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THE CITY OF SAN DIEGO

REPORT TO THE PLANNING COMMISSION

DATE ISSUED: September 29, 2006 REPORT NO. PC-06-264

ATTENTION: Planning Commission
Agenda of October 5, 2006

SUBJECT: AFFORDABLE HOUSING DENSITY BONUS REGULATIONS

REFERENCE: Manager's Report Nos. 03-237, 04-127, 05-028, 05-107

SUMMARY

Issue - Should the Planning Commission recommend to the City Council approval of amendments to the Land Development Code related to the City's Affordable Housing Density Bonus Regulations (Chapter 12, Article 6, Division 7; Chapter 14, Article 1, Division 3; and Chapter 14, Article 3, Division 7)?

Staff Recommendations -

1. Recommend that the City Council CERTIFY Supplement to Environmental Impact Report No. 96-0333 (Project No. 63422) and adopt the Findings and Statement of Overriding Considerations.
2. Recommend to the City Council approval of amendments to the Land Development Code and the City's Local Coastal Program related to the City's Affordable Housing Density Bonus Regulations (Chapter 12, Article 6, Division 7; Chapter 14, Article 1, Division 3; and Chapter 14, Article 3, Division 7).

Other Recommendations - Community Planners Committee (CPC) - On February 23, 2005, the CPC voted 11-1 to oppose the staff recommendation and to revise the City's draft Affordable Housing Density Bonus Regulations to not vary from or exceed the requirements of the state required Density Bonus Program. Specifically, the CPC did not support the two City-initiated proposals. The first City-initiated proposal is to provide a 10 percent density bonus incentive for providing required inclusionary housing onsite

rather than paying an in-lieu fee. The second is to increase the state-required density bonus for providing moderate income housing from 5 percent to 20 percent.

Technical Advisory Committee (TAC) - On March 9, 2005 the TAC voted 7-0 to support the staff recommendation with the following additions:

1. Projects that qualify for the proposed 10 percent bonus by satisfying their inclusionary housing requirement onsite be afforded the regulatory incentives available to projects that qualify for state density bonus.
2. The review process for incentives/deviations should be Process Three or less.
3. A new local density bonus category is added for accessible units that meet American National Standards Institute A 117.1 standards.
4. The moderate income condominium category should have the more generous bonus recommended by staff.

Planning Commission - On March 17, 2005, the Planning Commission held a workshop on the draft regulations. A number of questions were asked but no specific direction was given.

Housing Commission - On April 8, 2005, the Housing Commission voted 4-0 to generally support the staff recommendation while expressing the view that the primary goal should be to provide incentives for low- and very-low income housing.

Land Use & Housing Committee (LU&H) - On May 11, 2005, the Committee voted to accept the proposed ordinance and directed staff to prepare the required environmental documentation for Planning Commission and City Council consideration and adoption. LU&H provided the following direction to staff:

1. Answer more completely the Committee's questions regarding use of different approval process levels and differential findings for different elements of the program in order to adequately address community concerns.
2. Direct the Intergovernmental Relations Department to bring state legislation affecting local housing and land use policy to the attention of the Committee for possible review and comment prior to adoption by the state or federal legislatures.
3. Chart and track which projects take advantage of the density bonus program, the number of incentives each uses, where the projects are located, and to what extent they rely on state versus local elements of the program.

Code Monitoring Team (CMT) - On April, 2006, the City of San Diego's (City's) CMT voted to recommend approval of the proposed revisions to the City's Affordable Housing Density Bonus Regulations by a vote of 6-0-1.

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Environmental Review - A Supplement to Environmental Impact Report No. 96-0333 has been prepared for the project in accordance with the California Environmental Quality Act (CEQA).

Fiscal Impact - None with this action.

Housing Impact - The intent of these revisions is to provide incentives to increase the supply of housing affordable to very-low and low-income renters, seniors, and moderate income homeowners in accordance with state law.

BACKGROUND

State law requires cities in California to grant density bonuses and development incentives to residential projects when restrictions are implemented to maintain specified affordability levels. San Diego's Municipal Code includes local regulations intended to fulfill this state requirement.

On January 1, 2003, Assembly Bill (AB) 1866 became effective. The revised bill was intended to increase use of the state density bonus program and increase the supply of affordable housing in the state. Passage of this bill resulted in San Diego's density bonus regulations becoming outdated and partially out of compliance with state law. Therefore, on December 3, 2003, the City Council's Land Use and Housing Committee directed the Planning Department and the City Attorney to make necessary revisions to the City's Affordable Housing Density Bonus Regulations and forward them to the Community Planners Committee, Housing Commission, and Planning Commission for input and recommendations and then to the City Council for adoption.

A draft of that ordinance was prepared for presentation to City Council. However, the presentation to the City Council was postponed when it became apparent that the state density bonus regulations were again being significantly modified at the state level. On January 1, 2005, the second major revision to the state density bonus law in two years, Senate Bill (SB) 1818, became effective. Further, only a few months later, Senate Bill 435, which provided clarifying language related to SB 1818, was approved.

DISCUSSION

The purpose of this draft of the Affordable Housing Density Bonus Regulations is to bring the City's regulations into conformance with state density bonus law. State density bonus law requires that the density bonus be granted ministerially. A project may be granted up to three incentives through Process One based upon the percentage of affordable units in a project and the level of affordability. The incentives may take the form of deviations from development regulations. State law also directs that an applicant proposing a project that uses density bonus, in and of itself, cannot be required to process a land use plan or zoning ordinance amendment. However, applicants requesting deviations to regulations, or changes to land use plans or zoning beyond those permitted through density bonus shall be required to comply with current Land Development Code processes.

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The draft Affordable Housing Density Bonus Regulations in Attachment 1 reflect all of the amendments made to state density bonus law. The following is a summary of significant changes to state density bonus law that have been enacted.

- A new density bonus category was added for moderate income common interest for-sale condominiums and planned unit developments.
- Upon resale of a moderate-income unit developed under the density bonus law, the local government shall recapture both the initial subsidy and a proportionate share of appreciation, unless it conflicts with another funding source or law.
- A new density bonus category was added for projects that donate land to the City and make at least 10 percent of units affordable to very-low-income families.
- The maximum state density bonus was increased from 25 percent to 35 percent. A sliding scale of density bonus was established from 5 percent to 35 percent depending on the proportion of units that will be affordable and at what affordability level they will be provided.
- Rental projects that receive a density bonus must retain a specified number of units at specified affordability levels for 30 years.
- The City must offer up to three incentives to all qualifying projects that request incentives. The number of incentives a project is eligible for depends upon the number (percentage) of affordable units being provided and the income group being targeted.
- The City must offer an additional incentive to qualifying projects that include onsite day care facilities meeting specified conditions.
- Applicants may choose incentives. The City must grant the request unless specific findings are made that granting the request would not be necessary to provide the affordable units or that the requested deviation would have an adverse impact on health, safety, the physical environment, or property listed on the California Register of Historical Resources.
- The revised state law limits parking standards that a city can place on projects seeking a density bonus. Furthermore, a development using density bonus may use tandem or uncovered parking to meet this requirement.
- Density bonus for senior developments also applies to senior mobilehome parks.

On June 9, 2004, LU&H recommended adding a new City category of projects eligible for a density bonus. The intent would be to create an incentive that would encourage developers to satisfy their inclusionary housing requirements onsite, rather than option to pay the in-lieu fee.

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On February 2, 2005, Planning Department and Housing Commission staff returned to LU&H with the draft Affordable Housing Density Bonus Regulations. Staff was directed to seek input from a number of City advisory committees including the Community Planners Committee, the Technical Advisory Committee, the Housing Commission, and the Planning Commission. Staff sought input and recommendations from each of these bodies (see "Other Recommendations" starting on page 1 of this report).

The recommendations made by the CPC and TAC have been analyzed. Staff believes that the CPC recommendation to oppose the City-initiated bonuses for moderate-income for-sale units and construction of inclusionary housing onsite would likely remove both the incentive to provide housing in the moderate-income category and the incentive to construct inclusionary housing onsite. Staff believes the two City-initiated amendments to the state density bonus law would result in additional affordable housing units, and in the case of the onsite building bonus, those affordable housing unit would be developed more rapidly than they would through collection of in-lieu fees.

The TAC made four recommendations, some which staff believes would expand the scope beyond the goal of fostering more affordable housing construction. The first recommendation, that the onsite density bonus also include the regulatory incentives afforded the state density bonus categories, is not recommended because it would dilute the incentive of providing additional affordable housing (beyond that required by the Inclusionary Housing Regulations) through the density bonus regulations. The second and third recommendations, that a review process for deviations be a Process Three and that a separate category of density bonus be developed for accessible units, has a twofold response. First, projects utilizing density bonus would be entitled to up to three deviations/incentives ministerially, beyond those three, the project would be subject to the findings and requirements of the Planned Development Permit which is a Process Four. Second the lowering of a decision level for deviating from citywide zoning regulations and addressing the need for accessible living units should be considered citywide and not in a piecemeal fashion for only for certain project types. The fourth recommendation, that the density bonus for moderate income housing be increased has been incorporated into the draft regulations. A City-initiated amendment proposes the minimum density bonus for providing moderate income for-sale housing be increased from 5 percent to 20 percent.

Staff returned to LU&H on May 11, 2005, to request that the Committee recommend the proposed amendments to the Planning Commission and City Council. LU&H provided direction to staff in three areas: clarify the findings and processes, become involved in state housing and land use legislation early on, and chart and track projects that utilize the density bonus regulations.

Regarding the findings and processes, state law mandates that qualifying projects are entitled to up to three incentives, to be granted ministerially, unless findings are made that the incentives are not needed to make the project affordable or that the project would result in specified adverse impacts. Projects requesting to deviate from regulations beyond the three ministerial incentives allowed through density bonus would be required to process a Planned Development Permit

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(Process Four) as would other projects requesting to deviate from development regulations. The second and third recommendations (early involvement in state housing and land use legislation, and charting and tracking projects using the density bonus program) are operational and administrative functions that can be accomplished.

Staff has incorporated two City-initiated amendments into the draft Affordable Housing Density Bonus Regulations that are in addition to those required by the state. At the direction of LU&H staff has included a density bonus incentive for projects that satisfy their required inclusionary housing requirement onsite rather than through payment of an in-lieu fee. The "onsite building bonus" would provide a 10 percent density bonus, to be approved ministerially, to applicants that agree to satisfy their inclusionary housing requirement onsite. An applicant could apply for both the state density bonus and the onsite building bonus up to a maximum allowable density bonus of 35 percent as allowed per state law, without processing a rezone or community plan amendment to increase the density on a site.

The second City-initiated amendment would increase the density bonus for projects that provide 10 percent of the onsite units to moderate income homebuyers within common interest developments. The Housing Commission and the City Planning and Community Investment Department believe that the state's minimum requirement a of 5 percent density bonus provided for moderate-income ownership units in the state legislation is not sufficient to offset the cost of providing affordable units in San Diego due to the region's high costs and is therefore not a viable incentive. Since cities do have the option of offering a more generous density bonus ratio than that required by the state, it is recommended that in San Diego, the basic density bonus for moderate-income projects be increased to 20 percent. An applicant could apply for this bonus and the state density bonus up to a maximum allowable density bonus of 35 percent as allowed per state law, without processing a rezone or community plan amendment to increase the density on a site.

Due to the complexity of the state density bonus regulations, the Housing Commission has drafted a procedures manual. This manual will be for the use of potential density bonus applicants to explain the procedures and requirements for each of the categories. The manual contains information regarding application procedures, agreements, restrictions, affordability requirements, development incentives, rents and for-sale prices, information on the interaction/relationship between the proposed onsite building bonus and state density bonus provisions, and Housing Commission fees for administering the program.

The ordinance approving the amendments to these regulations will be crafted to allow implementation in those areas of the City outside the Coastal Overlay Zone 30 days after the second reading at City Council. Implementation in areas within the Coastal Overlay Zone will become effective upon the unconditional certification of the regulations by the California Coastal Commission.

CONCLUSION

Staff recommends approval of the proposed draft Affordable Housing Density Bonus Regulations in accordance with state law with the addition of the two City-initiated density bonus incentives.

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ALTERNATIVES

1. Adopt the state-mandated density bonus regulations and deny or modify the City-initiated density bonus incentives.
2. Deny and/or modify the state mandated provisions of the draft Affordable Housing Density Bonus Regulations. This action would cause the regulations to be out of compliance with state law.

Respectfully submitted,

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Attachment: Draft Affordable Housing Density Bonus Regulations

REGULATIONS RELATED TO AFFORDABLE HOUSING DENSITY BONUS

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Article 3: Supplemental Development Regulations**Division 7: Affordable Housing Density Bonus Regulations***(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)***§143.0710 Purpose of Affordable Housing Density Bonus Regulations**

The purpose of these regulations is to provide increased residential *density* to developers who guarantee that a portion of their residential *development* will be available to *moderate income, low income, very low income*, or senior households. The regulations are intended to materially assist the housing industry in providing adequate and affordable shelter for all economic segments of the community and to provide a balance of housing opportunities for *moderate income, low income, very low income*, and senior households throughout the City. It is intended that the affordable housing *density* bonus and any additional *development* incentive be available for use in all residential *development* of five or more units, using criteria and standards provided in the Progress Guide and General Plan, as defined by the San Diego Housing Commission; that requests be processed by the City of San Diego, and that they be implemented by the President and Chief Executive Officer of the San Diego Housing Commission. It is also intended that these regulations implement the provisions of California Government Code Sections 65915 through 65918.

§143.0715 When Affordable Housing Density Bonus Regulations Apply

This division applies to any residential *development* of five or more pre-*density* bonus *dwelling units* where an *applicant* proposes *density* beyond that permitted by the applicable zone in exchange for either of the following as set forth in this division:

- (a) A portion of the total *dwelling units* in the development being reserved for *moderate, low, or very low income* households or for senior citizens through a written agreement with the San Diego Housing Commission; or
- (b) The donation of land.

§143.0720 Density Bonus in Exchange for Affordable Housing Units

- (a) A *development* shall be entitled to a *density* bonus and incentives as described in this division, for any residential *development* for which an agreement, and a deed of trust securing the agreement, is entered into by the *applicant* and the President and Chief Executive Officer of the San Diego Housing Commission. The agreement and deed of trust in favor of the San Diego Housing Commission are to be recorded in the Office of the Recorder of the County of San Diego as an encumbrance against the *development*.

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- (b) The density bonus units authorized by this division shall be exempt from the Inclusionary Housing Regulations set forth in Chapter 14, Article 2, Division 13.
- (c) A rental *density* bonus agreement shall utilize the following qualifying criteria consistent with the procedures established by the San Diego Housing Commission:
 - (1) Housing for senior citizens - The *development* consists of housing for senior citizens or qualifying residents as defined under California Civil Code Section 51.3 and 51.12, where at least 35 *dwelling units* are provided; or a mobilehome park that limits residency based on age requirements for housing for older persons pursuant to California Civil Code Section 798.76 or 799.5.
 - (2) Affordable housing units -
 - (A) *Low income* - At least 10 percent of the pre-*density* bonus units in the *development* shall be affordable, including an allowance for utilities, to *low income* households at a rent that does not exceed 30 percent of 60 percent of area median income, as adjusted for assumed household size; or
 - (B) *Very low income* - At least 5 percent of the pre-*density* bonus units in the *development* shall be affordable, including an allowance for utilities, to *very low income* households at a rent that does not exceed 30 percent of 50 percent of the area median income, as adjusted for assumed household size.
 - (C) The affordable units shall be designated units, be comparable in bedroom mix and amenities to the market-rate units in the *development*, and be dispersed throughout the *development*.
 - (3) The *dwelling units* shall remain available and affordable for a period of at least 30 years or longer as may be required by other laws.
- (d) A for-sale *density* bonus agreement shall utilize the following qualifying criteria consistent with the procedures established by the San Diego Housing Commission:
 - (1) For-sale density bonus shall only be available to common interest *development*, as defined by California Civil Code Section 1351, where at least 10 percent of the pre-*density* bonus units in the *development*

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shall be initially sold and affordable to *moderate income* households at a price that is affordable to families earning 110 percent of the area median income as adjusted or assumed household size, as determined by the San Diego Housing Commission, and where all of the *dwelling units* are offered to the public for purchase.

- (2) Prior to, or concurrent with, the sale of each *density* bonus affordable unit, the *applicant* shall require the buyer to execute and deliver a promissory note in favor of the San Diego Housing Commission.
- (3) Each for-sale unit shall be occupied by the initial owner at all times until the resale of the unit.
- (4) Upon the first resale of a unit the seller shall comply with all conditions regarding the sale of a unit, as applied by the San Diego Housing Commission, and as set forth in California Government Code Section 65915(c)(2).
- (5) The affordable units shall be designated units, be comparable in bedroom mix and amenities to the market-rate units in the *development*, and be dispersed throughout the *development*.
- (e) The *density* bonus units shall have recorded against them a Declaration of Covenants, Conditions and Restrictions in favor of the San Diego Housing Commission that shall enjoy first lien position and shall be secured by a deed of trust that may be recorded against the project or unit, as applicable, prior to construction or permanent financing.
- (f) Provision shall be made by the San Diego Housing Commission for certification of eligible tenants and purchasers, annual certification of property owner compliance, payment of a monitoring fee to the San Diego Housing Commission, as adjusted from time to time, for monitoring of affordable unit requirements, and any other terms that the San Diego Housing Commission determines are needed to implement the provisions and intent of this division and State law.

§143.0725 Density Bonus Provisions

A *development* proposal requesting an affordable housing *density* bonus is subject to the following:

- (a) For senior citizen housing meeting the criteria of Section 143.0720(c)(1), the *density* bonus shall be 20 percent.

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- (b) For *development* that includes affordable housing, pursuant to the Inclusionary Housing Regulations in Chapter 14, Article 2, Division 13, and that affordable housing is located onsite, that *development* shall be entitled to a *density* bonus, equal to the number of affordable units provided onsite, up to a maximum of 10 percent of the pre-*density* bonus units. The increased *density* shall be in addition to any other increase in *density* allowed in this division, up to a maximum combined *density* increase of 35 percent.
- (c) For development meeting the criteria for *low income* in Section 143.0720(c)(2)(A), the *density* bonus shall be calculated as set forth in Table 143-07A. The increased *density* shall be in addition to any other increase in *density* allowed in this division, up to a maximum combined *density* increase of 35 percent. For *development* meeting the same criteria within the Centre City Planned District, the bonus shall apply to the maximum allowable *floor area ratio* applicable to the *development* consistent with Section 151.0310(e).
- (d) For *development* meeting the criteria for *very low income* in Section 143.0720(c)(2)(B), the *density* bonus shall be calculated as set forth in Table 143-07B. The increased *density* shall be in addition to any other increase in *density* allowed in this division, up to a maximum combined *density* increase of 35 percent. For *development* meeting the same criteria within the Centre City Planned District, the bonus shall apply to the maximum allowable floor area ratio applicable to the *development* consistent with Section 151.0310(e).
- (e) For *development* meeting the criteria for *moderate income* in Section 143.0720(d), the *density* bonus shall be calculated as set forth in Table 143-07C. The increased *density* shall be in addition to any other increase in *density* allowed in this division, up to a maximum combined *density* increase of 35 percent. For *development* meeting the same criteria within the Centre City Planned District, the bonus shall apply to the maximum allowable floor area ratio applicable to the *development* consistent with Section 151.0310(e).
- (f) Where the zone requires that each *lot* be occupied by no more than one *dwelling unit*, the *development* requires a Planned Development Permit.
- (g) If the *premises* is located in two or more zones, the number of *dwelling units* permitted in the *development* is the sum of the *dwelling units* permitted in each of the zones. Within the *development*, the permitted number of *dwelling units* may be distributed without regard to the zone boundaries.
- (h) Where the *development* consists of two or more specifically identified parcels, whether contiguous or noncontiguous, the maximum number of *dwelling units* permitted on each parcel is calculated based on the area of that parcel.

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- (i) Where the *development* consists of two or more noncontiguous parcels lying within two or more community planning areas, the *dwelling units* reserved at levels affordable by *moderate income*, *low income* or *very low income* households shall be distributed among community planning areas in the same proportion as the total number of *dwelling units* constructed within the *development*.

§143.0730 Density Bonus in Exchange for Donation of Land

An applicant for a tentative map, parcel map, or residential development permit, may donate land to the City for *development* with affordable housing units, in exchange for a *density bonus*, in accordance with California Government Code Section 65915, provided the land to be transferred meets the following criteria:

- (a) The site is at least 1 acre or of sufficient size to permit *development* of at least 40 affordable *dwelling units*;
- (b) The General Plan designation is appropriate for residential *development*;
- (c) The site is zoned to allow for the appropriate residential *development*;
- (d) The site is or will be served by public facilities and infrastructure adequate to serve the *dwelling units*; and
- (e) The land to be transferred is within the boundary of the proposed *development* or, if the City agrees, within one-quarter mile of the boundary of the proposed *development*.

§143.0740 Development Incentives for Affordable Housing Density Bonus Projects

- (a) The City shall grant an incentive requested by an applicant, to the extent allowed by State law and as set forth in this Section.
 - (1) An incentive means any of the following:
 - (A) A deviation to a *development* regulation;
 - (B) Approval of a mixed use *development* in conjunction with the residential development if the commercial, office, or industrial uses will reduce the cost of the residential development; and if the mixed use *development* is compatible with the residential *development*; and if the mixed use *development* is compatible with the applicable land use plan;

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- (C) Any other regulatory deviation proposed by the applicant, other than a waiver from a required permit, which results in identifiable, financially sufficient, and actual cost reductions.
- (2) The granting of an incentive shall not be interpreted, in and of itself, to require a General Plan amendment, zoning change, or other discretionary approval, notwithstanding Planned Development Permit Procedures (Chapter 12, Article 6, Division 6).
- (3) Nothing in this division shall be construed to require the City or any of its related legal entities, including the San Diego Housing Commission, to provide a direct financial incentive, including the provision of land, or the waiver of fees or dedication requirements.
- (4) Upon an *applicant's* request, *development* meeting the requirements of Sections 143.0720(c) or (d) shall be entitled to incentives pursuant to Section 143.0740(b) unless the City makes a written finding based upon substantial evidence, of either of the following:
- (A) The incentive is not required in order to provide for affordable housing costs, as defined in California Health and Safety Code Sections 50052.5 and 50053.
- (B) The incentive would have a specific adverse impact upon health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the *development* unaffordable to *low* and *moderate income* households.
- (b) The following incentives shall be provided through Process One consistent with Tables 143-07A, 143-07B, and 143-07C:
- (1) One incentive for *development* that includes any of the following:
- (A) At least 10 percent of the total units for *low income* households;
- (B) At least 5 percent of the total units for *very low income* households; or
- (C) At least 10 percent of the total units for *moderate income* households in a common interest *development*.

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- (2) Two incentives for *development* that includes any of the following:
- (A) At least 20 percent of the total units for *low income* households;
 - (B) At least 10 percent of the total units for *very low income* households; or
 - (C) At least 20 percent of the total units for *moderate income* households in a common interest *development*.
- (3) Three incentives for *development* that includes any of the following:
- (A) At least 30 percent of the total units for *low income* households;
 - (B) At least 15 percent of the total units for *very low income* households; or
 - (C) At least 30 percent of the total units for *moderate income* households in a common interest *development*.

Low Income Density Bonus
Table 143-07A

Percent <i>Low Income</i> units	Percent Density Bonus	Number of Incentives
10	20	1
11	21.5	1
12	23	1
13	24.5	1
14	26	1
15	27.5	1
16	29	1
17	30.5	1
18	32	1
19	33.5	1
20 – 29	35	2
≥ 30	35	3

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Very Low Income Density Bonus
Table 143-07B

Percent <i>Very Low Income</i> Units	Percent Density Bonus	Number of Incentives
5	20	1
6	22.5	1
7	25	1
8	27.5	1
9	30	1
10	32.5	2
11 - 14	35	2
≥ 15	35	3

Moderate Income Density Bonus
Table 143-07C

Percent <i>Moderate Income</i> Units	Percent Density Bonus	Number of Incentives
10	20	1
11	21	1
12	22	1
13	23	1
14	24	1
15	25	1
16	26	1
17	27	1
18	28	1
19	29	1
20	30	2
21	31	2
22	32	2
23	33	2
24	34	2
25 - 29	35	2
≥ 30	35	3

- (c) Child Care Center: *Development* that meets the criteria in 143.0720 and includes a child care center as defined in Section 141.0606(a)(2) as part of, or adjacent to, such *development* shall be entitled to an additional *density* bonus or incentive provided that:

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- (1) The child care center remains in operation for the greater of 30 years, or the period of time established by Section 143.0720(c)(3);
 - (2) The percentage of children from *low, very low, or moderate income* households attending the child care center is equal to or greater than the percentage of those same households required in the residential *development*;
 - (3) The additional density bonus or incentive requested is either:
 - (A) An additional *density* bonus in an amount equal to the amount of *square feet* in the child care center up to a maximum combined *density* increase of 35 percent; or
 - (B) An additional incentive that contributes significantly to the economic feasibility of the construction of the child care center; and
 - (4) The City finds, based upon substantial evidence, that the community is inadequately served by child care centers.
- (d) Parking: In addition to any other incentive, and upon the request of an *applicant* that proposes a *development* meeting the criteria of Section 143.0720(c) or (d), the City shall apply the following vehicular parking ratio, inclusive of handicapped and guest parking:
- (1) Zero to one bedroom: one onsite parking space
 - (2) Two to three bedrooms: two onsite parking spaces
 - (3) Four and more bedrooms: two and one-half parking spaces
 - (4) For purposes of this division, a *development* may provide onsite parking through tandem parking or uncovered parking, but not through on-street parking.

§143.0750 Development in the Coastal Overlay Zone

- (a) *Development* within the Coastal Overlay Zone that proposes to use the regulations of this division shall be subject to the applicable certified land use plan and implementing ordinances, including a Coastal Development Permit (Chapter 12, Article 6, Division 7), as described in Chapter 13, Article 2, Division 4.

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- (b) The City may consider deviations from the Environmentally Sensitive Lands Regulations in Chapter 14, Article 3, Division I when requested by an *applicant* as an incentive for providing affordable housing consistent with this division, provided that the *findings* in Section 126.0708(b)(2) can be made.

126.0708 Findings for Coastal Development Permit Approval

An application for a Coastal Development Permit may be approved or conditionally approved only if the decision maker makes all of the *findings* in Section 126.0708(a) and the supplemental *findings* in Section 126.0708(b) that are applicable to the proposed *development*.

- (a) [no change]
- (b) Supplemental Findings - Environmentally Sensitive Lands Within the Coastal Overlay Zone
 - (1) When a deviation is requested from the Environmentally Sensitive Lands Regulations because the *applicant* contends that application of the regulations would result in denial of all economically viable use, the following shall apply:
 - (A) Any *development permit* in the Coastal Overlay Zone, required in accordance with Section 143.0110 because of potential impacts to *environmentally sensitive lands* where a deviation is requested in accordance with Section 143.0150 may be approved or conditionally approved only if the decision maker makes the following supplemental *findings* and the supplemental *findings* for deviations from the Environmentally Sensitive Lands Regulations in addition to the *findings* for the applicable *development permit(s)*:
 - (i) Based on the economic information provided by the *applicant*, as well as any other relevant evidence, each use provided for in the Environmentally Sensitive Lands Regulations would not provide any economically viable use of the *applicant's* property;
 - (ii) Application of the Environmentally Sensitive Lands Regulations would interfere with the *applicant's* reasonable investment-backed expectations;
 - (iii) The use proposed by the *applicant* is consistent with the applicable zoning;
 - (iv) The use and project design, siting, and size are the minimum necessary to provide the *applicant* with an economically viable use of the *premises*; and

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- (v) The project is the least environmentally damaging alternative and is consistent with all provisions of the certified Local Coastal Program with the exception of the provision for which the deviation is requested.
 - (B) The Coastal Development Permit shall include a determination of economically viable use.
 - (C) The public hearing on the Coastal Development Permit shall address the economically viable use determination.
 - (D) The *findings* adopted by the decision making authority shall identify the evidence supporting the *findings*.
- (2) A deviation from the Environmentally Sensitive Lands Regulations when requested as an incentive for providing affordable housing pursuant to the Affordable Housing Density Bonus Regulations in Chapter 14, Article 3, Division 7, may be approved or conditionally approved only if the decision maker makes the following supplemental *findings* in addition to the *findings* in Section 126.0708(a)(1) through (4):
- (A) Feasible alternatives to the requested incentive and the effect of such alternatives on coastal resources have been considered;
 - (B) Granting the incentive or alternative will not adversely affect coastal resources.

§141.0310 Housing for Senior Citizens

Housing for senior citizens may be permitted with a Conditional Use Permit decided in accordance with Process Three in the zones indicated with a "C" in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) subject to the following regulations.

- (a) [no change]
- (b) Housing for senior citizens may be permitted a *density* bonus as provided in Chapter 14, Article 3, Division 7 (Affordable Housing *Density* Bonus Regulations).
- (c) through (e) [no change]

000861



THE CITY OF SAN DIEGO
REPORT TO THE CITY COUNCIL

DATE ISSUED: March 22, 2006 REPORT NO: 06-032
ATTENTION: Committee of Land Use and Housing
Agenda of March 29, 2006
SUBJECT: Land Development Code Update Work Program
REFERENCE: CMR 04-048

REQUESTED ACTION:

This is an informational report of the items on the work program for the Land Development Code Update section for Fiscal Year 2006-2007. The LDC update work program is the vehicle for bringing code amendment issues forward related to land use regulations, policies, and procedures. No action is required by the Committee or the City Council at this time.

Categorical Exclusion Request to Coastal Commission

In an effort to simplify the development permit process, this item is a request to pursue a previous (1997) application submitted to the California Coastal Commission that would exempt single family residential from the Coastal Development Permit process under specified conditions. The City's existing CDP requirements seem to have associated unintended consequences in single dwelling unit zones. Due to the time and expense associated with processing a discretionary Coastal Development Permit, many applicants are remodeling existing structures in order to meet the exemptions offered under the current code and thereby avoid the discretionary review process, or where they apply for a CDP they are requesting to maximize the development on the site within the limits of the maximum height and floor area ratio standards. The result has been a drain of staff time to address proposed new development that is out of character in bulk and scale with existing neighborhoods, and to process and investigate controversial remodels based on complex valuation schedules.

The proposed code amendments would remove the existing disincentive for new development by reducing the permit process level from discretionary to ministerial and would instead provide incentives for development that does not maximize bulk and scale for better compatibility with the surrounding neighborhood in the Coastal Overlay Zone. The amendments are anticipated to save the City money on administrative costs as well as to save applicants money on permit costs. Permit costs are often transferred onto home buyers in the purchase price, so this may also contribute to a reduction in housing costs. This amendment would only be applicable to the Coastal Overlay Zone and would require an amendment to the City's Local Coastal Program. Potential stakeholders would primarily include property owners, consultants, community groups, and land use professional associations in the coastal overlay zone, as well as the City and the Coastal Commission. Goal is to obtain Coastal Commission approval by December 2006.

000863

EXECUTIVE SERVICE CORPS

A Division of



ZERO-BASED MANAGEMENT REVIEW

OF THE

CITY OF SAN DIEGO'S

**DEVELOPMENT SERVICES
DEPARTMENT**

August 12, 2004

*A Report by
Nonprofit Management Solutions/Executive Service Corps
For the City Manager and
City Council Select Committee for
Government Efficiency and Fiscal Reform*

Streamline Operations

1. *Implement Resubmittal Tracking Reason Code*
2. *Apply case study analysis to resolve regulation conflicts*
3. *Review Community Planning Group involvement with projects*
4. *Partner with City Manager Optimization Group*
5. *Reduce influence of outside organizations*

Figure 2 – Cover and Portion of Pages 2, 9, 13, 29, 30, 49, and 50 of Zero-Based Management Report of the Development Services Department (Page 1 of 3).

000864

- The many Community Planning Committees can be a major impediment to fast service. For example, although Information Bulletin #620 specifies Community Planning Committees as advisory groups, the Planning Groups can be much more than just advisors to DSD. That Bulletin indicates that applicants are "referred to" and encouraged to make presentations to the Community Planning Committee in the area where the particular property is located. It appears that Community Planning Committees can take advantage of the relationship with DSD and can end up representing a serious detriment to efficient application processing.

Although Bulletin #620 generally specifies time limit requirements for Planning Committee decisions, those time limits can be vague and/or difficult to enforce. This can cause further project delays.

Also, a Community Planning Committee member is typically designated as part of the project team for the DSD. This means the Community Planning Committee is in effect a "partner" with the DSD. Even though Community Planning Committee members receive training on their role in the process, these procedures can cause serious deterrents to project efficiency. In contrast to this "partner" relationship, County Planning Groups are truly "advisors" to County staff. This creates a subtle but important distinction between the two types of planning organizations.

- ≡ Regulations tend to cause delays in processing entitlements due to, a) sometimes conflicting ordinances and jurisdictions of public agencies, b) disputes regarding interpretation and application of regulations, c) mitigation efforts by staff and various boards and commissions, and d) regulations constantly changing and coordinating the implementation of the changes.
- ≡ Community Planning Committees' public input often extends beyond the technical jurisdictions of the committees for some development applications, sometimes with political overtones.
- The application of regulations and timeliness of response to development applications tend to be impacted by the motivation, knowledge and experience of individual DSD staff members.

3) Review Community Planning Group involvement with projects

There are approximately 44 Community Planning Committees (CPC) in the City of

San Diego. Those groups can and do severely influence project efficiency and seem to potentially cast a lethal shadow on the overall planning and development process. As detailed in the Findings section of this report, the planning groups can be a major impediment to fast service. Their scope of authority and influence in large projects seem to be extreme.

The ZBMR Team feels that some degree of service dissatisfaction can result from those groups' involvement and we recommend the basic operating principles for planning groups be reviewed with the direct objective to simplify and contain their effect on the timeliness and quality of development projects. Consideration should be given to establish deadlines for CPC project review and automatic approvals. Also, CPCs should be made "advisors" to the planning process rather than "partners" in the process.

000865

5. Reduce influence of outside organizations.

DSD has been inundated by outside groups investigating various aspects of department operations. In addition to those, a number of public interest groups continually place demands on the department for resources, special projects, and extra resources in general. The ZBMR Team quite frankly can't understand how the department can ever get any work done in the current environment.

We suggest the City Manager let the DSD absorb the vast amount of intelligence

RECOMMENDATIONS:

30

Following are some examples of Regulations including relief suggestions in small or medium sized projects that can cause disproportionate processing cost or time increases unique to San Diego.

2. Single Family Coastal Exemption: Allow a new single-family residence to be constructed in the coastal zone without a discretionary permit, unless it is located on a site that contains environmentally sensitive lands. (Note: this exemption was passed several years ago by council and has been pending before the coastal commission since 1997.) **[Categorical Exemption for Single Family Homes in the Coastal Overlay Zone will Lower Review from Discretionary to Ministerial].**

3. Allow for a change in use for small businesses of 5,000 sq. ft. or less without meeting new parking criteria, except for convenience stores with or without liquor sales.

4. Make tandem-parking allowances uniform throughout the city.

5. Increase density levels on commercial sites being proposed for mixed-use where residential density is limited to 1 du/1500 sq. ft. of lot area. Increasing density to 1 du/800 sq. ft. would make mixed-use more financially feasible. Require discretionary hearing and approval for this density increase. **[The Affordable Housing Density Bonus increase is granted Ministerial].**

6. Make projects subject to PDO's ministerial when they comply with the provisions of the PDO. Currently PDO's spell out detailed design requirements, and even when the project meets all of these specific requirements they must obtain a site development permit and go to a process 3 hearing. **[In general, Lower Review from Discretionary to Ministerial].**

7. Make certain limited uses permitted by right rather than through CUP/NUP (i.e., gas stations in commercial or industrial zones currently require a CUP). **[Lower Review from Discretionary to Ministerial].**

8. Exempt projects that fully comply with environmentally sensitive lands regulations (no deviations being requested) from site development permits. **[Lower Review from Discretionary to Ministerial].**

9. Modify the environmentally sensitive land regulations so that non-native grassland that is outside of the MSCP/MHPA area is no longer regulated.

10. Lower the buffer distances to environmentally sensitive lands for development to within 35 feet from the 100 feet currently required. This means, for example, on lots with a single-family dwelling, a person doing a room add in the front of their house on a lot which backs onto a canyon has to go to a discretionary hearing to do this because the room is within 100 feet of the edge of a canyon. Maybe swimming pools should be exempt from this requirement as well. New development that sets back forty feet from a canyon's edge would also be allowed without a hearing if this change is made. **[Lower Review from Discretionary to Ministerial].**

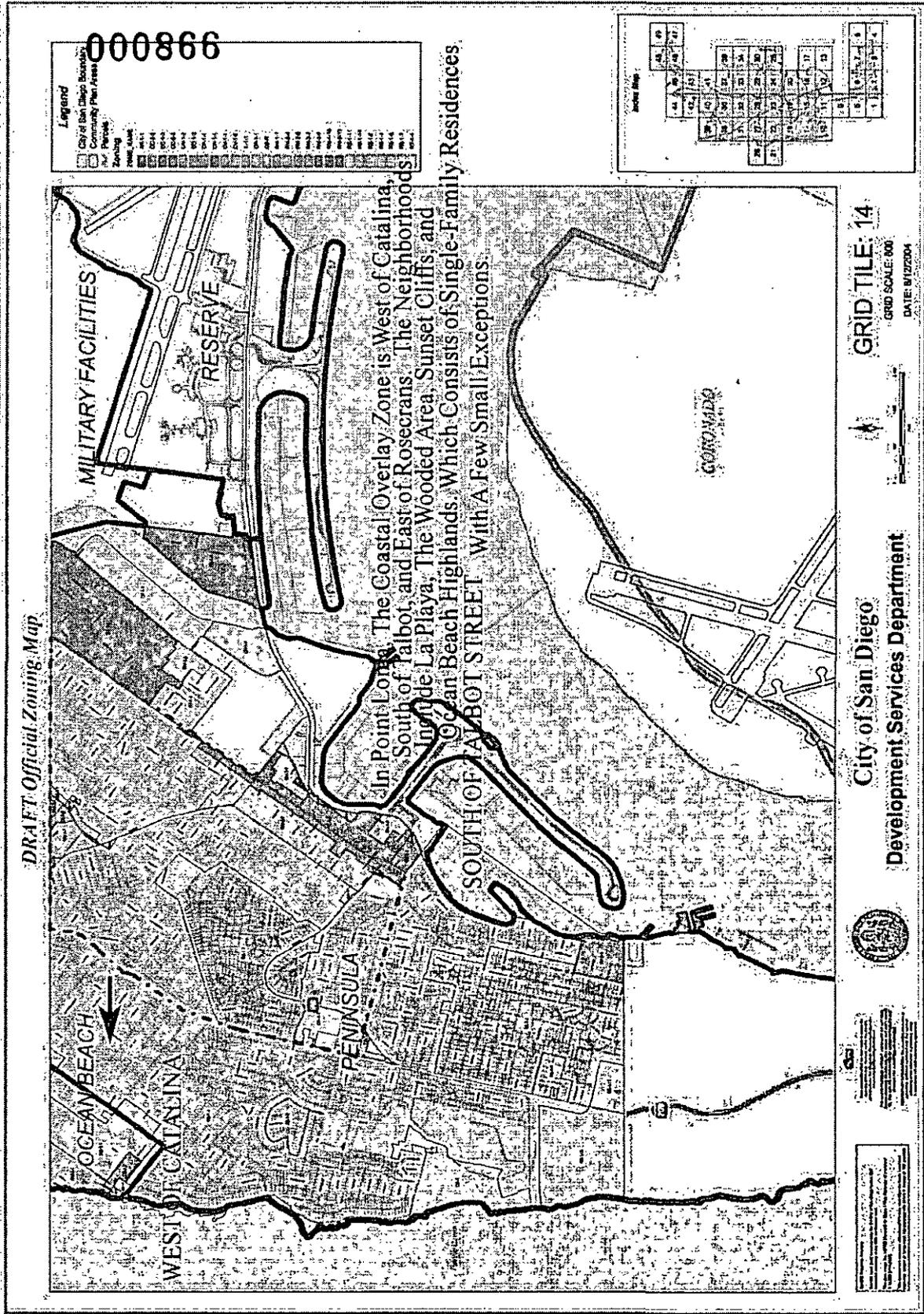


Figure 3 – Portions of Point Loma in the Coastal Overlay Zone are West of Catalina, South of Talbot, and East of Rosecrans. The Zone includes the neighborhoods of La Playa, The Wooded Area, Sunset Cliffs, and Ocean Beach Highlands. The yellow and white area are zoned for single family homes

000867

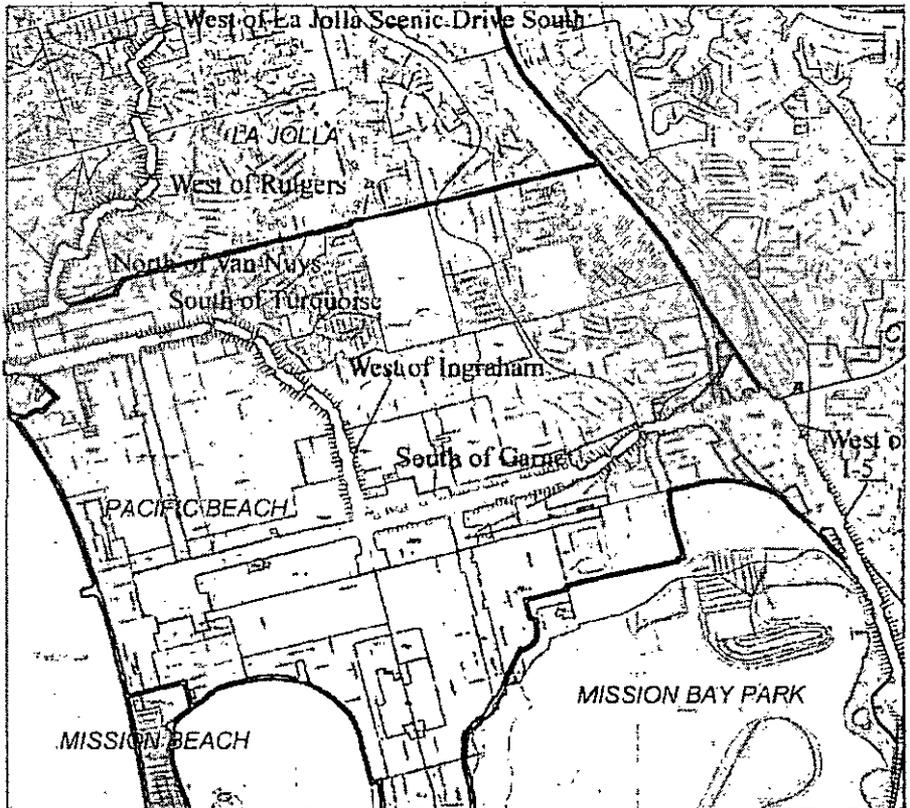
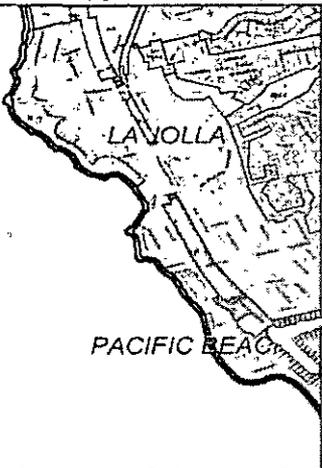
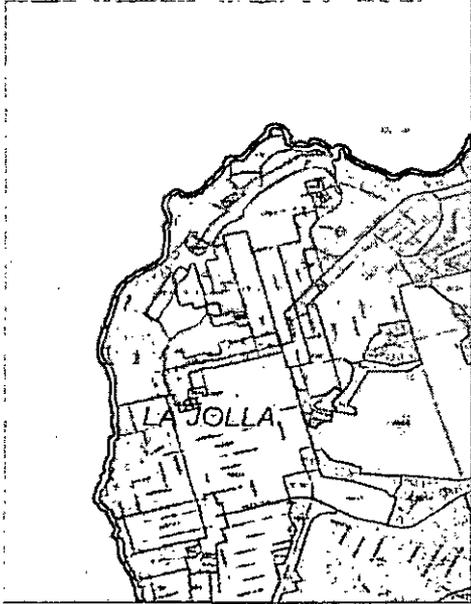


Figure 4 – Portions of La Jolla, Pacific Beach and Mission Beach in the Coastal Overlay Zone are north of Van Nuys, West of Rutgers, West of La Jolla Scenic Drive South, north of Mount Soledad, West of La Jolla Parkway, West of Torrey Pines Road. The yellow and white areas are zoned for single family homes.

000869



Land Development
Review Division
(619) 446-5460

SUPPLEMENT to an ENVIRONMENTAL IMPACT REPORT

Project No. 63422
Supplement to EIR No. 96-0333
SCH No. 96081056

SUBJECT: LAND DEVELOPMENT CODE REVISIONS: Affordable Housing Density Bonus Regulations: Amendments to Chapter 14, Article 3, Division 7, Sections §143.0710 through §143.07560; and Chapter 12, Article 6, Division 75 of the Municipal Code, Section §126.0708504 (1), and Section 141.0310. The regulations are intended to apply city-wide; however, until approved by the Coastal Commission, only the existing State Density Bonus Law would apply in the Coastal Zone.

Applicant: City of San Diego Planning Department.

December 2006 Update:

Clarifications were made to the description of the "No Project Alternative;" however, these clarifications do not affect the analysis or conclusions of the document. The revisions are shown in bold italic strikeout/underline format.

November 2006 Update:

Additional changes were made to the draft Land Development Code (LDC) Revisions to provide further explanation of the parking incentives available for density bonus projects. These revisions are shown in standard double-strikeout/underline format; and the revisions do not affect the analysis or conclusions of the environmental document.

September 2006 Update:

Several changes were made to the draft Land Development Code (LDC) Revisions to provide further clarification. These changes are shaded in the attached revised ordinance. In addition, several LDC Sections were inadvertently cited incorrectly in the environmental document. These corrections are shown in standard strikeout/underline format; and the revisions do not affect the analysis or conclusions of the environmental document.

I. PROJECT DESCRIPTION

The existing and revised density bonus regulations apply to any residential development of five or more pre-density bonus dwelling units where an applicant proposes density beyond that permitted by the existing zone. The applicant must either reserve a portion of the units for moderate, low, or very-low income households, or senior citizens or donate land.

The majority of the proposed Land Development Code (LDC) revisions are intended to implement requirements mandated by State Assembly Bill (AB) 1866, State Senate Bills (SB) 1818 (January 2005) and SB 435, and facilitate the development of affordable housing for very-low and low-income renters, seniors, and moderate income residents within the City of San Diego.

In general, recently adopted state law requires the City to provide up to three regulatory incentives or benefits to applicants for a traditional density bonus based on the percentage of affordable units included as part of the development proposal; it provides additional incentives or concessions to qualifying projects that include on-site day care facilities; it expands the density bonus entitlement option to all common-interest developments (condominium, condominium conversions, and planned-unit developments) which provide for-sale units restricted to moderate income residents; it adds a density bonus category for projects that include the donation of land to the City; it increases the maximum density bonus from 25 percent to 35 percent with a sliding scale of density bonus from 5 percent to 35 percent depending upon the proportion of affordable units; it limits the parking standards required for density bonus projects and allows the use of tandem parking; it changes the length of the affordability requirements; it clarifies that the density bonus for senior development also applies to senior mobilehome parks; and it clarifies that the applicant may only receive one density bonus per project. In addition, and according to the City Attorney, the local proposition, Proposition D, limiting height in the coastal zone would have to yield to the state law mandating density bonuses and incentives. California Government Code Section 65918 specifically states that the density bonus provisions apply to charter cities.

In addition to the new provisions included within state law, the City would offer up to a 10 percent ministerial density bonus to projects that build inclusionary units on-site rather than paying an in-lieu affordable housing fee, and offer an increased density bonus for projects that provide ten percent moderate income ownership units of 20 percent rather than the five percent minimum offered per state law. Please see Attachments 1 (Draft Revised Density Bonus Regulations) & Attachment 2 (Strikeout/Underline Version of the Draft Revised Density Bonus Regulations).

II. ENVIRONMENTAL SETTING: See EIR.

III. DISCUSSION

The City's density bonus regulations were originally adopted in 1981 and were last amended in 1999. The City's existing density bonus regulations were not approved by the Coastal Commission, so state regulations apply in the Coastal Zone. State law supersedes the City's current density bonus ordinance, and staff has been using both current state law and the existing City regulations to review density bonus applications. State law provisions take precedence in the event of a conflict.

Approximately 1000 density bonus units have been produced over the last 20 years within the City of San Diego. With the ordinance revisions, it is anticipated that approximately 50 to 100 density bonus units could be provided per year. As is currently the case, applicants may request additional incentives or community plan amendments for the provision of an increased number of units as well.

The proposed amendments to the EDC would define the parameters specific to the City of San Diego for projects of five or more dwelling units. As is currently the case for all discretionary projects, all new discretionary developments which take advantage of the ordinance provisions would be required to comply with applicable environmental regulations.

Maximum Density

For projects providing the inclusionary units on-site, the maximum ministerial density bonus granted would be ten percent. An applicant could seek an additional 25 percent density bonus, up to a maximum density bonus of 35%, if the state law density bonus regulations are utilized.

For senior citizen housing projects of at least 35 units or a mobilehome park that limits residency based on age requirements for older persons the density bonus would be 20 percent.

For projects providing a donation of land, the density bonus would be granted for a donation of land that could accommodate at least 10 percent of the pre-density bonus units of the proposed development (approximately one acre or of sufficient size to permit the development of at least 40 very low income affordable units). The land must be zoned and have a general plan designation appropriate for residential development, and must be adequately served by public facilities and infrastructure. In addition, the land must be within the boundary of the proposed development or within 1/4 mile of the boundary of the proposed development with City approval. The density bonus would start at a minimum of 15 percent pre-density bonus units or 15 percent of the maximum FAR allowed for projects within Center City Planned District. The density bonus would increase on a sliding scale up to 35 percent for land that could accommodate 30 dwelling units.

For other qualifying projects the new density bonus regulations mandated by state law allow a maximum pre-density bonus of 35 percent (either of units or the maximum FAR allowed for projects within Centre City consistent with LDC Section 151.0310(e)) rather than the 25 percent previously allowed. This increased density could be higher than the density allowed by the underlying zone, community plan, and/or planned district ordinance.

Additional Development Incentives (Section 143.0740)

New state law requires that the City grant an applicant's request for up to three incentives. These incentives may include a deviation from development regulations, the approval of a mixed use development in conjunction with a residential development, or any other regulatory deviation proposed by the applicant or the City which would result in an identifiable, financially sufficient, and actual cost reduction. The mixed-use development of residential and commercial, office, or industrial uses must reduce the cost of the residential development and be compatible with the residential development and the applicable land use plan.

Incentives may not be granted if the City makes written findings that the incentive is not required in order to provide for affordable housing costs, or would have an adverse impact upon health and safety, or the physical environment, or on any property listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. However, the granting of an incentive would not be interpreted, in and of itself, to require a general plan amendment, zoning change, or other discretionary approval. In addition, and according to state law, CEQA only applies to discretionary projects.

Qualified projects that include child care centers under certain conditions would be entitled to either an additional density bonus (of up to a maximum density bonus of 35 percent) or an additional regulatory incentive.

The applicant may also request that the City not require that the vehicular parking ratio, inclusive of handicapped and guest parking, for certain projects not exceeding the ratios shown on page 12 of the strikeout/underline ordinance.

The new density bonus regulations would allow up to three regulatory development incentives based on the number and the affordability of the units provided in a common interest development through a Process One action. Additional incentives may be granted via deviation requests through a Process Three, Site Development Permit (SDP) action, provided that supplemental findings can be made.

Supplemental Findings (Section 126.0504 (1))

The supplemental findings for SDP have been revised to include findings that:

1. The development assist in the redevelopment of blighted areas consistent with an approved redevelopment plan or, as currently written, assist in accomplishing the goal of providing affordable housing opportunities in economically balanced communities throughout the City.
2. The incentive would not have an adverse impact upon the public health, and safety, or upon environmentally sensitive lands.
3. The incentive would not have an adverse impact on historical resources.

Coastal Zone (Section 143.0750)

Affordable Housing Density Bonus projects within the Coastal Overlay Zone would be subject to the applicable certified land use plan and implementing ordinances, including the Coastal Development Permit. However, deviation requests for projects exceeding the 30-foot Proposition D height limit in the Coastal Zone would yield to the state law mandating density bonuses and incentives. Deviation requests from the Environmentally Sensitive Lands Regulations within the coastal zone would require that supplemental findings be made.

Supplemental Findings – Environmentally Sensitive Lands within the Coastal Overlay Zone (Section 126.0708 (b))

The supplemental findings required for requests for deviations from Environmentally Sensitive Lands Regulations have been revised to require that a public hearing on the Coastal Development Permit address the economically viable use determination. (The economically viable use determination is that the use and project design, siting, and size are the minimum necessary to provide economically viable use.) In addition, findings must include that feasible alternatives to the requested incentive and that the effects on coastal resources have been considered and the granting of the incentive or alternative will not adversely affect coastal resources.

It should be noted that the decision maker would not be precluded from denying the project for other reasons.



Land Development
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(619) 446-5460

SUPPLEMENT to an ENVIRONMENTAL IMPACT REPORT

Project No. 63422
Supplement to EIR No. 96-0333
SCH No. 96081056

SUBJECT: LAND DEVELOPMENT CODE REVISIONS: Affordable Housing Density Bonus Regulations: Amendments to Chapter 14, Article 3, Division 7, Sections §143.0710 through §143.07560, and Chapter 12, Article 6, Division 75 of the Municipal Code, Section §126.0708~~504(4)~~, and Section 141.0310. The regulations are intended to apply city-wide; however, until approved by the Coastal Commission, only the existing State Density Bonus Law would apply in the Coastal Zone.

Applicant: City of San Diego Planning Department.

February 2007 Update

Per a subsequent City Attorney opinion, the environmental document has been revised to reflect that implementation of the revised ordinance would not supercede the 30-foot height limit in areas specified by Proposition D. The revised interpretation means that potential visual quality impacts in those areas could be reduced; however, the analysis and conclusions regarding remaining areas would remain the same. The revisions are shown in bold small caps double strikeout/underline format.

A new section (143.0470 (a)(5)) has been added to the draft Land Development Code Revisions to further clarify the requirement to comply with the Coastal Height Limit Overlay Zone.

December 2006 Update:

Clarifications were made to the description of the "No Project Alternative;" however, these clarifications do not affect the analysis or conclusions of the document. The revisions are shown in bold italic strikeout/underline format.

November 2006 Update:

Additional changes were made to the draft Land Development Code (LDC) Revisions to provide further explanation of the parking incentives available for density bonus projects. These revisions are shown in standard double-strikeout/underline format; and the revisions do not affect the analysis or conclusions of the environmental document.

September 2006 Update:

Several changes were made to the draft Land Development Code (LDC) Revisions to provide further clarification. These changes are shaded in the attached revised ordinance. In addition, several LDC Sections were inadvertently cited incorrectly in the environmental document. These corrections are shown in standard strikeout/underline format; and the revisions do not affect the analysis or conclusions of the environmental document.

I. PROJECT DESCRIPTION

The existing and revised density bonus regulations apply to any residential development of five or more pre-density bonus dwelling units where an applicant proposes density beyond that permitted by the existing zone. The applicant must either reserve a portion of the units for moderate, low, or very-low income households, or senior citizens or donate land.

The majority of the proposed Land Development Code (LDC) revisions are intended to implement requirements mandated by State Assembly Bill (AB) 1866, State Senate Bills (SB) 1818 (January 2005) and SB 435, and facilitate the development of affordable housing for very-low and low-income renters, seniors, and moderate income residents within the City of San Diego.

In general, recently adopted state law requires the City to provide up to three regulatory incentives or benefits to applicants for a traditional density bonus based on the percentage of affordable units included as part of the development proposal; it provides additional incentives or concessions to qualifying projects that include on-site day care facilities; it expands the density bonus entitlement option to all common interest developments (condominium, condominium conversions, and planned unit developments) which provide for-sale units restricted to moderate income residents; it adds a density bonus category for projects that include the donation of land to the City; it increases the maximum density bonus from 25 percent to 35 percent with a sliding scale of density bonus from 5 percent to 35 percent depending upon the proportion of affordable units; it limits the parking standards required for density bonus projects and allows the use of tandem parking; it changes the length of the affordability requirements; it clarifies that the density bonus for senior development also applies to senior mobilehome parks; and it clarifies that the applicant may only receive one density bonus per project. In addition, and according to the City Attorney, the local proposition, Proposition D, limiting height in the coastal zone would NOT HAVE TO yield to ~~THE~~ state law mandating density bonuses and incentives BECAUSE THE CITY IS NOT SEEKING TO AMEND THE PORTION OF THE CITY'S LOCAL COASTAL PROGRAM PERTAINING TO PROPOSITION D. ~~CALIFORNIA GOVERNMENT CODE SECTION 65918 SPECIFICALLY STATES THAT THE DENSITY BONUS PROVISIONS APPLY TO CHARTER CITIES.~~

In addition to the new provisions included within state law, the City would offer up to a 10 percent ministerial density bonus to projects that build inclusionary units on-site rather than paying an in-lieu affordable housing fee, and offer an increased density bonus for projects that provide ten percent moderate income ownership units of 20 percent rather than the five percent minimum offered per state law. Please see Attachments 1 (Draft Revised Density Bonus Regulations) & Attachment 2 (Strikeout/Underline Version of the Draft Revised Density Bonus Regulations).

II. ENVIRONMENTAL SETTING: See EIR.

III. DISCUSSION

The City's density bonus regulations were originally adopted in 1981 and were last amended in 1999. The City's existing density bonus regulations were not approved by the Coastal Commission, so state regulations apply in the Coastal Zone. State law supersedes the City's current density bonus ordinance, and staff has been using both current state law and the existing City regulations to review density bonus applications. State law provisions take precedence in the event of a conflict.

Approximately 1000 density bonus units have been produced over the last 20 years within the City of San Diego. With the ordinance revisions, it is anticipated that approximately 50 to 100 density bonus units could be provided per year. As is currently the case, applicants may request additional incentives or community plan amendments for the provision of an increased number of units as well.

The proposed amendments to the LDC would define the parameters specific to the City of San Diego for projects of five or more dwelling units. As is currently the case for all discretionary projects, all new discretionary developments which take advantage of the ordinance provisions would be required to comply with applicable environmental regulations.

Maximum Density

For projects providing the inclusionary units on-site, the maximum ministerial density bonus granted would be ten percent. An applicant could seek an additional 25 percent density bonus, up to a maximum density bonus of 35%, if the state law density bonus regulations are utilized.

For senior citizen housing projects of at least 35 units or a mobilehome park that limits residency based on age requirements for older persons the density bonus would be 20 percent.

For projects providing a donation of land, the density bonus would be granted for a donation of land that could accommodate at least 10 percent of the pre-density bonus units of the proposed development (approximately one acre or of sufficient size to permit the development of at least 40 very low income affordable units). The land must be zoned and have a general plan designation appropriate for residential development, and must be adequately served by public facilities and infrastructure. In addition, the land must be within the boundary of the proposed development or within ¼ mile of the boundary of the proposed development with City approval. The density bonus would start at a minimum of 15 percent pre-density bonus units or 15 percent of the maximum FAR allowed for projects within Center City Planned District. The density bonus would increase on a sliding scale up to 35 percent for land that could accommodate 30 dwelling units.

For other qualifying projects the new density bonus regulations mandated by state law allow a maximum pre-density bonus of 35 percent (either of units or the maximum FAR allowed for projects within Centre City consistent with LDC Section 151.0310(e)) rather than the 25 percent previously allowed. This increased density could be higher than the density allowed by the underlying zone, community plan, and/or planned district ordinance.

Additional Development Incentives (Section 143.0740)

New state law requires that the City grant an applicant's request for up to three incentives. These incentives may include a deviation from development regulations, the approval of a mixed use development in conjunction with a residential development, or any other regulatory deviation proposed by the applicant or the City which would result in an identifiable, financially sufficient, and actual cost reduction. The mixed-use development of residential and commercial, office, or industrial uses must reduce the cost of the residential development and be compatible with the residential development and the applicable land use plan.

Incentives may not be granted if the City makes written findings that the incentive is not required in order to provide for affordable housing costs, or would have an adverse impact upon health and safety, or the physical environment, or on any property listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. However, the granting of an incentive would not be interpreted, in and of itself, to require a general plan amendment, zoning change, or other discretionary approval. In addition, and according to state law, CEQA only applies to discretionary projects.

Qualified projects that include child care centers under certain conditions would be entitled to either an additional density bonus (of up to a maximum density bonus of 35 percent) or an additional regulatory incentive.

The applicant may also request that the City not require that the vehicular parking ratio, inclusive of handicapped and guest parking, for certain projects not exceeding the ratios shown on page 12 of the strikeout/underline ordinance.

The new density bonus regulations would allow up to three regulatory development incentives based on the number and the affordability of the units provided in a common interest development through a Process One action. Additional incentives may be granted via deviation requests through a Process Three, Site Development Permit (SDP) action, provided that supplemental findings can be made.

Supplemental Findings (~~Section 126.0504 (f)~~)

The supplemental findings for SDP ~~have been revised~~ to include findings that:

1. The development assist in ~~the redevelopment of blighted areas consistent with an approved redevelopment plan or, as currently written, assist in~~ accomplishing the goal of providing affordable housing opportunities in economically balanced communities throughout the City.
2. The incentive would not have an adverse impact upon the public health, and safety, or upon environmentally sensitive lands.
3. The incentive would not have an adverse impact on historical resources.

Coastal Zone (Section 143.0750)

Affordable Housing Density Bonus projects within the Coastal Overlay Zone would be subject to the applicable certified land use plan and implementing ordinances, including the Coastal Development Permit. ~~HOWEVER, DEVIATION REQUESTS FOR PROJECTS EXCEEDING THE 30 FOOT PROPOSITION D HEIGHT LIMIT IN THE COASTAL ZONE WOULD YIELD TO THE STATE LAW MANDATING DENSITY BONUSES AND INCENTIVES.~~ Deviation requests from the Environmentally Sensitive Lands Regulations within the coastal zone would require that A SITE DEVELOPMENT PERMIT BE OBTAINED AND supplemental findings be made. DEVIATIONS TO THE HEIGHT LIMIT WITHIN THE COASTAL HEIGHT LIMITATION OVERLAY ZONE/PROPOSITION D AREA WOULD CONTINUE TO BE SUBJECT TO THE CURRENT 30-FOOT HEIGHT LIMIT.

Supplemental Findings – Environmentally Sensitive Lands within the Coastal Overlay Zone (Section 126.0708 (b))

The supplemental findings required for requests for deviations from Environmentally Sensitive Lands Regulations have been revised to require that a public hearing on the Coastal Development Permit address the economically viable use determination. (The economically viable use determination is that the use and project design, siting, and size are the minimum necessary to provide economically viable use.) In addition, findings must include that feasible alternatives to the requested incentive and that the effects on coastal resources have been considered and the granting of the incentive or alternative will not adversely affect coastal resources.

It should be noted that the decision maker would not be precluded from denying the project for other reasons.

Potential Impacts

Visual Quality (Neighborhood Character/Views/Aesthetics)

Significance Criteria

In analyzing a project's potential environmental effects, staff is guided by the City's Significance Determination Thresholds. The Visual Quality section of the Guidelines addresses public views from public spaces, neighborhood character, and aesthetics. While several factors are involved in evaluating potential project impacts in these areas, the effect of bulk and scale is a common theme in all three. For instance, according to the Guidelines, projects that severely contrast with the surrounding community character by substantially exceeding height or bulk regulations, or those that strongly contrast architecturally with existing patterns of development in surrounding areas may result in a significant impact on neighborhood character. Projects that exceed height and bulk regulations and, as a result, substantially block views from public areas (roads, designated open space, etc.) of public resources such as the ocean may be considered to have a significant view impact. Projects with development features that significantly conflict with the height, bulk, or coverage regulations of a zone without also providing architectural interest may result in a significant aesthetic impact.

Impact Conclusion of the LDC EIR

The LDC EIR did not identify significant view or aesthetic impacts, and concluded that significant impacts to neighborhood character would not result from the adoption of the LDC. This conclusion was based on the expectation that future projects would conform to the LDC development regulations. These regulations specify the bulk and scale limits of features that affect neighborhood character, views, and aesthetics, such as building setbacks, lot size, height, and floor area ratio (FAR). In general, these types of limits are identified and applied within each zone or planned district ordinance.

Proposed Project Impact

The density bonus incentives included in the revised ordinance would potentially allow for up to three deviations from the bulk and scale regulations of the underlying zones without requiring the project to process a discretionary permit.. The deviation(s) allowed would be on a case-by-case

basis, and could include deviations from the underlying zone requirements related to height, lot size, FAR, and setbacks. The allowed deviations and additional density could result in structures that are larger and taller than surrounding buildings, closer to adjacent structures and roadways, and/or cover a larger portion of the property. These differences may result in direct impacts on neighborhood character and aesthetics. Larger structures also have the potential to block public views. Construction of several projects with bulk and scale deviations in any one area may also result in localized cumulative visual quality impacts.

Mitigation

Ministerial projects are not subject to CEQA, and such projects would not undergo environmental review or be required to provide mitigation. However, specific mitigation measures would be determined on a case-by-case basis for any future projects that go through the discretionary environmental review process. It is anticipated that impacts related to aesthetics may be mitigable through architectural treatments, such as façade articulation and building textures and colors. Substantial view blockages could not be mitigated. Severe contrast with community character resulting from increased height and bulk may be reduced through architectural treatments, but likely not to a level below significance in every case.

Significance of Impact

For discretionary projects, aesthetic impacts may be reduced to below a level of significance with appropriate mitigation. However, for Process 1 projects the aesthetic impacts may not be mitigated. Direct and cumulative Visual Effects and Neighborhood Character would be considered significant and not mitigated.

Only adoption of the “No Project Alternative” would reduce visual quality impacts.

Transportation/ Parking

Significance Criteria - Traffic

As stated earlier, in analyzing a project’s potential environmental effects, staff is guided by the City’s Significance Determination Thresholds. The Traffic/Parking section of the Thresholds addresses direct traffic impacts which are projected to occur at the time a proposed development or associated developments become operational, and cumulative traffic which is projected to occur at some point after the development or associated developments become operational in the future. According to the Thresholds, intersections and roadway segments affected by a project with a current level of service (LOS) D or better are considered acceptable under both direct and cumulative conditions. For undeveloped locations the goal is to achieve a LOS of C. If any intersection, roadway segment, or freeway segment affected by a project would operate at LOS E or F under direct or cumulative conditions, the impact would be significant if the project exceeds LOS thresholds for freeways, roadway segments, intersections or ramp metering.

Significance Criteria – Parking

In addition, the City’s Significance Determination Thresholds address parking deficiencies that may constitute a significant impact. Parking deficiencies of more than ten percent would also need to substantially impact an adjacent residential area or severely impede the accessibility of a

public facility to be determined significant.

Impact Conclusion of the LDC EIR

The LDC EIR anticipated that there might be increased development due to the removal of some “obstacles” to development. This development could be accompanied by a corresponding increase in traffic on already overcrowded streets and potential reductions in LOS at existing intersections. Therefore, the EIR concluded that the adoption of the LDC could result in future development that could incrementally increase the potential for cumulatively significant traffic impacts.

The LDC EIR anticipated a reduction in parking in transit areas and for very low income housing projects but concluded that the patterns and intensity of growth were not proposed to be changed and, therefore, overall parking demand would not be significantly increased by the implementation of the LDC. The LDC EIR concluded that the project would not have a significant adverse impact on the amount of parking required in the city nor on the area required to meet parking demands.

Impact - Proposed Density Bonus Ordinance Revisions

The increased density resulting from the proposed revisions to the City’s Density Bonus Ordinance could result in maximum densities of 35 percent over the existing zoning for qualified projects; and, if requested by the applicant, reduced parking standards with options to include tandem or uncovered parking as imposed by the recently changed State law would apply. In addition, projects within the Transit Area Overlay Zone currently receive 10 to 20 percent parking reductions (LDC Section §142.0525), and those projects providing very low income housing already receive reductions of 10 to 20 percent of the required parking or 50 percent for very low income single room occupancy hotels (LDC Section §142.0530). The implementation of the ordinance could exacerbate existing transportation congestion.

Significance of Impact

The density achieved with the implementation of this ordinance could result in new potentially significant direct and cumulative parking impacts. In addition, the project could result in new direct transportation impacts and would add to the cumulative impacts already identified in the LDC EIR.

Only the adoption of the “No Project Alternative” would reduce parking and transportation impacts.

Public Services

In general, the City’s community plans incorporate elements that specify or plan for adequate public services and facilities to accommodate the specific densities within each community. However, the proposed ordinance revisions would allow individual project densities over and above the current zoning and community plans and may allow the reduction or waiver of facilities benefit or impact fees as an additional development incentive. Therefore, it is possible that the adoption of the proposed ordinance could exacerbate current or future public service deficiencies. However, any proposed additional development incentives or concessions (deviations) would not

be granted if they could result in a threat to public health and safety. This provision is a necessary finding for ~~denying~~^{granting} the development incentive (deviation).

Other Potential Impacts

Future density bonus units are not expected to exceed the cumulative impacts to Soils/Erosion Hazard, Air Quality, Hydrology/Water Quality, Biological Resources, Land Use, Transportation/Circulation, Landform Alteration, Historical Resources, and Paleontological Resources that were already analyzed and disclosed in the Land Development Code EIR.

Conclusion

The proposed revisions could result in new direct and cumulative significant environmental impacts requiring that the decisionmaker adopt Findings and a Statement of Overriding Considerations.

IV. ALTERNATIVES

No Project Alternative (Environmentally Preferred Alternative): This alternative would *not* bring the City's ordinance into compliance with State law. It *this* would *not* end the current process in which staff evaluates individual projects using the existing ordinance with State regulations superceding when there is a conflict. This alternative would not include the City's proposed 10 percent on-site ministerial inclusionary density bonus incentive or the City's proposed 20 percent density bonus for moderate income ownership units. Since the State law is already in effect, this *alternative project* would not result in any additional environmental impacts.

Elimination of the City's On-Site Inclusionary Unit Density Bonus: This alternative would eliminate the City's suggested density bonus which would provide a 10 percent ministerial density bonus for projects that build inclusionary units on-site rather than paying their in-lieu inclusionary housing fee. This on-site inclusionary provision has been added to the LDC to enhance the efforts of the inclusionary housing program by helping to assure that inclusionary units were built, and since the payment of in-lieu fees has not resulted in the development of equivalent housing at alternative sites. The removal of this density bonus could reduce potential impacts to visual quality, transportation and parking since fewer units may be built at the proposed sites. The incorporation of this provision is anticipated to have a minor impact because of the size of the density bonus (10 percent) and because no additional density bonus or incentives would be offered to projects within this category.

This alternative may result in direct visual quality and transportation/parking impacts which may not be reduced to below a level of significance in every case. Cumulative impacts would remain significant.

Elimination of the City's 20 Percent Density Bonus for Moderate Income Ownership Units: This alternative would eliminate the City's proposed minimum 20 percent density bonus for common interest moderate income ownership units. The elimination of this incentive would reduce the number of affordable moderate income ownership housing units built because it is anticipated that the five percent density bonus proposed by state law would not be sufficient to attract such development in San Diego's high land cost market. The elimination of this incentive

would reduce but not eliminate potential impacts to visual quality and transportation/parking since the other regulatory incentives or concessions would still be available. This alternative may result in direct impacts which may not be reduced to below a level of significance in every case. Cumulative impacts would remain significant.

V. DETERMINATION:

The City of San Diego previously prepared an Environmental Impact Report (EIR) No. 96-0333 for revisions to the Land Development Code. Based upon a review of the current project, it has been determined that the revisions to the Density Bonus Ordinance may result in significant effects not discussed in the previous EIR.

Therefore, in accordance with Sections 15163 and 15164 of the State CEQA Guidelines, this Supplemental EIR has been prepared.

VI. MITIGATION, MONITORING AND REPORTING PROGRAM INCORPORATED INTO THE PROJECT:

No mitigation is required for these proposed revisions to the Land Development Code. As development occurs, individual discretionary projects would be subject to environmental review, impact analysis, and identification of project-specific mitigation measures.

VII. SIGNIFICANT UNMITIGATED IMPACTS:

The final EIR for the original project identified significant unmitigated impacts in the following areas: Land Use, Biological Resources, Landform Alteration, Historical Resources, Paleontological Resources, and Human Health and Public Safety. Cumulative impacts were also identified to Soils/Erosion Hazard, Air Quality, Hydrology/Water Quality, Biological Resources, Land Use, Transportation/Circulation, Landform Alteration, Historical Resources, and Paleontological Resources. Significant effects previously examined would not be substantially more severe than shown in the previous EIR. However, the proposed revisions to the Density Bonus Ordinance have the potential to result in significant impacts to visual quality and transportation/parking, as well as cumulative impacts to visual quality and parking.

Because there are new significant unmitigated direct and cumulative impacts associated with future development in conformance with the proposed revisions, approval requires the decision-maker to make specific and substantiated CEQA Findings which state that:

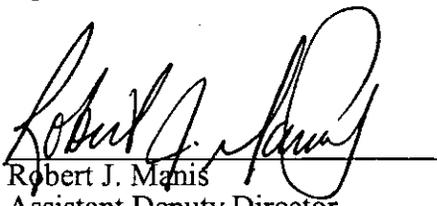
- a) specific economic, social or other considerations make infeasible the project alternatives identified in the Supplemental EIR; and
- b) the impacts have been found acceptable because of specific overriding considerations. Approval of the project requires the decisionmaker to adopt the Findings and a Statement of Overriding Considerations.

VIII. RESULTS OF PUBLIC REVIEW:

() No comments were received during the public input period.

- (X) Comments were received but they did not address the draft Supplemental findings or the accuracy/completeness of the Initial Study. No response is necessary. The letters and responses follow.
- () Comments addressing the findings of the draft Supplemental and/or accuracy or completeness of the Initial Study were received during the public input period. The letters and responses follow.

Copies of the draft Supplemental, EIR No. 96-0333, and any technical appendices may be reviewed in the office of the land Development Review Division, or purchased for the cost of reproduction.


Robert J. Manis
Assistant Deputy Director
Development Services Department

July 14, 2006
Date of Draft Report

September 5, 2006
Date of Final Report

Analyst: Mirrasoul

Attachments:

- Attachment A: Conclusions of Final EIR No. 96-0333
- Attachment B: Draft Affordable Housing Density Bonus Regulations
- Attachment C: Draft Strikeout/Underline Affordable Housing Density Bonus Regulations

DISTRIBUTION:

City of San Diego
Mayor Sanders
Council President Peters, District 1
Councilmember Faulconer, District 2
Councilmember Atkins, District 3
Councilmember Young, District 4
Councilmember Maienschein, District 5
Councilmember Frye, District 6
Councilmember Madaffer, District 7
Councilmember Hueso, District 8
City Attorney, Shirley Edwards
Development Services Department (78, 78A)
Central Library (81)
Real Estate Assets Department (85)*
Engineering and Capital Projects Department (86)*
Historical Resources Board (87)

Park and Recreation Department (89)
Wetland Advisory Board (91A)
City Planning and Community Investment Department (MS 5A)
Water Department
Metropolitan Wastewater Department
Environmental Services Department
San Diego Housing Commission (MS 49N)
City of San Diego Redevelopment Agency (MS 904)

Community Service Centers:

Clairemont (274)
Navajo (337)
Peninsula (389)
Rancho Bernardo (399)
San Ysidro (435)
Scripps Ranch (442)

Federal Agencies

Naval Facilities Engineering Command, SW Division (12)*
MCAS Miramar (13)*
US Environmental Protection Agency (19)*
U.S. Fish and Wildlife Service (23)*
U.S. Army Corps of Engineers (26)*

Native Americans

Ron Christman (215)*
Louie Guassac (215A)*
Kumeyaay Cultural Repatriation Committee (225)*
Native American Bands and Groups (225A - Q) (notice only)*

State of California

CALTRANS, District 11 (33)*
Department of Fish and Game (32)*
Department of Parks and Recreation (40)*
Department of Parks and Recreation, Office of Historic Preservation (41)*
Resources Agency (43)*
Regional Water Quality Control Board, Region 9 (44)*
State Clearinghouse (46A)
California Coastal Commission (47)
Native American Heritage Commission (56)*

San Diego County

Department of Planning and Land Use (68)
County Water Authority (73)
Department of Environmental Health (75)*

Other Agencies

San Diego Association of Governments (108)

San Diego Transit (12)
Sempra (114)
Metropolitan Transit Development Board (115)
San Diego County Regional Airport Authority (110)

Community Groups

Community Planners Committee (194)
Otay Mesa - Nestor Planning Committee (228)
Otay Mesa Planning Committee (235)
Clairemont Mesa Planning Committee (248)
Greater Golden Hill Planning Committee (259)
Serra Mesa Planning Group (263A)
Kearny Mesa Community Planning Group (265)
Linda Vista Community Planning Committee (267)
La Jolla Community Planning Association (275)
City Heights Area Planning Committee (287)
Kensington-Talmadge Planning Committee (290)
Normal Heights Community Planning Committee (291)
Eastern Area Planning Committee (302)
Midway Community Planning Advisory Committee (307)
Mira Mesa Community Planning Group (310)
Mission Beach Precise Planning Board (325)
Mission Valley Unified Planning Organization (331)
Navajo Community Planners Inc. (336)
Carmel Mountain Ranch Community Council (344)
Carmel Valley Community Planning Board (350)
Del Mar Mesa Community Planning Board (361)
Greater North Park Planning Committee (363)
Ocean Beach Planning Board (367)
Old Town Community Planning Committee (368)
Pacific Beach Community Planning Committee (375)
Rancho Penasquitos Planning Board (380)
Peninsula Community Planning Board (390)
Rancho Bernardo Community Planning Board (400)
Sabre Springs Planning Group (406B)
San Pasqual - Lake Hodges Planning Group (426)
San Ysidro Planning and Development Group (433)
Scripps Ranch Community Planning Group (437)
Miramar Ranch North Planning Committee (439)
Skyline - Paradise Hills Planning Committee (443)
Torrey Hills Community Planning Board (444A)
Southeastern San Diego Planning Committee (449)
Encanto Neighborhoods Community Planning Group (449A)
College Area Community Council (456)
Tierrasanta Community Council (462)
Torrey Pines Community Planning Group (469)
University City Community Planning Group (480)
Uptown Planners (498)

Other Interested Parties

San Diego Apartment Association (152)
San Diego Chamber of Commerce (157)
Building Industry Association (158)
San Diego River Park Foundation (163)*
Sierra Club (165, 165A)*
San Diego Natural History Museum (166)*
San Diego Audubon Society (167, 167A)*
California Native Plant Society (170)*
Center for Biological Diversity (176)*
Endangered Habitats League (182 & 182A)*
Carmel Mountain Conservancy (184)*
Torrey Pines Association (186)*
Carmen Lucas (206)*
Dr. Jerry Schaefer (208A)*
South Coastal Information Center (210)*
San Diego Historical Society (211)*
San Diego Archaeological Center (212)*
Save Our Heritage Organisation (214)*
San Diego County Archaeological Society Inc. (218)*
La Jolla Historical Society (221)*
University of San Diego (251)*
Tecolote Canyon Citizens Advisory Committee (254)*
Friends of Tecolote Canyon (255)*
Tecolote Canyon Rim Owner's Protection Association (256)*
UCSD Natural Reserve System (284)*
Friends of the Mission Valley Preserve (330)*
Mission Trails Regional Park Citizens Advisory Committee (341)*
Los Penasquitos Canyon Preserve Citizens Advisory Committee (360)*
Pacific Beach Historical Society (377)*
Sunset Cliffs Natural Park Recreation Council (388)*
San Dieguito Lagoon Committee (409)*
San Dieguito River Park CAC (415)*
San Dieguito River Valley Conservancy (421)*
RVR PARC (423)*
San Dieguito River Park JPA (425A)*
Beeler Canyon Conservancy (436)*
Mission Trails Regional Park (465)*
UCSD (478)*
SEDC (MS 68)
CCDC (MS 51D)
City of San Diego Planning Department Housing Issues Interest List*

* (Public Notice Only)



STATE OF CALIFORNIA
Governor's Office of Planning and Research
State Clearinghouse and Planning Unit

Arnold Schwarzenegger
Governor



Sean Walsh
Director

August 16, 2006

Marilyn Mirrasoul
City of San Diego
1222 First Avenue, MS-501
San Diego, CA 92101-4155

Subject: Land Development Code Revisions: Affordable Housing Density Bonus Regulations
SCH#: 1996081056

Dear Marilyn Mirrasoul:

The State Clearinghouse submitted the above named Subsequent EIR to selected state agencies for review. The review period closed on August 15, 2006, and no state agencies submitted comments by that date. This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act.

Please call the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process. If you have a question about the above-named project, please refer to the ten-digit State Clearinghouse number when contacting this office.

Sincerely,

Terry Roberts
Director, State Clearinghouse

State Clearinghouse Data Base

SCH# 1996081056
Project Title Land Development Code Revisions: Affordable Housing Density Bonus Regulations
Lead Agency San Diego, City of

Type SBE Subsequent EIR
Description Amendments to Chapter 14, Article 3, Division 7, Sections 143.0710 through 143.0760 and Chapter 12, Article 6, Division 5 of the Municipal Code, Section 126.0504 (1). The regulations are intended to apply city-wide; however, until approved by the Coastal Commission, only the existing State Density Bonus Law would apply in the Coastal Zone.

Lead Agency Contact

Name Marilyn Mirrasoul
Agency City of San Diego
Phone (619) 446-5380 Fax
email
Address 1222 First Avenue, MS-501
City San Diego State CA Zip 92101-4155

Project Location

County San Diego
City San Diego
Region
Cross Streets
Parcel No.
Township Range Section Base

Proximity to:

Highways City-wide
Airports City-wide
Railways City-wide
Waterways City-wide
Schools City-wide
Land Use Land Development Code Ordinance revision.

Project Issues Traffic/Circulation; Cumulative Effects; Aesthetic/Visual

Reviewing Agencies Caltrans, District 11; California Highway Patrol; Department of Water Resources; Department of Fish and Game, Region 5; Department of Health Services; Department of Housing and Community Development; Department of Parks and Recreation; Regional Water Quality Control Board, Region 9; Resources Agency; Native American Heritage Commission

Date Received 07/17/2006 Start of Review 07/17/2006 End of Review 08/15/2006

Attachment A: Conclusions of Final EIR No. 96-0333

City of San Diego
Development
Services
Department



Land Development
Review Division
(619) 236-6460

Environmental Impact Report

DEP No. 96-0333
SCH No. 96081056

SUBJECT: Land Development Code. Various CITY COUNCIL actions including the ADOPTION of the proposed Land Development Code to be incorporated as Chapters 12, 13 and 14 of the Municipal Code; AMENDMENT and RE-ADOPTION of previously adopted Chapter 11; REPEAL and AMENDMENT of certain chapters of the Municipal Code, including Chapter 10 and portions of Chapters 2, 5, 6 and 9; AMENDMENT of the non-conforming use and premises regulations and renaming to "previously conforming" uses and premises; AMENDMENT of the Local Coastal Program implementing ordinances and other documents in the Local Coastal Program; ADOPTION of categorical exclusions within the Coastal Zone; MODIFICATION of existing planning and zoning support documents and ADOPTION of new support documents; AMENDMENT of zone regulations; and READOPTION of the Uniform Building Code, the National Electrical Code, the Uniform Mechanical Code and the Uniform Plumbing Code.

Applicant: City of San Diego.

CONCLUSIONS:

Subsequent to preparation of the Draft EIR and distribution of the Final EIR, revisions to the proposed Land Development Code and Land Development Manual have been made. A summary of the revisions is provided in the Preface to the Final EIR following these conclusions. In addition, several comment letters received on the Draft EIR contained accepted revisions which resulted in changes to the Final EIR text. The revision to the project and Final EIR do not include significant new information and would not result in a new significant environmental impact or a substantial increase in the severity of an environmental impact and do not include a new feasible project alternative that would lessen the environmental impacts of the project. Therefore, recirculation of the EIR is not required consistent with CEQA (Public Resources Code section 21092.1) and section 15088.5 of the State CEQA Guidelines.

The Municipal Code is an important tool for implementation of the City's Progress Guide and General Plan. Currently the planning, zoning, engineering and building regulations are located throughout Chapters 2, 5, 6, 9, 10, and 11 of the Municipal Code. The proposed Land Development Code is the location within the Municipal Code for definitions, procedures, zones, and regulations which are used in the development of property other than within the planned districts.

The Municipal Code was revised in 1991 to add Chapter 11 as Phase I of a comprehensive update. The first phase streamlined and reduced the processing

procedures for development actions and standardized the application and noticing requirements. The current proposed project is the second phase of the comprehensive update and includes revisions and reformat of several chapters of the Municipal Code relative to the development process.

The proposed Land Development Code consolidates all development regulations into a sequence of four chapters of the Municipal Code. Technical manuals, standards and guidelines are being consolidated into a Land Development Manual. The Planned Districts have not been substantively revised as part of the proposed project and remain in Chapter 10 of the Municipal Code.

In reports to the City Council, the City Manager identified the overall goals of the Code update project:

Clarity

To write land development regulations which are easy to understand

Objectivity:

To write land development regulations that mean the same thing to everyone

Consistency:

To eliminate contradictions among all land development regulations

Predictability:

To make it clear what land development regulations apply to a project and what to expect from following them

Simplicity:

To reduce the complexity of land development regulations

Adaptability:

To allow for tailoring of land development regulations to fit unique features of the City

Progressiveness:

To use new ideas while retaining the best of existing land development regulations

Integrity:

To develop a code framework which is standardized but which is flexible enough to accommodate future changes

The proposed Code includes changes to existing citywide zones: name changes; changes to permitted uses; and changes to development regulations. There are several new zones that are created to implement existing land use policy; however these new zones would not be applied until: requested by a property owner; proposed as part of a land use plan adoption process; or proposed as part of land use plan consistency rezoning.

There are several proposed procedural changes. The revisions to use regulations include revisions to accessory use regulations. There are proposed revisions to Decision Process 2 which include making it a discretionary review and approval process. Proposed revisions to permit types include reducing the number from more than 80 to 14; variance procedures remain unchanged. The project proposes changes to the regulations for previously conforming uses and premises.

The proposed project includes changes to the development regulations as part of the zone changes. In addition, the project proposes changes to resource protection regulations: there are new Environmentally Sensitive Lands Regulations

which protect sensitive biological resources and hillsides, coastal bluffs and beaches and wetlands. The project includes proposed Historical Resource Regulations, revisions to the Parking Regulations, and revisions to the Landscape regulations.

This EIR analyzes the potential effects to existing on-the-ground conditions if the proposed project were to be implemented. The analysis does not include a comparison between the existing regulations and the effects of implementation of the proposed regulations (plan-to-plan analysis). Descriptions of the existing regulations are included in both Chapter II, Environmental Setting, and Chapter III, Project Description of the attached EIR.

Natural Communities Conservation Plan

On March 25, 1993, the U.S. Fish & Wildlife Service listed the California gnatcatcher as a threatened species under the federal Endangered Species Act (ESA). On December 10, 1993, the federal ESA Section 4(d) rule became effective, affecting projects at all stages of the development process. Where future projects include take of California gnatcatcher and/or its habitat, a permit will be required: either from the USFWS (pursuant to ESA section 7 or 10(a)); or from the City (pursuant to ESA section 4(d)). The Section 4(d) permit process is tied to the state's Natural Communities Conservation Program (NCCP).

The City is enrolled as a participating agency in the state's NCCP, which requires tracking of impacts on coastal sage scrub habitat. (The City's Multiple Species Conservation Program has been accepted by the state as an equivalent to the NCCP.) The NCCP allows the City to approve the loss of up to five percent of existing coastal sage scrub habitat. Approval must also comply with the state NCCP Process Guidelines, which require findings relative to the affect on regional preserve planning, and require that mitigation be adopted. The NCCP Conservation Guidelines have indicated that a five percent loss of coastal sage scrub habitat is acceptable within any individual subregion during the preparation of a subregional NCCP or its equivalent (e.g. MSCP Subarea Plan). Within the City of San Diego, the five percent cumulative loss allowed is 1186 acres of coastal sage scrub.

Total loss allowed:	1186.00 acres
Cumulative actual loss to date:	488.85 acres
Loss due to this project:	0.00 acres
Total cumulative loss:	488.85 acres
Remaining loss allowed:	697.15 acres

Note: Planned loss to date (i.e. approved projects for which grading permits have not yet been obtained) is 530.57 acres.

Approval of the proposed project does not constitute approval of an actual specific development project whereby there would be known loss of coastal sage scrub. Future development in accordance with the proposed regulations would require a permit, either through the City or through the USFWS if loss of coastal sage scrub would result from the proposed activities.

Multiple Species Conservation Program

The Draft Multiple Species Conservation Program (MSCP) is a comprehensive habitat conservation planning program which addresses the habitat needs for 87 covered species and the preservation of natural communities for a 900-square mile area in southwestern San Diego County. The proposed preserve system would replace the currently fragmented, project-by-project biological mitigation areas, which by themselves do not contribute adequately to the continued existence of sensitive species or the maintenance of natural biodiversity. The program creates a process for the issuance of federal and state permits and other authorizations according to the state and federal Endangered Species Acts and the NCCP Act of 1991.

Several of the elements of the proposed project are designed to implement the MSCP. The Environmentally Sensitive Lands Regulations, the Biology Guidelines, and the OR-1-2 zone contain regulations for the protection of sensitive biological resources as identified in the City's Subarea Plan for the MSCP.

The issue of the proposal's effect on long-term conservation of biological resources is analyzed in terms of meeting the goals and objectives of the Multiple Species Conservation Program. Thus, only target species are considered with regard to long-term adverse effects on conservation. This EIR provides no independent analysis whether the design of the MSCP preserve will achieve long-term conservation. The analysis of that issue is provided in the EIR for the MSCP. This EIR uses as a baseline assumption the conclusion of the MSCP EIR that the preserve design and the associated implementation program is adequate for long-term conservation of the covered species. Thus there are two parts of the analysis in this EIR with regard to long-term conservation of biological resources: (1) whether the proposed project adequately achieves the goals and objectives of the MSCP for long-term conservation of covered species and (2) how non-covered species will be affected by the proposed regulations.

Alternatives

There are four alternatives analyzed in the EIR. Alternative 1 is the No Project alternative. Alternatives 2 and 3 concern resource protection regulations and Alternative 4 describes language alternative to the proposed regulations, which, if adopted would avoid or lessen impacts of the proposed project. Therefore, Alternative 4 is environmentally superior to the proposed project. The project alternatives are described more fully below and in Chapter VIII of the EIR.

SIGNIFICANT IMPACTS

Implementation of the proposed Land Development Code would result in unavoidable impacts: those effects which would result from implementation of a project as proposed in spite of the best efforts to minimize environmental effects. Since the proposed project is limited to ordinance language, guidelines and standards, there are no conditions of approval upon which to attach mitigation measures. The only way to avoid the potentially significant effects, as identified in the attached EIR, is through the adoption of one or more alternatives. The following have been identified as potentially significant effects of implementation of the proposed project.

Land Use: inconsistency with environmental goals of adopted land use plans relative to the protection of important and sensitive resources; loss of important agricultural land and mineral resources due to regulations for implementation of the Multiple Species Conservation Program preserve.

Biological Resources: lack of wetland buffer regulations; potentially significant losses of populations of species not covered by the MSCP preserve design and the City's Subarea Plan; potential preclusion of adequate wildlife corridors for species not covered by the MSCP preserve design and the City's Subarea Plan.

Landform Alteration: loss of existing natural landforms, which are considered sensitive resources, through future grading consistent with the regulations of the proposed Code.

Historical Resources: loss of archaeological resources and historical buildings, structures, objects and landscapes consistent with regulations of the proposed Code.

Paleontological Resources: the proposed regulatory scheme does not provide for detection, investigation, collection or preservation of paleontological resources; therefore, there could be a significant loss of resources where projects are not subject to environmental review.

Human Health and Public Safety: potential impacts related to mosquito-borne diseases as mosquito breeding may increase due to drainage/sediment control structures required by the proposed regulations.

In addition to the effects directly attributable the project (project-specific impacts), the project would result in effects on an incremental basis, which when added to other past, present, and reasonably foreseeable future projects would be cumulatively significant. The following are effects of the project which would incrementally contribute to an impact that would, in combination with other effects, be cumulatively significant.

Soils/Erosion Hazard: New development anticipated to occur in accordance with the proposed project would result in increased erosion from exposed soil areas; the resulting sediment ultimately affects downstream wetland and lagoon areas.

Air Quality: There would be new development in accordance with the proposed regulations which would result in increased emissions from traffic and commercial and industrial activities.

Hydrology/ Water Quality: The proposed regulations do not include provisions to control volume or pollutant tolerance levels of runoff from urban areas. With a greater amount of impervious area, there is increased runoff and increased volume of pollutants carried by the runoff.

Biological Resources: There would be losses of species currently identified as sensitive, as well as loss of populations not currently identified as sensitive;

increased pressure to develop outside the MSCP preserve would have cumulatively significant effects on biodiversity and population levels.

Land Use: With development pressure shifted to areas not within the MSCP preserve, there may be increased urbanization or intensification of land use not presently subject to these kinds of development pressures. This pressure could result in potentially significant secondary and cumulative impacts on historical, biological and landform resources.

Transportation/Circulation: New development in accordance with the proposed regulations would increase traffic volumes in the City; the incremental increases in traffic as a result of future projects would be cumulatively significant.

Landform Alteration: The proposed regulations would result in loss of landforms including hillsides; the incremental loss of these unique landscape features would be cumulatively significant.

Historical Resources: Development pressure from implementation of biological conservation programs may result in development of areas with significant historical resources that may otherwise have been left undisturbed; the incremental losses of historical resources would be cumulatively significant.

Paleontological Resources: Since the proposed project contains no regulations to protect paleontological resources, fossil resources would only be detected and researched when development projects are subject to environmental review. There would be incremental losses of fossil resources both because there are no regulatory protections, and due to development that is likely to occur in accordance with the proposed regulations.

ALTERNATIVES FOR SIGNIFICANT IMPACTS:

There are four project alternatives that would avoid or lessen the significant impacts identified above. These alternatives are described in greater detail in Chapter VIII of the attached EIR.

1. No Project

According to this alternative, the City Council could reject in full the proposed Land Development Code and not take the associated actions. This alternative would result in a continuation of existing zoning and regulations.

If this alternative is adopted, the goals of the zoning code update project would not be met. The proposed changes to the Code which would make it easier to understand and use would not be effected and the benefit of a more uniform organization of regulations would not be realized.

2. Alternative Biological Resource Protection

According to this alternative, the specific elements of the proposed project which would implement the Draft MSCP would not be adopted; however, all the other elements of the proposed resource protection regulations would be retained and adopted. That is, the following proposed regulations would remain: the hillside regulations; the landscaping regulations; the historical resource regulations; regulations for development in floodplains and sensitive coastal resource areas;

and coastal beaches and bluffs regulations. As proposed, the protection for wetland buffers would be eliminated.

This alternative includes elimination of the distinction between lands within the MSCP preserve and outside the preserve boundary. This alternative would most closely approximate the biological resource protection regulations that exist currently. Protection of sensitive biological resources would be achieved by applying citywide biological resource protections that are proposed to apply only in the MSCP preserve.

Adoption of this alternative would mean that the MSCP would not be implemented. Protection of biological resources would continue to be effected in a piecemeal fashion, rather than being directed toward a large contiguous landholding as a preserve.

3. Retain Existing Resource Protection Regulations

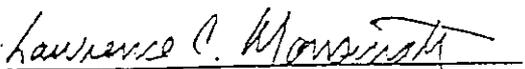
With this alternative, all of the proposed resource regulations would be rejected, including the Environmentally Sensitive Lands Regulations, the Historical Resource Regulations, the OR-1-2 Zone, and portions of the Biological Guidelines. The existing regulations would be retained, including Resource Protection Ordinance, the Sensitive Coastal Resource Overlay Zone, and the Hillside Review Overlay Zone. The protection of wetland buffers would be retained.

This alternative would avoid impacts to sensitive biological, hillside and historical resources that would occur with implementation of the proposed project.

4. Alternative Language for Specific Sections of the Proposed Project

Since the project is primarily changes to ordinances, guidelines and standards, there are no conditions of approval upon which to attach mitigation measures. Thus, avoidance of significant impacts of the proposed regulatory scheme can be achieved by revising the regulatory language such that significant effects would not result. This alternative provides, in concept, regulatory language that would avoid the impacts in the areas of paleontological resources, historical resources, biological resources (wetlands and wetland buffers), and human health/public safety.

Unless project alternatives are adopted, project approval will require the decision-maker to make Findings, substantiated in the record, which state that: a) project alternatives are infeasible, and b) the overall project is acceptable despite significant impacts because of specific overriding considerations.


Lawrence C. Monserrate
Principal Planner
Development Services Department

December 6, 1996
Date of Draft Report

April 8, 1997
Date of Final Report

Analyst: Baker

September 12, 1997
Date of Revised Final Report

PUBLIC REVIEW:

The following individuals, organizations, and agencies received a copy or notice of the draft EIR and were invited to comment on its accuracy and sufficiency:

City of San Diego

Mayor Susan Golding (MS 11A)
Councilmember Mathis, District 1 (MS 10A)
Councilmember Wear, District 2
Councilmember Kehoe, District 3
Councilmember Stevens, District 4
Councilmember Warden, District 5
Councilmember Stallings, District 6
Councilmember McCarty, District 7
Councilmember Vargas, District 8
Community and Neighborhood Services Bus. Ctr. - Betsy McCoulogh (MS 4A)
Community and Neighborhood Services Bus. Ctr. - Nancy Acevedo (MS 37)
Public Works Bus. Ctr. - Frank Belock (MS 9B)
Public Works Bus. Ctr. - Richard Hayes (MS 1102-A)
Public Works Bus. Ctr. - Mike Steffen (MS 51A)
Community & Economic Development - Kurt Chilcott (MS 9A)
Park & Recreation - Marcia McLatchy (MS 9A)
Assistant City Manager - Penelope Culbreth-Graft (MS 9A)
Deputy City Attorney Prescilla Dugard (MS 59)
Development Services - Tina Christiansen (MS 9A)
Wetlands Advisory Board - Robin Stribley (MS 37C)
Public Works Bus. Ctr. - Cruz Gonzales (MS 9B)
Public Works Bus. Ctr. - Susan Hamilton (MS 905)

Federal Agencies

SW Division, Naval Facilities Engineering Command (12)
NAS Miramar (14)
USMC - Col. Pender, Marine Air Base, El Toro
Army Corps of Engineers (26)
Border Patrol, William Pink (22)
Fish and Wildlife Service (23)
Department of Agriculture (25)
Bureau of Land Management, 6221 Box Springs Boulevard, Riverside, CA 92507
EPA Region 9
Marc Ebbib, Dept. Interior, Asst. to Secretary
600 Harrison Street #545, San Francisco, CA 94107

Vicki Kingslien, Director, Resource Management Division,
425 "I" Street NW #2060, Washington D.C. 20536
Tom Stahl, Asst. U.S. Attorney, 880 Front Street #6293, San Diego 92101
Pete Stine, National Biological Survey, 1920 20th Street
Sacramento, CA 95514
Lynn Cox, Office of the Solicitor, Dept. Interior, 2800 Cottage Way #2753
Sacramento, CA 95628

State of California

California Coastal Commission (47, 48)
State Clearinghouse (46)
CALTRANS (31)
Fish and Game (32)
Park and Recreation (40)
Regional Water Quality Control Board (44)
Native American Heritage Commission (56)
Department of Conservation (61)
Lands Commission (62)
Forestry
Office of Historic Preservation

County of San Diego

Board of Supervisors, Chair, 1700 Pacific Highway, San Diego 92101
DPLU- Tom Oberbauer (MS-065)
Public Works - Tom Garibay (MS 0336)
Parks and Recreation - Mike Kemp (MS --065)
Agriculture (MS -01)
Environmental Services Unit - Anna Noah (MS -0385)
County Health Department

Cities

Chula Vista (94)
Del Mar (96)
El Cajon (98)
Escondido (98)
Imperial Beach (99)
La Mesa (100)
Lemon Grove (101)
National City (102)
Poway (103)
Santee (104)
Solana Beach (105)
Carlsbad, 1200 Carlsbad Village, 92008
Encinitas, 505 S. Vulcan, 92024
Oceanside, 300 N. Hill St. 92054
San Marcos, 1 Civic Ctr. Dr., 92-69
Vista, P.O. Box 1988, 92085
Coronado (95)

The Public Notice and/or Draft EIR is also distributed to the:

MSCP Working Group
Zoning Code Update Citizens' Advisory Committee
Zoning Code Update Mailing List
Recognized Community Planning Groups
Main and Branch City Libraries

Other Interested Parties

County Water Authority (73)
San Diego Association of Governments (108)
San Diego Gas & Electric (114)

San Dieguito River Park JPA (116)
UCSD Library (134)
Sierra Club (165)
S. D. Natural History Museum (166)
San Diego Audubon Society (167)
California Native Plant Society (170)
Ellen Bauder (175)
SW Center for Biological Diversity (176)
Citizens Coordinate for Century III (179)
Endangered Habitats League (182)
San Diego Historical Society (211)
San Diego Museum of Man (212)
Save Our Heritage Organization (214)
San Diego County Archaeological Society (218)
California Indian Legal Services (225)
San Diego City Schools, Mel Roop, 4100 Normal St., San Diego, CA 92103
Opal Trueblood, 13014 Caminito del Rocio, Del Mar, CA 92014
La Jolla Town Council, 1055 Wall Street, Suite 110, La Jolla, CA 92038

Copies of the draft EIR, the Mitigation Monitoring and Reporting Program and any technical appendices may be reviewed in the office of the Land Development Review Division, or purchased for the cost of reproduction.

RESULTS OF PUBLIC REVIEW:

- () No comments were received during the public input period.
- () Comments were received but the comments do not address the accuracy or completeness of the environmental report. No response is necessary and the letters are attached at the end of the EIR.
- (X) Comments addressing the accuracy or completeness of the EIR were received during the public input period. The letters and responses follow.

PREFACE TO THE FINAL EIR FOR THE PROPOSED LAND DEVELOPMENT CODE AND ASSOCIATED ACTIONS

Subsequent to preparation of the Draft EIR and distribution of the Final EIR, revisions to the proposed Land Development Code and Land Development Manual have been made. Strikeout/redline versions of the revised Code and Manual were prepared in April 1997 and the Final EIR was prepared based on those versions. The Final EIR, including a Preface describing the changes in the proposed project, was distributed in April 1997. Additional changes in the project have been made since that time as a result of public comments and direction from the Planning Commission and City Council Committee on Land Use and Housing. New strikeout/redline versions of the Land Development Code and Manual have been prepared (dated September 1997) and are available for public review. This Preface has been revised to describe all of the changes made to the project since preparation of the Draft EIR in December 1996. In addition, several comment letters on the Draft EIR contained acceptable revisions which resulted in changes in the Final EIR. The Responses to Comments indicate where revisions have been made. The Final EIR reflects revisions made in response to public comment and changes in the project. Major changes to the EIR and in the project are summarized below. The revisions to the project and Final EIR do not constitute significant new information and recirculation of the EIR is not required.

FINAL EIR

- The Biological Resources analysis was revised to delete the discussion regarding Biological Survey Reports. It was determined, subsequent to preparation of the Draft EIR, that the requirements for Biological Survey Reports would not have a significant impact on biological resources.
- Alternative 4 was expanded to include more specifics with regard to alternative regulatory language which, if adopted, would avoid or reduce the significant impacts identified with the proposed project language. The Final EIR includes greater detail on alternative language in the areas of biological resources, brush management, and landform alteration. The Final EIR does not include alternative language relating to marine industrial uses because the regulations were revised since preparation of the Draft EIR.

LAND DEVELOPMENT CODE

Chapter 11

- The Board of Zoning Appeals would consider general relief variances but would not consider Process Two appeals. The Historical Resources Board has the authority to identify specific areas that would be exempt from the requirement for a historical resources survey.
- Diagram 112-05A (Decision Processes With Notices) has been revised to reflect that community planning groups receive notice, to reformat the key for clarification, and to delete the State Coastal Commission processes. The Planning Commission would hear Process Two appeals, rather than the Board of Zoning Appeals.
- Various defined terms have been added, deleted, and modified. The term Archaeological Site has been deleted. The definition of Coastal Bluff Edge has been modified to be more consistent

with the existing Municipal Code by including reference to changing downward gradient. The terms Designated Historical Resource, Historical Building, Historical District, Historical Landscape, Historical Object, Historical Structure, and Important Archaeological Site have been modified for clarity and to be consistent with the revised Historical Resources Regulations. MHPA has been added as a defined term to replace MSCP Preserve and means the multiple habitat planning areas as identified by the City of San Diego MSCP Subarea Plan. The MHPA includes areas to be preserved and areas where development may occur. MSCP Preserve was deleted as a defined term. MSCP Subarea Plan was added to describe the plan. The Sensitive Biological Resources definition was modified to delete habitat of species of special concern and California fully protected species. The term Significant Archaeological Site has been deleted. SRO Hotel Room was revised so that it may not contain a kitchen and may have shared sanitary facilities. The Wetlands definition has been revised to reflect agreements made in development of the MSCP and to add wetlands depicted on Map C-713 (coastal wetlands) to the definition.

- Various Rules for Calculation and Measurement have been modified. Bluff rounding and erosional processes were added in determining the coastal bluff edge which is consistent with the existing Municipal Code. In determining existing grade, added grade that existed on March 4, 1972 will be considered existing grade, when a premises is disturbed. The grading proposed with a tentative map will be used as existing grade when the map is approved. In determining proposed grade, the highest floor of a multi-floor basement will be used. Limitations were added to the calculation of gross floor area for enclosed space built over open, at-grade space. Clarification of regulations for measuring structure height when a basement is proposed.

Chapter 12

- Language was added to specify that a Historical Resources Board designation decision may be appealed by an applicant or interested person.
- Revisions to Neighborhood Use, Conditional Use, Neighborhood Development and Site Development procedures and permit thresholds to be consistent with changes in Chapters 13 and 14 were made. Findings for Neighborhood Use, Neighborhood Development, and Site Development permits were modified so that granting of the permit would not adversely affect the applicable land use plan. The CUP regulations were modified so that the decision maker cannot allow less restrictive regulations except through a variance process. A finding for environmentally sensitive lands was added which requires consistency with the MSCP Subarea Plan. Findings for alternative compliance for steep hillside development area regulations were added. A new finding was added for those developments that are requesting deviations as part of the Planned Development Permit. Thresholds and findings for disturbance of Class II historical resources have been deleted. The remaining supplemental findings for historical resources were revised to be consistent with revised regulations.
- Categorical Exclusions from a Coastal Development permit were deleted. An exemption was added for demolition and alteration of a structure within the coastal zone if it is not a historical resource. An exemption was added for single dwelling unit development in the coastal zone if it does not exceed 80 percent of the allowable floor area ratio and height. The decision process for Coastal Development permits was changed to Process Two in the non-appealable area and remains a Process Three in the appealable area.

- Language was added to clarify the loss of previously conforming rights when a premises or use is brought into conformance. References to previously conforming parking and landscape regulations that are contained in Chapter 14 were added. Regulations were revised so that a previously conforming use cannot change to a use that is separately regulated.

Chapter 13

- Revisions were made to the use categories and subcategories for base zones and minor revisions were made to the use regulations tables. Amusement parks were deleted as separately regulated uses and only larger outdoor facilities are included in the scope of privately operated recreation facilities. Clarifications were made to the mobile home park, multiple dwelling unit, and single dwelling unit use subcategories to better link the definition to the lot or premises. Repair, distribution and assembly were deleted from the retail sales use category. Photographic services was added to the business support use subcategory. New commercial services subcategories were added for funeral and mortuary services and radio and television studios. The public assembly and entertainment subcategory was revised for clarity. The light manufacturing subcategory was revised to exclude any uses that utilize explosive, petroleum, or radioactive materials.
- Child care centers and private recreational facilities were added as conditional uses in the OP-1-1 zone and park maintenance facilities were added as permitted uses in the OP-2-1 zone. Minor telecommunication facilities as a limited use in those zones were they are allowed. The purpose of the OR zones was clarified. Golf course driving ranges are limited within the MHPA. Revisions to the regulations for development area were made to clarify that all of the area outside of the MHPA can be developed unless otherwise limited. Clarifications were added explaining when the additional 5 percent development area may be utilized.
- Interpretive centers were added as a permitted use in the AG zones and energy generation and distribution facilities were added as a conditional use in the AR zones. Minor telecommunication facilities as a limited use in the AG, AR and all residential zones. Privately operated outdoor recreation facilities were added as a separately regulated use requiring a CUP in the AR zones. Housing for senior citizens and exhibit halls and convention facilities were deleted as a separately regulated use in the AR zones.
- The maximum floor area ratio was increased from 0.30 to 0.35 in the RE-1-3 zone and in other RE zones when the setbacks are increased. Allowable structure height was increased from 30 feet to 35 feet and the exclusion of up to 400 square feet of garage area in the calculation of floor area ratio was added in the RS-1-8 through RS-1-14 and RT zones. The standard and minimum setback requirements were reduced for narrow lots.
- Development regulations for parking lot orientation were clarified. Many uses that were previously shown as permitted or conditionally permitted are no longer permitted when they are not consistent with other uses allowed in the particular zone or may now require a conditional use permit. Marine industry was deleted as a permitted use in the CR, CV and CC-5 zones. Funeral and mortuary services and radio and television studios have been added as permitted uses in all CR, CC, IL-2-1; IL-3-1, and IH-2-1 zones.

- Radio and television studios have been added as permitted uses in all industrial zones except the IP-1-1 and IH-1-1 zones. Sports arenas and stadiums have been added as conditional uses in the IP-2-1, IL-2-1, IL-3-1, and IH-2-1 zones. Regional and corporate headquarters are allowed in the IH-2-1 zone consistent with the existing Municipal Code (i.e., one per parcel). Camping parks have been deleted as a conditional use from all industrial zones. Impound storage yards have been revised from a conditional use to a permitted use in the IL-2-1, IL-3-1, and IS-1-1 zones and deleted from the IP-1-1 and IP-2-1 zones. Marine industry and marine related uses have been added as a permitted use in the IL-2-1 zone.

Chapter 14

- Parking standards for uses not covered in the Parking Regulations were added. Employee housing and communication antenna regulations were revised. Regulations prohibiting companion units when the vacancy rate exceeds 5 percent and within the Coastal Zone and the agricultural zones of the FUA were added. Revised restrictions on uses within the FUA to be consistent with the existing Municipal Code. Deleted amusement parks as a separately regulated use; it will be permitted under the subcategory of privately operated recreation facilities over 40,000 square feet. The decision process for automobile service stations was changed from Process Two to Process Three. Processing and packaging of plant and animal products was moved from agricultural use category to industrial use category.
- The applicability table for Landscape Regulations was clarified. The plant point schedule increased and plant material, irrigation, and area requirements were clarified. Yard planting area and point requirements were revised to include the existing Municipal Code planting point reduction. Overall plant point requirements were reduced. Revegetation requirements were revised to reflect requirements from the Landscape Technical Manual. Minor clarifications to brush management and water conservation requirements were added.
- Text was added to clarify parking requirements for previously conforming premises and to provide for a Neighborhood Development permit for uses that have been discontinued for more than two years. Parking requirements were added for transitional housing, botanical gardens, exhibit halls, convention facilities, funeral parlors and mortuaries, and vehicle sales and rentals.
- The threshold for development area regulations on steep hillsides for single dwelling unit lots was reduced to 15,000 square feet. The Site Development Permit exemption for interior or exterior modifications was revised to require a 40-foot setback from the coastal bluff edge for any second-plus story addition to a structure on a sensitive coastal bluff. Site Development Permit exemptions were added for zone two brush management and minor improvements for existing structures on steep hillsides, consistent with the existing Municipal Code. A Site Development Permit exemption was added for habitat restoration projects. The development area exemption for mining and extractive industries with the MHPA was deleted. An exemption from the development area limitations for sensitive biological resources for zone two brush management was added. Code enforcement regulations have been added for unlawful development in environmentally sensitive lands. Revisions were made to the emergency permit regulations to acknowledge that only authorization is necessary to impact environmentally sensitive lands in the event of an emergency and that a subsequent Site Development Permit will

only be required if the impacts are permanent. The requirement for consultation with the wildlife agencies was revised to require that the applicant confer with the agencies. The regulations for unavoidable impacts to wetlands were revised to reference impacts associated with a deviation instead, since a deviation is the only way impacts to wetlands can be considered. Regulations requiring wetland buffers were added. Regulation that limits impacts to sensitive biological resources outside the MHPA for specified conditions was added. The requirement to avoid impacts to narrow endemic species was revised to only apply inside the MHPA. Measures for protection of narrow endemic species outside the MHPA were added and specific mitigation requirements were deleted. A regulation requiring consistency with the City of San Diego MSCP Subarea Plan was added. Regulations for grading during wildlife breeding seasons were added. A clarification was added that the setbacks from the coastal bluff edge apply to all development. Regulations requiring a visual corridor were revised. New regulations for alternative compliance for additional steep hillside encroachment were added.

- Regulations for Class II historical resources were deleted and regulations for remaining historical resources were reorganized. Minor modifications were made to the applicability text and table for clarification and consistency with revisions to regulations. Minor modifications were made to site-specific survey requirements to clarify language and allow areas to be exempted by the City Manager or Historical Resources Board. An exemption was added which provides for substantial alteration of a non-contributing structure located in a historic district. The exemption for an important archaeological site was modified to require a 100-foot setback with no discretion. Minor modifications were made to the general development regulations for clarification and to reference the Historical Resources Guidelines of the Land Development Manual. The requirement for Covenants of Easements was deleted. Regulations have been added requiring approval of new development on a premises when a deviation for demolition or removal of designated historical building or structure has been granted.
- A Neighborhood Development Permit was added to the regulations applicability table for previously conforming parking for a discontinued use. In the regulations applicability table, the Site Development Permits for the Airport Approach Overlay Zone, the Airport Environs Overlay Zone, and the Clairemont Mesa Height Limit Overlay Zone were corrected to indicate a Process Three rather than a Process Five decision.
- The title and applicability of the general development regulations for Planned Development Permits (Section 143.0410) were revised so that they do not apply to those Planned Development Permits within Land Use Plans that require the permit in conjunction with another discretionary action. If deviations from any base zone development regulations are proposed, a requirement for compliance with the general development regulations was added; deviations to residential density are not permitted. Some of the regulations in the general development regulations section were revised to state that they "should" be complied with, rather than "shall" be complied with, in order to provide flexibility in how a development can achieve compliance. The maximum permitted building coverage for residential projects was increased to 60 percent. Open space requirements were revised or deleted. Other minor revisions for clarification were made to other Planned Development Permit regulations.
- The purpose and applicability of the SRO hotel regulations was revised to include rehabilitation of existing SRO hotels and rooms. The housing replacement requirement for new SRO hotel

rooms to contain a sink and screened toilet was deleted in favor of revisions to the definition of SRO hotel room. Other minor revisions for clarification were made to other SRO hotel regulations.

LAND DEVELOPMENT MANUAL

Biology Guidelines

- The Development Regulations for development in the MHPA were revised to incorporate the special conditions of coverage including impact avoidance areas within specified distances of nesting sites of certain raptors, known locations of southwestern pond turtles, and occupied burrowing owl burrows. Regulations were added for protection of narrow endemic species outside the MHPA. Regulations were added for wetland buffers and the definition of wetlands was revised. Restrictions were added with regard to grading activities during the breeding seasons of several bird species as identified by the conditions of coverage.
- The procedures for impact analysis and mitigation were modified to clarify that a biological survey report is required for all proposed development subject to the ESL regulations or where a CEQA initial study has resulted in the determination that there may be a significant impact on biological resources considered sensitive pursuant to CEQA. Further, the guidelines were revised to clarify that the survey report must identify impacts to Sensitive Biological Resources and to other significant biological resources as determined pursuant to the CEQA process. The guidelines were revised to state that mitigation may be required for sensitive species not covered by the MSCP, pursuant to CEQA.

Coastal Bluffs and Beaches Guidelines

- The Guidelines were revised to reflect the revisions made to the definitions of coastal bluff edge and reference to the geology and rounding of the bluff edge was added to the explanation of this definition. The explanation of the definition of coastal bluff face was revised to include reference to a rounded bluff edge. New diagrams were added for the definitions of coastal bluff edge and coastal bluff face. The description of the bluff edge setback regulations were revised to clarify that the basic 40-foot setback is a minimum and that a setback of more than 40 feet could be required. A statement was added that the rate of retreat of the bluff shall be considered in determining the bluff stability. A statement was added that future erosion control measures may be precluded if a reduced bluff edge setback is utilized. The regulations for view corridors and access easements were separated. In the Bluff Measurement Guidelines section, the interpretation of the coastal bluff edge definition was deleted since this information was included in the explanation of the definitions section. A clarification of the bluff edge examples was added. The bluff edge regulations for sea caves, gullies, and coastal canyons were revised and explanations of each of these land forms was added.

Historical Resources Guidelines

- The sections on San Diego History and Consultant Qualifications were made appendices to the Guidelines and other appendices were added. Revisions to clarify and better organize the text and incorporate public review comments were made. The Introduction and Development Review Process sections were modified to reflect the changes to the Code. Regulations for Class II historical resources were deleted. Areas to be exempted from the requirement for a site specific survey for the identification of a potential historical building or historical structure were added. Requirements for notification and consultation with the Native American Community were added. Requirements for curation of historical materials were added.

Landscape Guidelines

- Modifications to the revegetation requirements were made to be consistent with changes to the Code. Tree planting and maintenance requirements in the public right-of-way were added.

Steep Hillside Guidelines

- Clarification was added as to what is included as existing development area for a premises. The Findings and Deviations section was renamed and revised to address the revisions that were made to the Site Development Permit and alternative compliance and deviation findings. Other minor revisions were made to terms for clarification.

**Attachment B: Draft Affordable Housing Density Bonus
Regulations**

DRAFT**Article 3: Supplemental Development Regulations****Division 7: Affordable Housing Density Bonus Regulations**

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§143.0710 Purpose of Affordable Housing Density Bonus Regulations

The purpose of these regulations is to provide increased residential *density* to developers who guarantee that a portion of their residential *development* will be available to *moderate income, low income, very low income*, or senior households. The regulations are intended to materially assist the housing industry in providing adequate and affordable shelter for all economic segments of the community and to provide a balance of housing opportunities for *moderate income, low income, very low income*, and senior households throughout the City. It is intended that the affordable housing *density* bonus and any additional *development* incentive be available for use in all residential *development* of five or more units, using criteria and standards provided in the Progress Guide and General Plan, as defined by the San Diego Housing Commission; that requests be processed by the City of San Diego, and that they be implemented by the President and Chief Executive Officer of the San Diego Housing Commission. It is also intended that these regulations implement the provisions of California Government Code Sections 65915 through 65918.

§143.0715 When Affordable Housing Density Bonus Regulations Apply

This division applies to any residential *development* of five or more pre-*density* bonus *dwelling units* where an *applicant* proposes *density* beyond that permitted by the applicable zone in exchange for either of the following as set forth in this division:

- (a) A portion of the total *dwelling units* in the development being reserved for *moderate, low, or very low income* households or for senior citizens through a written agreement with the San Diego Housing Commission; or
- (b) The donation of land.

§143.0720 Density Bonus in Exchange for Affordable Housing Units

- (a) A *development* shall be entitled to a *density* bonus and incentives as described in this division, for any residential *development* for which an agreement, and a deed of trust securing the agreement, is entered into by the *applicant* and the President and Chief Executive Officer of the San Diego Housing Commission. The agreement and deed of trust in favor of the San Diego Housing Commission are to be recorded in the Office of the Recorder of the County of San Diego as an encumbrance against the *development*.

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- (b) The density bonus units authorized by this division shall be exempt from the Inclusionary Housing Regulations set forth in Chapter 14, Article 2, Division 13.
- (c) A rental *density* bonus agreement shall utilize the following qualifying criteria consistent with the procedures established by the San Diego Housing Commission:
 - (1) Housing for senior citizens - The *development* consists of housing for senior citizens or qualifying residents as defined under California Civil Code Section 51.3 and 51.12, where at least 35 *dwelling units* are provided; or a mobilehome park that limits residency based on age requirements for housing for older persons pursuant to California Civil Code Section 798.76 or 799.5.
 - (2) Affordable housing units -
 - (A) *Low income* - At least 10 percent of the pre-*density* bonus units in the *development* shall be affordable, including an allowance for utilities, to *low income* households at a rent that does not exceed 30 percent of 60 percent of area median income, as adjusted for assumed household size; or
 - (B) *Very low income* - At least 5 percent of the pre-*density* bonus units in the *development* shall be affordable, including an allowance for utilities, to *very low income* households at a rent that does not exceed 30 percent of 50 percent of the area median income, as adjusted for assumed household size.
 - (C) The affordable units shall be designated units, be comparable in bedroom mix and amenities to the market-rate units in the *development*, and be dispersed throughout the *development*.
 - (3) The *dwelling units* shall remain available and affordable for a period of at least 30 years or longer as may be required by other laws.
- (d) A for-sale *density* bonus agreement shall utilize the following qualifying criteria consistent with the procedures established by the San Diego Housing Commission:
 - (1) For-sale density bonus shall only be available to common interest *development*, as defined by California Civil Code Section 1351, where at least 10 percent of the pre-*density* bonus units in the

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development shall be initially sold and affordable to *moderate income* households at a price that is affordable to families earning 110 percent of the area median income as adjusted or assumed household size, as determined by the San Diego Housing Commission, and where all of the *dwelling units* are offered to the public for purchase.

- (2) Prior to, or concurrent with, the sale of each *density* bonus affordable unit, the *applicant* shall require the buyer to execute and deliver a promissory note in favor of the San Diego Housing Commission so that the repayment of any initial subsidy is ensured.
 - (3) Each for-sale unit shall be occupied by the initial owner at all times until the resale of the unit.
 - (4) Upon the first resale of a unit the seller shall comply with all conditions regarding the sale of a unit, as applied by the San Diego Housing Commission, and as set forth in California Government Code Section 65915(c)(2).
 - (5) The affordable units shall be designated units, be comparable in bedroom mix and amenities to the market-rate units in the *development*, and be dispersed throughout the *development*.
- (e) The *density* bonus units shall have recorded against them a Declaration of Covenants, Conditions and Restrictions in favor of the San Diego Housing Commission that shall enjoy first lien position and shall be secured by a deed of trust that may be recorded against the project or unit, as applicable, prior to construction or permanent financing.
 - (f) Provision shall be made by the San Diego Housing Commission for certification of eligible tenants and purchasers, annual certification of property owner compliance, payment of a monitoring fee to the San Diego Housing Commission, as adjusted from time to time, for monitoring of affordable unit requirements, and any other terms that the San Diego Housing Commission determines are needed to implement the provisions and intent of this division and State law.

§143.0725 Density Bonus Provisions

A *development* proposal requesting an affordable housing *density* bonus is subject to the following:

- (a) For senior citizen housing meeting the criteria of Section 143.0720(c)(1), the *density* bonus shall be 20 percent.

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- (b) For *development* that includes affordable housing, pursuant to the Inclusionary Housing Regulations in Chapter 14, Article 2, Division 13, and that affordable housing is located onsite, that *development* shall be entitled to a *density* bonus, equal to the number of affordable units provided onsite, up to a maximum of 10 percent of the *pre-density* bonus units. The increased *density* shall be in addition to any other increase in *density* allowed in this division, up to a maximum combined *density* increase of 35 percent.
- (c) For development meeting the criteria for *low income* in Section 143.0720(c)(2)(A), the *density* bonus shall be calculated as set forth in Table 143-07A. The increased *density* shall be in addition to any other increase in *density* allowed in this division, up to a maximum combined *density* increase of 35 percent. For *development* meeting the same criteria within the Centre City Planned District, the bonus shall apply to the maximum allowable *floor area ratio* applicable to the *development* consistent with Section 151.0310(e).
- (d) For *development* meeting the criteria for *very low income* in Section 143.0720(c)(2)(B), the *density* bonus shall be calculated as set forth in Table 143-07B. The increased *density* shall be in addition to any other increase in *density* allowed in this division, up to a maximum combined *density* increase of 35 percent. For *development* meeting the same criteria within the Centre City Planned District, the bonus shall apply to the maximum allowable floor area ratio applicable to the *development* consistent with Section 151.0310(e).
- (e) For *development* meeting the criteria for *moderate income* in Section 143.0720(d), the *density* bonus shall be calculated as set forth in Table 143-07C. The increased *density* shall be in addition to any other increase in *density* allowed in this division, up to a maximum combined *density* increase of 35 percent. For *development* meeting the same criteria within the Centre City Planned District, the bonus shall apply to the maximum allowable floor area ratio applicable to the *development* consistent with Section 151.0310(e).
- (f) Where the zone requires that each *lot* be occupied by no more than one *dwelling unit*, the *development* requires a Planned Development Permit.
- (g) If the *premises* is located in two or more zones, the number of *dwelling units* permitted in the *development* is the sum of the *dwelling units* permitted in each of the zones. Within the *development*, the permitted number of *dwelling units* may be distributed without regard to the zone boundaries.
- (h) Where the *development* consists of two or more specifically identified parcels, whether contiguous or noncontiguous, the maximum number of

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dwelling units permitted on each parcel is calculated based on the area of that parcel.

- (i) Where the *development* consists of two or more noncontiguous parcels lying within two or more community planning areas, the *dwelling units* reserved at levels affordable by *moderate income, low income or very low income* households shall be distributed among community planning areas in the same proportion as the total number of *dwelling units* constructed within the *development*.

§143.0730 Density Bonus in Exchange for Donation of Land

An *applicant* for a *tentative map, parcel map*, or residential *development* permit, may donate land to the City for *development* with affordable housing units, in exchange for a *density* bonus, in accordance with California Government Code Section 65915, provided the land to be transferred meets the following criteria:

- (a) The site is at least 1 acre or of sufficient size to permit *development* of at least 40 affordable *dwelling units*;
- (b) The General Plan designation is appropriate for residential *development*;
- (c) The site is zoned to allow for the appropriate residential *development*;
- (d) The site is or will be served by public facilities and infrastructure adequate to serve the *dwelling units*; and
- (e) The land to be transferred is within the boundary of the proposed *development* or, if the City agrees, within one-quarter mile of the boundary of the proposed *development*.

§143.0740 Development Incentives for Affordable Housing Density Bonus Projects

- (a) The City shall grant an incentive requested by an applicant, to the extent allowed by State law and as set forth in this Section.
 - (1) An incentive means any of the following:
 - (A) A deviation to a *development* regulation;
 - (B) Approval of a mixed use *development* in conjunction with the residential development if the commercial, office, or industrial uses will reduce the cost of the residential development; and if the mixed use *development* is compatible with the residential *development*; and if the mixed use *development* is compatible with the applicable land use plan;

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- (C) Any other regulatory deviation proposed by the applicant, other than a waiver from a required permit, which results in identifiable, financially sufficient, and actual cost reductions.
- (2) The granting of an incentive shall not be interpreted, in and of itself, to require a General Plan amendment, zoning change, or other discretionary approval, notwithstanding Planned Development Permit Procedures (Chapter 12, Article 6, Division 6).
- (3) Nothing in this division shall be construed to require the City or any of its related legal entities, including the San Diego Housing Commission, to provide a direct financial incentive, including the provision of land, or the waiver of fees or dedication requirements.
- (4) Upon an *applicant's* request, *development* meeting the requirements of Sections 143.0720(c) or (d) shall be entitled to incentives pursuant to Section 143.0740(b) unless the City makes a written finding based upon substantial evidence, of either of the following:
- (A) The incentive is not required in order to provide for affordable housing costs, as defined in California Health and Safety Code Sections 50052.5 and 50053.
- (B) The incentive would have a specific adverse impact upon health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the *development* unaffordable to *low* and *moderate income* households.
- (5) Any *development* requesting an incentive within the Coastal Overlay Zone shall be required to make the findings in Section 126.0708 and any *development* within the area identified on Map C-380 shall be subject to the regulations of Chapter 13, Article 2, Division 5 in accordance with the certified *Local Coastal Program*.
- (b) Incentives shall be granted through Process One. The number of incentives provided are identified in Table 143-07A for *low income*, Table 143-07B for *very low income*, and Table 143-07C for *moderate income* consistent with the percentage of pre-density bonus units identified in column one of the tables.

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Low Income Density Bonus
Table 143-07A

Percent <i>Low Income</i> units	Percent Density Bonus	Number of Incentives
10	20	1
11	21.5	1
12	23	1
13	24.5	1
14	26	1
15	27.5	1
16	29	1
17	30.5	1
18	32	1
19	33.5	1
20 – 29	35	2
≥ 30	35	3

Very Low Income Density Bonus
Table 143-07B

Percent <i>Very</i> <i>Low Income</i> Units	Percent Density Bonus	Number of Incentives
5	20	1
6	22.5	1
7	25	1
8	27.5	1
9	30	1
10	32.5	2
11 - 14	35	2
≥ 15	35	3

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Moderate Income Density Bonus
Table 143-07C

Percent <i>Moderate Income</i> Units	Percent Density Bonus	Number of Incentives
10	20	1
11	21	1
12	22	1
13	23	1
14	24	1
15	25	1
16	26	1
17	27	1
18	28	1
19	29	1
20	30	2
21	31	2
22	32	2
23	33	2
24	34	2
25 - 29	35	2
≥ 30	35	3

- (c) Child Care Center: *Development* that meets the criteria in 143.0720 and includes a child care center as defined in Section 141.0606(a)(2) as part of, or adjacent to, such *development* shall be entitled to an additional *density* bonus or incentive provided that:
- (1) The child care center remains in operation for the greater of 30 years, or the period of time established by Section 143.0720(c)(3);
 - (2) The percentage of children from *low, very low, or moderate income* households attending the child care center is equal to or greater than the percentage of those same households required in the residential *development*;
 - (3) The additional density bonus or incentive requested is either:
 - (A) An additional *density* bonus in an amount equal to the amount of square feet in the child care center up to a maximum combined *density* increase of 35 percent; or

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- (B) An additional incentive that contributes significantly to the economic feasibility of the construction of the child care center; and
- (4) The City finds, based upon substantial evidence, that the community is inadequately served by child care centers.
- (d) Parking: In addition to any other incentive, and upon the request of an *applicant* that proposes a *development* meeting the criteria of Section 143.0720(c) or (d) the City shall apply the following vehicular parking ratio, inclusive of handicapped and guest parking:
 - (1) Zero to one bedroom: one onsite parking space
 - (2) Two to three bedrooms: two onsite parking spaces
 - (3) Four and more bedrooms: two and one-quarter parking spaces
 - (4) Reductions to the parking ratios shall be granted as follows:
 - (i) *Development* that is at least partially within a *transit area* as described in Chapter 13, Article 2, Division 10 (Transit Area Overlay Zone) or that is subject to Chapter 13, Article 2, Division 11 (Urban Village Overlay Zone), shall receive a 0.25 space per *dwelling unit* reduction in the parking ratio for the entire *development*.
 - (ii) *Development* that includes *dwelling units* limited to occupancy by *very low income* households shall receive a 0.25 space reduction in the parking ratio for each *dwelling unit* that is limited to occupancy by a *very low income* household.
 - (iii) *Development* that includes *dwelling units* limited to occupancy by *very low income* households, and is at least partially within a *transit area*, shall receive a 0.50 space reduction in the parking ratio for each *dwelling unit* that is limited to occupancy by a *very low income* household.
- (5) For purposes of this division, a *development* may provide onsite parking through tandem parking or uncovered parking, but not through on-street parking or parking within a required front yard setback.

DRAFT**§143.0750 Development in the Coastal Overlay Zone**

- (a) *Development* within the Coastal Overlay Zone that proposes to use the regulations of this division shall be subject to the applicable certified land use plan and implementing ordinances, including a Coastal Development Permit (Chapter 12, Article 6, Division 7), as described in Chapter 13, Article 2, Division 4.
- (b) The City may consider deviations from the Environmentally Sensitive Lands Regulations in Chapter 14, Article 3, Division 1 when requested by an *applicant* as an incentive for providing affordable housing consistent with this division, provided that the *findings* in Section 126.0708(b)(2) can be made.

DRAFT**126.0708 Findings for Coastal Development Permit Approval**

An application for a Coastal Development Permit may be approved or conditionally approved only if the decision maker makes all of the *findings* in Section 126.0708(a) and the supplemental *findings* in Section 126.0708(b) that are applicable to the proposed *development*.

- (a) [no change]
- (b) Supplemental Findings - Environmentally Sensitive Lands Within the Coastal Overlay Zone
 - (1) When a deviation is requested from the Environmentally Sensitive Lands Regulations because the *applicant* contends that application of the regulations would result in denial of all economically viable use, the following shall apply:
 - (A) Any *development permit* in the Coastal Overlay Zone, required in accordance with Section 143.0110 because of potential impacts to *environmentally sensitive lands* where a deviation is requested in accordance with Section 143.0150 may be approved or conditionally approved only if the decision maker makes the following supplemental *findings* and the supplemental *findings* for deviations from the Environmentally Sensitive Lands Regulations in addition to the *findings* for the applicable *development permit(s)*:
 - (i) Based on the economic information provided by the *applicant*, as well as any other relevant evidence, each use provided for in the Environmentally Sensitive Lands Regulations would not provide any economically viable use of the *applicant's* property;
 - (ii) Application of the Environmentally Sensitive Lands Regulations would interfere with the *applicant's* reasonable investment-backed expectations;
 - (iii) The use proposed by the *applicant* is consistent with the applicable zoning;
 - (iv) The use and project design, siting, and size are the minimum necessary to provide the *applicant* with an economically viable use of the *premises*; and
 - (v) The project is the least environmentally damaging alternative and is consistent with all provisions of

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the certified Local Coastal Program with the exception of the provision for which the deviation is requested.

- (B) The Coastal Development Permit shall include a determination of economically viable use.
 - (C) The public hearing on the Coastal Development Permit shall address the economically viable use determination.
 - (D) The *findings* adopted by the decision making authority shall identify the evidence supporting the *findings*.
- (2) A deviation from the Environmentally Sensitive Lands Regulations when requested as an incentive for providing affordable housing pursuant to the Affordable Housing Density Bonus Regulations in Chapter 14, Article 3, Division 7, may be approved or conditionally approved only if the decision maker makes the following supplemental *findings* in addition to the *findings* in Section 126.0708(a)(1) through (4):
- (A) Feasible alternatives to the requested incentive and the effect of such alternatives on coastal resources have been considered;
 - (B) Granting the incentive or alternative will not adversely affect coastal resources.

DRAFT**§141.0310 Housing for Senior Citizens**

Housing for senior citizens may be permitted with a Conditional Use Permit decided in accordance with Process Three in the zones indicated with a "C" in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) subject to the following regulations.

- (a) [no change]
- (b) Housing for senior citizens may be permitted a *density* bonus as provided in Chapter 14, Article 3, Division 7 (Affordable Housing *Density* Bonus Regulations).
- (c) through (e) [no change]

**Attachment C: Draft Strikeout/Underline Affordable Housing
Density Bonus Regulations**

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Article 3: Supplemental Development Regulations

Division 7: Affordable Housing Density Bonus Regulations

(Added 12-9-1997 by O-18451 N.S.; effective 1-1-2000.)

§143.0710 Purpose of Affordable Housing Density Bonus Regulations

The purpose of these regulations is to provide increased residential ~~densities~~*density* to developers who guarantee that a portion of their residential *development* will be available to *moderate income, low income, very low-income,* or senior households. The regulations are intended to materially assist the housing industry in providing adequate and affordable shelter for all economic segments of the community and to provide a balance of housing opportunities for *moderate income, low income, very low-income,* and senior households throughout the City. It is intended that the affordable housing *density* bonus and any additional ~~development~~*development* incentive be available for use in all residential ~~developments,~~*development of five or more units,* using criteria and standards provided in the Progress Guide and General Plan, as defined by the San Diego Housing Commission; that requests be processed by the City of San Diego, and that they be implemented by the President and Chief Executive Officer of the San Diego Housing Commission. It is also intended that these regulations implement the provisions of California Government Code Sections 65915 through 65918.

§143.0715 When Affordable Housing Density Bonus Regulations Applies

- (a) This division applies to any residential *development* of five or more ~~pre-density bonus dwelling units~~*dwelling units* where an *applicant* proposes *density* beyond that permitted by the applicable zone in exchange for either of the following as set forth in this division:
- (a) A portion of the total ~~dwelling units~~*dwelling units* in the development being reserved for *moderate, low,* or *very low-income* households or for senior citizens ~~or qualified residents~~ through a written agreement with the San Diego Housing Commission; or
- (b) ~~An applicant proposing development as provided in Section 143.0715(a) shall be entitled to a density bonus as provided in Sections 143.0720 and 143.0730 and may be granted an additional development incentive as provided in Section 143.0740.~~
- (b) The donation of land.

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§143.0720 Density Bonus in Exchange for Affordable Housing Units~~Affordable Housing Density Bonus Agreement~~

- (a) An applicant development shall be entitled to a density bonus and incentives as described in this division, for any residential development for which an agreement, and a deed of trust securing the agreement, is entered into by the applicant and the President and Chief Executive Officer of the San Diego Housing Commission as provided in Section 143.0720(b). The agreement and deed of trust in favor of the San Diego Housing Commission are to be recorded in the Office of the Recorder of the County of San Diego as an encumbrance against the development.
- (b) The density bonus units authorized by this division shall be exempt from the Inclusionary Housing Regulations set forth in Chapter 14, Article 2, Division 13.
- (c) The A rental density bonus agreement shall include utilize the following provisions qualifying criteria consistent with the procedures established by the San Diego Housing Commission:
- (1) Housing for senior citizens - The development consists of housing for senior citizens or qualifying residents as defined under California Civil Code Section 51.3 and 51.12, where at least 35 dwelling units are provided; or a mobilehome park that limits residency based on age requirements for housing for older persons pursuant to California Civil Code Section 798.76 or 799.5.
- (+2) With respect to rental housing affordable units: Affordable housing units -
- (A) Low income - At least 2010 percent of the pre-density bonus units in the development shall will be affordable, including an allowance for utilities, to low-income households at a rent that does not exceed 30 percent of 60 percent of area median income, as adjusted for assumed household size; or
- (B) Very low income - At least 105 percent of the pre-density bonus units in the development shall will be affordable, including an allowance for utilities, to very low-income households at a rent that does not exceed 30 percent of 50 percent of the area median income, as adjusted for assumed household size; or
- (C) At least 50 percent of the total units will be available to senior citizens or qualifying residents as defined under California Civil Code Section 51.3.

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- (4C) The affordable units shall be designated units, ~~which are~~ comparable in bedroom mix and amenities to the market-rate units in the *development*, and ~~are~~ dispersed throughout the *development*.
- ~~(5) Provision shall be made for certification of eligible tenants, and purchasers, annual certification of property owner compliance, and payment of a monitoring fee, as adjusted from time to time, for monitoring of affordable unit requirements.~~
- (3) The *dwelling units* shall remain available and affordable for a period of at least 30 years or longer as may be required by other laws.
- (2d) A for-sale *density* bonus agreement shall utilize the following qualifying criteria consistent with the procedures established by the San Diego Housing Commission: With respect to "for sale" housing affordability shall be determined based on prevailing underwriting standards of mortgage financing available for the *development*, which shall include a forgivable second, silent mortgage, as administered by the Housing Commission.
- (1) For-sale density bonus shall only be available to common interest *development*, as defined by California Civil Code Section 1351, where A at least 2010 percent of the pre-*density* bonus units in the *development* shall be initially sold and affordable to moderate income households at a price that is affordable to families earning 110 percent of the area median income as adjusted or assumed household size, as determined by the San Diego Housing Commission, and where all of the *dwelling units* are offered to the public for purchase. available to low income purchasers or 10 percent of the pre-bonus units shall be available to very low-income purchasers or at least 50 percent of the pre-bonus units in the *development* shall be available to senior citizens or qualifying residents as defined under California Civil Code Section 51.3.
- (2) Prior to, or concurrent with, the sale of each *density* bonus affordable unit, the *applicant* shall require the buyer to execute and deliver a promissory note in favor of the San Diego Housing Commission so that the repayment of any initial subsidy is ensured.
- (3) Each for-sale unit shall be occupied by the initial owner at all times until the resale of the unit.

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- (4) Upon the first resale of a unit the seller shall comply with all conditions regarding the sale of a unit, as applied by the San Diego Housing Commission, and as set forth in California Government Code Section 65915(c)(2).
- (45) The affordable units shall be designated units, which are be comparable in bedroom mix and amenities to the market-rate units in the development, and are be dispersed throughout the development.
- (3) ~~The affordable units will remain available and affordable as provided in Section 143.0720 for a period of at least 30 years if an additional development incentive is granted to the applicant as provided in Section 143.0740 or 10 years if an additional development incentive is not granted. If an applicant does not request an additional development incentive, the applicant shall submit a pro forma analysis for the Chief Executive Officer of the Housing Commission to document project feasibility.~~
- (e) The density bonus units shall have recorded against them a Declaration of Covenants, Conditions and Restrictions in favor of the San Diego Housing Commission that shall enjoy first lien position and shall be secured by a deed of trust that may be recorded against the project or unit, as applicable, prior to construction or permanent financing.
- (5f) Provision shall be made by the San Diego Housing Commission for certification of eligible tenants; and purchasers, annual certification of property owner compliance, and payment of a monitoring fee to the San Diego Housing Commission, as adjusted from time to time, for monitoring of affordable unit requirements, and any other terms that the San Diego Housing Commission determines are needed to implement the provisions and intent of this division and State law.

§143.073025 Density Bonus Provisions

A residential development proposal requesting an affordable housing density bonus is subject to the following:

- (a) The development shall be permitted a density bonus of the amount of units requested by the applicant, up to a total project dwelling unit count of 125 percent of the units permitted by the density regulations of the applicable base zone. For senior citizen housing meeting the criteria of Section 143.0720(c)(1), the density bonus shall be 20 percent.
- (b) For development that includes affordable housing, pursuant to the Inclusionary Housing Regulations in Chapter 14, Article 2, Division 13, and that affordable housing is located onsite, that development shall be

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entitled to a density bonus, equal to the number of affordable units provided onsite, up to a maximum of 10 percent of the pre-density bonus units. The increased density shall be in addition to any other increase in density allowed in this division, up to a maximum combined density increase of 35 percent.

- (c) For development meeting the criteria for low income in Section 143.0720(c)(2)(A), the density bonus shall be calculated as set forth in Table 143-07A. The increased density shall be in addition to any other increase in density allowed in this division, up to a maximum combined density increase of 35 percent. For development meeting the same criteria within the Centre City Planned District, the bonus shall apply to the maximum allowable floor area ratio applicable to the development consistent with Section 151.0310(e).
- (d) For development meeting the criteria for very low income in Section 143.0720(c)(2)(B), the density bonus shall be calculated as set forth in Table 143-07B. The increased density shall be in addition to any other increase in density allowed in this division, up to a maximum combined density increase of 35 percent. For development meeting the same criteria within the Centre City Planned District, the bonus shall apply to the maximum allowable floor area ratio applicable to the development consistent with Section 151.0310(e).
- (e) For development meeting the criteria for moderate income in Section 143.0720(d), the density bonus shall be calculated as set forth in Table 143-07C. The increased density shall be in addition to any other increase in density allowed in this division, up to a maximum combined density increase of 35 percent. For development meeting the same criteria within the Centre City Planned District, the bonus shall apply to the maximum allowable floor area ratio applicable to the development consistent with Section 151.0310(e).
- (bf) ~~Where the applicable zone requires that each lot be occupied by no more than one dwelling unit, the development requires a Site Development Permit. If any deviation from the development regulations of the applicable zone is proposed, a Planned Development Permit is required.~~
- (eg) ~~If the premises is located in two or more zones, the number of dwelling units permitted in the development is the sum of the dwelling units permitted in each of the zones. Within the development, the permitted number of dwelling units may be distributed without regard to the zone boundaries.~~
- (dh) ~~Where the development consists of two or more specifically identified parcels, whether contiguous or noncontiguous, the maximum number of~~

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~~dwelling units~~ *dwelling units* permitted on each parcel ~~property~~ is calculated based on the area of that ~~property~~ parcel. Within the *development*, if any portion of the *density* is to be transferred between two or more separate parcels, the regulations of Section 143.0750 apply.

- (ei) Where the *development* consists of two or more noncontiguous parcels lying within two or more community planning areas, the ~~dwelling units~~ *dwelling units* reserved at levels affordable by *moderate income*, *low-income* or *very low-income* households shall be distributed among community planning areas in the same proportion as the total number of ~~dwelling units~~ *dwelling units* constructed within the *development*.

§143.0730 Density Bonus in Exchange for Donation of Land

An applicant for a tentative map, parcel map, or residential development permit, may donate land to the City for development with affordable housing units, in exchange for a density bonus, in accordance with California Government Code Section 65915, provided the land to be transferred meets the following criteria:

- (a) The site is at least 1 acre or of sufficient size to permit development of at least 40 affordable dwelling units;
- (b) The General Plan designation is appropriate for residential development;
- (c) The site is zoned to allow for the appropriate residential development;
- (d) The site is or will be served by public facilities and infrastructure adequate to serve the dwelling units; and
- (e) The land to be transferred is within the boundary of the proposed development or, if the City agrees, within one-quarter mile of the boundary of the proposed development.

§143.0740 Additional Development Incentives for Affordable Housing Density Bonus Projects

~~In accordance with the provisions of Government Code Section 65915, the City may grant a development incentive in addition to the 25 percent density bonus. The additional development incentive may consist of the following:~~

- (a) ~~A density bonus of more than 25 percent;~~ The City shall grant an incentive requested by an applicant, to the extent allowed by State law and as set forth in this Section.
- (1) An incentive means any of the following:
- (A) A deviation to a development regulation;

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- (B) Approval of a mixed use *development* in conjunction with the residential development if the commercial, office, or industrial uses will reduce the cost of the residential development; and if the mixed use *development* is compatible with the residential *development*; and if the mixed use *development* is compatible with the applicable land use plan;
- (C) Any other regulatory deviation proposed by the applicant, other than a waiver from a required permit, which results in identifiable, financially sufficient, and actual cost reductions.
- (2) The granting of an incentive shall not be interpreted, in and of itself, to require a General Plan amendment, zoning change, or other discretionary approval, notwithstanding Planned Development Permit Procedures (Chapter 12, Article 6, Division 6).
- (3) Nothing in this division shall be construed to require the City or any of its related legal entities, including the San Diego Housing Commission, to provide a direct financial incentive, including the provision of land, or the waiver of fees or dedication requirements.
- (4) Upon an *applicant's* request, *development* meeting the requirements of Sections 143.0720(c) or (d) shall be entitled to incentives pursuant to Section 143.0740(b) unless the City makes a written finding based upon substantial evidence, of either of the following:
- (A) The incentive is not required in order to provide for affordable housing costs, as defined in California Health and Safety Code Sections 50052.5 and 50053.
- (B) The incentive would have a specific adverse impact upon health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact without rendering the *development* unaffordable to *low* and *moderate income* households.
- (5) Any *development* requesting an incentive within the Coastal Overlay Zone shall be required to make the findings in Section 126.0708 and any *development* within the area identified on Map C-380 shall be subject to the regulations of Chapter 13, Article 2,

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Division 5 in accordance with the certified *Local Coastal Program*.

(b) ~~A financial incentive consisting of:~~ Incentives shall be granted through Process One. The number of incentives provided are identified in Table 143-07A for *low income*, Table 143-07B for *very low income*, and Table 143-07C for *moderate income* consistent with the percentage of pre-density bonus units identified in column one of the tables.

- (1) ~~Fee reductions or deferrals as authorized for affordable housing in the Municipal Code; or~~
- (2) ~~Direct financing assistance from the Housing Commission, Redevelopment Agency, or other public funds, if authorized by the applicable agency on a case-by-case basis; or~~

Low Income Density Bonus
Table 143-07A

<u>Percent</u> <u>Low Income units</u>	<u>Percent</u> <u>Density Bonus</u>	<u>Number of Incentives</u>
<u>10</u>	<u>20</u>	<u>1</u>
<u>11</u>	<u>21.5</u>	<u>1</u>
<u>12</u>	<u>23</u>	<u>1</u>
<u>13</u>	<u>24.5</u>	<u>1</u>
<u>14</u>	<u>26</u>	<u>1</u>
<u>15</u>	<u>27.5</u>	<u>1</u>
<u>16</u>	<u>29</u>	<u>1</u>
<u>17</u>	<u>30.5</u>	<u>1</u>
<u>18</u>	<u>32</u>	<u>1</u>
<u>19</u>	<u>33.5</u>	<u>1</u>
<u>20 - 29</u>	<u>35</u>	<u>2</u>
<u>≥ 30</u>	<u>35</u>	<u>3</u>

Very Low Income Density Bonus
Table 143-07B

<u>Percent Very</u> <u>Low Income Units</u>	<u>Percent</u> <u>Density Bonus</u>	<u>Number of Incentives</u>
<u>5</u>	<u>20</u>	<u>1</u>
<u>6</u>	<u>22.5</u>	<u>1</u>
<u>7</u>	<u>25</u>	<u>1</u>
<u>8</u>	<u>27.5</u>	<u>1</u>

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<u>9</u>	<u>30</u>	<u>1</u>
<u>10</u>	<u>32.5</u>	<u>2</u>
<u>11 - 14</u>	<u>35</u>	<u>2</u>
<u>> 15</u>	<u>35</u>	<u>3</u>

Moderate Income Density Bonus
Table 143-07C

<u>Percent Moderate Income Units</u>	<u>Percent Density Bonus</u>	<u>Number of Incentives</u>
<u>10</u>	<u>20</u>	<u>1</u>
<u>11</u>	<u>21</u>	<u>1</u>
<u>12</u>	<u>22</u>	<u>1</u>
<u>13</u>	<u>23</u>	<u>1</u>
<u>14</u>	<u>24</u>	<u>1</u>
<u>15</u>	<u>25</u>	<u>1</u>
<u>16</u>	<u>26</u>	<u>1</u>
<u>17</u>	<u>27</u>	<u>1</u>
<u>18</u>	<u>28</u>	<u>1</u>
<u>19</u>	<u>29</u>	<u>1</u>
<u>20</u>	<u>30</u>	<u>2</u>
<u>21</u>	<u>31</u>	<u>2</u>
<u>22</u>	<u>32</u>	<u>2</u>
<u>23</u>	<u>33</u>	<u>2</u>
<u>24</u>	<u>34</u>	<u>2</u>
<u>25 - 29</u>	<u>35</u>	<u>2</u>
<u>> 30</u>	<u>35</u>	<u>3</u>

(c) A deviation from applicable *development* regulations of the underlying zone pursuant to Section 143.0750, Child Care Center: *Development* that meets the criteria in 143.0720 and includes a child care center as defined in Section 141.0606(a)(2) as part of, or adjacent to, such *development* shall be entitled to an additional *density* bonus or incentive provided that:

- (1) The child care center remains in operation for the greater of 30 years, or the period of time established by Section 143.0720(c)(3);
- (2) The percentage of children from *low, very low, or moderate income* households attending the child care center is equal to or greater than the percentage of those same households required in the residential *development*;
- (3) The additional density bonus or incentive requested is either:

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- (A) An additional *density* bonus in an amount equal to the amount of square feet in the child care center up to a maximum combined *density* increase of 35 percent; or
- (B) An additional incentive that contributes significantly to the *economic feasibility of the construction of the child care center*; and
- (4) The City finds, based upon substantial evidence, that the community is inadequately served by child care centers.
- (d) Parking: In addition to any other incentive, and upon the request of an *applicant* that proposes a *development* meeting the criteria of Section 143.0720(c) or (d) the City shall apply the following vehicular parking ratio, inclusive of handicapped and guest parking:
- (1) Zero to one bedroom: one onsite parking space
- (2) Two to three bedrooms: two onsite parking spaces
- (3) Four and more bedrooms: two and one-quarter parking spaces
- (4) Reductions to the parking ratios shall be granted as follows:
- (i) *Development* that is at least partially within a *transit area* as described in Chapter 13, Article 2, Division 10 (Transit Area Overlay Zone) or that is subject to Chapter 13, Article 2, Division 11 (Urban Village Overlay Zone), shall receive a 0.25 space per *dwelling unit* reduction in the parking ratio for the entire *development*.
- (ii) *Development* that includes *dwelling units* limited to occupancy by *very low income* households shall receive a 0.25 space reduction in the parking ratio for each *dwelling unit* that is limited to occupancy by a *very low income* household.
- (iii) *Development* that includes *dwelling units* limited to occupancy by *very low income* households, and is at least partially within a *transit area*, shall receive a 0.50 space per unit reduction in the parking ratio for each *dwelling unit* that is limited to occupancy by a *very low income* household.
- (5) For purposes of this division, a *development* may provide onsite parking through tandem parking or uncovered parking, but not

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through on-street parking or parking within a required front yard setback.

§143.0750 ~~Deviation to Allow for Additional Development Incentive~~ Development in the Coastal Overlay Zone

~~An applicant may request a deviation from the applicable development regulations as an additional development incentive for affordable housing pursuant to a Site Development Permit decided in accordance with Process Four provided that the *findings* in Section 126.0504(a) and the supplemental *findings* in Section 126.0504(1) are made.~~

- (a) Development within the Coastal Overlay Zone that proposes to use the regulations of this division shall be subject to the applicable certified land use plan and implementing ordinances, including a Coastal Development Permit (Chapter 12, Article 6, Division 7), as described in Chapter 13, Article 2, Division 4.
- (b) The City may consider deviations from the Environmentally Sensitive Lands Regulations in Chapter 14, Article 3, Division 1 when requested by an applicant as an incentive for providing affordable housing consistent with this division, provided that the *findings* in Section 126.0708(b)(2) can be made.

§143.0760 ~~Deviations from Density Bonus and Affordable Housing Provisions~~

- (a) ~~A deviation from the provisions of either Section 143.0730 or Section 143.0740 may be requested in accordance with a Site Development Permit and shall require that the *findings* in Section 126.0504(m) be made.~~
- (b) ~~Deviations may only be considered as follows:~~
- (1) ~~An increase in the affordable housing density bonus provisions of Section 143.0730(a) and/or decrease in the affordable housing provisions of Section 143.0740(a), may be granted where the *development* provides for the inclusion of dwelling units affordable by persons of *very low income*. The total *density* bonus shall not result in a *development* containing more than 150 percent of the units permitted by the *density* regulations of the base zone nor shall the affordable housing requirement provide that less than 10 percent of the total *development* be affordable by persons and *families* of *very low income*.~~
- (2) ~~An increase in the affordable housing density bonus provisions of Section 143.0730(a), and/or decrease in the affordable housing provisions of Section 143.0740(a), may be granted where the~~

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~~development is located within a census tract where the median household income exceeds 120 percent of the citywide median household income as measured by the most recent U.S. Bureau of Census survey and the development provides for the inclusion of dwelling units affordable by persons of low income. The total density bonus shall not result in a development containing more than 150 percent of the units permitted by the density regulations of the applicable zone nor shall the affordable housing requirement provide that less than 10 percent of the total development be affordable by persons and families of low income.~~

126.0708 Findings for Coastal Development Permit Approval

An application for a Coastal Development Permit may be approved or conditionally approved only if the decision maker makes all of the *findings* in Section 126.0708(a) and the supplemental *findings* in Section 126.0708(b) that are applicable to the proposed *development*.

- (a) [no change]
- (b) Supplemental Findings - Environmentally Sensitive Lands Within the Coastal Overlay Zone
 - (1) When a deviation is requested from the Environmentally Sensitive Lands Regulations because the ~~applicant~~applicant contends that application of the regulations would result in denial of all economically viable use, the following shall apply:
 - (A) ~~A Coastal Development Permit~~Any development permit, or a Site Development Permit in the Coastal Overlay Zone, required in accordance with Section 143.0110 because of potential impacts to ~~environmentally sensitive lands~~ environmentally sensitive lands where a deviation is requested in accordance with Section 143.0150 may be approved or conditionally approved only if the decision maker makes the following supplemental ~~findings~~findings and the supplemental findings for deviations from the Environmentally Sensitive Lands Regulations in addition to the findings in Section ~~126.0708(a), (b), (c) and (d)~~ and the supplemental ~~findings~~findings in Section 126.0504 (b) for the applicable development permit(s):

~~The decision maker shall hold a public hearing on any application on a Coastal Development Permit that includes a deviation from the Environmentally Sensitive Lands Regulations in the Coastal Overlay Zone.~~

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- (1i) Based on the economic information provided by the ~~applicant~~ applicant, as well as any other relevant evidence, each use provided for in the Environmentally Sensitive Lands Regulations would not provide any economically viable use of the ~~applicant's~~ applicant's property; and
- (2ii) Application of the Environmentally Sensitive Lands Regulations would interfere with the ~~applicant's~~ applicant's reasonable investment-backed expectations; and
- (3iii) The use proposed by the ~~applicant~~ applicant is consistent with the applicable zoning; and
- (4iv) The use and project design, siting, and size are the minimum necessary to provide the ~~applicant~~ applicant with an economically viable use of the ~~premises~~ premises; and
- (5v) The project is the least environmentally damaging alternative and is consistent with all provisions of the certified Local Coastal Program with the exception of the provision for which the deviation is requested.
- (B) ~~The~~ Coastal Development Permit shall include a determination of economically viable use.
- (C) ~~The public hearing on the Coastal Development Permit~~ Such hearing shall address the economically viable use determination. ~~Prior to approving a Coastal Development Permit for development within the Coastal Overlay Zone that requires a deviation from the Environmentally Sensitive Lands Regulations, the decision maker shall make all of the following findings:~~
- (D) ~~The findings~~ findings adopted by the decision making authority shall identify the evidence supporting the ~~findings~~ findings.
- (2) A deviation from the Environmentally Sensitive Lands Regulations when requested as an incentive for providing affordable housing pursuant to the Affordable Housing Density Bonus Regulations in Chapter 14, Article 3, Division 7, may be approved or conditionally approved only if the decision maker makes the

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following supplemental findings in addition to the findings in Section 126.0708(a)(1) through (4):

- (A) Feasible alternatives to the requested incentive and the effect of such alternatives on coastal resources have been considered;
- (B) Granting the incentive or alternative will not adversely affect coastal resources.

§141.0310 Housing for Senior Citizens

Housing for senior citizens may be permitted with a Conditional Use Permit decided in accordance with Process Three in the zones indicated with a "C" in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones) subject to the following regulations.

- (a) [no change]
- (b) ~~Housing for senior citizens may be permitted a an affordable housing density bonus and an additional development incentive as provided in Chapter 14, Article 3, Division 7 (Affordable Housing Density Bonus Regulations). All density bonus units in excess of 25 percent of the allowable density of the base zone shall be for occupancy by very low income Senior Citizens or very low income qualifying residents at a rent that does not exceed 30 percent of 50 percent of area median income, as adjusted for assumed household size. Proposed developments that provide daily meals in a common cooking and dining facility, and provide and maintain a common transportation service for residents, may be exempt from the affordability requirement of Chapter 14, Article 3, Division 7.~~
- (c) through (e) [no change]