

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
(619) 767-2370



W13b

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original staff report

Second Addendum

December 2, 2016

To: Commissioners and Interested Persons

From: California Coastal Commission
San Diego Staff

Subject: Second Addendum to **Item W13b**, City of Encinitas LCP Amendment
#**LCP-6-ENC-16-0058-2** (Grading Exemptions), for the Commission
Meeting of December 7, 2016.

The attached public comment letter in opposition to the staff recommendation shall be added as Exhibit 2 to the staff report.

California Coastal Commission
Meeting December 7, 2016
Ventura, CA

**Subject: Encinitas Issues - W13b -LCP Amendment No. LCP-6-ENC-16-0058-2
Part B "Grading Permit Exemptions"**

I strongly object and request that you reject the City of Encinitas' decision to waive Grading Permits to encourage Agricultural uses.

I was at the Encinitas City Council Meeting on September 14, 2016 and spoke to this issue on that meeting's Agenda. I specifically expressed concern that this would allow neighbors that have half acres of property or larger all over the City to freely grade their yards to put in agricultural plantings.

Moving over 250 yards of dirt and 10,000 square feet to one Acre - is a huge amount of grading that would impose itself on the land and create current and lasting problems. 10,000 sf is a building Lot size!! This is hardly in proportion to a "backyard garden".

At the City Council meeting, it was indicated that this would probably only happen on a very few pieces of land. It is clear, this will be much more far reaching to every piece of land in Encinitas.

It is vital to note, that Councilman Kranz followed up on the issue I raised by asking the Director of Public Works and Engineering, Mr. Glenn Pruim, the following question:

"Do we expect that this ordinance may create wars in neighborhoods on smaller lots with grading and attempts to put in gardens in backyards that will involve bobcats and moving a lot of soil, or are we fairly confident that that is not going to be the case?"

Mr. Pruim's response: "Well, it is hard to predict, but it certainly makes it more possible than it was before...than it is *today*."

I think it is clear that Staff could see problems ahead with allowing Grading Permit Exemptions!

Mayor Kristin Gaspar voted AGAINST this Agenda Item. She was the only one who clearly could see the problems we would be creating in the City, if this passed. I hope that you, the Commissioners will see this, too.

The following excerpt is taken from Page 2, top paragraph of Eric Stevens report:

"If Agricultural areas are utilized for any other use, the city *MAY* require that a grading permit be obtained." The word *SHALL* would be the appropriate action word here and I respectfully request that this change be recommended by the Commission.

EXHIBIT NO. 2
Public Comment Letter
Encinitas LCP-6-ENC-16-0058-2 California Coastal Commission

In fact, that paragraph gives you an insight as to what this LCP Amendment is really all about. It is not just grading, - it is evading the permit process - it gives another *alarming* meaning to this LCP Amendment request!

Very important to note, is to honor and respect the Vote of the Citizens of Encinitas who passed Proposition A in 2013. The recent November "No on Measure T" victory by 56% of the Voters of our City reaffirmed the citizens commitment to Prop A.

Prop A put the responsibility for rezoning, density, intensity, and even "grading" of land, in the hands of the Voters - not the City Council.

Allowing the City Council to have the last word regarding grading permits - or waiver of them is in direct conflict with what the Voters of Encinitas have twice supported --- Proposition A. Grading Permit Exemptions - Waiving "grading permits" that will disturb the "natural" level of the land is in direct violation of Proposition A.

I have lived in Encinitas for 42 years; helped Incorporate our City 30 years ago; served as City Council member and Mayor; and am a very involved citizen for all those 30 years.

Waiving "Grading Permits" for any reason in a City will set a precedent ripe for abuse. We are not talking about back yard gardens here if we need to move 250 yards of dirt and require a bobcat to do that!

Please do not adopt this request by 4 members of the Encinitas City Council, protect the will of the citizens. Commissioners, please **REJECT** this request to waive grading permits for Agricultural use.

Sincerely,

Sheila S. Cameron
Encinitas, CA 92024

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W13b

Addendum

November 29, 2016

To: Commissioners and Interested Persons

From: California Coastal Commission
San Diego Staff

Subject: Addendum to **Item W13b**, City of Encinitas LCP Amendment #**LCP-6-ENC-16-0058-2** (Grading Exemptions), for the Commission Meeting of December 7, 2016.

Staff recommends the following changes be made to the above-referenced staff report. Language to be deleted is shown in ~~strikeout~~:

1. On Page 3 of the staff report, the Public Participation Section shall be modified as follows:

Section 30503 of the Coastal Act requires local governments to provide the public with the maximum opportunities to participate in the development of the LCP amendment prior to submittal to the Commission for review. 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.

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
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November 17, 2016

W13b**TO: COMMISSIONERS AND INTERESTED PERSONS****FROM: KARL SCHWING, DEPUTY DIRECTOR, SAN DIEGO COAST DISTRICT
GABRIEL BUHR, LCP MANAGER, SAN DIEGO COAST DISTRICT
ERIC STEVENS, COASTAL ANALYST, SAN DIEGO COAST DISTRICT****SUBJECT: STAFF RECOMMENDATION ON CITY OF ENCINITAS LOCAL COASTAL PROGRAM AMENDMENT NO. LCP-6-ENC-16-0058-2 (Part B) (Grading Exemptions) for Commission Meeting of December 7-9, 2016**

SYNOPSIS

The City of Encinitas' Local Coastal Program (LCP) Amendment request No. LCP-6-ENC-16-0058-2 (Part B) involves an amendment to the City's certified Implementation Plan (IP) to add a new section 23.24.095 (Agricultural Exemptions).

The subject LCP implementation plan amendment was submitted and filed as complete on October 18, 2016. The Commission must act upon amendments containing only IP components within 60 days of filing. There are no Land Use Plan amendments included herein. The date by which the Commission must take action, absent an extension of the time limits by the Commission, is December 17, 2016. This staff report only addresses a component of the complete submittal. The submittal also includes an amendment to the density bonus provisions of the City's certified LCP (LCP-6-ENC-16-0058-2 (Part A) (Density Rounding), which is also scheduled for the Commission's December 7-9, 2016 hearing.

SUMMARY OF AMENDMENT REQUEST

The City of Encinitas has submitted the subject implementation plan amendment in order to encourage and support more opportunities for urban agriculture by allowing small scale urban agricultural uses without requiring a grading permit that could cost several thousands of dollars. Specifically, the amendment would exempt urban agricultural activities from obtaining a grading permit for projects that involve less than 250 cubic yards of grading, disturb less than 10,000 sq. ft. of land area, propose less than 500 sq. ft. of new and replaced impervious area, divert less than 5,000 sq. ft. of rainwater runoff. Any proposed activity must not directly or indirectly impact environmentally sensitive areas or wetlands and cannot take place within 100 ft. of an inland or coastal bluff or wetland or within 50 ft. from riparian habitats. The amendment also allows for applicants to obtain an erosion control permit instead of a more complicated and costly grading

permit for urban agricultural activities that involve a land disturbance area between 10,000 sq. ft. and one acre. In addition, the amendment would allow applicants to obtain, in place of a grading permit, a stormwater Best Management Practices (BMPs) construction permit for activities that propose new and replaced impervious area between 500 sq. ft. and 5,000 sq. ft. The proposed grading permit exemptions in this amendment only apply to urban agricultural activities. If agricultural areas are utilized for any other use, the City may require that a grading permit be obtained. The changes proposed in this amendment are specifically related to the need for a grading permit associated with urban agriculture activities, and do not affect the Coastal Development Permit requirements related to urban agricultural activities.

SUMMARY OF STAFF RECOMMENDATION

Staff is recommending that the Commission approve the amendment as submitted. The Commission may reject IP amendments only if the amendment would be inconsistent with the certified Land Use Plan (LUP) or render the IP inadequate to carry out the LUP. The proposed implementation plan amendments are consistent with the goals and policies of the Land Use Plan in that the amendments support the emphasis to maintain agricultural land uses, encourage sustainable practices, and improve greater local food security. The proposed amendments would broaden agricultural opportunities, promote small-scale urban agriculture, and remove or limit unnecessary regulations without jeopardizing the environment or public health. Furthermore, the amendment would not affect the requirement to obtain a Coastal Development Permit (CDP) for non-exempt development in the Coastal Zone, and would not result in impacts to coastal resources.

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

ADDITIONAL INFORMATION

Further information on the City of Encinitas' LCP Amendment No. LCP-6-ENC-16-0058-2 (Part B) may be obtained from Eric Stevens, Coastal Planner, at (619) 767-2370.

PART I. OVERVIEW**A. LCP HISTORY**

On November 17, 1994, the Commission approved, with suggested modifications, the City of Encinitas' LCP (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 Commission has certified many amendments to the City's LCP since 1995.

B. 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.

C. PUBLIC PARTICIPATION

Section 30503 of the Coastal Act requires local governments to provide the public with the maximum opportunities to participate in the development of the LCP amendment prior to submittal to the Commission for review. 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 each resolution.

- I. **MOTION:** *I move that the Commission reject the Implementation Program Amendment No. LCP-6-ENC-16-0058-2 (Part B) for the City of Encinitas 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 Encinitas 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 Encinitas LUP, 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 Amendment.

**PART III. FINDINGS FOR APPROVAL OF THE CITY OF ENCINITAS
IMPLEMENTATION PLAN AMENDMENT, AS SUBMITTED**

A. AMENDMENT DESCRIPTION

The City of Encinitas has submitted the subject citywide implementation plan amendment in order to clarify and expand the types of urban agricultural activities that are exempt from the requirement of obtaining a grading permit. Specifically, through the adoption of Ordinance 2015-05 on September 28, 2016, the City would add a new “Agricultural Exemptions” section to the Municipal Code and Implementation Plan (Section 23.24.095).

As proposed, the expanded grading exemptions only apply to agricultural activities and will not adversely impact environmentally sensitive areas, wetlands, riparian habitat, or coastal or inland bluffs. The introduction of the expanded urban agriculture grading permit exemptions will not result in a change to the types of development that require issuance of a CDP. Chapter 30.80 regarding Coastal Development Permits details development that can be found exempt from CDP requirements. The City does not propose to make any changes to Chapter 30.80 with this LCPA.

B. FINDINGS FOR APPROVAL

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.

1) Purpose and Intent of the Ordinance.

The primary goal of the City’s amendment is to accommodate new models of urban agriculture that increase access to healthy, local and sustainable food sources and support the expansion of community gardens and sales of agricultural products in the City.

2) Major Provisions of the Ordinance.

The major provisions of the proposed ordinance is to introduce a new Agricultural Exemptions section to the City's municipal code and Implementation Plan to allow for small scale urban agricultural activities without obtaining a grading permit.

The Agricultural Exemptions section includes detailed urban agricultural activities that would be exempt from obtaining a grading permit. As proposed in the LCPA, grading permit exemptions for urban agriculture are as follows:

- Grading of 250 cubic yards or less
- Placement of any quantity of soil in contained planters
- Land disturbance area of less than 10,000 sq. ft.
- New or replaced impervious area of less than 500 sq. ft.
- Diversion of rainwater during or after construction of less than 5,000 sq. ft.

The Agricultural Exemptions section also allows for a simplified erosion control permit instead of a more complicated and costly grading permit for urban agricultural activities that involve land disturbance area between 10,000 sq. ft. and one acre. In addition, the amendment would allow applicants to obtain, in place of a grading permit, a stormwater Best Management Practices (BMPs) construction permit for activities that propose new and replaced impervious area between 500 sq. ft. and 5,000 sq. ft.

The proposed grading permit exemptions in this amendment only apply to urban agricultural activities and the activities cannot directly or indirectly impact environmentally sensitive areas or wetlands and cannot take place within 100 ft. of an inland or coastal bluff or wetland or within 50 ft. from riparian habitats.

The City's certified LCP already contains Grading, Erosion, and Sediment Control policies (Chapter 23.24), which detail the process for obtaining a grading permit and also detail citywide grading permit exempt activities (Sections 23.24.090, 23.24.100, and 23.24.105). The existing non-urban agriculture specific grading permit exemption sections differ from the exemptions proposed for urban agriculture, as follows:

- Grading of 50 cubic yards or less is exempt, which is 200 cubic yards less than the proposed urban agriculture grading exemption.
- There is no grading exemption for placement of any quantity of soil in contained planters, as proposed for urban agriculture.
- Land disturbance area of less than 10,000 sq. ft. is exempt. However, there is no option to obtain an erosion control permit in place of a grading permit for disturbances greater than 10,000 sq. ft., as proposed for urban agriculture.

All the existing grading exemptions will remain unchanged including grading exemptions for new or replaced impervious area and diversion of rainwater during or after construction.

3) Conformance with the Certified Land Use Plan.

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(s). In the case of the City of Encinitas, it has a fully certified LUP. The proposed implementation plan amendments would allow for additional urban agricultural activities without obtaining a grading permit. In general, urban agriculture enterprises and community gardens are being promoted as one element of sustainable living and supporting local food sources. The proposed amendment will not result in any adverse impacts to coastal resources.

The following Resource Management LUP policies relate to agriculture and resource protection within the City:

Policy 2.1: In that the ocean water quality conditions are of utmost importance, the City shall aggressively pursue the elimination of all forms of potential unacceptable pollution that threatens marine and human health.

Policy 2.3: To minimize harmful pollutants from entering the ocean environment from lagoons, streams, storm drains and other waterways containing potential contaminants, the City shall mandate the reduction or the elimination of contaminants entering all such waterways...

Goal 10: The City will preserve the integrity, function, productivity, and long term viability of environmentally sensitive habitats throughout the City, including kelp-beds, ocean recreational areas, coastal water, beaches, lagoons and their up-lands, riparian areas, coastal strand areas, coastal sage scrub and coastal mixed chaparral habitats. (Coastal Act/30230/30231/30240)

RM Policy 10.1: The City will minimize development impacts on coastal mixed chaparral and coastal sage scrub environmentally sensitive habitats by preserving within the inland bluff and hillside systems, all native vegetation on natural slopes of 25 % grade and over other than manufactured slopes...

Policy 10.6: The City shall preserve and protect wetlands within the City's planning area...

Goal 11: The City recognizes the important contribution of agricultural and horticultural land uses in the local economy and the emphasis of the need to maintain these activities.

Policy 11.8: Preserve and promote the produce unique horticultural crops and gardens in Encinitas.

Policy 14.1: The best strategy to reduce erosion and sedimentation is to reduce to the maximum extent feasible, grading and removal of vegetation. It is the policy of the

City that, in any land use and development, grading and vegetation removal shall be limited to the minimum necessary. (Coastal Act/30240/30250)

The proposed implementation plan amendments are consistent with the goals and policies of the Land Use Plan in that the amendments support the emphasis to maintain agricultural land uses, encourage sustainable practices, and improve greater local food security. The proposed amendments would promote small-scale urban agriculture by removing or limiting unnecessary regulations without jeopardizing the environment or public health. No changes are being proposed to any certified resource protection standards cited above and coastal development permits will still be required. As such, the Commission finds the amendment request can be found consistent with the certified land use plan and approved as submitted.

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

Section 21080.9 of the California Environmental Quality Act (CEQA) exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its local coastal program. 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 its review of an LCP or LCP amendment submittal.

At the local level, in connection with the revisions to its Municipal Code, the City determined that the subject LCP amendment is exempt from environmental review pursuant to CEQA Policy 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.

Nevertheless, the Commission is required in an LCP amendment submittal, such as in this case, to find that the approval of the proposed LCP, or LCP as amended, does conform to CEQA. In this particular case, the LCP amendment will not have any significant adverse effects on the environment and there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact on the environment. Further, the Commission finds that the proposed amendment is unlikely to have any significant adverse effect on the environment as a whole. Therefore, the Commission finds that the subject LCP IP amendment conforms to the provisions of CEQA.

ORDINANCE 2016-05

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ENCINITAS, CALIFORNIA, ADDING SECTION 23.24.095 AGRICULTURAL EXEMPTIONS TO THE MUNICIPAL CODE CHAPTER 23.24, GRADING , EROSION AND SEDIMENT CONTROL CASE NUMBER 16-142 POD

WHEREAS, the City Council finds the proposed amendment is consistent with the purposes of the General Plan, Municipal Code, adopted Local Coastal Program, and other applicable City ordinances in that the amendment facilitates the agricultural land uses; and

WHEREAS, the City Council has duly considered all public testimony, including the evaluation and recommendation by staff, presented at said hearing; and

WHEREAS, notices of said Public Hearings were made at the time and in the manner required by law; and

WHEREAS, a Public Notice of Availability of proposed Local Coastal Plan Amendments (LCPA) was issued, which opened a six-week public review period that ran from July 1, 2016 through August 12, 2016; and

WHEREAS, the City Council finds that the amendments are consistent with the adopted Local Coastal Plan. Additionally, this Ordinance is intended to be carried out in a manner in full conformance with the California Coastal Act of 1976 and the Planning and Building Director is hereby authorized to submit this Ordinance as part of the Local Coastal Program Amendment to the California Coastal Commission for their review and adoption.

WHEREAS, the City Council finds that the Grading Permit regulations shall be streamlined to facilitate urban agriculture, which encourage sustainable practices, improve greater local food security and access to healthy food while at the same time protecting the environment, public health and animal welfare; and

NOW, THEREFORE, the City Council of the City of Encinitas, California, hereby ordains as follows:

SECTION 1: ADDITION OF SECTION 23.24.095 AGRICULTURAL EXEMPTION:

Section 23.24.095 is added to the Encinitas Municipal Code, to read as follows:

23.24.095 Agricultural Exemptions

The exemption applies to urban agricultural operations, including disking, harrowing, terracing, leveling, and soil preparation. Urban agricultural activities are exempt from a grading permit if all the following criteria are met:



- A. Shall employ proper erosion and sediment control to ensure that there is no discharge of sediment and other pollutants from the site.
- B. Shall store and use pesticides, composts, organics, and nutrients in conformance with the applicable local, State and Federal codes.
- C. Shall prevent irrigation runoff leaving the site.
- D. Shall safeguard life, limb, property, and the public welfare.
- E. The volume of soil or earth materials stored, graded, replaced, imported, exported or otherwise disturbed is 250 cubic yards or less. Soil placed in contained planters that are structurally safe, designed to fully contain planting soils, and do not pose drainage, stormwater pollution, or stability hazards would not be added to the grading quantities, provided that these soils are removed from the site if/when the subject urban agricultural operations are terminated.
- F. Proposed land disturbance area is less than 10,000 square feet or the proposed land disturbance area is between 10,000 square feet and less than one acre and an erosion control permit is obtained from the City.
- G. Proposed new and replaced impervious area is less than 500 square feet or between 500 square feet to less than 5,000 square feet if a construction permit for construction of stormwater Best Management Practices (BMPs) is obtained.
- H. Rainwater runoff is diverted, either during or after construction, from an area smaller than 5,000 square feet.
- I. The activity will not encroach or impact either directly or indirectly an environmentally sensitive area or wetlands.
- J. The activity does not take place on an inland or coastal bluff; within 100 feet by horizontal measurement from the bluff top edge of an inland or coastal bluff; the bank of a watercourse; or within 100 feet of any wetlands; or within 50 feet from riparian areas.

Should the agricultural areas be utilized for any other use, the Public Works Director may require that a grading permit be obtained to ensure that the agricultural land is mitigated properly to support any fill or structures.

Normal agricultural crop management practices, including disking, harrowing, terracing, leveling, and soil preparation that take place on land that has been farmed are exempt pursuant to Section 23.24.100.D. of this code.

SECTION 2: ENVIRONMENTAL FINDING:

The City Council, in their independent judgment, finds that the adoption of the Municipal Code Section 23.24.095 Agricultural Exemption 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; any

development as a result of the amended language will be subject to CEQA review and analysis.

SECTION 3: PUBLIC NOTICE AND EFFECTIVE DATE:

The City Clerk is directed to prepare and have published a summary of this Ordinance no less than five (5) days prior to consideration of its adoption, and again within fifteen (15) days following adoption, indicating the votes cast.

This Ordinance was introduced on September 14, 2016 and will become effective following adoption by the City Council and certification by the California Coastal Commission as being consistent with the Local Coastal Program for the City of Encinitas.

SECTION 4: INTRODUCTION:

This Ordinance was introduced on September 14, 2016.

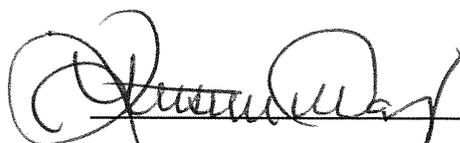
PASSED AND ADOPTED this 28th day of September, 2016 by the following vote to wit:

AYES: Blakespear, Kranz, Muir, Shaffer

NAYS: Gaspar

ABSTAIN: None

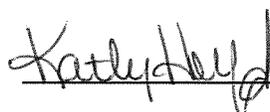
ABSENT: None



Kristin Gaspar, Mayor
City of Encinitas

ATTESTATION AND CERTIFICATION:

I hereby certify that this is a true and correct copy of Ordinance No. 2016-05 which has been published pursuant to law.



Kathy Hollywood, City Clerk