

CALIFORNIA COASTAL COMMISSION

SAN DIEGO DISTRICT OFFICE
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
VOICE (619) 767-2370
FAX (619) 767-2384



W16c

Date: November 19, 2020

To: **COMMISSIONERS AND INTERESTED PERSONS**

From: **KARL SCHWING, DEPUTY DIRECTOR, SAN DIEGO COAST DISTRICT
DEBORAH LEE, DISTRICT MANAGER, SAN DIEGO COAST DISTRICT
ERIN PRAHLER, COASTAL PLANNER, SAN DIEGO COAST DISTRICT**

Subject: **STAFF RECOMMENDATION ON CITY OF CARLSBAD MAJOR LCP
AMENDMENT NO. LCP-6-CAR-20-0033-1 (Inclusionary Housing and
Density Bonus Updates) for Commission Meeting of December 9-11, 2020**

SYNOPSIS

The subject LCP implementation plan amendment was submitted on May 27, 2020 and filed as complete on July 23, 2020. A one-year time extension was granted on October 9, 2020. As such, the last date for Commission action on this item is October 15, 2021. This amendment request affects the City's certified implementation plan only. This report, regarding affordable housing and density bonus requirements, addresses one of two components of the City's submittal. The other item is LCP-6-CAR-20-0032-1, which relates to floodplain regulations and will be scheduled for Commission review at a later date.

SUMMARY OF AMENDMENT REQUEST

The City of Carlsbad proposes revisions to the City's Zoning Ordinance, part of the certified LCP implementation plan, to make the City's regulation of Inclusionary Housing and Density Bonuses consistent with recent changes in state law.

Specifically, the City proposes to revise Chapter 21.85 (Inclusionary Housing) to clarify that the City's inclusionary housing regulations apply equally to rental and ownership projects. This change reflects Assembly Bill 1505 (Bloom, 2017), which supersedes a 2009 Court of Appeal decision that limited the City's ability to impose affordable housing requirements on all residential rental projects.

The proposed revisions to Chapter 21.86 (Residential Density Bonus and Incentives or Concessions) reflect changes from seven Assembly and Senate bills revising the requirements for affordable housing/density bonus requests. As proposed, Chapter 21.86 will be revised to: 1) incorporate a number of new definitions related to affordable housing; 2) require that any density bonus, concessions, incentives, waivers or reductions of development standards or parking ratios be consistent with the Coastal Act; and 3) provide additional development rights to commercial developments when proposed in connection

with an affordable housing project. The changes proposed by the City will bring the Local Coastal Program (LCP) into conformance with current state housing law.

SUMMARY OF STAFF RECOMMENDATION

Staff is recommending approval of the Implementation Plan (IP) 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 changes to the inclusionary housing ordinance will ensure that all residential development will contribute to the City's stock of affordable housing, consistent with the affordable housing and public access provisions of the Coastal Act and certified LUP. The primary concerns regarding density bonus requests are the potential impacts to coastal resources associated with the increased density and incentives and concessions granted to promote the inclusion of affordable housing into development proposals. However, in this case, the amendment includes a provision that requires any density bonus or associated concessions, waivers, or reductions of development standards to be consistent with the Coastal Act, and will therefore provide adequate protection of coastal resources consistent with the certified LCP as submitted.

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 City of Carlsbad LCP Amendment No. LCP-6-CAR-20-0033-1 may be obtained from Erin Prahler, Coastal Planner, at (619) 767-2370.

EXHIBITS

[Exhibit 1 – Resolution No. 7334](#)

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

TABLE OF CONTENTS

I. OVERVIEW.....	4
A. LCP HISTORY.....	4
B. STANDARD OF REVIEW.....	4
C. PUBLIC PARTICIPATION.....	4
II. MOTION AND RESOLUTION	4
III. FINDINGS FOR APPROVAL OF THE CITY OF CARLSBAD IMPLEMENTATION PLAN AMENDMENT, AS SUBMITTED.....	5
A. AMENDMENT DESCRIPTION.....	5
B. FINDINGS FOR APPROVAL.....	6
IV. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA).....	10

I. OVERVIEW

A. LCP HISTORY

The City of Carlsbad's certified LCP contains six geographic segments as follows: Agua Hedionda, Mello I, Mello II, West Batiquitos Lagoon/Sammis Properties, East Batiquitos Lagoon/Hunt Properties, and Village-Barrio. Pursuant to Sections 30170(f) and 30171 of the Public Resources Code, the Coastal Commission prepared and approved two portions of the LCP, the Mello I and II segments, in 1980 and 1981, respectively. The West Batiquitos Lagoon/Sammis Properties segment was certified in 1985. The East Batiquitos Lagoon/Hunt Properties segment was certified in 1988. The Village Redevelopment Area LCP was certified in 1988; the City has been issuing coastal development permits there since that time. (The Village LCP segment was expanded and renamed the Village-Barrio in 2019.) On October 21, 1997, the City assumed permit jurisdiction and has been issuing coastal development permits for all segments except Agua Hedionda. The Agua Hedionda Lagoon LCP segment is a deferred certification area until an implementation plan for that segment is certified. This amendment modifies the City's implementation plan for the other five segments.

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

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.

II. MOTION AND RESOLUTION

MOTION:

I move that the Commission reject the Implementation Program Amendment No. LCP-6-CAR-20-0033-1 as submitted by the City of Carlsbad.

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 No. LCP-6-CAR-20-0033-1 as submitted by the City of Carlsbad 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.

III. FINDINGS FOR APPROVAL OF THE CITY OF CARLSBAD IMPLEMENTATION PLAN AMENDMENT, AS SUBMITTED

A. AMENDMENT DESCRIPTION

The City of Carlsbad is proposing to revise Chapter 21.85 (Inclusionary Housing) of its Zoning Ordinance, part of the certified IP, to ensure the city's inclusionary housing regulations are applied equally to rental and ownership projects. The City also proposes to revise Chapter 21.86 (Residential Density Bonus and Incentives or Concessions), part of the certified IP, to: 1) incorporate a number of new definitions related to affordable housing; 2) require that any density bonus, concessions, incentives, waivers or reductions of development standards or parking ratios be consistent with the Coastal Act; and 3) provide additional development rights to commercial developments when proposed in connection with an affordable housing project.

Background on Affordable Housing

The City of Carlsbad has a number of programs designed to increase affordable housing opportunities for lower income households. The City's mandatory inclusionary housing program requires housing developers to provide 15 percent of total units as affordable to low income households. Since implementation of this requirement in 1993, over 2,000 units of affordable housing have been constructed within the City of Carlsbad. Out of 24 rental apartment buildings that offer affordable units, at least 7 of these projects are located within the Coastal Zone.

The City has a certified Housing Element, but is currently processing its sixth cycle update, covering the period from 2021-2029. The City Council must adopt the updated Housing Element by April 15, 2021.

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 purpose of Chapter 21.85 (Inclusionary Housing) is to ensure that residential development provides a range of opportunities for all identifiable economic segments of the population. The purpose of Chapter 21.86 (Residential Density Bonus and Incentives of Concessions) is to establish policies which facilitate the development of affordable housing to serve a variety of economic needs within the City through the inclusion of a density bonus or additional incentives or concessions.

b) Major Provisions of the Ordinance.

As currently certified, the inclusionary housing ordinance requires that fifteen percent of ownership and qualifying rental units be affordable for lower-income households. Only rental projects where the developer receives direct financial assistance, offsets, or any incentive specified in density bonus law and agrees by contract to limit rents are subject to these affordable housing requirements. The proposed text changes throughout Chapter 21.85 clarify that the affordable housing requirements apply equally to rental and ownership projects.

State density bonus law allows a property owner to increase the density (the number of new, market-rate residential units) on a property above the maximum density 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. The proposed text changes throughout Chapter 21.86 incorporate recent revisions to state housing law, and include the following:

- AB 2501 – Streamlines density bonus processing and clarifies application requirements;
- AB 2442 – Expands the housing categories that could qualify for a density bonus to include housing for Transitional Foster Youth, Disabled Veterans, and Homeless Persons;
- AB 2556 – Provides clarifying language on addressing replacement units;
- AB 1934 – Includes a density bonus option for commercial projects with affordable housing;
- AB 2797 – Requires that any density bonus, concessions, incentives, waivers or reductions of development standards or parking ratios to which an applicant is entitled under the Density Bonus Law will only be permitted in a manner that is consistent with the Coastal Act;
- AB 2753 – Requires cities to provide an applicant with a determination as to the amount of density bonus and any parking ratios requested by the applicant for which the development is eligible and a determination as to whether the applicant

LCPA LCP-6-CAR-20-0033-1 (Inclusionary Housing and Density Bonus Updates)

has provided adequate information to grant any requested incentives, concessions, or waivers or reductions to development standards;

- SB 1227 – Provide a density bonus for qualifying dedicated student housing projects.

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

Inclusionary Housing

A 2009 Court of Appeal decision in *Palmer/Sixth Street Properties, L.P. v. City of Los Angeles* (175 Cal.App.4th 1396) (*Palmer*) determined that local inclusionary requirements for rental units are pre-empted by State law regarding rent control, unless the developer agrees by contract to limit rent in exchange for “direct financial contribution” or any other forms of assistance specified in density bonus law. In 2012, the Commission approved LCP Amendment No. CAR-MAJ-3-10A revising the City’s Inclusionary Housing regulations to conform to that decision, that is, that density bonus regulations apply to rental units only when the developer receives direct financial assistance, offsets, or any incentive of bonus ordinance, and that the developer agrees by contract to limit rents for below market-rate rental units.

Assembly Bill (AB) 1505 (Bloom, 2017) (Gov. Code, §§ 65850 and 65850.01) supersedes the *Palmer* decision and allows local governments to require that the development of residential rental units include a certain percentage of affordable housing for persons and families of low or moderate income. The modifications to Chapter 21.85 proposed in this LCP amendment are intended to clarify that the inclusionary housing requirements apply equally to rental and ownership projects.

The City of Carlsbad’s certified Land Use Plans do not contain any policy pertaining to inclusionary housing and therefore, the proposed modification is not inconsistent with the City’s certified Land Use Plan. The certified Land Use Plan segments do contain policies that support maximum public access to the shoreline; and inclusionary housing supports access for all incomes in the coastal zone. Further, Coastal Act Section 30604(g) directs the Commission to encourage the provision of new affordable housing opportunities for persons of low and moderate income in the coastal zone. The amendment does not conflict with any coastal zone regulations, land use designations, or policies with which development must comply. Thus, the proposed modifications to Chapter 21.85 can be found consistent with and adequate to implement the City’s LCP, and it can therefore be approved as submitted.

Density Bonus

The City’s certified LUP contains a number of policies that address protection of public views, the provision of adequate parking, protection for sensitive habitats and protection of and improvements to public access. These include the following provisions:

Habitat Management Plan Policy 7-1 Environmentally Sensitive Habitat Areas (ESHA)

Pursuant to Section 30240 of the California Coastal Act, environmentally sensitive habitat areas, as defined in Section 30107.5 of the Coastal Act, shall be protected

against any significant disruption of habitat values, and only uses dependent upon those resources shall be allowed within those areas.

Habitat Management Plan Policy 7-11 Buffers and Fuel Modification Zones

Buffers shall be provided between all preserved habitat areas and development. Minimum buffer widths shall be provided as follows:

- a. 100 ft. for wetlands
- b. 50 ft. for riparian areas
- c. 20 ft. for all other native habitats (coastal sage scrub, southern maritime chaparral, southern succulent scrub, southern mixed chaparral, native grassland, oak woodland)

Mello I Policy 4 – Parking

Parking shall be in conformance with the requirements of the City of Carlsbad Zoning Ordinance.

Mello II Policy 1-1 Allowable Land Uses

Allowable uses are those that are consistent with both the General Plan and the Local Coastal Program.

Mello II Policy 4-1 Coastal Erosion – I. Development Along Shoreline

- (a) For all new development along the shoreline, including additions to existing development, a site-specific geologic investigation and analysis similar to that required by the Coastal Commission's Geologic Stability and Blufftop Guidelines shall be required; for permitted development, this report must demonstrate bluff stability for 75 years, or the expected lifetime of the structure, whichever is greater.

Mello II Policy 7-10 Parking

Parking standards set forth within the City of Carlsbad Zoning Ordinance are appropriate for the future development of various land uses.

Mello II Policy 8-1 Site Development Review

The Scenic Preservation Overlay Zone should be applied where necessary throughout the Carlsbad coastal zone to assure the maintenance of existing views and panoramas. Sites considered for development should undergo individual review to determine if the proposed development will obstruct views or otherwise damage the visual beauty of the area. The Planning Commission should enforce appropriate height limitations and see-through construction, as well as minimize any alterations to topography.

East Batiquitos Lagoon Policy 6 Scenic and Visual Qualities

The scenic and visual qualities of the area are of great value to the region. Again, the focal point for these qualities is Batiquitos Lagoon. The viewshed to the lagoon and from the lagoon shoreline are important resources.

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.

However, coastal resource concerns can occur when the granting of increased density would facilitate a structure that could impact public views (such as high rise buildings) or permit a development that could adversely affect public access (congestion or traffic due to a higher intensity type of project). In addition, incentives, concessions, waivers or reductions in development standards could also result in adverse impacts to coastal resources. For example, when incentives, concessions or deviations are granted to new development adjacent to wetlands or environmentally sensitive habitat areas (ESHA), there is the possibility that development could encroach into the sensitive habitat or result in a reduced biological buffer. If waivers were provided to the required height limit, coastal views may be impacted. If parking reductions were granted, potential impacts to public access could occur.

Previously, Section 21.86.120.A.6 required that any affordable housing or density bonus project located in the coastal zone must be consistent with the certified Land Use Plan. However, as proposed, the City will revise this regulation to mirror the policies of Assembly Bill (AB) 2797 (Bloom, 2018) (Gov. Code, § 65915), which requires that density bonuses, concessions, incentives, waivers or reductions of development standards and parking ratios be permitted in a manner that is consistent with the Coastal Act. Through the inclusion of this requirement, any density bonus or affordable housing project will not be approved if the development includes significant coastal resource impacts similar to those described above. Additionally, because the City's LCP embodies the Coastal Act and has been previously certified as adequate to carry out the Chapter 3 policies of the Coastal Act, this language will also ensure that all proposals will be consistent with the City's certified LUP.

In summary, the proposed LCP amendment allows for density bonuses and associated incentives for the provision of affordable housing, but will also ensure that such housing is built in a manner consistent with the coastal resource protection standards of the Coastal Act, and; as an embodiment of the Coastal Act, the City's certified Land Use Plan. The LCP amendment can therefore be approved as submitted.

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 found that the proposed text revisions to the Zoning Ordinance is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3).

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 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 coastal development permit and such development would need to comply with all resource protection measures, including, but not limited to, buffers from sensitive habitats and wetlands and geological setbacks. Therefore, the Commission finds that the subject IP as proposed conforms to the CEQA provisions.