

CALIFORNIA COASTAL COMMISSION

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Prepared August 23, 2019 for September 11, 2019 Hearing

To: Commissioners and Interested Persons

From: Susan Craig, Central Coast District Manager
Ryan Moroney, District Supervisor

Subject: De Minimis Amendment Determination for City of Santa Cruz LCP Amendment Number LCP-3-STC-19-0104-1-Part A (Affordable Housing Density Bonus)

City of Santa Cruz Proposed Amendment

The City of Santa Cruz is requesting to amend the Implementation Plan (IP) of its certified Local Coastal Program (LCP) to encourage affordable housing through density bonuses. Consistent with the density bonus requirements specified in the State's Density Bonus law (Government Code Section 65915) and as referenced in Coastal Act Section 30604(f), the proposed amendment provides for increases in otherwise allowed density for affordable housing in residentially designated areas in the coastal zone, while ensuring that such increases in density (which may also include increased height, reduced setbacks, and modified parking standards to accommodate that density) protect coastal resources.

De Minimis LCP Amendment Determination

Pursuant to Coastal Act Section 30514(d), the Executive Director may determine that a proposed LCP amendment is "de minimis." In order to qualify as a de minimis amendment, the amendment must meet the following three criteria:

1. The Executive Director determines that the proposed amendment would have no impact, either individually or cumulatively, on coastal resources, and that it is consistent with the Chapter 3 policies of the Coastal Act;
2. The local government provides public notice of the proposed amendment at least 21 days prior to submitting the amendment to the Commission, by one of the following methods: posting on-site and off-site in the affected area, newspaper publication, or direct mailing to owners and occupants of contiguous property; and
3. The amendment does not propose any change in use of land or water or allowable use of property.

If the Executive Director determines that an amendment is de minimis, that determination must be reported to the Commission. If three or more Commissioners object to the de minimis LCP amendment determination, then the amendment shall be set for a future public hearing; if three or more Commissioners do not object to the de minimis determination, then the amendment is deemed approved, and it becomes a certified part of the LCP ten days after the date of the Commission meeting (in this case, on September 21, 2019).

The purpose of this notice is to advise interested parties of the Executive Director’s determination that the proposed LCP amendment is de minimis. Each of the de minimis criteria is discussed briefly below:

1. No impact to coastal resources and consistency with Chapter 3 of the Coastal Act:

In response to recent changes to the State’s Density Bonus Law,¹ the proposed amendment would add Section 24.16.262 to the City’s IP (see **Exhibit A**) to make clear that the State’s Density Bonus Law is not to in any way lessen or alter the Coastal Act (i.e., density bonuses must be consistent with the Coastal Act’s coastal resource protection requirements). The proposed amendment language also states that projects using the State’s Density Bonus criteria (i.e., an increase in the number of otherwise allowable residential units and modification of certain development standards to provide for those units in exchange for a certain percentage of those units to be affordable) shall comply with the certified City of Santa Cruz LCP, except as they relate to certain numeric standards that may be changed through the State Density Bonus provisions. In other words, while some of the more quantitative LCP development standards (e.g., those related to height, density, and parking) may be relaxed so as to accommodate the increased residential density for the affordable housing units pursuant to the State Density Bonus Law, the more qualitative LCP policy requirements to protect coastal resources (e.g., related to protection of environmentally sensitive habitat, provision of public access, protection of public views, etc.) must still be adhered to in all cases, notwithstanding any bonus, concession, incentive, waiver, or reduction in development standards allowed under the State Density Bonus Law.

In sum, consistent with existing legal requirements, the proposed LCP amendment allows for density bonuses and associated incentives for the provision of affordable housing, while ensuring that such housing is built in a manner consistent with the LCP’s coastal resource protection standards, and is therefore consistent with the Land Use Plan and the Coastal Act as submitted. Thus, the proposed amendment will not adversely affect coastal resources, and it is consistent with the policies of Chapter 3 of the Coastal Act.

¹ In the 2016 *Kalnel Gardens v. City of Los Angeles* decision, the Second District of the California Court of Appeals determined that the Coastal Act takes precedence over the State’s Density Bonus Law. In response to this, the State legislature passed AB 2797 in 2018, which made explicit in the Density Bonus Law that any density bonus, concessions, incentives, waivers or reductions of development standards and parking ratios allowed be permitted “in a manner that is consistent with that law and the California Coastal Act of 1976.” To be clear, AB 2797 does not suggest that the State’s Density Bonus Law takes precedence over the Coastal Act; rather, AB 2797 evinces a clear intent that the State Density Bonus Law and Coastal Act be applied harmoniously.

- 2. Provision of public notice:** The City provided public notice in advance of the Planning Commission hearing (held on March 21, 2019) and the City Council hearings (held on May 14, 2019 and May 28, 2019) where the proposed amendment was considered. For the Planning Commission hearing, a newspaper advertisement notice was printed on March 2, 2019. For the City Council hearings, a newspaper advertisement notice was printed on April 2, 2019, and May 22, 2019. In addition, the proposed text was made available at the City Clerk's office and on the City's website for public inspection, all in advance of the City's hearings. The amendment submittal was subsequently received by the Commission on July 1, 2019 (and filed as complete on July 16, 2019), and therefore, the 21-day noticing requirement has been satisfied.
- 3. No change in use of land or allowable use of property:** No change in use is proposed by this amendment.

California Environmental Quality Act (CEQA)

The Coastal Commission's review and development process for LCPs and LCP amendments has been certified by the Secretary of Resources as being the functional equivalent of the environmental review required by CEQA. Local governments are not required to undertake CEQA environmental analysis of proposed LCP amendments (*see* Pub. Res. Code § 21080.9), although the Commission can and does use any environmental information that the local government has developed, consistent with its CEQA requirements, in consideration of approving and certifying an LCP proposal. Here, the City exempted the proposed amendment from environmental review under CEQA pursuant to Section 15265 of Chapter 3 of the California Code of Regulations (State CEQA Guidelines). This report has discussed the relevant coastal resource issues with the proposal, and has concluded that the proposed LCP amendment is not expected to result in any significant adverse impact on the environment. Thus, it is unnecessary for the Commission to suggest modifications to the proposed amendment to address adverse environmental impacts because the proposed amendment, as submitted, will not result in any significant environmental effects for which feasible mitigation measures would be required.

Coastal Commission Concurrence

The Executive Director will report this de minimis LCP amendment determination, and any comments received on it, to the Coastal Commission at its September 11, 2019 meeting in Newport Beach. If you have any questions or need additional information regarding the proposed amendment or the method under which it is being processed, please contact Ryan Moroney at the Central Coast District Office in Santa Cruz. If you wish to comment on and/or object to the proposed de minimis LCP amendment determination, please do so by 5:00 p.m. on September 6, 2019.

Procedural Note - LCP Amendment Action Deadline

This proposed LCP amendment was filed as complete on July 16, 2019. It amends the IP only and the 60-working-day action deadline is September 14, 2019. (*See* Coastal Act Sections 30513, 30514(b).) Thus, unless the Commission extends the action deadline (it may be extended by up to one year per Coastal Act Section 30517), the Commission has until September 14, 2019 to take a final action on this LCP amendment.

Exhibit

Exhibit A: Proposed IP Section 24.16.262

Section 24.16.262 – Local Coastal Plan Consistency of Part 3 of Chapter 24.16 of the City of Santa Cruz Municipal Code is hereby amended as follows:

24.16.262 LOCAL COASTAL PLAN CONSISTENCY.

1. 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.
2. For development within the coastal zone, the requested density bonus and any requested incentive, concession, waiver, modification, modified parking standard, or commercial development bonus shall be consistent with State Density Bonus criteria. All applicable requirements of the certified Santa Cruz local coastal program shall be met (including but not limited to sensitive habitat, agriculture, public viewshed, public recreational access, and open space) with the exception of the numeric standards changed through State Density Bonus provisions.