

**CALIFORNIA COASTAL COMMISSION**

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# F13b

## ADDENDUM

August 9, 2021

**To:** Commissioners and Interested Persons

**From:** California Coastal Commission  
San Diego Staff

**Subject:** Addendum to **Item F13b**, Coastal Commission Local Coastal Program Amendment No. **LCP-6-SAN-20-0045-2 (Inclusionary Housing Regulations)**, for the Commission Meeting of August 13, 2021

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The purpose of this addendum is to amend one of the suggested modifications addressing off-siting criteria for affordable housing, and to respond to a letter of opposition submitted. In working with Commission staff, City staff provided alternative language that staff has evaluated and determined will ensure that when affordable housing is located offsite of the primary market rate units, the affordable units must be located in an area that has adequate services, expanding access to the coast and discouraging segregation. Item No. 5 below, shows that Suggested Modification No. 2 in the original staff report should be deleted and the strike-out/underline changes shown are to the City's proposed language.

In addition, Suggested Modification No. 1 in the staff report accidentally included part of the City's proposed amendment language, incorrectly making it appear as if staff is recommending that language change in the suggested modification. The revised suggested modification below correctly displays the additional text staff is recommending be added as underlined.

All other underlined sections represent language that staff suggests be added to the original staff report, and the ~~struck-out~~ sections represent language which staff suggests be deleted from the staff report.

It is staff's understanding that with the below revisions, the City amenable to all of the suggested modifications.

1. On Page 3 of the staff report, the second paragraph shall be changed as follows:

Therefore, suggested modifications add location criteria for affordable units constructed outside of the same community planning area and farther than one

mile of the primary market-rate development. The suggested modification lists ~~three~~ four criteria that the off-site location must meet, ~~for transit, employment, education, and community income level, as well as the variables that are to be looked at in determining whether~~ the community resources available are these criteria are comparable between the primary market rate development location and the off-site affordable housing. These criteria are based in part on the California Tax Credit Allocation Committee's (CTCAC) Opportunity Area map that analyzes every region of the state based on the identified economic, environmental, education, and health criteria determined to be most integral to the success of low income families, identical to the certified LCP's current requirements for affordable housing constructed under the density bonus provisions and will ensure that the inclusionary housing affordable units are not concentrated in less desirable areas of the City.

2. On Page 5 of the staff report, a new Exhibit No. 2 shall be added as follows:

Exhibit No. 2 – Letter of Opposition

3. On Page 5 of the staff report, add a new section titled “Substantive Permit Files” as follows:

SUBSTANTIVE PERMIT FILES

- Keyser Marston Assoc., Proposed Amendments to the City of San Diego Inclusionary Affordable Housing Ordinance Economic Feasibility Analysis

4. On Page 8 of the staff report, Suggested Modification No. 1 shall be corrected as follows to accurately show the staff recommended text additions to the City's proposal as underlined:

Section 142.1302 When Inclusionary Affordable Housing Regulations Apply

This Division applies to all residential development of 10 or more dwelling units outside of the Coastal Zone, five or more dwelling units within the Coastal Overlay Zone, and to all condominium conversion development of two or more dwelling units, except as provided in Section 142.1303. The requirements of this Division shall not be cumulative to state or other local affordable housing requirements where those dwelling units are subject to an affordability restriction recorded against the property by the state or local agency. To the extent that state or local regulations are inconsistent with the requirements of this Division for the amount of the fee, length of the restriction or the level of affordability, the more restrictive shall apply.

5. On Pages 8-9 of the staff report, Suggested Modification No. 2 shall be replaced with the following:

Section 142.1305 Methods of Compliance

- a. The requirement to provide inclusionary dwelling units may be met in any of the following ways:

[...]

3. On different premises from the development that does not meet the locational criteria in Section 142.1305(a)(2) but within the City of San Diego, if the applicant provides five percent more inclusionary dwelling units than required for the development pursuant to Section 142.1304(a) or Section 142.1304(b) receiver site is within a Transit Priority Area in an area identified as a High or Highest Resource California Tax Credit Allocation Committee (CTCAC) Opportunity Area and the community planning area has less than 5 percent of its existing housing units as covenant-restricted very low, low, or moderate units.

[Original Suggested Modification #2 below shall be deleted.]

~~3. On different premises from the development that does not meet the locational criteria in Section 142.1305(a)(2) but within the City of San Diego, if the applicant provides five percent more inclusionary dwelling units than required for the development pursuant to Section 142.1304(a) or Section 142.1304(b), subject to the following criteria:~~

- ~~i. The location of the off-site affordable dwelling units will provide comparable or superior access to transit. Factors to be considered include, but are not limited to, the number, frequency, and destination of transit routes within one-half mile of the development;~~
- ~~ii. The location of the off-site affordable dwelling units will provide comparable or superior access to employment opportunities. Factors to be considered include, but are not limited to, distances and transit availability to regional centers, subregional employment areas and industrial areas;~~
- ~~iii. For non-age restricted development, the location of the off-site affordable dwelling units will provide comparable or superior access to schools. Factors to be considered include, but are not limited to, the number of schools, the educational levels of the schools, whether the schools are private or public, whether the schools are vocational, and the travelling distances between the schools and the development; and~~

~~iv. The off-site affordable dwelling units are located in a census tract with an average income level that is no more than 5% lower than the census tract of the development.~~

6. On Pages 17-18 of the staff report, the final paragraph shall be corrected as follows:

As modified by Suggested Modification No. 1, the threshold for projects subject to the inclusionary housing regulations would be five dwelling units in the coastal zone; an increase over the existing two units, but fewer than the ten units proposed by the City. The five-unit threshold is appropriate for several reasons. In the context of past Commission action on other nearby jurisdictions LCP amendments to their inclusionary housing regulations, the Commission recently certified the City of Carlsbad's amendment with a seven-unit threshold (LCP-6-CAR-20-0033-1), while the City of Oceanside was certified with a three-unit threshold (LCP-6-OCN-20-0091-4). Thus, a five-unit threshold for the City of San Diego would be firmly within the range of past Commission action and consistent with other coastal cities in San Diego County. Furthermore, the five-unit threshold promotes greater internal consistency within the City's LCP, as the similar affordable housing density bonus regulations have a threshold of projects located in zones that allow five or more dwelling units. Finally, five dwelling units more closely resembles the character of residential development within the City's coastal zone and would more effectively apply to greater development projects while allowing the smallest of residential projects, such as single family, duplex, and triplex projects, to not be overly burdened by the requirement to provide affordable housing.

7. On Page 18 of the staff report, the second paragraph shall be changed as follows:

Regarding the ability of developers to site the required affordable units off site from the primary market-rate development, Commission staff worked with City staff to identify off-site criteria that would focus the location of off-site affordable housing in high community resource areas of the City. The language identified in discussions with the City and contained in Suggested Modification No. 2 identify three criteria that must be met in order for a site to be suitable for the affordable housing: the site must be within a Transit Priority Area, defined in the LCP as the area defined in California Public Resources Code Section 21099 or an area within one-half mile of a major transit stop that is existing or planned to be completed during a Transportation Improvement Program timeline; the site must be within the "Highest" or "High" Opportunity Area as mapped by the California Tax Credit Allocation Committee (CTCAC), and the community planning area the site is located in has less than five percent of its existing housing units as covenant-restricted very low, low, or moderate units. As background, in February 2017, the Department of Housing and Community Development (HCD) and the CTCAC convened a group of independent organizations and research centers to create the California Fair Housing Task Force, charged with mapping every

region of the state on economic, environmental, educational, and health characteristics relative to success for low-income families.<sup>1</sup> In the City's coastal zone, the communities of Peninsula, Ocean Beach, Mission Beach, Pacific Beach, La Jolla, University, Torrey Pines, and the entire North City area are mapped as "highest" or "high" opportunity areas.<sup>2</sup> The City has stated that the community planning areas that are wholly or partly in the coastal zone that have less than 5% affordable housing are: Del Mar Mesa, Carmel Valley, Torrey Pines, Torrey Hill, University, La Jolla, Pacific Beach, Mission Beach, Ocean Beach, Peninsula, Via de la Valle, Mira Mesa, Mission Valley, Linda Vista, and Clairemont. The community planning areas that are wholly or partly in the coastal zone that have more than 5% affordable housing are: San Ysidro, Otay Mesa-Nestor, Barrio Logan, Downtown, Midway-Pacific Highway, Torrey Highlands, and Pacific Highlands Ranch.

HCD adopted the map in December 2017 along with policies aimed at increasing low-income housing access to high success areas. The map and methodology are updated annually based on new community data. Because the listed criteria focus the off-site affordable housing close to alternate transit in community planning areas identified as having the lowest inventories of affordable housing while having the highest resources for success, the suggested modification will ensure that when affordable housing is located offsite of the primary market rate units, the affordable housing will be located in an area that has adequate services, expanding access to the coast and discouraging potential segregation. Suggested Modification No. 2 imposes clear siting criteria that mirror the certified siting criteria already contained in the similar affordable housing density bonus regulations in order to avoid the potential environmental justice issue of developers concentrating the affordable units in less desirable segments of the city, such as areas with inferior access to transit, employment, and education or greater exposure to natural or artificial hazards. The suggested modification lists four criteria that the off-site location must address: transit, employment, education, and community income level, as well as the variables that are to be looked at in determining whether those criteria are comparable between the primary market rate development location and the off-site affordable housing. These criteria are an improvement over the City's proposal as submitted because the proposal allows the affordable housing to be placed anywhere else in the City that was not in the same community plan and within the mile of the primary market rate development, so long as the developer provides an additional five percent of affordable dwelling units. However, if in the future the methodology for determining Opportunity Areas changes significantly or the maps cease to be updated in a timely manner, the City should process an LCPA to revise the criteria to ensure the off-site location criteria continue to support these Coastal Act and LCP goals.

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<sup>1</sup> <https://www.treasurer.ca.gov/ctcac/opportunity/2021-hcd-methodology.pdf>

<sup>2</sup> <https://belonging.berkeley.edu/2021-tcac-opportunity-map>

8. On Page 19 of the staff report, a new paragraph shall be added at the top as follows:

Since publication of the staff report, public comment has been received arguing that the current state of inadequate housing in the City, and especially in its coastal zone, is less the result of a lack of inclusionary housing provisions, and more a result of the overall development regulations contained in the certified LCP, such as the thirty-foot coastal height limit (set by voter initiative Proposition D, 1972), and that the Commission should adopt suggested modifications to the City's existing development regulations addressing requirements such as off-street parking, setbacks, floor area ratio, and lot coverage so as to allow and encourage greater densities and multi-family housing (Exhibit 2). While the comment does raise a legitimate issue regarding the long-lasting impact that overly restrictive or exclusionary development regulations can have on a community's pattern of development, the City's existing LCP regulating density and residential uses is comprised of dozens of regulations spread over several chapters addressing multiple subject areas. The subject LCP amendment is solely an update to the City's existing inclusionary housing regulations. These regulations do not govern development requirements such as off-street parking, setback, heights, or floor area ratio for multi-family developments, and an insufficient nexus exists in the current proposal to substantially alter them. The City has submitted and received certification for several housing-related LCP amendments over the past few years in response to local and state efforts to address the state's acute housing shortage, and several more such amendments, addressing such topics as accessory dwelling units and lower parking standards, are expected in the coming months and years. The Commission will continue to review these amendments to ensure that the final certified language is in conformance with the Coastal Act's and certified LUPs' requirements to concentrate development in urbanized areas, minimize vehicle miles traveled, foster public transit, and promote affordable, balanced communities.

With regard to the commenter's assertion that the Commission does not have the authority to address affordable housing, the Commission is empowered not only to encourage affordable housing in the coastal zone but entrusted to protect lower-income groups in a number of ways, most recently, via environmental justice provisions (§§ 30013, 30107.3, 30301(f), 30604(h)) but also by long tradition, maximizing access for all people (§ 30210) and protecting and promoting lower-cost, visitor serving accommodations (§§ 30213, 30607.8). In turn, there's no question a local jurisdiction may implement inclusionary housing policies as part of its authority to regulate land use, as decided by the California Supreme Court. (See *Cal. Building Industry Assn. v. City of San Jose* (2015) 61 Cal.4th 435.) The Commission appreciates that the City of San Diego submitted this amendment as part of its efforts to create affordable housing and recognizes this increasingly important land use.

Like other land use regulations, inclusionary policies must abide by criteria established through case law on regulatory takings. As the City's economic feasibility analysis states, requirements must not be "confiscatory," and may not deprive property owners of a fair and reasonable return.<sup>3</sup> What is a reasonable rate of return? The threshold of five units derives from density bonus law (Gov. Code, § 65915(i).) While a local government may allow a lower threshold (see § 65915(n)), the City's feasibility study noted that inclusionary housing requirements may have a disproportionate impact on smaller developments, because there are fewer market-rate units available to spread the impact created by the income and affordability standards.<sup>4</sup> It's been observed in other cities that developers have not taken advantage of the smaller threshold even when they could.<sup>5</sup> Understandably, given the math. A developer proposing ten units would incur, more or less, ten percent additional costs by adding the required single affordable unit. At five units, the single unit costs doubles to 20% of the project overall; at two units, the impact more than triples.

Simply stated, the Commission desires a successful outcome: more affordable units in the coastal zone. A minimum of ten units of development to require a single affordable unit effectively exempts, or carves out, the coastal zone, from inclusionary housing requirements; and a two-unit minimum to require a unit is burdensome. Commission staff and City staff discussed this matter at length and reached agreement that a five-unit threshold not only encourages affordable housing in the coastal zone, but is a feasible way to reach that goal.

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<sup>3</sup> See Keyser Marston Assoc., *Proposed Amendments to the City of San Diego Inclusionary Affordable Housing Ordinance Economic Feasibility Analysis*, p. 2, available at [https://www.sandiego.gov/sites/default/files/19059kal\\_-sdhc\\_inclusionary\\_housing\\_economic\\_analysis\\_-\\_final\\_report\\_-\\_06-27-19\\_002.pdf](https://www.sandiego.gov/sites/default/files/19059kal_-sdhc_inclusionary_housing_economic_analysis_-_final_report_-_06-27-19_002.pdf).

<sup>4</sup> *Id.*, p. 4.

<sup>5</sup> City of Santa Rosa Density Bonus Ordinance Update White Paper, p. 33, noting that the City of Napa's smaller than five-unit threshold failed to attract developers.