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Date: May 27, 2021

To: **COMMISSIONERS AND INTERESTED PERSONS**

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Subject: **STAFF RECOMMENDATION ON CITY OF OCEANSIDE MAJOR
AMENDMENT NO. LCP-6-OCN-20-0091-4 (Inclusionary Housing Revisions)
for Commission Meeting of June 10, 2021**

SYNOPSIS

On February 2, 2021, the subject Local Coastal Program (LCP) implementation plan amendment was submitted and filed as complete. A one-year time extension was granted on April 16, 2021. As such, the last date for Commission action on this item is April 28, 2022. This report addresses the City's entire submittal.

SUMMARY OF AMENDMENT REQUEST

The City of Oceanside is proposing to update Section 14C of the City's Municipal Code, which provides provisions related to inclusionary housing. While the City's Municipal Code is not a part of its certified Local Coastal Program, Section 14C was included, by reference into the City's LCP through a previous Commission action (ref. LCP Amendment No. LCP-6-OCN-15-0043-5/Part B Inclusionary Housing). The City is proposing to revise three sections within Article 14C as a general update to the City's inclusionary housing regulations.

The first revision will modify Section 14C.4, Definitions - to include a definition for "Net Building Area." The Net Building Area of a structure is used by the City to determine in-lieu fee calculations and previous developers have expressed concerns on how to properly calculate the net building area for a structure. Thus, the inclusion of this definition is intended to help clarify how to correctly calculate the Net Building Area for structures.

The second revision modifies Section 14C.5 to add inclusionary housing regulations for rental units. While not a part of the LCP, this allowance was previously repealed from the City's municipal code in response to a 2009 Court of Appeal decision¹ that limited the

¹ 7. *Palmer/Sixth Street Properties, L.P. v. City of Los Angeles* (2009) 175 Cal. App. 4th 1396).

City's ability to impose affordable housing requirements on residential rental projects. However, more recently, Assembly Bill 1505 (Bloom, 2017), was passed, which authorized local jurisdictions to reinstitute inclusionary housing measures for developments that include rental units. Thus, the second proposed revision will re-insert the provisions for inclusionary housing opportunities for rental projects into the Municipal Code and certify it as a part of the LCP.

The final modification includes revising Section 14C.6, In-Lieu Fee Alternative – to clarify that any request for deferral of in-lieu fees be consistent with the requirements of the City's municipal code. The deferral of in-lieu fees was previously permitted by the City's LCP, and the opportunity for a developer to seek a deferral of any required in-lieu fees remains unchanged. Instead, the proposed revision clarifies the deferral review process.

SUMMARY OF STAFF RECOMMENDATION

The three revisions proposed by the City do not raise any Land Use Plan (LUP) consistency concerns and will result in increased opportunities for lower-cost housing through the expansion of inclusionary housing measures to rental units; however staff is recommending three suggested modifications to reinsert inclusionary housing provisions that were previously certified by the Commission and City, but inadvertently omitted in a subsequent LCP amendment submittal, as well as include the deletion of a provision approved by the City, but never submitted to the Commission for certification.

The City's inclusionary housing measures were originally included in the City's certified LCP in 2016. During this review the Commission identified concerns with two policies in the amendment request (ref. LCP Amendment No. LCP-6-OCN-15-0043-5/Part B – Inclusionary Housing). Specifically, the amendment included an allowance for two development incentives for properties that included low-cost housing – one that permitted a reduction in parking requirements (on average 1/2 space per unit) and one that allowed an additional level (8-foot height) beyond what would otherwise be permitted by the established zoning. The Commission raised LCP consistency concerns given that there was the potential these incentives could result in impacts to public access (through on-street parking being used by residents) and visual resources. To address the concerns, the Commission certified two modifications. As modified, these incentives were still permitted, but required that the parking and height incentives were consistent with the public access and visual resource policies of the LUP.

In 2018, the City underwent a major Implementation Plan (IP) update, which resulted in the reconfiguration and relocation of the entire IP. The revisions pertaining to inclusionary housing certified in 2016 were inadvertently omitted from the updated IP submittal, and the omission was not identified by the City or the Commission when the update was certified in 2018. Thus, the modifications in 2016 requiring protection of public access and views are no longer included in the City's IP. To correct the omission and reinsert the language certified by the Commission in 2016, staff is recommending the incorporation of two suggested modifications, both of which are identical to the revisions previously certified by the Commission.

Inclusionary Housing Ordinance Revisions

Additionally, in 2019 the City deleted Section 14C.3 – Exemptions – from the inclusionary housing measures, but failed to submit the deletion to the Commission for certification. Section 14C.3 requires projects located within the boundaries of the redevelopment area to be exempt from any inclusionary housing requirements. However, as a result of AB IX 26 (Blumenfeld, 2011) and AB 1484 (Budget Com., 2012), redevelopment agencies were eliminated statewide and the redevelopment area was redesignated as the Downtown District. Additionally, as a result of this dissolution, the City no longer received property tax increments from the Low and Moderate Housing Fund and the purpose of the exemption was no longer applicable. However, because Section 14C is a part of the City's certified LCP, this deletion must be certified by the Commission and has been included as a suggested modification.

To reinsert the two modifications from LCP-6-OCN-15-0043-5/Part B and certify the deletion of Section 14C.3 from the LCP, staff is recommending three suggested modifications. Suggested Modification No. 1 will reinsert the language that requires any increase in height limits granted for inclusionary housing proposals be consistent with all visual resource policies, including but not limited to, public view, community character, and bulk/scale policies. Suggested Modification No. 2 requires that any decrease in parking granted for inclusionary housing proposals be consistent with all public access policies, including but not limited to, public access and recreation, visitor serving facilities, and beach parking policies. This modification further requires that any incentive granted to allow a reduction in parking standards would still need to participate in the discretionary review process. The third modification will delete Section 14C.3, [Inclusionary Housing] Exemptions, from the City's LCP.

It is only through the inclusion of these suggested modifications that adequate protection of coastal resources can be assured and thus be found consistent with and adequate to implement the City's certified LUP. City staff indicated agreement with the suggested modifications.

The appropriate motions and resolutions begin on page 5. The suggested modifications begin on page 7. The findings for denial of the Implementation Plan Amendment as submitted begin on page 8. The findings for approval of the plan, if modified, begin on page 11.

ADDITIONAL INFORMATION

Further information on the Oceanside LCP Amendment No. LCP-6-OCN-20-0091-4 may be obtained from Toni Ross, Coastal Planner, at toni.ross@coastal.ca.gov

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EXHIBITS

- [Exhibit No. 1 – Resolution No. 20-R0501-1](#)
- [Exhibit No. 2 – Ordinance No. 20-OR0563-1](#)
- [Exhibit No. 3 – Proposed Text Changes in Strike-out/Underline](#)
- [Exhibit No. 4 – Ordinance No. 19-OR0594-1](#)

I. OVERVIEW

A. LCP HISTORY

The City of Oceanside first submitted its Land Use Plan (LUP) to the Commission in July 1980, and it was certified with suggested modifications on February 19, 1981. This action, however, deferred certification on a portion of the San Luis Rey River valley where an extension of State Route 76 was proposed. On January 25, 1985, the Commission approved with suggested modifications the resubmitted LUP and Implementing Ordinances. The suggested modifications for this approval were related to the guaranteed provision of recreation and visitor-serving facilities, assurance of the safety of shorefront structures, and the provision of an environmentally sensitive routing of the proposed Route 76 east of Interstate 5. The suggested modifications to the Zoning/Implementation phase resulted in ordinances and other implementation measures that were consistent with the conditionally certified LUP policies.

With one exception, the conditionally certified LUP and Implementing Ordinances were reviewed and approved by the City on May 8, 1985. The City requested that certification be deferred on one parcel adjacent to Buena Vista Lagoon designated by the City for “Commercial” use; the Commission's suggested modification designated it as “Open Space.” On July 10, 1985, the Commission certified the City's LCP as resubmitted by the City, including deferred certification on the above parcel.

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 opportunities to participate in the development of the LCP amendment prior to submittal to the Commission for review. The City held Planning Commission and City Council meetings with regard to the subject amendment request on August 19, 2020 and September 9, 2020, respectively. Both of the local hearings were duly noticed to the public. Notice of the subject amendment has been distributed to all known interested parties.

II. MOTIONS 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.

1. MOTION:

I move that the Commission reject the City of Oceanside Implementation Program Amendment No. LCP-6-OCN-20-0091-4 as submitted.

STAFF RECOMMENDATION OF REJECTION:

Staff recommends a **YES** vote. Passage of this motion will result in rejection of Implementation Program 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 DENY CERTIFICATION OF THE IMPLEMENTATION PROGRAM AMENDMENT AS SUBMITTED:

The Commission hereby denies certification of the Implementation Program Amendment submitted for the City of Oceanside and adopts the findings set forth below on grounds that the Implementation Program as submitted does not conform with, and is inadequate to carry out, the provisions of the certified Land Use Plan. Certification of the Implementation Program would not meet the requirements of the California Environmental Quality Act as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Implementation Program as submitted.

2. MOTION:

I move that the Commission certify the City of Oceanside Implementation Program Amendment for the City of Oceanside if modified pursuant to the staff recommendation.

STAFF RECOMMENDATION:

Staff recommends a **YES** vote. Passage of this motion will result in certification of the Implementation Program Amendment with suggested modifications 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 THE IMPLEMENTATION PROGRAM AMENDMENT WITH SUGGESTED MODIFICATIONS:

The Commission hereby certifies the Implementation Program Amendment for the City of Oceanside if modified as suggested and adopts the findings set forth below on grounds that the Implementation Program Amendment, with the suggested modifications, conforms with and is adequate to carry out the certified Land Use Plan. Certification of the Implementation Program Amendment if modified as suggested complies with 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 and mitigation measures that would substantially lessen any significant adverse impacts on the environment.

III. SUGGESTED MODIFICATIONS

Staff recommends the following suggested revisions to the proposed Implementation Plan be adopted. The underlined sections represent language that the Commission suggests be added, and the ~~struck-out~~ sections represent language which the Commission suggests be deleted from the language as originally submitted.

1. Revise Page 14 of Article 10C (Coastal Residential Districts), Section 1040, Subsection (Y) as follows:

(Y) See Section 3018 Exceptions to Height Limits. Projects that exceed base density allowances and reserve units for low-income households in accordance with Municipal Code Section 14C.7 are eligible for one additional story, not to exceed eight (8) additional feet above the maximum allowable height for the surrounding zoning district. While this concession is granted to qualified projects without the benefit of a variance, it does not preclude the discretionary review process, through which project approval may be contingent upon neighborhood compatibility, mitigation of massing impacts, compliance with the California Environmental Quality Act, and other considerations that may have the effect of limiting the overall bulk and scale of development. For development within the coastal zone, any modification(s) to height limits shall be consistent with all visual resource policies, including but not limited to, public views, community character, and bulk/scale.

2. Revise Page 15 of Article 31 (Parking), Section 3105, as follows:

3105 Reduced Parking for Other Uses

A use permit may be approved reducing the number of spaces to less than the number specified in the schedules in Section 3103, provided that the following findings are made:

[...]

Projects exceeding base density allowances that reserve units for low and moderate-income households in accordance with Municipal Code Chapter 14C.7 are eligible for the following concessions to the parking standards specified in the scheduled in Section 3103:

- One (1.0) parking space per market-rate studio and one-bedroom unit;
- 1.5 parking spaces per market-rate unit exceeding one bedroom;
- 0.5 parking space per inclusionary studio unit;
- One (1.0) parking space per inclusionary one-bedroom unit;
- 1.25 parking spaces per inclusionary two-bedroom unit;
- 1.5 parking spaces per inclusionary unit exceeding two bedrooms.

This concession does not preclude the discretionary review process, as required by the Oceanside certified LCP, through which project approval may be contingent upon current public parking reserves, current off-street parking usage, or other consideration that may have the effect of requiring additional parking. For development in the coastal zone, any reduction in parking standards shall be consistent with all public access policies, including but not limited to, public access and recreation, visitor serving facilities and beach parking.

3. Delete Article 14C, subsection 3 as follows:

~~Exemptions~~

~~(a) Any project located within the boundaries of the redevelopment project area shall be exempt from the provisions of this chapter.~~

IV. FINDINGS FOR REJECTION OF THE CITY OF OCEANSIDE IMPLEMENTATION PLAN AMENDMENT, AS SUBMITTED

A. AMENDMENT DESCRIPTION

The City is proposing to revise three sections within Article 14C, Inclusionary Housing, of its IP to: 1) include a new definition for Net Building Area,; 2) re-insert provisions for inclusionary housing opportunities for rental units; and 3) clarify the process by which a deferral of in-lieu fees is reviewed.

B. SPECIFIC FINDINGS FOR REJECTIONS

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 and intent of the ordinance is to encourage the production and preservation of affordable housing units in conjunction with market-rate housing developments.

b) Major Provisions of the Ordinance.

As currently certified, the inclusionary housing provisions require at least ten percent of for-sale residential projects (of three or more units) be reserved for low- and moderate-income households. As proposed, the chapter would also require that no rental residential project shall be permitted unless at least ten percent of such housing units are reserved for low-income households. The ordinance also details options for providing either in-lieu fees or the physical units through off-site provision of affordable “for sale” units, joint venture off-site rental units, reserved unit credits, etc.

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

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The standard of review for LCP implementation plan submittals or amendments is their consistency with and ability to carry out the provisions of the certified LUP. The City's LUP contains a number of policies that address protection of public views, preservation of community character, the provision of adequate parking, and the protection of public access, and state, in part:

City of Oceanside LCP Land Use Policies

I. Coastal Access

Objective: Adequate access to and along the coast shall be provided and maintained

VI. Visual Resources and Special Communities

1. In areas of significant natural aesthetic value, new developments shall be subordinate to the natural environment...
3. All new development shall be designed in a manner which minimizes disruption of natural land forms and significant vegetation.
4. The City shall maintain existing view corridors through public rights-of-way. [...]
8. The City shall ensure that all new development is compatible in height, scale, color and form with the surrounding neighborhood.

VII. New Development and Public Works

1. The City shall deny any project which diminishes public access to the shoreline, degrades coastal aesthetics, or precludes adequate urban services for coastal-dependent, recreation, or visitor serving uses.

City of Oceanside LCP – Design Standards for Preserving and Creating Views

The visual orientation to the Pacific Ocean is a major identity factor for the City of Oceanside. Traditional view corridors should be preserved and reinforced in the placement of buildings and landscaping. Additionally, some views not presently recognized deserve consideration in the design and location of further coastal improvements.

The Commission originally certified Article 14C – the City's inclusionary housing measures as a part of the City's LCP in 2016 through LCP Amendment No. LCP-6-OCN-15-0043-5 (Part B – Inclusionary Housing). At that time, the Commission included two modifications that addressed LCP inconsistency concerns related to impacts to public access and visual resources through the application of incentives for parking and height. Specifically, the 2016 Inclusionary Housing provisions included two incentives for projects that reserved units for low and moderate-income households. These included reduced parking

requirements (on average ½ space per unit) and the allowance for an additional level on the proposed structure (a height of 8-feet or lower) greater than what would otherwise be permitted by the zoning. The Commission's approval in 2016 included the following in the staff report:

The modifications proposed through the subject LCP amendment raise a number of LUP consistency concerns. Specifically, the Inclusionary Housing provisions would facilitate the application of two specific concessions which could result in significant impacts to coastal resources and public access. As detailed above, the City's LUP contains a number of policies that are intended to provide and protect both visual and physical access to the beach. As such, the review of any height or parking deviation must also ensure conformance with the applicable LUP policies as well as any relevant IP provisions. This is not to say that the concessions cannot be applied in the Coastal Zone, but rather that each request needs to be taken on a case-by-case basis and the potential impacts to coastal resources need to be analyzed appropriately. The majority of residentially zoned properties within the Coastal Zone currently have a 35' tall height limit. If the building height concession was granted, this means that proposed structures could be as tall as 42'. Allowing that increase in building height should not be granted if such an increase would result in a significant public view blockage or if the building height allowance would facilitate a development that would not be compatible with the surrounding community character. Additionally, access routes near properties located within close proximity to the ocean are often highly congested, and the existing on-street parking is the primary reservoir for public beach parking in Oceanside, therefore, the granting of reduced parking standards in these locations may not be appropriate, as it could result in the usurping of public beach parking.

The two modifications addressing these concerns were accepted by the City and the LCP amendment was effectively certified at the Commission's November 2017 hearing. In 2018, the City underwent a major update to its implementation plan, which included reconfiguration and relocation of the City's entire IP (ref. LCP Amendment No. LCP-6-OCN-18-0069-2/Base Zone Districts). This amendment was approved by the Commission in July 2019 and was effectively certified by the Commission in November 2019. However, the modifications included in the 2016 certification of the City's Inclusionary Housing LCP amendment were inadvertently omitted from the action in 2018 and thus, the modifications were no longer a part of the City's certified LCP.

Therefore, the modifications included in the Commission's approval of LCP Amendment No. LCP-6-OCN-15-0043-5 (Inclusionary Housing), are necessary in order to find the City's inclusionary housing provisions consistent with the LUP; and only through the reinsertion of these modifications can the subject LCP Amendment, and the policies regarding inclusionary housing, be found consistent with the LUP. Additionally, the subject amendment could further exacerbate the concerns raised in 2016 in that the proposed changes will extend inclusionary housing opportunities and associated incentives to rental development proposals, which will increase the opportunities to approve the parking and height incentives and may result in additional impacts to public access and visual resources.

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Additionally, in 2019 the City revoked Section 14C.3 – Exemptions – but failed to submit the deletion of Section 14C.3 to the Commission for certification. Section 14C.3 requires projects located within the boundaries of the City’s redevelopment area to be exempt from any inclusionary housing requirements. However, as a result of AB IX 26 and AB 1484, redevelopment agencies have been eliminated statewide and the redevelopment area was redesignated as the Downtown District. Additionally, as a result of this dissolution, the City no longer receives property tax increments from the Low and Moderate Housing Fund. Given that the redevelopment area was dissolved, and the funding terminated, the purpose of the exemption was no longer applicable. While the removal of Section 14C.3 raises no LUP consistency concerns, Section 14C is a part of the City’s certified LCP, and the deletion must be certified by the Commission. To resolve the inconsistency, the City has agreed to include the deletion in the subject LCP Amendment through the incorporation of a suggested modification.

Therefore, the proposed amendment cannot be found consistent with and adequate to carry out the certified Land Use Plan as submitted.

V. FINDINGS FOR APPROVAL OF THE CITY OF OCEANSIDE IMPLEMENTATION PLAN AMENDMENT, IF MODIFIED

As previously discussed, the Commission certified the City’s Inclusionary Housing regulations in 2016. At that time, two suggested modifications were included in the approval that addressed LUP consistency concerns with incentives provided to developers including reduced parking requirements and increased height allowance. The modifications clarified that those incentives would still be possible, but any incentives granted must be consistent with the public access and visual resource protection policies of the LUP. These modifications were accepted by the City but were then inadvertently omitted from the IP update certified by the Commission in 2018. To correct this error, Suggested Modification Nos. 1 and 2 will reinsert the revisions included in the Commission’s 2016 action. Specifically, Suggested Modification No. 1 will require that any increase in height limits granted for inclusionary housing proposals be consistent with all visual resource policies, including but not limited to, public view, community character, and bulk/scale policies, of the LCP. Suggested Modification No. 2 will require that any decrease in parking granted for inclusionary housing proposals be consistent with all public access policies, including but not limited to, public access and recreation, visitor serving facilities, and beach parking policies of the LCP. By requiring consistency with the LCP, the potential impacts to coastal resources will be analyzed, and while projects may be eligible for such concessions, the City will only grant them if it can be determined that such concessions will still be consistent with the applicable LCP policies. Suggested Modification No. 2 further requires that any incentive granted to allow a reduction in parking standards would still need to participate in the discretionary review process. This review would evaluate project approval contingent upon current public beach parking reserves, current off-street parking usage, and other considerations that may have the effect of requiring additional parking onsite.

Additionally, in order to certify a deletion previously approved by the City without the processing or approval of an LCP Amendment, a suggested modification has been included to delete Section 14C.3, Exemptions. Section 14C.3 exempted properties within

the redevelopment area from inclusionary housing requirements, however, the redevelopment area has since been dissolved and the provision is no longer applicable. Thus, the removal of Section 14C.3 raises no LCP consistency issues and has been included as Suggested Modification No. 3.

With the exception of the above provisions suggested to be modified, the proposed amendment is otherwise consistent with the City's LCP. The City is proposing three revisions to its Inclusionary Housing measures, including a new definition for Net Building Area, re-instating the provisions for inclusionary housing opportunities for rental units and clarifying the process by which a deferral of in-lieu fees is reviewed.

Regarding the reinstatement of inclusionary housing provisions for rental units, 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. Thus, when the inclusionary housing measures were certified as a part of the City's LCP in 2016, the provisions for rental units were not included. However, Assembly Bill (AB) 1505 (Bloom, 2017) (Gov. Code, §§ 65850 and 65850.01) 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. Thus, the proposed revision will re-insert the provisions for inclusionary housing opportunities for rental projects into the Municipal Code and certify it as a part of the LCP.

The City's certified LUP does not contain any policies pertaining to inclusionary housing and therefore, the proposed amendment is not inconsistent with the City's certified LUP regarding such housing. The certified LUP does 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.

In conclusion, the certified LUP requires that coastal resources such as public access and public views be protected. For the reasons described above, only if modified as suggested can the proposed Implementation Plan amendment be found consistent with and adequate to carry out the City's certified LUP.

VI. 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

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responsibility to prepare an EIR for each LCP submission. [if we know how city exempted, add citation or ask me for the cite]

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. The Commission finds that approval of the proposed ordinance amendment, as submitted, would result in significant impacts under the meaning of the California Environmental Quality Act. However, with the inclusion of the suggested modifications, implementation of the revised ordinance would not result in significant impacts to the environment within the meaning of the California Environmental Quality Act. Therefore, the Commission finds that approval of the LCP amendment, as modified, will not result in any significant adverse environmental impacts.