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# Th13c

**Date:** January 20, 2022

**To:** COMMISSIONERS AND INTERESTED PERSONS

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**Subject:** STAFF RECOMMENDATION ON CITY OF CARLSBAD MAJOR  
AMENDMENT NO. LCP-6-CAR-20-0078-2 (Density Bonus Update) for  
Commission Meeting of February 9-11, 2022

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## SYNOPSIS

The subject LCP implementation plan amendment was submitted and filed as complete on November 19, 2020. A one-year time extension was granted on February 10, 2021. As such, the last date for Commission action on this item is February 19, 2022. This amendment request affects the City's certified Implementation Plan only.

The subject amendment was originally scheduled for the December 2021 Commission meeting but was postponed at the City's request in order to incorporate the suggested modifications described below.

The subject request was submitted with LCP Amendment No. LCP-6-CAR-20-0077-2 which relates to accessory dwelling unit regulations and is also scheduled for the February 2022 meeting.

## SUMMARY OF AMENDMENT REQUEST

The City of Carlsbad is requesting an amendment to the City's Zoning Ordinance, part of the certified LCP implementation plan, in order to bring the City's density bonus regulations into compliance with state law. Specifically, the proposed amendment would repeal and replace Chapter 21.86 of the Municipal Code, which implements the state's density bonus law as found in Government Code Section 65915 and sequence. The subject request was submitted in response to changes made by Assembly Bill (AB) 1763 (Chiu, 2019), which became effective on January 1, 2020. Since the subject amendment request was filed by Commission staff in November 2020, density bonus law has been further amended by AB 2345 (Gonzalez, 2020), which became effective on January 1, 2021.

Density bonus law allows a developer of a housing project with at least five units to increase density on a property above the maximum set under a city's local regulations. In

exchange for the density increase, a percentage of the new dwelling units must be reserved for affordable or other qualifying housing types such as senior housing. The amount of allowable increased density depends on the amount and level of affordable housing provided. The law also allows applicants to receive reductions in required development standards such as setbacks, height limits, and parking requirements in order to make a project with increased density feasible.

The major changes to the Government Code by AB 1763 and AB 2345 include: (1) the maximum density bonus for mixed income developments was increased from 35% to 50%; (2) housing projects with 100% affordable units are now allowed a density bonus of up to 80%; and (3) for 100% affordable housing developments that are located within a half mile of a major transit stop, there are no restrictions on density, the height may be increased up to 33 feet or three stories above existing height limits, and there are no parking requirements.

To avoid having to amend the LCP for technical changes, the City of Carlsbad proposes to cross-reference directly to the applicable Government Code, incorporating by reference the definitions, thresholds, and standards into the certified implementation plan. Density bonus provisions are amended frequently, and the purpose of the proposed cross-references is to avoid having to amend provisions that have no impact on coastal resources. As proposed, Chapter 21.86 will detail requirements for the local application and review process.

## **SUMMARY OF STAFF RECOMMENDATION**

Staff is recommending denial of the Implementation Plan (IP) amendment as submitted, and approval of the amendment as modified in this staff report.

The subject request was originally scheduled for the December 2021 Commission meeting. However, the City requested a postponement after the Commission received public comment asserting that the proposed IP amendment would render future density bonus projects infeasible. Commission staff worked with City staff to modify the language, and it is Commission staff's understanding that the City is in agreement with the suggested modifications below.

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 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.

As proposed by the City, the IP amendment would require any density bonus, incentive, concession, or waiver of development standards to be consistent with all applicable requirements of the certified LCP, with the exception of density. However, on a site where waiving certain IP standards such as setbacks or height limits would not impact coastal resources or public access, the proposed language could prevent a density bonus project developer from receiving the incentive(s), concession(s), or waiver(s) to which they are entitled. The City of Carlsbad intends to allow deviations from the development standards in the LCP where such modifications would not impact coastal resources.

Staff is therefore recommending suggested modifications to clarify that a proposed density bonus development shall be consistent with the coastal resource protection, and where applicable, the public access requirements of the certified Carlsbad LCP. Consequently, while the density of a development project could be increased beyond the numbers established as part of the underlying land use designations, the proposed development would still have to meet all coastal resource protection and public access standards of the certified LCP. Therefore, the proposed amendment will encourage affordable housing projects within the coastal zone while avoiding adverse impacts to community character, visual resources, public views, sensitive biological resources such as wetlands or ESHA, or public access to the coast. In addition, increases in density are not likely to create impacts. The City is well-served by alternate transit, including the downtown Village Area transit center, Poinsettia transit station, and established bus services, as well as bikeways and pedestrian routes, such as the Coastal Rail Trail. These existing services and amenities would accommodate smart growth and higher densities while maintaining coastal access opportunities for the broader public.

The amendment proposes to cross-reference the Government Code provisions instead of listing the detailed density bonus provisions directly in the ordinance. Staff has reviewed the cross-references, which mainly describe application procedures that have no effect on coastal resources. As described above, the suggested modifications include language ensuring consistency of any proposed density bonus project with the coastal resource and public access protection requirements of the certified LCP, and also require City staff to describe this consistency in staff reports for project recommendations. Furthermore, the Coastal Act itself cross-references state density bonus law. Therefore, Chapter 21.86, as modified, would ensure consistency with the LCP and protection of coastal resources and public access.

The appropriate motions and resolutions begin on page 5. The suggested modifications begin on page 6. 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 12.

## **ADDITIONAL INFORMATION**

Further information on the City of Carlsbad LCP Amendment No. LCP-6-CAR-20-0078-2 may be obtained from Carrie Boyle, Coastal Planner, at (619) 767-2370 or [SanDiegoCoast@coastal.ca.gov](mailto:SanDiegoCoast@coastal.ca.gov).

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### EXHIBITS

[Exhibit 1 – Ordinance](#)

## **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 (IP) 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. 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 Implementation Program Amendment No. LCP-6-CAR-20-0078-2 for the City of Carlsbad 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 Carlsbad 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 Plans. 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 Implementation Program Amendment No. LCP-6-CAR-20-0078-2 if it is modified as suggested in this staff report.

**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 Carlsbad 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 Plans. 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. Section 21.86.070 Local Coastal Program Consistency

- A. State Density Bonus Law provides that it shall not be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Cal. Public Resources Code § 30000 et seq.), and further provides that the granting of a density bonus or an incentive shall not be interpreted, in and of itself, to require a local coastal plan amendment.
- B. ~~For a~~Development within the coastal zone, ~~any requested~~ that is granted a density bonus, incentive(s), waiver(s), parking reduction(s), or commercial development bonus shall be consistent with ~~all applicable~~ the coastal resource protection policies, and where applicable, the public access requirements of the certified Carlsbad Local Coastal Program, ~~with the exception of density.~~

#### 2. Section 21.86.080 Review Procedures

[. . .]

- A. Eligibility for Density Bonus, Incentive(s), Parking Reduction, and/or Waiver(s) for a Housing Development. To ensure that an application for a housing development conforms with the provisions of State Density Bonus Law and the Coastal Act, the staff report presented to the decision-making body shall state whether the application conforms to the following requirements of state law as applicable:
  - 1. through 7. [no change in text]
  - 8. If the housing development is in the coastal zone, the development requested density bonus and any requested incentive(s), waiver(s), or parking reduction(s) are ~~is~~ consistent with all applicable the coastal resource protection policies, and where applicable, the public access requirements of the certified Carlsbad Local Coastal Program, ~~with the exception of density.~~
- B. If a commercial development bonus is requested for a commercial development, the decision-making body shall make a finding that the development complies with all of the requirements of Subsection 21.86.110(C), that the city has approved the partnered housing agreement, and that the commercial development bonus has been mutually agreed upon by the city and the commercial developer. If the project is in the coastal zone, the decision-making body shall also find that the commercial development ~~bonus~~ is consistent with all applicable the coastal resource protection policies, and where applicable, the

public access requirements of the certified Carlsbad Local Coastal Program, ~~with the exception of density.~~

## **IV. FINDINGS FOR REJECTION OF THE CITY OF CARLSBAD IMPLEMENTATION PLAN AMENDMENT, AS SUBMITTED**

### **A. AMENDMENT DESCRIPTION**

The City of Carlsbad proposes to repeal and replace Chapter 21.86 of its Zoning Ordinance (Municipal Code), part of the certified IP, to make the City's regulation of density bonuses consistent with recent changes in state law. The proposed revisions will incorporate by reference the definitions, thresholds, and standards in Government Code Section 65915 and sequence and will detail application requirements and the review process for projects proposing affordable housing units in exchange for increased density and various incentives, waivers, and concessions.

### **B. SUMMARY FINDINGS FOR REJECTION**

The Commission is tasked with encouraging affordable housing while ensuring that coastal resources and public access are protected. The City's proposed language could discourage affordable housing in the coastal zone by requiring density bonus projects to comply with all technical requirements of the IP, even if those requirements do not protect coastal resources or public access at a particular site.

### **C. 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. As described in Section 21.86.010 of the proposed IP, the purpose and intent of the City's density bonus regulations are to promote the construction and facilitate the development of affordable housing. The ordinance implements the state density bonus law and the Housing Element of the City's General Plan.

b) Major Provisions of the Ordinance. The ordinance repeals and replaces Chapter 21.86. These revisions are proposed in response to changes made by Assembly Bill (AB) 1763, which became effective on January 1, 2020. Since the subject amendment request was filed by Commission staff in November 2020, the density bonus law has been further amended by AB 2345, which became effective on January 1, 2021. The major changes to the Government Code from AB 1763 and AB 2345 include: (1) the maximum density bonus for mixed income developments was increased from 35% to 50%; (2) housing projects with 100% affordable units are now allowed a density bonus of up to 80%; and (3) for 100% affordable housing developments that are located within a half mile of a major transit stop, there are no restrictions on density, the height may be increased up to 33 feet or three stories above existing height limits, and there are no parking requirements.



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The major changes in the proposed Chapter 21.86 (Density Bonus) include the following:

- Section 21.86.20 replaces various definitions (e.g., “public transit”) with a reference to the definitions in the Government Code.
- Sections 21.86.30 and 21.86.060 replace the density bonus eligibility standards, requirements, and allowances with references to the Government Code.
- Section 21.86.040 details the application requirements for requests for a density bonus and any incentive(s), waiver(s), parking reduction, child care facility, condominium conversion, or commercial development bonus allowed by the Government Code.
- Section 21.86.070 maintains the existing language providing that density law provisions shall not be construed to supersede or in any way lessen the effect of application of the Coastal Act. It further clarifies that, for development within the coastal zone, any requested density bonus, incentive(s), waiver(s), parking reduction(s), or commercial development bonus shall be consistent with all applicable requirements of the certified LCP, with the exception of density.
- Section 21.86.080 provides review procedures as well as standards for denying a requested incentive or waiver. To ensure that an application conforms with the provisions of the Government Code and the Coastal Act, the staff report shall state, among other requirements, whether the application is consistent with all applicable requirements of the certified LCP, with the exception of density.

c) Adequacy of the Ordinance to Implement the Certified LUP Segments. As noted above, 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. The most applicable LUP policies are as follows:

### Habitat Management Plan

Policy 7-1 Environmentally Sensitive Habitat Areas (ESHA) states:

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.

Policy 7-8 No Net Loss of Habitat states, in relevant part:

There shall be no net loss of Coastal Sage Scrub, Maritime Succulent Scrub, Southern Maritime Chaparral, Southern Mixed Chaparral, Native Grassland, and Oak Woodland within the Coastal Zone of Carlsbad.

Policy 7-11 Buffers and Fuel Modification Zones states, in relevant part:

Buffers shall be provided between all preserved habitat areas and development. Minimum buffer areas 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, maritime succulent scrub, southern mixed chaparral, native grassland, oak woodland).

The City of Carlsbad's certified Mello I and Mello II LUPs also include the above-cited language of Policies 7-1, 7-8, and 7-11.

### Mello II

Policy 1-1 Allowable Land Uses states:

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

Policy 7-10 Parking states:

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

Policy 8-1 Site Development Review states:

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.

The City of Carlsbad's certified Mello I LUP also includes the above-cited language of Policy 7-10.

### East Batiquitos Lagoon

Policy 3 Environmentally Sensitive Habitats states, in relevant part:

The environmentally sensitive habitats (wetlands, riparian areas, and areas greater than 25% slope) shall be preserved as open space with the following additional requirements: [...]

Policy 6 Scenic and Visual Qualities states, in relevant part:

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. Many of the requirements previously established by this document address visual quality components [...]

### Analysis

The Coastal Act requires the Commission to encourage affordable housing and recognizes its importance (Pub. Resources Code, § 30604(f), (g)). Furthermore, the consideration of residential permits may directly address environmental justice issues (§ 30604(h)). More

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broadly, the encouragement of affordable housing helps maximize public access to the coast (§§ 30001.5(c), 30210). The Government Code also preserves affordable housing in the coastal zone and requires new housing developments to provide affordable housing where feasible (§ 65590 et seq.).

However, the offering of density bonuses to applicants is tempered by the policies of the Coastal Act and relevant LCP provisions. The Government Code directly cites the Coastal Act in that density bonus provisions may not supersede or lessen the “effect or application of the Coastal Act.” (§ 65852.2(l)). The Coastal Act, for its part, allows a limit on the density bonus with findings that the density proposed “cannot feasibly be accommodated on the site in a manner that is in conformity with Chapter 3... or the certified local coastal program” (§ 30604(f)). In short, the Coastal Act and the Government Code work together to encourage 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 and the local government’s certified LCP. In previous LCP submittals regarding density bonus, staff has proposed modifications to further provide notice to applicants of these requirements, including the LCP for the City of Carlsbad (e.g., City of Carlsbad LCPA No. 1-06D (2008); City of Carlsbad LCPA 2-09 Part 1 (2010); City of Santa Cruz LCPA No. 1-06 Part 3 (2009)).

The Carlsbad LCP protects important coastal resources such as habitat, wetlands, riparian areas, views, and provides that parking requirements be compatible with uses. 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. For example, 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. 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. The recent amendments (AB 1763 and AB 2345) will facilitate construction of projects with increased density, height, and in some cases, the allowance of no additional parking requirements, that would have potential to adversely impact coastal resources.

It is therefore important that the City’s density bonus regulations explicitly require density bonus projects to comply with the LCP policies that protect coastal resources and public access. However, as originally proposed by the City, Chapter 21.86 would require any project seeking a density bonus to be consistent with all applicable requirements of the certified LCP. This requirement could render density bonus projects infeasible by requiring a project to comply with all development standards, even when those standards don’t protect coastal resources or public access at a particular site. For example, a proposed density bonus project might request a waiver of the IP’s setback standards in order to accommodate the proposed housing. Even if the City found that the reduced setbacks at a particular site would not impact coastal resources such as habitat, geologic stability, or

public views, the proposed amendment would prevent the City from approving the housing development because it would be inconsistent with the IP's setback requirements. Thus, the proposed language could have the unintended consequence of discouraging affordable housing in the coastal zone.

## **V. FINDINGS FOR APPROVAL OF THE CITY OF CARLSBAD IMPLEMENTATION PLAN AMENDMENT, IF MODIFIED**

The suggested modifications would clarify that a density bonus project shall be consistent with the coastal resource protection and, if applicable, the public access requirements of the LCP. Additionally, the City staff report presented to the decision-making body will be required to find, among other requirements, that the housing development is consistent with these specific requirements of the certified LCP. Commission staff therefore expects that future density bonus projects will be thoroughly analyzed by the City for consistency with the coastal resource and public access protection policies in the LCP, and any approvals will be based on substantial evidence of this LCP consistency as described in City staff reports. 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. Thus, the modified language will enable density bonus projects to be implemented in the coastal zone while avoiding impacts to coastal resources and public access.

The proposed amendments cross-reference sections in the Government Code that, for the most part, describe application requirements for the developer proposing a density bonus project. The Government Code provisions are largely procedural and do not affect coastal resources. Furthermore, the Coastal Act itself cross-references the density bonus provisions in the Government Code. While the Commission does not typically authorize language that would automatically incorporate changes into an LCP without an LCP amendment, in this limited circumstance, staff recommends certification of the cross-references as well as the overall amendment as modified. Additionally, as discussed above, the Coastal Act, the Government Code, and particular LCP provisions work in tandem to ensure a density bonus project avoids impacts to coastal resources.

## **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 responsibility to prepare an EIR for each LCP submission.

The City determined that the subject LCP amendment is exempt from environmental review pursuant to CEQA Section 15061(b)(3) [no potential for causing a significant effect on the environment]. Nevertheless, the Commission is required in an LCP submittal or, as in this case, an LCP amendment submittal, to find that the LCP, or LCP, as amended,

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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 specifies how the City will comply with and implement state law 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 CEQA.