

**CALIFORNIA COASTAL COMMISSION**

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February 21, 2019

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**TO: COMMISSIONERS AND INTERESTED PERSONS**

**FROM: KARL SCHWING, DEPUTY DIRECTOR, SAN DIEGO COAST DISTRICT  
DEBORAH LEE, DISTRICT MANAGER, SAN DIEGO COAST DISTRICT**

**SUBJECT: STAFF RECOMMENDATION ON CITY OF ENCINITAS LOCAL COASTAL PROGRAM AMENDMENT NO. LCP-6-ENC-18-0068-2 (Inclusionary Housing Ordinance) for Commission Meeting of March 6-8, 2019**

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## SYNOPSIS

The subject LCP implementation plan (IP) amendment was submitted and filed as complete on October 22, 2018. Pursuant to Section 30513 of the Coastal Act, the Commission must act on IP amendments within 60 days of filing. However, as provided for in the Commission's regulations, a one year time extension was granted by the Commission for the amendment request at the December 13, 2018 hearing. Therefore, the last date for Commission action on this item is the December 2019 hearing.

The amendment request involves only revisions to the City's certified implementation plan and the City's submittal included only the one item. There are no other pending amendment requests from the City.

## SUMMARY OF AMENDMENT REQUEST

The City of Encinitas is proposing new regulations for inclusionary housing standards. Specifically, through the adoption of Ordinance 2018-03, the City would repeal Chapter 24.21 (Dedication: Affordable Housing Assistance) in its entirety and adopt a new Chapter 30.41 (Affordable Housing). Both chapters are attached to this report as Exhibits 1 and 2. In general, Chapter 24.21, which will be repealed, provided that for residential developments of more than ten lots or units, one affordable rental or for sale unit for every ten units had to be provided. The chapter also allowed for the payment of an in-lieu fee rather than the unit reservation.

In conjunction with the repeal of Chapter 24.21, the City also proposes to adopt new Chapter 30.41 (Affordable Housing) to the municipal code. The stated purpose of the chapter is to establish policies which require the development of housing affordable to households of very low, low and moderate incomes, meet the City's regional share of housing needs and implement the goals and objectives of the City's housing element. In general, the new Chapter 30.41 provides that unless exempt from the provisions, all new residential developments and contiguous property under common ownership that equals

or exceed seven units or lots must include affordable units for rent or sale. The chapter requires that the applicant shall make available either 15% of the dwelling units to low income households or 10% of the dwelling units to very low income households at an affordable sales price or rent. The new provisions also include an option for the payment of an in-lieu fee as well. In addition, the new chapter also provides for several alternative compliance options including, but not limited to, the construction of accessory dwelling units (not to exceed a total of five such units); the incorporation of affordable rental units within a ownership residential project; off-site construction of affordable units; preservation or conversion of existing units; dedication of land to the City and affordable housing credits. The City's proposed revisions would 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 certified LUP.

The City's proposed amendment has been adopted to bring forth changes in its inclusionary housing regulations to both increase the reservation of affordable units in new residential developments and broaden the City's efforts to promote both affordable rental and for sale housing options. As experienced throughout the state, and more critically in coastal areas, the cost of rental and owner-occupied housing has become more and more expensive. Based on the 2010-2020 regional housing needs plan for San Diego County, prepared by the San Diego Association of Governments (SANDAG), over 50% of the new housing in the County should be affordable to extremely low, very low, lower and moderate-income households. At this time, and unfortunately like many other coastal communities, the City of Encinitas falls short of meeting its regional housing needs allocation (RHNA). Based on its General Plan, the City has policies to encourage the provision of a wide range of housing by location, unit type and price range to meet housing needs. In this amendment, the City's proposed regulations establish higher standards for requiring the provision of affordable housing within new residential projects. The new provisions also expand upon the City's currently certified density bonus incentives to try and provide development opportunities and funding assistance to support affordable housing.

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 which is cross-referenced in the current code amendment. 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. Thus, the proposed IP Amendment is found to be consistent with the certified LUP.

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

**ADDITIONAL INFORMATION**

Further information on the City of Encinitas LCP Amendment No. LCP-6-ENC-18-0068-2 may be obtained from Deborah Lee, District Manager, at (619) 767-2370.

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**EXHIBITS**

Exhibit 1 – Code Amendment New Text

Exhibit 2 – Repealed Chapter

**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 - RESOLUTION**

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 just prior to each resolution.

- I. MOTION:**     *I move that the Commission reject the City of Encinitas LCP Implementation Program Amendment No. LCP-6-ENC-18-0068-2 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 Land Use Plan 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.

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

**A. AMENDMENT DESCRIPTION**

The City of Encinitas is proposing new regulations for inclusionary housing standards. Specifically, through the adoption of Ordinance 2018-03, the City would repeal Chapter 24.21 (Dedication: Affordable Housing Assistance) in its entirety and adopt a new Chapter 30.41 (Affordable Housing). In general, the new regulations increase the number of affordable units, either for rent or sale, that must be reserved within new residential developments. In addition, the new chapter also provides for several alternative compliance options including, but not limited to, the construction of accessory dwelling units (not to exceed a total of five accessory units); the incorporation of affordable rental units within an ownership residential project; off-site construction of affordable units; preservation or conversion of existing units; dedication of land to the City and affordable housing credits. The City's proposed revisions would apply citywide.

**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.

a) **Purpose and Intent of the Ordinance.**

The stated purpose of the chapter is to establish policies which require the development of housing affordable to households of very low, low and moderate incomes, meet the City's regional share of housing needs and implement the goals and objectives of the City's housing element.

**b) Major Provisions of the Ordinance.**

In general, the new Chapter 30.41 provides that unless exempt from the provisions, all new residential developments and contiguous property under common ownership that equals or exceed seven units or lots must include affordable units for rent or sale. The chapter requires that the applicant shall make available either 15% of the dwelling units to low income households or 10% of the dwelling units to very low income households at an affordable sales price or rent.

The ordinance also provides for the following:

- Defines affordable rent and sales price consistent with California Health and Safety Code sections;
- Provides exemptions for developments with fewer than seven dwelling units or lots; residential development pursuant to an adopted development agreement and residential developments for which an application was deemed complete before the effective date of the ordinance;
- Requires that affordable units shall be comparable in exterior appearance and quality of construction to market-rate units
- Requires that affordable units have the same amenities as the market-rate units;
- Use of the City's density bonus provisions, assistance or financial subsidies;
- All required affordable units shall be made available for occupancy concurrently with the market rate units;
- Establishes alternative compliance options that include the development of no more than five accessory units for five required affordable units; the development of rental units within an ownership residential project; off-site construction of affordable units, but still within the same planning area, where locational advantages and proximity to jobs, schools, alternate transit and public services are present; the preservation of existing affordable units at risk; the conversion of existing market-rate units to affordable units; in-lieu fees established by the City based on an affordability gap analysis; the dedication of land to the City; use of affordable housing credits from a developer of surplus affordable units and other methods; and
- Requires all affordable units to remain affordable to the targeted income group in perpetuity.

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

The Commission supports the State's mandate and City's efforts to encourage affordable housing opportunities; the Commission recognizes the importance of providing such housing within coastal communities as a means to promote public access to and recreational use of the coast. However, there have been issues, historically, in reconciling efforts to promote such opportunities and still maintain coastal resource protection measures. Given that inclusionary housing and density bonus programs typically include provisions that cities grant concessions or incentives, such as modifications to site development standards as a means to incentivize the development of

affordable housing, there have been challenges in reconciling the affordable housing and coastal mandates.

Coastal resources such as sensitive habitats, shoreline bluffs, public view corridors and public access all have the potential to be adversely affected by new regulations if incentives or modifications offered to encourage affordable housing would conflict or eliminate critical resource protection measures in the certified Land Use Plan(s). Development standards such as habitat buffers, geologic setbacks, building height limits and parking requirements all dictate a development's footprint and bulk/massing. Reducing setbacks that provide buffers from identified resources, such as wetlands or coastal bluffs, could result in both direct and indirect impacts to those resources or the siting of new development in a more hazardous location. Increased density could impact levels of service along major coastal access routes in the absence of interconnected multi-modal transit programs.

The Commission may reject the proposed IP amendments only 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 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.*
- *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 inclusionary housing ordinance includes a cross-reference (Section 30.16.020.C) to the City's already certified density bonus measures. Section 30.16.020.C.7. Local Coastal Plan Consistency specifically provides:

- a. State Density Bonus Law provides that it shall not be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976, and further provides that the granting of a density bonus or an incentive shall not be interpreted, in and of itself, to require a local coastal plan amendment.*
- b. For development within the coastal zone, any requested density bonus, incentive(s), waiver(s), parking reduction(s), or commercial development bonus shall be consistent with all applicable requirements of the certified Encinitas Local Coastal Program, with the exception of density.*

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 states the Commission should encourage affordable housing, and requires the Commission (or local agency) 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.

No changes to any of the LCP's certified resource protection measures are being proposed with this amendment. In addition, no changes are being proposed to the City's density bonus program which maintains the LCP's resource protection standards for all coastal development. Therefore, while additional density, incentives and mixed use development 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 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 each LCP submission. At the local level, the City stated that the action was exempt from CEQA pursuant to Guidelines Section 15061 (b)(3) finding there would be no possibility of a significant effect on the environment, in that its provisions requiring the provision of affordable housing would not have any effect on the physical environment.

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 and no significant coastal resource impacts are anticipated. The proposed amendments would only specify how the City will promote affordable housing opportunities through incentives, such as use of the City's density bonus program, preservation of existing affordable units at risk or allowing a mix of affordable rental/for sale units in residential projects. All 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. The Commission therefore finds that the proposed amendment is unlikely to have any significant adverse effect on the environment as a whole and finds that the subject IP as proposed conforms to CEQA provisions.