

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



Th16a

Date: February 28, 2020

To: COMMISSIONERS AND INTERESTED PERSONS

From: KARL SCHWING, DEPUTY DIRECTOR, SAN DIEGO COAST DISTRICT
DEBORAH LEE, DISTRICT MANAGER, SAN DIEGO COAST DISTRICT
CORT HITCHENS, COASTAL PLANNER, SAN DIEGO COAST DISTRICT

Subject: STAFF RECOMMENDATION ON CITY OF ENCINITAS MAJOR LCP
AMENDMENT NO. LCP-6-ENC-19-0160-3 (Specialized Housing,
Reasonable Accommodation, SRO) for Commission Meeting of March 11-
13, 2020)

SYNOPSIS

The subject LCP implementation plan amendment was submitted in a “batch” along with two other LCP amendment requests, and all three LCP amendments were filed as complete on December 23, 2019. This staff report addresses only LCP-6-ENC-19-0160-3. The Commission has 60 working days from filing to act on Implementation Plans (“IP”) and Implementation Plan amendments. Thus, the date by which the Commission must take action on this matter, absent an extension of the time limits by the Commission, is March 22, 2020.

This amendment request involves revisions to the City’s certified implementation plan, including the Encinitas Municipal Code (EMC), the Cardiff-by-the-Sea Specific Plan, the Downtown Encinitas Specific Plan, the Encinitas Ranch Specific Plan, and the North 101 Corridor Specific Plan. As previously mentioned, there are currently two other pending LCP items from the City of Encinitas: LCPA No. LCP-6-ENC-19-0158-3 (Pedestrian and Bicycle Connectivity), which is an IP amendment, and LCPA No. LCP-6-ENC-19-0159-3 (5th Street Zone Change), which is a combined LUP/IP amendment. These two additional LCPA items were submitted and filed on December 23, 2019; they will be either presented for action at the April 2020 Commission hearing, or time extensions will be requested for them at that hearing.

SUMMARY OF AMENDMENT REQUEST

The City of Encinitas proposes three ordinances to add permitted uses and provide regulations for special housing types in order to increase housing options for residents, and to add reasonable accommodation procedures into the certified Implementation Plan. The proposed ordinances would amend the City’s Implementation Plan, including Title 30 of the City’s Municipal Code, as well as the Cardiff-by-the Sea Specific Plan, the

Downtown Encinitas Specific Plan, the Encinitas Ranch Specific Plan, and the North 101 Corridor Specific Plan.

The amendment allows for transitional, supportive, and qualified employee housing, as well as single room occupancy housing in order to provide a wider range of housing than currently exists within the City. Qualified employee housing provides accommodations for agricultural employees but such housing must be for permitted agricultural uses; and, at such time that the agricultural use ceases, the employee housing must be converted to another permitted use in the applicable zone. The proposed amendment consists of text changes only, and is intended to reflect changes in state law and to replace local municipal code definitions with State and federal definitions.

California law establishes the requirements for the Housing Element of the City's General Plan and requires that cities' housing elements be updated periodically. A primary goal of the State is ensuring that every resident has a decent home and a suitable living environment. Municipalities must amend their zoning codes to define, permit, and provide accommodations for special housing types, including employee housing (especially for agricultural employees), supportive housing, transitional housing, and single-room occupancy units; and to address and remove constraints to the maintenance, improvement, and development of housing for persons with disabilities. While the City approved its 2019 Housing Element Update in March of 2019, the proposed ordinances were not submitted at that time and are now proposed to be incorporated into the LCP. At its June 2019 meeting, the Coastal Commission approved, with one suggested modification, the City's Housing Element Update as LCP Amendment No. LCP-6-ENC-19-0014-1 (Housing Element Update 2013-2021). In August of 2019, the Encinitas City Council acknowledged and accepted the Commission's suggested modification.

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. As detailed in the findings below, the LUP encourages the construction of new housing units that offer a wide range of housing types to ensure that an adequate supply is available to meet existing and future needs. Such housing opportunities are also expected to support the continued viability of agricultural operations.

Additionally, no changes to the City's resource protection measures such as habitat buffers, blufftop setbacks, or grading restrictions on steep slopes are proposed or modified with the subject amendment, so while new housing options and regulations may be permitted, such changes will not result in any reduction of environmental safeguards. The City also proposes to add reasonable accommodation procedures into the LCP to provide for a wider range of housing options for persons with disabilities. The LCP amendments for reasonable accommodations provide some relief of the residential development standards, such as reduced front yard setbacks, as a reasonable accommodation. However, requested accommodations would not allow a fundamental alteration in the nature of the City's land use and zoning and building regulations, policies, practices, and procedures, or

the City's local coastal program. Thus, the proposed IP amendment is found to be consistent with the certified LUP.

ADDITIONAL INFORMATION

The appropriate resolutions and motions begin on Page 5. The findings for approval of the Implementation Plan Amendment as submitted begin on Page 6.

Further information on the City of Encinitas LCP Amendment No. LCP-6-ENC-19-0160-3 (Specialized Housing, Reasonable Accommodation, SRO) may be obtained from **Cort Hitchens**, Coastal Planner, at (619) 767-2370.

EXHIBITS

- Exhibit 1 – [Ordinance 2019-14](#)
- Exhibit 2 – [Ordinance 2019-15](#)
- Exhibit 3 – [Ordinance 2019-16](#)

TABLE OF CONTENTS

I. OVERVIEW	5
A. LCP HISTORY	5
B. STANDARD OF REVIEW.....	5
C. PUBLIC PARTICIPATION.....	5
II. MOTION AND RESOLUTIONS	5
III. FINDINGS FOR APPROVAL OF THE CITY OF ENCINITAS IMPLEMENTATION PLAN AMENDMENT, AS SUBMITTED.....	6
A. AMENDMENT DESCRIPTION.....	6
B. FINDINGS FOR APPROVAL	8
IV. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA).....	11

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 land use plan. 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.

II. MOTION AND 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 just prior to each resolution.

MOTION:

I move that the Commission reject the Implementation Program Amendment for the City of Encinitas Implementation Program Amendment No. LCP-6-ENC-19-0160-3 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 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 ENCINITAS IMPLEMENTATION PLAN AMENDMENT, AS SUBMITTED

A. AMENDMENT DESCRIPTION

The City of Encinitas has submitted the subject IP Amendment, containing three ordinances to make text changes in order to provide accommodations for special housing types to increase housing options for residents, and for State and federal fair housing law consistency. The proposed ordinances would amend the City's Implementation Plan, including Title 30 of the City's Municipal Code, the Cardiff-by-the Sea Specific Plan, the Downtown Encinitas Specific Plan, the Encinitas Ranch Specific Plan, and the North 101 Corridor Specific Plan.

California law establishes the requirements for the Housing Element of the City's General Plan. A primary goal of the State is ensuring that every resident has a decent home and a suitable living environment, and this requires municipalities to amend their zoning codes to define, permit, and provide accommodations for special housing types, including employee housing (especially for agricultural employees), supportive housing, transitional housing, and single-room occupancy units; and to address and remove constraints to the maintenance, improvement, and development of housing for persons with disabilities. While the City approved its 2019 Housing Element Update in March of 2019, the proposed ordinances were not submitted at that time and are now proposed to be incorporated into the LCP. The proposed amendment consists of text changes only, and is intended to reflect changes in state law and to replace local municipal code definitions with State and federal definitions.

Ordinance 2019-14 ([Exhibit 1](#)) is proposed to accommodate qualified employee housing, supportive housing, and transitional housing in compliance with state law. State law requires that supportive and transitional housing shall be considered a residential use of property and shall be subject only to those restrictions that apply to other residential dwellings of the same types in the same zone. (Gov. Code, § 65583(c)(3).) State law also requires that local jurisdictions identify actions to accommodate agricultural worker and employee housing, pursuant to the State's Employee Housing Act (EHA) (Health & Safety

Code, § 17000 et seq.). As proposed, Ordinance 2019-14 renames “Farm Employee Housing” to “Qualified Employee Housing,” and provides a definition for qualified employee housing that is the same as the State law definition (Health & Safety Code, § 17008). Additionally, the ordinance proposes to add qualified employee housing for seven or more employees into the permitted use tables and lists in the same manner and in the same zones that agricultural uses are permitted, and adds employee housing for six or fewer employees into the permitted use tables and lists found in the Zoning Code and Specific Plans in the same manner and in the same zones that single family dwellings are currently permitted, consistent with the State law. The code amendment considers agricultural worker/employee housing as an agricultural use. The ordinance clarifies, however, that qualified employee housing of seven or more employees may be permitted only as an accessory use in conjunction with an approved agricultural use.

To implement the State law and the City’s Housing Element Program 2E, Ordinance 2019-14 also includes proposed amendments to the City’s Zoning Code and Specific Plans to allow supportive housing and transitional housing throughout the City where other residential uses of the same type (single family or multifamily) are permitted. Ordinance 2019-14 also proposes new parking standards that require one parking space per unit or one space for every three beds, plus one space for an on-site manager; unless the applicant provides substantial evidence to the Development Services Director that the actual parking need is lower. Finally, Ordinance 2019-14 modifies the restrictions and requirements within the Accessory Use Regulations Chapter of the zoning code to require compliance with applicable State laws, including the need to obtain a permit from HCD, require a covenant to be recorded on properties identifying the requirements in conjunction with the use as a qualified employee housing, and to require the removal or conversion to another permitted use after the agricultural activity ceases.

Ordinance 2019-15 ([Exhibit 2](#)) is proposed to add reasonable accommodation procedures into the IP to comply with fair housing laws. Federal and State fair housing laws require that local governments remove constraints and provide reasonable accommodations for housing in rules, policies, procedures or services when such accommodations are deemed necessary to afford a person with disabilities equal opportunity to use and enjoy a dwelling unit. (E.g., Gov. Code § 65583(c)(3).) As an example, requests for reasonable accommodations can involve such variances as reducing the required front yard setback to allow construction of a ramp for wheelchair access. As proposed, Ordinance 2019-15 defines reasonable accommodations, and outlines the procedures and necessary findings to approve proposals for specific reasonable accommodations, including the allowance for individuals or developers to submit reasonable accommodation requests. Ordinance 2019-15 also incorporates Reasonable Accommodation procedures into a new Chapter 30.86 of the Municipal Code, and is incorporated by reference into Specific Plans. While a “blanket” statement within the North 101 Corridor Specific Plan incorporates all of Title 30 unless otherwise stated, the proposed ensures that requested accommodations would not require a fundamental alteration in the nature of the City’s land use and zoning and building regulations, policies, practices, and procedures, and for housing in the coastal zone, ensures consistency with the City’s local coastal program.

Ordinance 2019-16 ([Exhibit 3](#)) is proposed in order to allow single room occupancy (SRO) housing as a permitted use where multi-family residential uses are permitted. State law requires that the City accommodate this housing type, as it can provide for smaller, less

expensive housing units in order to meet regional housing needs for lower income households. (Gov. Code, §§ 65583(c)(1), 65583.2(c).) Proposed amendments within Ordinance 2019-16 include adding a new definition for single room occupancy housing into the Municipal Code and Specific Plans, as well as including the use in permitted use tables and lists in the same manner and in the same zones that multiple family dwellings and currently permitted. The proposed ordinance provides a provision that each single room occupancy housing unit, regardless of the plan for a kitchen or kitchenette, shall be considered a dwelling unit for purposes of density. Ordinance 2019-16 also proposes regulations for SRO units and facilities to be applied in addition to the regulations of the underlying zoning districts where SRO development would be permitted, including minimum and maximum unit sizes and facility requirements.

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 Ordinances.

The purpose of the three proposed ordinances is to remove constraints to securing housing and to accommodate for different housing options within the City, consistent with State and Federal Fair Housing Laws and pursuant to Government Code Section 65583.

b) Major Provisions of the Ordinances.

The major provisions of the proposed ordinances would achieve the following goals: (1) modify the IP and the other applicable certified Specific Plans to accommodate qualified employee housing, supportive housing, and transitional housing in compliance with state law, as well as to allow single room occupancy housing as a permitted use where multi-family residential uses are permitted; and (2) create a new chapter within the IP to provide reasonable accommodation definitions and procedures.

The proposed Qualified Employee Housing modifications would amend the implementation plan to accommodate agricultural worker housing and employee housing within the City. The proposed amendment would allow employee housing for 7 or more employees in the same manner and in the same zones that agricultural uses are currently permitted; and allow employee housing for 6 or less employees in the same manner and in the same zones that SFRs are currently permitted. The amendment would allow qualified employee housing of seven or more employees to be permitted within Ecological Resource/Open Space zones as an accessory use in conjunction with an approved agricultural use, where it is not currently permitted. While state housing law requires that the City review and allow for qualified employee housing subject to the same requirements as other permitted agricultural uses within the same zone, this new use would undoubtedly introduce more intensive activities within these zones. Within the City's coastal zone, ER/OS areas are restricted to specific uses including essential utilities, aquaculture, nature centers, fish hatcheries, land reclamation, and parks and public recreational facilities; any qualified employee housing proposed in these zones would have to be an accessory use to a permitted agricultural use. Due to the restrictions on conditionally permitted items within the ER/OS zones within the Coastal Zone, qualified employee housing would only be

possible on a site with aquaculture or a fish hatchery because those are the only permitted agricultural uses with ER/OS zone. While the City would issue the CDP for the development, applications for Qualified Employee Housing would be submitted to and approved by HCD, would require a covenant to be recorded on properties identifying the requirements in conjunction with the use as a qualified employee housing, and would require the removal of the use or the need to obtain approval for the conversion to another permitted use after the agricultural activity ceases.

The code amendment also allows for qualified employee housing for six or fewer persons, as well as supportive and transitional housing uses, to be located within the Visitor Commercial Mixed zone (D-VCM) within the Downtown Encinitas Specific Plan, even on the ground floor in this zone. While the allowance for housing in a visitor commercial zone could raise concerns in some districts relative to promoting priority uses, in this instance, the amendment is consistent with the LUP since the zone does not front the Coast Highway 101 corridor and general housing was already permitted in the zone.

Specifically, the proposed Ordinance 2019-14 for Supportive and Transitional Housing adds these two housing types into the City's permitted use tables and lists in the same manner and in the same zones that residential uses are currently permitted. In other words, the amendment would allow supportive and transitional housing throughout the City where other residential uses of the same type (SFRs or multi-family) are permitted.

Through the adoption of Ordinance 2019-15 on October 23, 2019, the City would modify sections of Title 30 Zoning, as well as sections of the Cardiff-by-the-Sea Specific Plan, the Downtown Encinitas Specific Plan, and the Encinitas Ranch Specific Plan to include reasonable accommodation procedures to comply with State and federal fair housing laws. The proposed ordinance ensures that requested accommodations would not require a fundamental alteration in the nature of the City's land use and zoning and building regulations, policies, practices, and procedures, and for housing in the coastal zone, the City's local coastal program.

Through the adoption of Ordinance 2019-16 on October 23, 2019, the City would modify sections of Title 30 Zoning, as well as sections of the Cardiff-by-the-Sea Specific Plan, the Downtown Encinitas Specific Plan, the Encinitas Ranch Specific Plan, and the North 101 Corridor Specific Plan to allow single room occupancy housing as a permitted use in all zones that multi-family residential uses are permitted. Single Room Occupancy Housing would be permitted in the same manner and zones that multiple family dwellings are currently permitted. The proposed amendment considers SRO units as dwelling units regardless of the existence of a kitchen/kitchenette. Also proposed for SROs are minimum and maximum sizes; requirements for bathrooms, laundry rooms, kitchens and common areas; and a requirement for an on-site facility manager in developments over 7 units.

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

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 standards are as follows:

Housing Element

Policy 1.4: Require that housing constructed for low and moderate income households should not be concentrated in any single community or single area of the City and that such housing should be high quality in terms of design and construction without sacrificing affordability.

Policy 1.8: Coordinate with local social service providers to address the needs of the City's homeless population. Initiate and amendment of the Zoning Ordinance to permit transitional housing/emergency shelters under appropriate zones and/or at specified locations.

Policy 2.2: Support ongoing efforts of the State and County to enforce "fair-housing" laws.

Circulation Element

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. [...]

Policy 1.2: Restrict development in those areas where slope exceeds 25% as specified in the Hillside/Inland Bluff overlay zone 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 [...]

Land Use Element

Goal 8: Environmentally and topographically sensitive and constrained areas within the City shall be preserved to the greatest extent possible to minimize the risks associated with development in these areas.

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 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. A deviation from this policy may be permitted only upon a finding that strict application thereof would preclude any reasonable use of the property (one dwelling unit per lot).

Additionally, the Encinitas Ranch Specific Plan also contains the following relevant policies related to the preservation of agricultural uses and for the provision of affordable housing:

Policy 14.3: Provide an opportunity in the Green Valley, Sidonia East, and West Saxony Areas to meet some of the needs of the City of Encinitas for affordable housing.

Policy 29.3: Require that new residential development be located and clustered to avoid inhibiting continued agricultural use of land reserved for that purpose, and where feasible, require that new development be located adjacent to existing development or areas planned for development. In instances where continued agricultural use is no longer feasible, encourage sensitive residential development that allows for the continued viability of an agricultural business on site.

The proposed amendment seeks to fulfill State and federal fair housing law requirements and provides additional housing opportunities for low and moderate income households, as well as provides reasonable accommodation procedures in order for persons with disabilities to secure housing opportunities. No changes to the City's resource protection measures such as habitat buffers, blufftop setbacks, and grading of steep slopes are proposed or modified with the subject amendment, so while new housing options and regulations may be permitted, such changes will not result in any reduction of environmental safeguards. The proposed amendment ensures that priority uses, including continued agriculture and visitor-serving commercial uses, are protected. The proposed amendment does not involve differences in the physical design, development, or construction of residential or nonresidential structures, nor any increases in density, any changes to development standards such as setbacks or height, or any modifications to land resulting in changes to the physical environment that are meaningfully different than what is permitted under the City's current zoning. Thus, the proposed IP amendment is consistent with the goals and policies of the certified LUP and is adequate to carry it out. Therefore, the LCPA can 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 ordinance revisions were exempt from environmental review pursuant to the CEQA Guidelines Section 15061(b)(3) since there would be no possibility of a significant effect on the environment with the proposed

amendment. Environmental review will be considered for any resulting future projects at the time of development.

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 amendment would only clarify how the City will comply with and implement State laws governing qualified employee housing, transitional housing, supportive housing, single room occupancy housing, and reasonable accommodation procedures. Therefore, the Commission finds that the subject IP amendment as proposed conforms to CEQA provisions.