

**CALIFORNIA COASTAL COMMISSION**

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January 25, 2006

**TH 15b****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 February 8-10, 2006)**

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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 for Commission action on the proposed amendment was adopted on July 15, 2005. The proposal was scheduled on the Commission's October, 2005 hearing, but at the City's request, the Commission granted a postponement of its action on the LCP amendment on October 12, 2005. 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, the City ordinance approving these Implementation Plan revisions identifies that pre-existing short-term vacation rentals could continue to exist in residential neighborhoods as a legal non-conforming use subject to (non-LCP) regulations to address potential nuisances (Ref. Ordinance No. 2005-06 attached as Exhibit #5).

**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. In addition, in approving the residential land use designations in the certified LCP Land Use Plan, the Commission would assume the residences could be rented as short-term vacation rental opportunities in residential areas, unless such use is specifically prohibited by policy or zoning. Short-term vacation rental of blufftop homes in Encinitas has historically occurred even before certification of the LCP. The subject request to ban short-term vacation rentals in all residential zones is inconsistent with the implied residential use within residentially-designated areas, and the public access and recreation policies of the Coastal Act.

In October, Commission staff recommended denial of the proposed amendment, but, as indicated above, the item was postponed. Since the item was postponed in October 2005, City staff has submitted additional information (ref. Exhibit #6) supporting the LCP amendment request which includes suggestions on ways the LCP Amendment submittal might be modified by the Commission to create vacation rental opportunities in non-residential zones. In addition, the City has submitted a copy of the regulations that would apply to the vacation rentals that would be allowed to remain as legal non-conforming uses pursuant to the subject LCP amendment (ref. Exhibit 4). These regulations were approved by the City in June of 2005 and were designed to police vacation rentals so as to lessen any potential nuisance. However, the subject LCP Amendment does not propose the regulations be included in the LCP. After discussions with the City and consideration of the full range of potential scenarios to address vacation rentals in the Encinitas community, staff has determined the recommendation to deny this amendment as submitted is still appropriate. The prohibition of vacation rentals in any context raises potential conflicts with Coastal Act policies and the range of possible options to revise the submittal to address Coastal Act concerns and those of the community should be addressed at the local level through a revised LCP amendment.

The appropriate resolutions and motions begin on Page 4. The findings for denial of the Implementation Plan Amendment as submitted begin on Page 5.

**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 seventeenth 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 to 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). The ordinance approving these LCP revisions identifies that 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 with the residential land use designation and are therefore allowable 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 suggested 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 an allowable 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 ordinance approving these proposed revisions 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)

POLICY 5.3: The areas of South Carlsbad Beach State Park, Moonlight Beach State (future City) Park, Cardiff Beach State Park and San Elijo Beach State Park shall be designated as high intensity beach recreational use areas. (Coastal Act/30212.5/30221)

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 significant 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 the 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. There are hotels and motels within the City, however, almost all of these are located on non-visitor-serving use zones and are, therefore, not protected as a priority use.

Highway 101 is a primary coastal access route and the areas west of Highway 101 are high intensity beach use areas. The City has identified that there are currently 670 hotel rooms, 171 camping spaces and approximately 150 short-term vacation rentals citywide. In addition, west of Highway 101 or within a 5-minute walk to the beach they identify there are approximately 468 hotel rooms, 171 camping spaces and approximately 135 short-term vacation rentals. Based on this information, existing short-term vacation rentals account for approximately 21% of available lodging near the beach or approximately 18% city-wide. Therefore, existing and future use of residential structures in the nearshore area for short-term vacation rentals provides a significant supplement to the overnight visitor-serving accommodations provided in the commercial zones in the City.

As identified above, the area reserved for hotel/motel use as a priority use west of Highway 101 are limited, and no hotels currently exist in those areas. In addition, the hotel/motels not located in Visitor-Serving Commercial zones are not protected as a priority use in the currently certified LCP and, therefore, could be eliminated. The City's current request to prohibit short-term vacation rentals further restricts lodging opportunities for coastal visitors and raises serious questions with the LUP requirements for promoting access to the City's beaches. The use of short-term vacation rentals, especially in the nearshore area, is essential for the promotion of public access to the major visitor destination beaches as required by Recreation Policy 5.1 of the City's LUP.

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, an increasing number of 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 advertised 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 of the General Plan:

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. In addition, 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 anecdotal 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 and has not provided a detailed log or report of the various problems. While problems may occur, it is not clear if a total ban on vacation rentals is the appropriate response particularly since the effect of the ban will be to limit or reduce a significant visiting-serving use.

The City has recently enacted Short-Term Vacation Rental regulations to address and mitigate any adverse impacts that might result from vacation rentals such as noise, disorderly conduct, traffic congestion and excessive trash (Ref. Exhibit #5). The ordinance went into affect July 15, 2005, but is not part of the LCP or proposed with this LCP Amendment. Until the City has had time to evaluate the effectiveness of the regulations to control the problems that may exist with short-term vacation rentals, a ban on short-term vacation rentals citywide is premature. In addition, there are no policies within the LUP that would specifically prohibit residential units from being rented as short-term vacation rentals. In fact, in designating the various residential areas in the LUP, it is likely the Commission and City assumed the residences could be rented on a short-term basis. In addition, it was common knowledge that some blufftop homes have historically been used as short-term vacation rentals, although probably not as many as occur today. 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 promoting public access and visitor-serving opportunities.

Another concern raised by the subject LCP Amendment is that the proposed "grandfathering" of existing vacation rentals may be limited. The ordinance approving the subject LCP revisions identifies that any existing short-term vacation rental will be allowed to continue subject to the non-conforming use regulations of the certified LCP.

(The non-conforming use regulations are attached as Exhibit #4.) While the City ordinance allows for existing short-term vacation rentals to continue as a legal non-conforming use, the application of these non-conforming use regulations overtime may reduce the number of these vacation rentals. As identified in the Section 30.76.090(B) of the City's Implementation Plan, ". . . a nonconforming use which remains inactive for 180 consecutive days, shall be deemed to have ceased, and shall not thereafter be renewed." Therefore, if a property owner only rents their residence during the 6-7 week period of the Del Mar Racetrack season or only rents 3 months during the summer, they will lose the right to continue to operate as a short-term vacation rental. It is not known how many of the approximately 150 short-term vacation rentals currently operate in this manner, but since that is when demand is highest, it is likely to affect a significant number of the approximately 150 short-term vacation rentals. In addition, Section 30.76.090(C) identifies the nonconforming use would also be terminated if the use or structural nonconformity is "enlarged, extended, expanded or in any manner changed to increase its inconsistency with the regulations of this Title". Therefore, if a homeowner adds a bedroom or a second story to the residence, the right to use the residence as a short-term vacation rental will expire. Therefore, while the existing approximately 150 short-term vacation rentals may continue, it is likely that the number will be reduced, perhaps significantly, over time. Therefore, the effect of the City's LCP Amendment would be to reduce the amount of existing visiting-service uses within the City, particular those adjacent to the shoreline.

In approving other Local Coastal Programs 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, 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 to 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 in Encinitas are residential, and the prohibition of short-term vacation rentals would have a significant impact on the supply of visitor serving accommodations in nearshore areas.

In summary, the proposed LCP Amendment raises serious concerns relating to the supply of current and future visitor-serving uses within the City, particularly those near the shoreline. As proposed, the prohibition on short-term vacation rentals in all residential zones and the application of nonconforming use regulations for those that will be allowed to continue as a legal nonconforming use will 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 unmitigable environmental impact within the meaning of CEQA will result from the approval of the proposed LCP amendment.

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