

CALIFORNIA COASTAL COMMISSION

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



June 29, 2007

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TO: COMMISSIONERS AND INTERESTED PERSONS

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

**SUBJECT: PROPOSED MINOR AMENDMENT (#1-07A/Affordable Housing Waiver) TO
THE CITY OF ENCINITAS LOCAL COASTAL PROGRAM**

The City of Encinitas is requesting that its certified Local Coastal Program (LCP) Implementation Plan (IP) be amended. This amendment was filed on May 18, 2007 pursuant to Section 30514(c) of the Coastal Act and Section 13553 of the Commission's Code of Regulations. Section 30513 of the Coastal Act requires the Commission to take action on an implementation plan amendment within 60 days. Therefore, absent a time extension, the Commission must take action on this matter at the July hearing.

Amendment Description

The subject request is to amend the City's Implementation Plan (IP) to provide a waiver, adjustment or reduction provision to the City's inclusionary housing requirements. Section 24.21 of the City's certified IP requires that subdivisions of 10 or more units provide for either one affordable unit for every 10 lots or dwelling units or pay an in-lieu fee to provide for an affordable unit. A recent court decision regarding inclusionary housing requirements found that such ordinances must include a waiver, adjustment or reduction provision that affords the applicant the opportunity to demonstrate if there is an absence of a reasonable relationship or nexus between the development and the inclusionary housing requirement. The proposed amendment is designed to satisfy the court's requirement that the City provide such a "due process". The proposed amendment also requires that the applicant bear the burden to support the claim of an absence of a reasonable relationship or nexus between the development and inclusionary housing requirements of the IP.

The proposed amendment is consistent with the Housing Element requirements of the City's Land Use Plan that identifies that the City's "General Plan and its implementing zoning regulations is the City's single most important "housing program", in providing for the number, and range of type, of housing units needed." (Ref. Page H-78 of certified Housing Element). The proposed amendment does not conflict with that provision.

Procedure

Pursuant to Section 30514 (c) of the Coastal Act and Section 13554 (a) of the Commission's Code of Regulations, the Executive Director has determined that the proposed amendment is "minor" in nature. Section 13554 (a) defines a minor amendment as changes in wording which make the use as designated in the zoning ordinances, maps or other implementing actions more specific and which do not change the kind, location, intensity or density of use and are consistent with the certified land use plan.

Pursuant to Section 13555, the Executive Director will report this determination to the Coastal Commission at the following date and location:

DATE and TIME: July 10, 2007
9:00 a.m., Tuesday

LOCATION: Embassy Suites Hotel
333 Madonna Road
San Luis Obispo, Ca 93406

At that time, any objections to this determination, received within ten days of the transmittal of this notice, will also be reported to the Commission. This proposed minor amendment will be deemed approved unless one-third of the appointed members of the Commission request that it be processed in accordance with Section 13555 (b) of the Code of Regulations as a major amendment. Otherwise, the minor amendment will become effective ten days from the date the Commission concurs with the Executive Director's designation.

If you have any questions or need additional information regarding this proposed amendment, please contact Gary Cannon at the above office. Any objections to the "minor" amendment determination must be received within ten working days of the date of this notice.

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ORDINANCE NO. 2007-02

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ENCINITAS,
CALIFORNIA, AMENDING MUNICIPAL CODE CHAPTER 24.21 REGARDING THE
ESTABLISHMENT OF A WAIVER CLAUSE FOR THE AFFORDABLE HOUSING
ASSISTANCE DEDICATION (INCLUSIONARY HOUSING) REQUIREMENT
ZCA/LCPA Case #06-240

WHEREAS, this action is necessary in order to provide applicants the ability to request a waiver or reduction of the requirement based upon the absence of any reasonable relationship or nexus between the development and the requirement; and


WHEREAS, this action is consistent with the General Plan and Local Coastal Plan. The General Plan establishes policies regarding the need to provide adequate housing opportunities for all segments of the population. (Housing Element Policy 1.3) Maintaining Chapter 24.21, helps to disperse affordable housing throughout the community by incorporating affordable housing in all subdivisions of 10 or more units. (Policy 1.4, Housing Element) The General Plan requires development to pay their "fair share" of costs for facilities and services. (Policy 2.4, Land Use Element) The waiver clause allows a developer to request a review of this "fair share" (reasonable relationship or nexus) between the requirement and the development. No Local Coastal Program policies were found to conflict with the waiver provision.

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

SECTION 1: That Chapter 24.21, Dedication: Affordable Housing Assistance, is amended by establishing Section 24.21.090 Requirement Adjustment, as follows:

24.21.090 Requirement Adjustment. A subdivider of any project subject to the requirements of this Chapter may apply to the City Council for a reduction, adjustment, or waiver of the requirement based upon the absence of any reasonable relationship or nexus between the impact of the development and either the amount of in-lieu fee charged or the affordable unit reservation required. The application shall be made in writing, in a form acceptable to the Director of Planning and Building, at the time of filing of a tentative subdivision map, or no later than 10 days before the first public hearing on the proposed subdivision map. The application shall state in detail the factual basis for the claim of reduction, adjustment, or waiver. The subdivider shall bear the burden of presenting substantial evidence to support the claim that there is not a reasonable relationship or nexus between the impact of the development and the requirements of this Chapter. The City Council shall consider the application for reduction, adjustment, or waiver within 30 days of its filing. If a reduction, adjustment, or waiver is granted, any change in use within the development, modification of the approved tentative subdivision map, or application for a new subdivision map shall invalidate the reduction, adjustment, or waiver of the in-lieu fee or affordable unit reservation requirement.

Psm/l/housing/inclusionary/cc staff rpt 012407 2/15/2007 8

EXHIBIT NO. 1
APPLICATION NO.
Encinitas LCPA
No. 1-07A Minor
Resolution
 California Coastal Commission

SECTION 2: The City Council, in their independent judgment, finds that the adoption of the Zoning Code and Local Coastal Program Amendment is 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 amendment will not directly result in development.

EFFECTIVE DATE: 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. Once effective, the provisions of this ordinance shall supersede any previous policy adopted by the City Council regarding the procedure for reduction, adjustment or waiver of the requirements of Chapter 24.21.

INTRODUCED at a regular meeting of the City Council of the City of Encinitas held on the 24th day of January, 2007, and thereafter

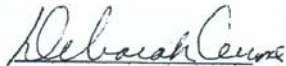
PASSED AND ADOPTED at a regular meeting of the City Council of the City of Encinitas, California, held on the 14th day of February, 2007, by the following vote.

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


James Bond, MAYOR

ATTEST AND CERTIFICATION:

I hereby certify that this is a true and correct copy of ordinance 2007-02 which has been published pursuant to law.



Deborah Cervone, City Clerk

ATTACHMENT 3

CHAPTER 24.21

DEDICATION: AFFORDABLE HOUSING ASSISTANCE

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APR 02 2007

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

24.21.010 Intent. The intent of this Chapter is to insure that the private sector, as well as the public sector, contributes to and shares our government's responsibility of providing adequate housing opportunities for all segments of the population. (Ord. 87-10)

24.21.020 Requirement. As a condition of approval of any tentative subdivision map for residential dwellings, condominiums, community apartments, stock cooperatives or conversions comprising ten (10) or more lots or ten (10) or more dwelling units, the subdivider shall reserve a unit or units for rental to tenants qualified by the County Housing Authority as meeting Section 8 Rental Assistance Requirements or shall pay a fee in-lieu thereof, at the option of the subdivider, for the purpose of providing affordable housing assistance.

24.21.030 Filing. At the time of filing of a tentative subdivision map, the subdivider shall, as part of the filing, elect whether to reserve a unit or units or to pay the in-lieu fee.

24.21.040 Amount of Reservation/In-lieu Fee Required.

A. Unit Reservation. If the subdivider elects to reserve units, the number of units required shall be equal to one unit for every ten (10) lots or ten (10) dwelling units in the proposed development. Said unit or units shall be rented at or below the "Fair Market Rent" established by HUD to tenants qualified for Section 8 Rent Subsidies by the County Housing Authority.

B. In-Lieu Fee. If the subdivider elects to make payment in-lieu of unit reservation, the amount of the fee shall be fixed by a schedule adopted, from time to time, by resolution of the City Council. Said amount shall be reasonably calculated to provide the subdivider's fair share contribution towards meeting the City's affordable housing objective without placing an unreasonable financial burden on any applicant.


24.21.050 Affordable Housing Fund. All fees collected hereunder shall be deposited in an Affordable Housing Fund. Said fund shall be administered by the City and shall be used only for the purpose of providing funding assistance for the provision of affordable housing units consistent with the goals and policies contained in the Housing Element of the Community Plan.

24.21.060 Procedure.

A. Where a unit or units are to be reserved pursuant to the provisions herein, the subdivider shall prepare covenants, conditions, and restrictions applicable to the subdivision in accordance with the provisions herein.

B. Where a subdivider has elected to pay a fee in-lieu of unit reservation, approval of the tentative map or tentative parcel map shall be conditioned upon a requirement that the

Psm/housing/inclusionary/cc staff rpt 012407 2/15/2007 10

EXHIBIT NO. 2
APPLICATION NO.
Encinitas LCPA
No. 1-07A Minor
Proposed Ordinance (Underlined)
 California Coastal Commission

subdivider, prior to approval of the final or parcel map, shall pay an in-lieu fee for the subdivision in an amount established by resolution of the City Council in effect at the time of payment. Or, in the alternative, the subdivider shall execute a secured, recorded agreement whereby:

1. The owner of each lot within the subdivision shall pay an in-lieu fee for such lot as a condition to the owner's entitlement to obtain a building permit for such lot.
2. The in-lieu fee for the lot shall be calculated as follows: The number of units or portions thereof required to be reserved from the subdivision shall be multiplied by the per unit in-lieu fee fixed by the resolution of the City Council in effect at the time of payment. The resulting product shall be divided by the number of units created by the subdivision. The resulting quotient shall equal the amount of the fee for the lot.
3. In the case of condominiums, community apartments, stock cooperatives or conversions, payment of the in-lieu fee for each unit shall be included as a condition of the escrow for the initial sale of each unit within the project.

24.21.070 Refund.

A. Any fee paid pursuant to the provisions of this Chapter shall be refunded upon written request by the subdivider following withdrawal of the application or abandonment of the approval of the subdivision, provided such withdrawal or abandonment occurs prior to the recordation of the final map.

B. The in-lieu funds shall be segregated from City funds. The in-lieu funds may be invested in the same manner and at the same rate as allowed for City funds. If the City has not, within a ten (10) year period from receipt of in-lieu funds committed the funds to a low or moderate income housing project, then the in-lieu funds, together with any earnings thereon, shall be refunded to the payor. The ten year period shall be suspended during the pendency of any litigation involving the above.

24.21.080 New Condominiums: Rental Unit Agreement. Notwithstanding any other provisions in this Title, the City may enter into an agreement with the subdivider proposing to construct a condominium development to provide apartment rental units in accordance with Section 66452.50 of the Act.

24.21.090 Requirement Adjustment. A subdivider of any project subject to the requirements of this Chapter may apply to the City Council for a reduction, adjustment, or waiver of the requirement based upon the absence of any reasonable relationship or nexus between the impact of the development and either the amount of in-lieu fee charged or the affordable unit reservation required. The application shall be made in writing, in a form acceptable to the Director of Planning and Building, at the time of filing of a tentative subdivision map, or no later than 10 days before the first public hearing on the proposed subdivision map. The application shall state in detail the factual basis for the claim of reduction, adjustment, or waiver. The subdivider shall bear the burden of presenting

substantial evidence to support the claim that there is not a reasonable relationship or nexus between the impact of the development and the requirements of this Chapter. The City Council shall consider the application for reduction, adjustment, or waiver within 30 days of its filing. If a reduction, adjustment, or waiver is granted, any change in use within the development, modification of the approved tentative subdivision map, or application for a new subdivision map shall invalidate the reduction, adjustment, or waiver of the in-lieu fee or affordable unit reservation requirement.