is upheld by the Coastal Commission.

Middle class families like mine will lose access to the coast in my neighborhood, renters homeowners alike, if people can't rent out their properties short-term to pay their mortgages. Not only will vacationing families lose their enjoyment of the area for one or two weeks a year, but folks like me who depend on short-term rentals to keep and maintain their property, will be forced to sell. One of the main reasons I bought in Leucadia, is that I loved the way of life here. It seemed to be the last little bit of "old" surf California beach towns, and I loved the way the City had kept the single-family and small-multi-family housing along the coast and kept out the big chain stores in Downtown Encinitas, instead of allowing massive hotel and condo development, like most of the other coastal cities. Now if they ban short-term rentals it will leave many people with no choice but to sell to developers. The ban will have the opposite effect of its surface intent: instead of keeping the "residential" feel of the area, AS IT IS NOW, it is obvious to me that it will pave the way for massive development instead.

Please also see enclosed my letter to the City Council, which was ignored by four out of five members. I am appealing to the Coastal Commission, in hopes that you will see the insanity of this zoning law, and ban the City Council from implementing it. Thank you for your time and attention to this vital matter.

Sincerely,

  
Jacqueline Grad



Dear Gary Cannon,

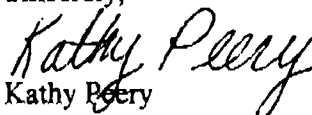
I have lived in Leucadia SeaBluffe for the last three years. My husband and I bought here because it is where we want to retire and because we wanted to live in the San Dieguito School District. Last summer, we rented our home on a weekly basis while we were in the process of putting our home in La Costa up for sale. In the process of renting, we meet wonderful people. A family from New Zealand came while their daughter was getting married. Another couple and their grown sons came and stayed for a couple of weeks. They live in San Diego but wanted a place at the beach to get away from home so their family could be together. They knew that if they were home that there would be things to do around the house and that they would be caught up in the everyday things that come. Another wonderful family with 3 boys came from Utah. We talked about changing residence for a few weeks a year, they could come to the beach and we could go skiing. Every one of the renters took great care with our home and we meet new friends. We also offered to have our family from Texas come to our home and stay while we are on vacation this summer.

The unit next to us is a short term rental. All of our experience with those renters has been wonderful as well. One couple which we came to know comes here every summer. My daughter dog sits when they need to leave for a day or two. It is also nice because most of the year, this rental is vacant as many of the rentals in Sea Bluffe are. This makes most of the year, very quiet and when summer comes, it is great to see family and friends get together and enjoy the beach and weather. A few summers ago, there was a family reunion and they all stayed in Sea Bluffe. Each family took turns preparing breakfast and lunch in the club house. I loved this idea and plan for a similar family reunion next summer. If this ordinance is passed it would eliminate these kinds of gatherings. It would also eliminate the diversity of people that we come to know as part of these short term rentals. Short term renters also become future buyers in our community and future contributors to our community. Many people that live here in Sea Bluffe came here originally as renters.

I am fully aware the when a minority of the Sea Bluffe residences couldn't change the CCC's to their satisfaction which would eliminate the short term rentals, they took this issue to the City of Encinitas. When I first came to Sea Bluffe, I was approached by this group to run for a position on the Board. I received many calls from this group telling me that if I supported their position, that they would get their supporters to vote for me. My response to them was that if I was elected I would do what I thought was best for Sea Bluffe and refused to support any group just to secure votes. This group also sees Sea Bluffe as a retirement community and has little tolerance for children. Being a teacher, I love having kids around to brighten up the day and not as a nuisance as they do. This mentality has to STOP.

I sincerely hope that you will reconsider this opposition to short term rentals. I love my community just the way that it is. One of the reasons that I bought in SeaBluffe was so that I could go on vacation over the summer and have a family come to enjoy my home and community. The beach is a place for families to come to and enjoy but many don't have a full month of vacation from work. I would miss the diversity and uniqueness of Leucadia/Encinitas. It is a wonderful place to live and I feel very lucky for that opportunity.

Sincerely,



Kathy Peery

Leucadia Sea Bluffe Owner, 1760 Kennington Rd., 760-436-2441  
Educational Technology Coordinator, Cardiff School District

