

CALIFORNIA COASTAL COMMISSION

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January 25, 2018

Th17c

TO: COMMISSIONERS AND INTERESTED PERSONS

**FROM: KARL SCHWING, DEPUTY DIRECTOR, SAN DIEGO COAST DISTRICT
DEBORAH LEE, DISTRICT MANAGER, SAN DIEGO COAST DISTRICT
DENNIS DAVIS, COASTAL ANALYST, SAN DIEGO COAST DISTRICT**

**SUBJECT: STAFF RECOMMENDATION ON CITY OF ENCINITAS LCP
AMENDMENT NO. LCP-6-ENC-17-0069-2 (Grading Permit Exemption) for
Commission Meeting of February 7-9, 2018**

SYNOPSIS

The subject Local Coastal Program (LCP) Implementation Plan (IP) amendment was submitted and filed as complete on December 14, 2017. Pursuant to Section 30513 of the Coastal Act, the Commission must act on IP amendments within 60 days of filing. The date by which the Commission must take action, absent an extension of the time limit by the Commission, is February 12, 2018. In addition to this amendment, there are two other pending LCP items from the City of Encinitas: LCPA No. LCP-6-ENC-17-0068-1 (Omnibus Code Cleanup) and LCPA No. LCP-6-ENC-17-0070-3 (Density Bonus Amendments). LCPA No. LCP-6-ENC-17-0070-3 is scheduled for the February 2018 Commission hearing while a time extension has been requested for LCPA No. LCP-6-ENC-17-0068-1.

SUMMARY OF AMENDMENT REQUEST

The City of Encinitas proposes an amendment to Section 23.24.100.D of the City's Municipal Code, part of the certified IP, to clarify the exemption of existing agricultural and crop management practices as intended in the City's Grading Ordinance. Specifically, this amendment will allow that local farmers and growers—who have enjoyed use of the grading permit exemption since the City's incorporation in 1986—to continue to use it without concern that their exemptions will expire for failing to cultivate their land on a yearly basis. The proposed amendment consists of text changes only; the revisions will apply citywide, but shall only apply to lands that are zoned agriculture or in active agricultural use prior to the adoption of this ordinance. The amendment does not affect CDP requirements.

SUMMARY OF STAFF RECOMMENDATION

Staff is recommending approval of the proposed LCP 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 IP Amendment is consistent with the goals and policies of the LUP in that the amendment helps to maintain agricultural land uses while minimizing and regulating the amount of grading in the City. The proposed IP Amendment is not creating a new grading permit exemption, but rephrasing the language of the existing grading permit exemption to provide clarity as to the requirements for obtaining one. Furthermore, the amendment would not affect the requirement to obtain a Coastal Development Permit (CDP) for non-exempt development in the Coastal Zone. Therefore, no adverse impacts to coastal resources are anticipated.

The appropriate resolutions and motions begin on Page 3. The findings for approval of the IP Amendment as submitted begin on Page 4.

ADDITIONAL INFORMATION

Further information on the City of Encinitas LCP Amendment No. LCP-6-ENC-17-0069-2 may be obtained from Dennis Davis, Coastal Planner, at (619) 767-2370.

EXHIBITS

[Exhibit 1 – Ordinance No. 2016-13](#)

[Exhibit 2 – Proposed Text Changes in Strikeout/Underline](#)

[Exhibit 3 – Public Comment Letter in Opposition](#)

PART I. OVERVIEW

A. LCP HISTORY

On November 17, 1994, the Commission approved, with suggested modifications, the City of Encinitas' LCP (both LUP and implementing ordinances). The City accepted the suggested modifications; and, on May 15, 1995, began issuing CDPs 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 LUP. 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 amount of 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 resolution and findings. The appropriate motion to introduce the resolution and a staff recommendation are provided.

- I. MOTION:** *I move that the Commission reject the City of Encinitas Implementation Program Amendment No. LCP-6-ENC-17-0069-2 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 IP
AMENDMENT, AS SUBMITTED**

A. AMENDMENT DESCRIPTION

The City of Encinitas has submitted the subject citywide IP Amendment in order to revise the exemption of existing agricultural and crop management practices as provided in the City's Grading ordinance. Specifically, through the adoption of Ordinance 2016-13 on January 11, 2017, the City would modify a section of Chapter 23.24 (Grading, Erosion, and Sediment Control) of the municipal code. Agricultural practices must still comply with the policies of the City's certified LCP.

B. CONFORMANCE WITH ENCINITAS CERTIFIED LUP

The standard of review for IP 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 primary goal of the City's grading exemption amendment is to allow the continued exemption of certain agricultural and crop management practices as intended in the original Grading Ordinance.

b) Major Provisions of the Ordinance

The major provisions of the proposed ordinance would achieve the following goals: (1) limit the scope of properties that qualify for the exemption; and (2) remove the requirement that the lands be farmed yearly and remove the current three year time limit from the agricultural exemption.

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

The Commission can only reject the LCP's IP amendments where it can be shown that the amendment would be inconsistent with the certified LUP or render the IP inadequate to carry out the LUP. The City of Encinitas' certified LCP includes the following relevant LUP policies:

Resource Management Element

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 11.1: Investigate the feasibility of establishing and instituting an incentive program for preservation of land within the City suitable for agricultural production. Institute such a program if fiscally sound within the City.

Policy 11.8: Preserve and promote the right to produce unique horticultural crops and community 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 removal shall be limited to the minimum necessary. (Coastal Act/30240/30250)

The proposed IP Amendment is consistent with the goals and policies of the certified LUP. The goals and policies of the certified LUP seek to maintain agricultural and horticultural land use activities by incentivizing preservation of lands suitable for agricultural production and promoting the right to produce unique horticultural crops in Encinitas. Here, the proposed IP Amendment does incentivize preservation of lands suitable for agricultural production because the amendment provides an exemption from the more intensive grading permit review process for lands zoned agricultural or in active agriculture production before adoption of the subject ordinance.

Additionally, the amendment promotes the right to produce unique horticultural crops because the removal of the requirement that the land be farmed during each of the preceding three years will allow farmers and growers flexibility in the selection of their agricultural operations. In addition, other typical agricultural operations—such as crop rotations or resting periods to restore soil fertility—will finally be available to farmers and growers under the proposed ordinance. This would allow them to produce unique crops or allow land to be fallow without compromising their grading permit exemptions for failing to cultivate the land on a yearly basis. Thus, the proposed IP Amendment, as submitted, is adequate to maintain agricultural and horticultural land use activities in the City.

The policies of the certified LUP also seek to reduce grading within the City to the minimum necessary and protect coastal resources. Here, the proposed IP Amendment

Encinitas LCPA No. LCP-6-ENC-17-0069-2
Grading Permit Exemption

will narrow the scope of who can apply for the exemption from the broader standard—any land that has been farmed—to a narrower standard—only lands zoned agricultural or in active agriculture production before adoption of Ordinance 2016-13.

Again, the proposed IP Amendment is not creating a new grading permit exemption. The existing grading exemption was previously certified as consistent with the City's certified LCP. The amendment will only make minor changes to the language of the existing grading exemption to clarify the requirements for how to obtain the exemption as originally intended in the City's Grading Ordinance.

Therefore, the proposed IP Amendment is consistent with the goals and policies of the certified LUP and adequate to carry it out. The LCP amendment can therefore be 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 LCP. Instead, the Coastal Commission acts as lead agency for the purposes of fulfilling CEQA. 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 submission.

Nevertheless, the Commission is required in an LCP submittal or, as in this case, an LCP amendment submittal, to find that the LCP, or LCP, as amended, does conform with CEQA provisions. In this particular case, the LCP amendment as proposed will not have any significant adverse effects on the environment given its limited scope and the environmental safeguards established in both the grading and CDP permit processes. Therefore, no significant coastal resource impacts are anticipated. Therefore, the Commission finds that the subject IP as proposed conforms with the CEQA provisions.

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