

**CALIFORNIA COASTAL COMMISSION**

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January 19, 2018

**Th17d**

**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-17-0070-3 (Density Bonus Amendment)  
for Commission Meeting of February 7-9, 2018**

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**SYNOPSIS**

The subject Local Coastal Program (LCP) Implementation Plan (IP) amendment was submitted and filed as complete on January 19, 2018. 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 March 20, 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-17-0069-2 (Grading Permit Exemption). LCPA No. LCP-6-ENC-17-0069-2 is scheduled for Commission action at 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 amendments to Section 30.16.020.C of the City's Municipal Code, part of the certified IP, to regulate density bonuses in a manner consistent with the current provisions of the state density bonus law. Specifically, this amendment will specify how the City will comply with and implement current state law governing density bonuses within Encinitas. In 1995, the City adopted a local density bonus ordinance, which followed the requirements and standards specified under the state law in existence at the time. As the state legislature modifies existing density bonus laws or enacts new laws, local governments need to update their density bonus ordinance(s) to conform to the changes in state law. AB 1934 and AB 2442 offer the most significant changes in the state density bonus law by creating a new density bonus for commercial development and extending the grant of density bonuses for housing developments, where a developer agrees to build units intended to serve transitional foster youth, disabled veterans, or homeless persons. The amendments will apply citywide.

**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 even though the density of a development project within the Coastal Zone could increase beyond the thresholds established in the LUP. The proposed development project would still have to comply with all applicable development standards in the certified LCP, as specified in Section 30.16.020.C.7. Development standards control a proposed development's footprint and bulk through buffer and setback distances, use restrictions on steep slopes and floodplains, and requirements to protect designated viewsheds. Since the City is not proposing to alter existing development standards or any certified resource protection measures in the LCP, the proposed amendment should not result in any adverse impacts to wetlands, sensitive habitat, designated viewsheds, or coastal access and recreation. Furthermore, the amendment would not affect the requirement to obtain a Coastal Development Permit (CDP) for non-exempt development in the Coastal Zone. Thus, the proposed IP Amendment is found to be consistent with the certified LUP.

The appropriate resolution and motion 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-17-0070-3 may be obtained from Dennis Davis, Coastal Planner, at (619) 767-2370.

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**EXHIBITS**

[Exhibit 1 – Ordinance No. 2017-13](#)

[Exhibit 2 – Proposed Text Changes in Strikeout/Underline](#)<sup>1</sup>

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<sup>1</sup> Comments were provided to the City of Encinitas by an interested third party, David C. Meyes, on 10/3/2017.

**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 resolutions 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-17-0070-3 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 to make a series of text changes to the City's Municipal Code so that it will be consistent with the following California Assembly Bills: AB 1934, AB 2501, AB 2442, AB 2556, and AB 744.

AB 1934 and AB 2442 are significant in the fact that together they created a new commercial development bonus for non-residential projects that partner with an affordable housing developer and provided a housing development density bonus for developers that agree to build units intended to serve transitional foster youth, disabled veterans, or homeless persons. Several subsections within Section 30.16.020.C have also been amended to include references to the new commercial development bonus subsection.

**B. FINDINGS FOR APPROVAL**

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 density bonus amendments is to regulate density bonuses in a manner consistent with the current provisions of the state density bonus law, pursuant to Government Code Section 65915(a).

**b) Major Provisions of the Ordinance**

State density bonus law allows a property owner to increase the density (number of new, market-rate residential units) on the property above the maximum set under a local government's land use plan and zoning ordinances. In exchange for these additional units, a percentage of the proposed development must be reserved for very low, low, or moderate-income households. Additionally—with the enactment of AB 1934—a housing development density bonus may be permitted if a percentage of the units are intended to serve a class of individuals identified in the statute: transitional foster youth, disabled veterans, and homeless persons. Property owners may also receive modifications of development standards.

Minor text changes throughout Section 30.16.020.C include expanding the reference of the state density bonus law to include the newly codified Government Code Section 65915.7 from AB 1934. Other minor modifications included clarifying whether the ordinance is referring to housing development or commercial development density bonuses; relaxing the standard on the information required to establish eligibility for a density bonus to “reasonable documentation;” and changing the definition of “incentive” as shown in Government Code Section 65915(k).

Turning to the major provisions of the ordinance, the following are proposed:

- Application Requirements (Section 30.16.020.C.4): This section requires applicants to prepare and submit a “Density Bonus Report” for any incentive(s), waiver(s), or parking reductions. The proposed amendments would add the commercial development bonus to the enumerated list (Section 30.16.020.C.4.b.vii). Additionally, pursuant to AB 2442, the proposed amendments will incorporate a new bonus for units intended to serve transitional foster youth, disabled veterans, or homeless persons. Lastly, pursuant to AB 2501—which among other things requires local governments to adopt procedures that reduce the processing time for density bonus applications—the proposed amendments will require the City to inform the applicant whether or not his or her application is complete consistent with Government Code Section 65943.
- Base Density Calculation (Section 30.16.020.C.5): This section dictates how the base density and density bonus are calculated—specifically on how to treat fractional units when computing the density. The ordinance provides that when calculating the number of affordable units needed for a given density bonus—obtained by multiplying the maximum allowable residential density by the allowable percentage density increase—any resulting fractions shall be rounded up to the next whole number. This section also limits each housing development to only one density bonus; however, some housing developments may qualify for a density bonus under several categories—including the newly created category under AB

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2442 for units intended to serve transitional foster youth, disabled veterans, or homeless persons. Applicants will still have to choose the category that will be the basis of the density bonus they are seeking. Lastly, pursuant to AB 2501, this section will allow the applicant not only to accept a lesser percentage of a density bonus than the housing development is entitled to, but to also accept no density bonus at all.

- LCP Consistency (Section 30.16.020.C.7): This section provides that state density bonus law does not supersede or in any way lessen the effect of the Coastal Act. The proposed amendments add the new commercial density bonus and those density bonuses requesting a parking reduction to the list of development that must be consistent with the City’s certified LCP, with the exception of density.
- Review Procedures (Section 30.16.020.C.8): This section provides how requests for density bonuses are to be reviewed to ensure the project complies with the requirements of state density bonus law. The proposed amendments will require the City to comply with the timelines prescribed in the Permit Streamlining Act pursuant to AB 2501. Additionally, this section will be modified to incorporate the provisions of AB 2556—which clarified provisions regarding the replacement of rental housing located on the site of a proposed density bonus project—by reference. Section 30.16.020.C.8.b was also added to implement the new commercial development bonus.
- Long-Term Affordability (Section 30.16.020.C.9): This section provides that any affordable rental unit remain restricted as affordable for at least fifty-five years. An exception to obtaining an affordable housing agreement is carved out for market-rate senior housing developments that receive a density bonus. In addition to density bonuses, the list has been amended to include, incentives, waivers, parking reductions, or commercial development bonuses. The applicant for the market-rate senior housing development that is seeking a density bonus, waiver, or parking reduction must enter into a restrictive covenant with the City to require that the development be operated as “housing for older persons.”
- Design and Quality (Section 30.16.020.C.10): This section requires developers to construct affordable units in a manner that is comparable in exterior appearance and overall quality of construction to market-rate units in the same housing development. Additionally, this section requires that the number of bedrooms for the affordable units equal at least the minimum number of bedrooms of the market-rate units.
- Commercial Density Bonus (Section 30.16.020.C.11): The proposed amendment will create this section to provide definitions for what

constitutes commercial development, a commercial development bonus, and a partnered housing agreement. AB 1934 does not provide a definition for what constitutes commercial development, so the City has created a broad definition of the term which includes any development project for a “non-residential use.” A “partnered housing agreement” is an agreement between a commercial developer and a housing developer—approved by the City—that identifies how the commercial development will provide affordable housing or rentals. Any approved partnered housing agreement must be described in the City’s housing element annual report. The agreement must contain the following provisions: (1) the location of the housing development shall be on the commercial development site or within one-half of a mile of a major transit stop and in close proximity to public amenities; (2) at least 30%—or 15% for very-low income households—of the total units in the housing development will be made available at affordable ownership or rental cost for low-income households, and (3) the commercial developer must agree either to (1) directly build the affordable units, (2) donate a site on the commercial development for the affordable units, or (3) make a cash payment to the housing developer for the affordable units. Additionally, this section restricts an applicant for a commercial development bonus from seeking a reduction or waiver of fees imposed on commercial development to provide for affordable housing.

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

The Commission has, in general, found that the allowance for density bonuses can be an effective tool to provide for affordable housing. In fact, Coastal Act Section 30604(f) specifically encourages the Commission to approve an increase in density for affordable housing when such housing can be accommodated in a manner otherwise consistent with the resource protection policies of the Coastal Act or a local government’s certified LCP. As such, while the density of a development project could be increased beyond the numbers established as part of the underlying land use designations, the proposed development would still have to meet all coastal resource protection standards in the certified LCP.

The Commission can only reject the proposed 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 most applicable LUP development standards are as follows:

**Environmentally Sensitive Habitat Areas (ESHA)/Steep Slopes**

*Land Use Policy 8.3: Residential development on land that has physical constraints shall exclude or discount areas subject to specified constraints from density allowance. Portions of development sites subject to the following constraints shall be excluded from the net lot area used to figure density: floodplains, beaches, permanent bodies of water, significant wetlands, major*

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*utility easements, railroad track beds or rights-of-way, and rights-of-way and easements for public/private streets and roads. The remaining net lot area shall then be calculated for density allowance, based on the assigned land use category density range, subject to the following discounts based on site slope:*

- *Portions of site 0-25% slope - 100% density;*
- *Portions of site 25-40% slope - approximately 50% density allowance;*
- *Portions of site 40%+ slope - no density allowance.*

***Public Safety Policy 1.2:*** *Restrict development in those areas where slope exceeds 25% as specified in the Hillside/Inland Bluff overlay zone regulations of the zoning code. Encroachment into slopes as detailed in the Hillside/Inland Bluff overlay may range from 0 percent to a maximum of 20 percent, based on a sliding scale of encroachment allowances reflective of the amount of the property within steep slopes, upon the discretionary judgment that there is no feasible alternative siting or design which eliminates or substantially reduces the need for such encroachment, and it is found that the bulk and scale of the proposed structure has been minimized to the greatest extent feasible and such encroachment is necessary for minimum site development and that the maximum contiguous area of sensitive slopes shall be preserved. . . .*

***Resource Management 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. . . .*

## **Wetlands**

***Resource Management Policy 10.6:*** *The City shall preserve and protect wetlands within the City's planning area. . . . Within the Coastal Zone, the diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following newly permitted uses and activities:*

- a. *Incidental public service projects.*
  - b. *Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.*
  - c. *Restoration purposes.*
  - d. *Nature study, aquaculture, or other similar resource dependent activities.*
- [ . . . ]

*The City shall also control use and development in surrounding areas of influence to wetlands with the application of buffer zones. At a minimum, 100-foot wide buffers shall be provided upland of salt water wetlands, and 50-foot wide buffers shall be provided upland of riparian wetlands. . . .*

## Hazards

**Land Use Policy 8.2:** *Development within coastal and flood plain areas identified in the Land Use and Resource Management Elements must be limited, designed to minimize hazards associated with development in these areas, and to preserve area resources. . . . No development shall occur in the 100-year Floodplain that is not consistent and compatible with the associated flood hazard. Only uses which are safe and compatible with periodic flooding and inundation shall be considered, such as stables, plant nurseries, a minimum intrusion of open parking, some forms of agriculture, and open space preservation, as appropriate under zoning, and subject to applicable environmental review and consistency with other policies of this Plan. . . .*

**Public Safety Policy 1.6:** *The City shall provide for the reduction of unnatural causes of bluff erosion, as detailed in the Zoning Code, by:*

[. . .]

*f. Requiring new structures and improvements to existing structures to be set back 25 feet from the inland bluff top edge, and 40 feet from coastal bluff top edge with exceptions to allow a minimum coastal bluff top setback of no less than 25 feet. For all development proposed on coastal bluff tops, a site-specific geotechnical report shall be required. The report shall indicate that the coastal bluff top setback will not result in risk of foundation damage resulting from bluff erosion or retreat to the principal structure within its economic life and with other engineering evidence to justify the coastal bluff top setback.*

*On coastal bluffs, exceptions to allow a minimum setback of no less than 25 feet shall be limited to additions or expansions to existing principal structures which are already located seaward of the 40 foot coastal bluff top setback, provided the proposed addition or expansion is located no further seaward than the existing principal structure, is set back a minimum of 25 feet from the coastal bluff top edge, and the applicant agrees to remove the proposed addition or expansion, either in part or entirely, should it become threatened in the future. . . .*

## Visual Resources

**Resource Management Policy 4.5:** *The City will designate "Scenic/Visual Corridor Overlay" areas within which the character of development would be regulated to protect the integrity of the Vista Points according to the following criteria:*

- *Critical view shed areas should meet the following requirements:*
  - *extend radially for 2,000 feet (610M) from the Vista Point; and*
  - *cover areas upon which development could potentially obstruct, limit, or degrade the view.*

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- *Development within the critical view shed area should be subject to design review based on the following:*
  - *building height, bulk, roof line and color and scale should not obstruct, limit or degrade the existing views;*
  - *landscaping should be located to screen adjacent undesirable views (parking lot areas, mechanical equipment, etc.)*

### **Coastal Access and Recreation**

***Circulation Policy 1.12:** The City will require increased off-street parking for expansions and additions to existing and future commercial and residential uses in the near coast area, will minimize curb cuts for new development in the vicinity of beach access points in order that the maximum amount of curb parking will be available to beach users, and will encourage remote parking/shuttle service and park-and-ride facilities in the Coastal Zone. The City will require that all commercial, industrial and residential uses be designed and constructed with sufficient off-street parking and loading facilities to assure adequate parking is provided with new development such that no adverse impacts on coastal access are documented. Parking ratios shall be utilized as specified and detailed in the City's Zoning Code and in implementing Specific Plans which provide sufficient parking spaces so as not to require patrons/employees/ residents to utilize parking which is necessary/required for other approved uses or street and other public parking that should otherwise be available for public use.*

Development standards dictate a development's footprint and bulk/massing through buffer and setback distances, use restrictions on steep slopes and floodplains, and requirements to protect designated viewsheds. The City's development standards and resource protection measures for properties in the Coastal Zone are established in their certified LCP. The proposed amendments to Section 30.16.020.C.7 maintains that any requested housing development density bonus, commercial development bonus, incentive, waiver, or parking reduction is consistent with the City's certified LCP, with the exception of density. No changes to any of the LCP's resource protection measures are being proposed. Therefore, while additional density or incentives can be endorsed to facilitate affordable housing options, such revisions will not result in any reduction of environmental safeguards. Thus, the proposed IP amendment is consistent with the goals and policies of the certified LUP and adequate to carry it out. Therefore, the LCPA can 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

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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 to CEQA provisions. In this particular case, the LCP amendment as proposed will not have any significant adverse effects on the environment and no significant coastal resource impacts are anticipated. The proposed amendments would only specify how the City will comply with and implement state laws governing density bonuses. Any proposed non-exempt development seeking a density bonus of any kind within the coastal zone would still need to acquire a CDP and such development would need to comply with all resource protection measures such as buffers from sensitive habitats and wetlands and geological setbacks to name a few. Therefore, the Commission finds that the subject IP as proposed conforms to the CEQA provisions.

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