



DATE: May 2, 2012

TO: Honorable Mayor and City Council Members

FROM: Development Services Department/Planning Division

SUBJECT: **INTRODUCTION OF AN ORDINANCE AMENDING THE OCEANSIDE ZONING ORDINANCE BY MODIFYING THE CITY'S DENSITY BONUS PROVISIONS RELATED TO AFFORDABLE HOUSING, AND ADOPTION OF A RESOLUTION APPROVING LOCAL COASTAL PLAN AMENDMENT**

SYNOPSIS

Staff recommends that the City Council introduce an ordinance amending Article 30, Section 3032 of the Oceanside Zoning Ordinance, modifying the City's density bonus provisions to include State-mandated incentives for affordable housing pursuant to Government Code Section 65915; and adopt a resolution approving Local Coastal Program Amendments establishing the amended text as part of the implementing document of the Local Coastal Program.

BACKGROUND

Density Bonus is generally defined by state law as additional density granted over the otherwise maximum allowable residential density established by local zoning standards. Government Code Section 65915, *et seq.* requires that local jurisdictions in California grant density bonus to housing projects that include certain percentages of dwelling units affordable to lower-income households. The percentage of density bonus a local jurisdiction must grant is based on the type and percentage of affordable dwelling units provided. The text of state density bonus law (Attachment 3) includes sliding scales that specify the percentages of density bonus to be granted for particular types and percentages of affordable units.

In the context of state density bonus law, qualifying households fall into one of three income categories: very low income (earning less than fifty percent of the county median income); low income (earning less than eighty percent of the county median income) and moderate income (earning less than 120 percent of the county median income). The ratio of density bonus to the percentage of affordable units provided depends upon the targeted lower-income category, such that the provision of units affordable to very low income households earns a greater percentage of density bonus than the provision of units affordable to low or moderate income households.

State density bonus law was substantially amended in 2005, resulting in the following changes:

- Increase in the maximum percentage of density bonus local jurisdictions must grant, from twenty-five percent to thirty-five percent
- Increase in the maximum number of concessions/incentives local jurisdictions must grant, from one to three, based on the type and percentage of affordable units provided
- Waiver of development standards that render density bonus projects infeasible
- Density bonus (twenty percent) for senior housing
- Density bonus for land donation (based on a sliding scale)
- Density bonus for new affordable units in conjunction with condominium conversion (twenty-five percent bonus for thirty-three percent low/moderate income units or fifteen percent very low income units)
- Density bonus for childcare facilities (based on square footage)
- Minimum parking standards

These changes are discussed in further detail in the Planning Commission staff report on this subject, included with this staff report as Attachment 5.

Government Code Section 65915, *et seq.* requires that local jurisdictions adopt ordinances that comply with state density bonus law. Notwithstanding a local jurisdiction's failure to adopt its own density bonus ordinance, eligible projects must be granted state-prescribed density bonuses and associated concessions/incentives.

At the same time, state density bonus law does not exempt density bonus projects from public review otherwise required by a local jurisdiction. Given that zoning standards in the City of Oceanside require public review for any housing project comprised of more than two units, requests for density bonus in Oceanside would inevitably be subject to such public review, with approval contingent upon the City's ability to make specific findings (e.g., that the project will not have adverse impacts on health, safety, or welfare).

Program 3 of the City's current Housing Element indicates that the City will update its density bonus provisions to accord with state law. It is the expectation of California Housing and Community Development (HCD) that the City will update its density bonus provisions in advance of its next Housing Element update, which is scheduled to be completed by mid-2013.

On January 9, 2012, the Planning Commission reviewed and recommended City Council approval of staff-recommended changes to the City's Density Bonus Ordinance. These changes are intended to bring the City's density bonus provisions into compliance with state law, while providing additional flexibility to both the City and the local development community in implementing density bonus.

ANALYSIS

Provisions beyond Those Specified in State Law

In addition to incorporating the specific changes to state density bonus law enacted in 2005, the staff-recommended revisions to the City's Density Bonus Ordinance include language from the State Model Density Bonus Ordinance that grants local jurisdictions the authority to allow the required affordable units in a density bonus project to be constructed at a site other than where the project's market-rate units would be built, when it can be found that such off-site provision would be in the public interest. Under this provision, the City would have full discretion to devise and enforce any mechanisms it found necessary to ensure construction and occupancy of required affordable units prior to, or concurrent with, construction and occupancy of market-rate units.

State density bonus law provides for density bonus in exchange for land donation, when such land meets certain size and locational requirements. Under state law, localities must provide density bonus for donated land only when such land is at least one acre in size and large enough to accommodate a minimum of forty dwelling units. The staff-recommended changes to the City's Density Bonus Ordinance would be somewhat less restrictive, establishing only that land donated in exchange for density bonus have capacity for dwelling units equivalent to the project's affordability requirement. For example, if a project were required to provide ten affordable units in exchange for a specified percentage of density bonus, the project's affordability requirement could be met through the donation of land of sufficient size to accommodate ten dwelling units under current zoning. Intended to allow smaller projects to qualify for density bonus, such flexibility in land donation standards would not diminish the City's wherewithal to impose conditions it found necessary to ensure construction and occupancy of required affordable units prior to, or concurrent with, construction and occupancy of market-rate units.

State density bonus law further restricts land donated in exchange for density bonus to being either contiguous with the site of the density bonus project or within a quarter mile of it. Along with its recommendation of the staff-recommended changes to the City's Density Bonus Ordinance, the Planning Commission has further suggested that density bonus be granted for the donation of land situated within transit-oriented areas of the City, defined as those areas included on SANDAG's regional Smart Growth Concept Map as well as any property lying within a quarter mile of high-frequency bus service. (Maps identifying those areas of the City that would currently qualify as transit-oriented under these parameters are included with this staff report as Attachment 6). State density bonus law requires local jurisdictions to grant density bonus in exchange for the donation of land only when the donated land lies within a quarter-mile of the site where the density bonus project would be implemented. The Planning Commission recommends that density bonus be granted in exchange for the donation of land outside of this quarter-mile radius when the donated land lies within a transit-oriented area. It is staff's position that broadening the locational parameters for land donation in exchange for density bonus is consistent with state law. Staff has thus incorporated this Planning Commission recommendation into the proposed update of the City's Density Bonus Ordinance.

In the spring of 2011, in conjunction with its approval of changes to the calculation of the City's affordable housing in-lieu fee (established under Article 14C of the Municipal Code), the City Council directed staff to convene an affordable housing ad hoc committee to consider voluntary incentives for affordable housing beyond those established by state density bonus law. Staff recommendations informed by the ad hoc committee's input and further refined by the Planning Commission will be brought forward to the City Council in the summer of 2012. These recommendations involve augmented affordable housing requirements for proposals to exceed the City's current base density allowances, with a range of options for meeting these augmented requirements.

ENVIRONMENTAL DETERMINATION

In accordance with the provisions of the California Environmental Quality Act (CEQA) Guidelines Section 15061 (b) (3), the proposed project does not have the potential for causing a significant effect on the environment and therefore is not subject to CEQA review.

COMMISSION OR COMMITTEE REPORT

On January 9, 2012, the Planning Commission reviewed and approved the proposed revisions to the City's Density Bonus Ordinance. The Planning Commission staff report associated with this item is appended to this staff report as Attachment 5.

FISCAL IMPACT

Does not apply.

CITY ATTORNEY'S ANALYSIS

State density bonus law is set forth in Government Code sections 65915 through 65918. In general, cities are obligated to provide a specified bonus above the maximum permitted residential density when an applicant agrees that a defined percentage of the total units in a housing project will be affordable for very low, low, or moderate income households. In addition, cities are generally required to grant certain incentives or concessions to enable the applicant to construct the bonus units. Requested incentives or concessions can be denied on a case-by-case basis if the City makes written findings that the incentive or concession is not required to provide for affordable housing costs, the concession or incentive will have a specific adverse impact upon public health and safety, the physical environment or on any historical resources, or the concession or incentive would violate state or federal law.

The staff proposal ensures that the City's Density Bonus Ordinance conforms to the mandatory requirements in state law. The staff recommendation contains the required bonuses as well as the mandatory concessions and incentives. Government Code section 65915 (n) permits the City to provide a greater density bonus than otherwise mandated by state law, but this must be allowed by local ordinance. The staff proposal provides the minimum bonuses cities must grant.

RECOMMENDATION

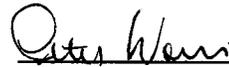
Staff recommends that the City Council introduce an ordinance amending Article 30, Section 3032 of the Oceanside Zoning Ordinance, modifying the City’s density bonus provisions to include State-mandated incentives for affordable housing pursuant to Government Code Section 65915; and adopt a resolution approving Local Coastal Program Amendments establishing the amended text as part of the implementing document of the Local Coastal Program.

PREPARED BY



Russ Cunningham
Senior Planner

SUBMITTED BY



Peter A. Weiss
City Manager

REVIEWED BY:

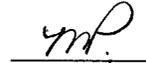
Michelle Skaggs-Lawrence, Deputy City Manager



George Buell, Development Services Director



Margery M. Pierce, Neighborhood Services Director



Jerry Hittleman, City Planner



ATTACHMENTS:

1. City Council Ordinance
 - A. Affordable Housing Density Bonus Provisions of the 1986 Zoning Ordinance
 - B. Affordable Housing Density Bonus Provisions of the 1992 Zoning Ordinance
2. Resolution LCPA11-00001
3. Government Code Section 65915
4. California State Model Density Bonus Ordinance
5. Planning Commission staff report (January 9, 2012)
6. Map of transit-oriented areas (3 pages)

ATTACHMENT 1

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE AMENDING ARTICLE 30, SECTION 3032, OF THE 1992 OCEANSIDE ZONING ORDINANCE AND ADDING ARTICLE 40 OF THE 1986 OCEANSIDE ZONING ORDINANCE, MODIFYING THE CITY'S DENSITY BONUS PROVISIONS TO COMPLY WITH GOVERNMENT CODE SECTION 65915

WHEREAS, Article 30, Section 3032 of the Zoning Ordinance entitled "Affordable Housing Density Bonus" sets forth policies which are intended to facilitate the development of affordable housing to serve a variety of economic needs within the City of Oceanside; and

WHEREAS, Section 3032 currently provides a density bonus of twenty-five percent in the number of dwelling units over the otherwise maximum allowable residential density provided at least twenty percent of the total units are designated for lower income households, ten percent of the total units are designated for very low income households, or fifty percent of the total units are designated for Qualifying Residents (senior citizen housing) as defined in the Civil Code; and

WHEREAS, Section 3032 currently provides for approval of an additional concession or incentive beyond the density bonus unless the additional incentive is determined unnecessary for the affordability of the units; and

WHEREAS, pursuant to Senate Bill ("SB") 1818, California Government Code Section 65915 was amended in 2005 making several changes to state density bonus law, including among other additions: 1. A bonus of twenty percent is available if ten percent of the units in a project are affordable to low income residents, five percent of the units are affordable for very low income households, or the project is a senior citizen development as defined in the Civil Code; and 2. A bonus of five percent is available if ten percent of the units are affordable to moderate income households; and

WHEREAS, Government Code Section 65915(f) provides a density bonus of up to thirty-five percent for projects setting aside a required number of units for very low, low or moderate units households; and

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1 WHEREAS, Government Code Section 65915(d) requires a city to provide at least one
2 incentive or concession for projects that include at least ten percent of total units for lower
3 income households, five percent for very low income households or at least ten percent for
4 persons and families of moderate income; two concessions or incentives must be provided for
5 projects that include at least twenty percent of the total units for lower income households, at
6 least ten percent for very low income households, or at least twenty percent for persons and
7 families of moderate income in a condominium or planned development; three concessions or
8 incentives must be provided to projects that include at least thirty percent of the total units for
9 lower income households, at least fifteen percent for very low income households, or at least
10 thirty percent for persons and families of moderate income in a common interest development;
11 and

12 WHEREAS, state density bonus law currently allows a density bonus of at least fifteen
13 percent when an applicant for a land development project donates land to a city in accordance
14 with the provisions of Government Code Section 65915(g); and

15 WHEREAS, Government Code Section 65915(h) provides for a density bonus when an
16 applicant proposes to construct a housing development that includes a child care facility; and

17 WHEREAS, the California Department of Housing and Community Development has
18 published a model density bonus law which includes the potential for off-site provision for
19 affordable units pursuant to an agreement between the City and a developer where the linked
20 developments are to be considered a single housing development; and

21 WHEREAS, City staff has conducted six meetings with affordable housing advocates
22 and building industry representatives between March 21, 2011, and October 11, 2011, to
23 discuss proposed amendments to the City's density bonus Ordinance; and

24 WHEREAS, the City of Oceanside Planning Commission did, on January 9, 2012,
25 conduct a duly-noticed public hearing on proposed amendments to the City's density bonus
26 provisions and voted 6-0 to recommend City Council approval of said amendments; and

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1 WHEREAS, the City Council conducted a duly-noticed public hearing on May 2, 2012,
2 to consider the proposed amendments to the City’s density bonus provisions; and

3 WHEREAS, a Notice of Exemption was prepared by the Resource Officer of the City of
4 Oceanside for this project pursuant to the California Environmental Quality Act of the 1970
5 and State Guidelines;

6 NOW, THEREFORE, the City Council of the City of Oceanside does ordain as follows:

7 **SECTION 1.** Zone Amendment (ZA11-00003) establishing the text of the 1986
8 Zoning Ordinance for properties in the Coastal Zone, except for those properties within the
9 Downtown “D” District, as specified in Exhibit A, and the 1992 Zoning Ordinance for
10 properties outside of the Coastal Zone and within the Downtown “D” District, as specified in
11 Exhibit B, is hereby adopted.

12 **SECTION 2.** The City Clerk of the City of Oceanside is hereby directed to publish
13 this Ordinance, or the title hereof as a summary, pursuant to state statute, once within fifteen
14 (15) days after its passage in the North County Times, a newspaper of general circulation
15 published in the City of Oceanside.

16 **SECTION 3.** Severability.

17 If any section, sentence, clause or phrase of this Ordinance is for any reason held to be
18 invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision
19 shall not affect the validity of the remaining portions of this Ordinance. The City Council
20 hereby declares that it would have passed this Ordinance and adopted this Ordinance and each
21 section, sentence, clause or phrase thereof, irrespective of the fact that any one or more
22 sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

23 **SECTION 4.** Notice is hereby given that the time within which judicial review must
24 be sought on this decision is governed by Government Code Section 65009(c).

25 **SECTION 5.** For properties within the Coastal Zone, this ordinance shall be effective
26 upon certification of Local Coastal Plan Amendment (LCPA11-00001) by the California
27 Coastal Commission. For properties outside of the Coastal Zone, this ordinance shall be
28 effective 30 days after its adoption.

1 INTRODUCTION at a regular meeting of the City Council of the City of Oceanside,
2 California, held on the ____ day of _____, 2012, and, thereafter,

3 PASSED AND ADOPTED at a regular meeting of the City Council of the City of
4 Oceanside, California, held on the ____ day of _____, 2012, by the following vote:

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6 AYES:

7 NAYS:

8 ABSENT:

9 ABSTAIN:

10
11 MAYOR OF THE CITY OF OCEANSIDE

12 ATTEST:

APPROVED AS TO FORM:

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15 CITY CLERK


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28 CITY ATTORNEY

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE AMENDING ARTICLE 30,
SECTION 3032, OF THE 1992 OCEANSIDE ZONING ORDINANCE AND ADDING ARTICLE 40 OF THE
1986 OCEANSIDE ZONING ORDINANCE, MODIFYING THE CITY'S DENSITY BONUS PROVISIONS
TO COMPLY WITH GOVERNMENT CODE SECTION 65915

EXHIBIT A

Affordable Housing Density Bonus Provisions of the 1986 Zoning Ordinance

ARTICLE 40

AFFORDABLE HOUSING DENSITY BONUS

Section 4000: Purpose. This section establishes policies which facilitate the development of affordable housing to serve a variety of economic needs within the City. To encourage provision of moderate, low and very low income housing, senior housing, the City shall provide developers/property owners meeting the requirements of this section a density bonus and additional incentives as specified in this section. The regulations set forth in this section shall apply Citywide.

Section 4001: Definitions. As used in this section, the following terms shall have the following meanings:

- (1) “Density Bonus” means a density increase over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the General Plan as of the date of application. The density bonus shall apply to residential developments of five or more units. The number of housing units to be reserved for very low, low and moderate income households, or senior housing does not include the density bonus units.
- (2) “Concession” or “incentive” shall have the meaning set forth in Government Code Section 65915(k).
- (3) “Equivalent Financial Value” concerns a condominium conversion project and refers to the cost to the developer/property owner based on the land cost per dwelling unit. The land cost per dwelling unit is determined by the difference in the value of the land with and without the density bonus.

- (4) "Lower Income Households" shall have the meaning set forth in Section 50079.5 of the Health and Safety Code and any subsequent amendments or revisions.
- (5) "Very Low Income Households" shall have the meaning set forth in Section 50105 of the Health and Safety Code and any subsequent amendments or revisions.
- (6) "Moderate Income Households" shall have the meaning set forth in Section 50093 of the Health and Safety Code and any subsequent amendments or revisions.
- (7) "Senior Citizen Housing Development" as currently defined by Sections 51.3 and 51.12 of the Civil Code and any subsequent amendments or revisions.
- (8) "Common Interest Development" as currently defined in Section 1351 of the Civil Code and any subsequent amendments or revisions.
- (9) "Child Care Facility" means a child day care facility other than a family day care home, including, but not limited to, infant centers, preschools, extended day care facilities, and school-age child care center, as defined by Government Code Section 65915.

Section 4002: Implementation. The City shall grant a density bonus, in the amount specified in subsection D below, to an applicant who proposes a housing development consisting of five or more dwelling units and meeting at least one of the following criteria:

- (1) At least ten percent (10%) of the total units of the housing development are designated for low income households; or
- (2) At least five percent (5%) of the total units of the housing development are designated for very low income households; or
- (3) A senior citizen housing development, as defined in Sections 51.3 and 51.12 of the Civil Code, or mobile home park that limits

residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the Civil Code.

- (4) Ten percent (10%) of the total dwelling units in a common interest development as provided in Section 1351 of the Civil Code for persons and families of moderate income, provided that all units in the development are offered to the public for purchase.
- (5) Circumstances may arise in which the public interest would be served by allowing some or all of the designated affordable units associated with a density bonus project to be produced and operated at an alternative development site. Where the City and applicant form such an agreement, the both the market-rate and affordable components of the project shall be considered a single housing development for the purposes of this chapter, and the applicant shall be subject to the same requirements of this chapter pertinent to the designated affordable units to be provided on the alternative site.

Section 4003: Amount of Density Bonus. The amount of density bonus granted to a qualifying project shall be based on the category and percentage of affordable units proposed, as reflected in the following matrices.

- (1) For housing developments meeting the criteria of Section C(1) above, the density bonus shall be calculated as follows:

TABLE 1
Density Bonus for
Low Income Units

Percentage Low Income Units	Percentage Density Bonus
10	20
11	21.5

Percentage Low Income Units	Percentage Density Bonus
12	23
13	24.5
14	26
15	27.5
16	29
17	30.5
18	32
19	33.5
20	35

- (2) For housing developments meeting the criteria of Section C(2) above, the density bonus shall be calculated as follows:

TABLE 2
Density Bonus for
Very Low Income Units

Percentage VL Income Units	Percentage Density Bonus
5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35

- (3) For housing development meeting the criteria of Section C(3) above, the density bonus shall be 20 percent (20%).
- (4) For housing development meeting the criteria of Section C(4) above, the density bonus shall be calculated as follows:

TABLE 3
Density Bonus for
Moderate Income Units

Percentage Mod. Income Units	Percentage Density Bonus
10	5
11	6
12	7
13	8
14	9
15	10
16	11
17	12
18	13
19	14
20	15
21	16
22	17
23	18
24	19
25	20
26	21
27	22

Percentage Mod. Income Units	Percentage Density Bonus
28	23
29	24
30	25
31	26
32	27
33	28
34	29
35	30
36	31
37	32
38	33
39	34
40	35

- (5) All density calculations resulting in fractional units shall be rounded up to the next whole number, unless otherwise indicated.
- (6) The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval.
- (7) An applicant may elect to accept a lesser percentage of density bonus.
- (8) The calculations are in accordance with Government Code Section 65915 and are subject to any subsequent amendments or revisions thereto.

Section 4004: Land Donation. When an applicant donates land to the City to satisfy the affordable housing obligation established under this Ordinance, the applicant shall be entitled to a density bonus as follows:

TABLE 4**Density Bonus for Land Donation**

Percentage VL Income Units	Percentage Density Bonus	Percentage Low Income Units	Percentage Density Bonus
10	15	10	7.5
11	16	11	8
12	17	12	8.5
13	18	13	9
14	19	14	9.5
15	20	15	10
16	21	16	10.5
17	22	17	11
18	23	18	11.5
19	24	19	12
20	25	20	12.5
21	26	21	13
22	27	22	13.5
23	28	23	14
24	29	24	14.5
25	30	25	15
26	31	26	15.5
27	32	27	16
28	33	28	16.5
29	34	29	17
30	35	30	17.5

Density bonus calculations are in accordance with Section 65915 of the Government Code and are subject to any amendments or revisions thereto. Applicants seeking density bonus for both the provision of affordable units and the donation of land shall be limited to a maximum combined density bonus of thirty-five percent (35%). In order to qualify for the above density bonus, the land donation must meet the following conditions:

- (1) The applicant donates and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application if no subdivision map is proposed.
- (2) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low or low income households in an amount not less than 10 percent (10%) of the total units of the housing development.
- (3) The transferred land is of sufficient size to permit development of the minimum number of units required by the prior paragraph (2), has the appropriate general plan and zoning designations, is appropriately zoned with appropriate development standards for development at the appropriate density, and is or will be served by adequate public facilities and infrastructure.
- (4) No later than the date of approval of the final subdivision map, parcel map, or residential development application for the first density bonus market-rate unit, the transferred land shall have all City required discretionary permits and approvals, other than building permits, necessary for the development of the very low or low income units on the transferred land, except the City may subject the proposed development to subsequent design review if the design is not otherwise reviewed by the City prior to the time of transfer.
- (5) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with Government Code Section 65915, which shall be recorded on the property at the time of the transfer.

- (6) The land is transferred to the City or to a housing developer approved by the City. The City may require the applicant to identify and transfer the land to the developer.
- (7) The transferred land shall be within the boundary of the proposed development or, if the City agrees, within one-quarter mile of the boundary of the proposed development.
- (8) In the event the transferred land is not within the boundary of the proposed development or within one-quarter mile of the boundary thereof, the transferred land must be situated within a transit-oriented area of the City, as identified on the regional Smart Growth Concept Map, prepared by the San Diego Association of Governments, or within one-quarter mile of high-frequency bus service (i.e., providing 15-minute headways).
- (9) A financing plan for funding the affordable units shall be identified no later than the date of the approval of the final subdivision map, parcel map or residential development application for the market-rate component of the density bonus project.

Section 4005: Child Care Facility.

- (1) When an applicant proposes to construct a housing development that conforms to the requirements of this section and includes a child care facility that will be located on the premises of, as a part of, or adjacent to, the project, the City shall grant either:
 - (a) An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the child care facility; or
 - (b) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility.

- (2) In order to qualify for the additional density bonus or incentive, the child care facility must meet the following criteria:
 - (a) The child care facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the density bonus units are required to remain affordable.
 - (b) Of the children who attend the child care facility, the children of very low income households, low income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low income households, low income households, or families of moderate income.

Section 4006: Condominium Conversions. When an applicant for approval to convert apartments to a condominium project agrees to provide at least thirty-three percent (33%) of the total units of the proposed condominium to persons and families of low or moderate income, or fifteen percent (15%) of the total units of the proposed condominium project to very low income households, and agrees to pay for the reasonably necessary administrative costs incurred by the City pursuant to this subsection, the City shall grant either:

- (1) A density bonus of twenty-five percent (25%) over the number of existing rental apartments, to be provided within the existing structure or structures proposed for conversion; or
- (2) An incentive of equivalent financial value.

The City may place such reasonable conditions on the granting of a density bonus or other incentives of equivalent financial value as it finds appropriate, including, but not limited to, conditions which assure continued affordability of units to subsequent purchasers who are persons and families of very low, low or moderate income households. The City shall enforce an equity sharing agreement, as set forth by Section 65915 of the Government Code, for these units.

Section 4007: Density Bonus Agreement. To be eligible for a density bonus, the applicant must submit an Affordable Housing Plan and, prior to securing any discretionary permits or approvals for the market-rate units, sign a binding agreement with the City which sets forth the conditions and guidelines to be met in the implementation of this Ordinance. The agreement will also establish specific compliance standards and remedies upon failure by the applicant to make the affordable units available to intended residents. As the means of ensuring compliance, the agreement shall require the recordation of a deed restriction against both the market-rate and affordable components of the density bonus project. The deed restriction shall remain in place and preclude issuance of the certificate of occupancy for the market-rate units until such time as the affordable units have been constructed or other security acceptable to the City is provided in lieu of the deed restriction. If the applicant proposes to phase development of the market-rate units, deed restrictions shall be recorded and implemented on a phase by phase basis.

Section 40008: Density Bonus Application.

- (1) Application for density bonus shall be made concurrent with submittals required for the processing of associated discretionary permits (e.g., development plans). The request for density bonus shall be articulated as part of the description and justification for the development project, in accordance with the City's Development Processing Guide. The request for density bonus shall specify the percentage of density bonus sought, per Subsections D(1) through D(4) of this Ordinance, and indicate how the affordable housing obligations of this Ordinance will be met.
- (2) The review process for a density bonus project shall be the same as that required for associated discretionary permits. Discretionary actions on density bonus projects shall be subject to the same appeal process applied to associated discretionary permits.

- (3) The application and approval of a density bonus and any associated incentives or concessions shall not require a separate permit or approval process from that otherwise required for the same project without a density bonus request.
- (4) The granting of a density bonus shall not, in and of itself, require a general plan amendment, local coastal plan amendment, zone change, or other discretionary action.

Section 4009: Concessions and Incentives.

- (1) In addition to the applicable density bonus, qualifying projects shall receive the following number of incentives or concessions:
 - (a) One incentive or concession for projects that propose at least ten percent (10%) of the total units for lower income households, at least five percent (5%) for very low income households, or at least ten percent (10%) for persons and families of moderate income in a common interest development.
 - (b) Two incentives or concessions for projects that propose at least twenty percent (20%) of the total units for lower income households, at least ten percent (10%) for very low income households, or at least twenty percent (20%) for persons and families of moderate income in a common interest development.
 - (c) Three incentives or concessions for projects that propose at least thirty percent (30%) of the total units for lower income households, at least fifteen percent (15%) for very low income households, or at least thirty percent (30%) for persons and families of moderate income in a common interest development.

- (d) Proposals seeking concessions or incentives deemed necessary to exceed the base density allowance would not be subject to the otherwise required conditional use permit.
- (2) For purposes of this Ordinance, concessions or incentives shall include, without limitation:
- (a) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results in identifiable, financially sufficient, and actual cost reductions.
 - (b) Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.
 - (c) Other regulatory incentives or concessions proposed by the developer or the City that result in identifiable, financially sufficient, and actual cost reductions.
- (3) This section does not limit or require the City to provide direct financial incentives, including the provision of publicly owned land, or the waiver of fees or dedication requirements. However, the City will consider deferral of application processing fees on a case-by-case basis.

- (4) The City shall grant the concession or incentive requested by the applicant unless the City makes a written finding, based upon substantial evidence, of any of the following:
- (a) The concession or incentive is not required in order to provide for affordable housing costs as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified.
 - (b) The concession or incentive would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public 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 or moderate income households.
 - (c) The concession or incentive would be contrary to state or federal law.

Section 4010: Waiver or Reduction of Development Standards.

- (1) An applicant may submit to the City a proposal for the waiver or reduction of development standards that will have the effect of physically precluding the construction of a development at the densities or with the concessions or incentives permitted under this section, and may request a meeting with the City. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to

satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources, or to grant any waiver or reduction that would be contrary to state or federal law.

- (2) A proposal for the waiver or reduction of development standards pursuant to this subdivision shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to subdivision (J) of this Ordinance.

Section 4011: Vehicular Parking Ratio. Upon request of the developer, the following maximum parking ratio, inclusive of handicapped and guest parking, shall apply, pursuant to Section 65915 of the Government Code:

- (1) Zero to one bedroom: one on site parking space.
- (2) Two to three bedrooms: two on site parking spaces.
- (3) Four or more bedrooms: two and one-half parking spaces.

If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number. A development may provide on site parking through tandem parking or uncovered parking, but not through on-street parking. The applicant may also request a concession or an incentive pursuant to Section 4009 to further lower the vehicle parking ratios from those described herein.

Section 4012: Requirements for Participation. In order for a developer/property owner to be eligible for density bonus or other incentives, the following requirements must be met:

- (1) A unit will be counted toward meeting the affordable housing requirement if it is either vacant or occupied by a very low, low or moderate income tenant, as applicable, or a Senior Citizen (if density bonus was based on a Senior Citizen Housing Development).

- (2) The affordable units must be proportional to the overall project in terms of unit mix, floor plan, square footage, and exterior design. Further, the range of affordable units must be reasonably dispersed throughout the development.
- (3) The time period of availability to the intended population shall be for at least thirty years. A longer period of availability may be required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program.
- (4) The maximum allowable rents to comply with the law are determined by a formula designated by the State Department of Housing and Community Development based on the area median income. This formula is indicated in Section 65915(c) of the Government Code.
- (5) Owner-occupied units shall be available at affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code.
- (6) For-sale affordable units may be subject to an equity sharing agreement, in the event that public subsidies are involved in the construction and/or purchase of said units.
- (7) The owner of the affordable units for which a density bonus was granted must provide to the Neighborhood Services Department a yearly accounting of the total units occupied, the total units vacant, the total units occupied by lower or very low-income households, the total number of units occupied by Senior Citizens and the total units required to be set aside under all applicable affordability covenants.

EXHIBIT B

Affordable Housing Density Bonus Provisions of the 1992 Zoning Ordinance

3032 Affordable Housing Density Bonus

- A. Purpose. This section establishes policies which facilitate the development of affordable housing to serve a variety of economic needs within the City. To encourage provision of moderate, low and very low income housing, senior housing, the City shall provide developers/property owners meeting the requirements of this section a density bonus and additional incentives as specified in this section. The regulations set forth in this section shall apply Citywide.
- B. Definitions. As used in this section, the following terms shall have the following meanings:
- (1) “Density Bonus” means a density increase over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the General Plan as of the date of application. The density bonus shall apply to residential developments of five or more units. The number of housing units to be reserved for very low, low and moderate income households, or senior housing does not include the density bonus units.
 - (2) “Concession” or “incentive” shall have the meaning set forth in Government Code Section 65915(k).
 - (3) “Equivalent Financial Value” concerns a condominium conversion project and refers to the cost to the developer/property owner based on the land cost per dwelling unit. The land cost per dwelling unit is determined by the difference in the value of the land with and without the density bonus.

- (4) "Lower Income Households" shall have the meaning set forth in Section 50079.5 of the Health and Safety Code and any subsequent amendments or revisions.
- (5) "Very Low Income Households" shall have the meaning set forth in Section 50105 of the Health and Safety Code and any subsequent amendments or revisions.
- (6) "Moderate Income Households" shall have the meaning set forth in Section 50093 of the Health and Safety Code and any subsequent amendments or revisions.
- (7) "Senior Citizen Housing Development" as currently defined by Sections 51.3 and 51.12 of the Civil Code and any subsequent amendments or revisions.
- (8) "Common Interest Development" as currently defined in Section 1351 of the Civil Code and any subsequent amendments or revisions.
- (9) "Child Care Facility" means a child day care facility other than a family day care home, including, but not limited to, infant centers, preschools, extended day care facilities, and school-age child care center, as defined by Government Code Section 65915.

C. Implementation. The City shall grant a density bonus, in the amount specified in subsection D below, to an applicant who proposes a housing development consisting of five or more dwelling units and meeting at least one of the following criteria:

- (1) At least ten percent (10%) of the total units of the housing development are designated for low income households; or
- (2) At least five percent (5%) of the total units of the housing development are designated for very low income households; or
- (3) A senior citizen housing development, as defined in Sections 51.3 and 51.12 of the Civil Code, or mobile home park that limits

residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the Civil Code.

- (4) Ten percent (10%) of the total dwelling units in a common interest development as provided in Section 1351 of the Civil Code for persons and families of moderate income, provided that all units in the development are offered to the public for purchase.
- (5) Circumstances may arise in which the public interest would be served by allowing some or all of the designated affordable units associated with a density bonus project to be produced and operated at an alternative development site. Where the City and applicant form such an agreement, the both the market-rate and affordable components of the project shall be considered a single housing development for the purposes of this chapter, and the applicant shall be subject to the same requirements of this chapter pertinent to the designated affordable units to be provided on the alternative site.

D. Amount of Density Bonus. The amount of density bonus granted to a qualifying project shall be based on the category and percentage of affordable units proposed, as reflected in the following matrices.

- (1) For housing developments meeting the criteria of Section C(1) above, the density bonus shall be calculated as follows:

TABLE 1
Density Bonus for
Low Income Units

Percentage Low Income Units	Percentage Density Bonus
10	20
11	21.5

Percentage Low Income Units	Percentage Density Bonus
12	23
13	24.5
14	26
15	27.5
16	29
17	30.5
18	32
19	33.5
20	35

- (2) For housing developments meeting the criteria of Section C(2) above, the density bonus shall be calculated as follows:

TABLE 2
Density Bonus for
Very Low Income Units

Percentage VL Income Units	Percentage Density Bonus
5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35

- (3) For housing development meeting the criteria of Section C(3) above, the density bonus shall be 20 percent (20%).
- (4) For housing development meeting the criteria of Section C(4) above, the density bonus shall be calculated as follows:

TABLE 3
Density Bonus for
Moderate Income Units

Percentage Mod. Income Units	Percentage Density Bonus
10	5
11	6
12	7
13	8
14	9
15	10
16	11
17	12
18	13
19	14
20	15
21	16
22	17
23	18
24	19
25	20
26	21
27	22

Percentage Mod. Income Units	Percentage Density Bonus
28	23
29	24
30	25
31	26
32	27
33	28
34	29
35	30
36	31
37	32
38	33
39	34
40	35

- (5) All density calculations resulting in fractional units shall be rounded up to the next whole number, unless otherwise indicated.
- (6) The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval.
- (7) An applicant may elect to accept a lesser percentage of density bonus.
- (8) The calculations are in accordance with Government Code Section 65915 and are subject to any subsequent amendments or revisions thereto.

E. Land Donation. When an applicant donates land to the City to satisfy the affordable housing obligation established under this Ordinance, the applicant shall be entitled to a density bonus as follows:

TABLE 4**Density Bonus for Land Donation**

Percentage VL Income Units	Percentage Density Bonus	Percentage Low Income Units	Percentage Density Bonus
10	15	10	7.5
11	16	11	8
12	17	12	8.5
13	18	13	9
14	19	14	9.5
15	20	15	10
16	21	16	10.5
17	22	17	11
18	23	18	11.5
19	24	19	12
20	25	20	12.5
21	26	21	13
22	27	22	13.5
23	28	23	14
24	29	24	14.5
25	30	25	15
26	31	26	15.5
27	32	27	16
28	33	28	16.5
29	34	29	17
30	35	30	17.5

Density bonus calculations are in accordance with Section 65915 of the Government Code and are subject to any amendments or revisions thereto. Applicants seeking density bonus for both the provision of affordable units and the donation of land shall be limited to a maximum combined density bonus of thirty-five percent (35%). In order to qualify for the above density bonus, the land donation must meet the following conditions:

- (1) The applicant donates and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application if no subdivision map is proposed.
- (2) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low or low income households in an amount not less than 10 percent (10%) of the total units of the housing development.
- (3) The transferred land is of sufficient size to permit development of the minimum number of units required by the prior paragraph (2), has the appropriate general plan and zoning designations, is appropriately zoned with appropriate development standards for development at the appropriate density, and is or will be served by adequate public facilities and infrastructure.
- (4) No later than the date of approval of the final subdivision map, parcel map, or residential development application for the first density bonus market-rate unit, the transferred land shall have all City required discretionary permits and approvals, other than building permits, necessary for the development of the very low or low income units on the transferred land, except the City may subject the proposed development to subsequent design review if the design is not otherwise reviewed by the City prior to the time of transfer.
- (5) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with

Government Code Section 65915, which shall be recorded on the property at the time of the transfer.

- (6) The land is transferred to the City or to a housing developer approved by the City. The City may require the applicant to identify and transfer the land to the developer.
- (7) The transferred land shall be within the boundary of the proposed development or, if the City agrees, within one-quarter mile of the boundary of the proposed development.
- (8) In the event the transferred land is not within the boundary of the proposed development or within one-quarter mile of the boundary thereof, the transferred land must be situated within a transit-oriented area of the City, as identified on the regional Smart Growth Concept Map, prepared by the San Diego Association of Governments, or within one-quarter mile of high-frequency bus service (i.e., providing 15-minute headways).
- (9) A financing plan for funding the affordable units shall be identified no later than the date of the approval of the final subdivision map, parcel map or residential development application for the market-rate component of the density bonus project.

F. Child Care Facility.

- (1) When an applicant proposes to construct a housing development that conforms to the requirements of this section and includes a child care facility that will be located on the premises of, as a part of, or adjacent to, the project, the City shall grant either:
 - (a) An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the child care facility; or

- (b) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility.
- (2) In order to qualify for the additional density bonus or incentive, the child care facility must meet the following criteria:
 - (a) The child care facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the density bonus units are required to remain affordable.
 - (b) Of the children who attend the child care facility, the children of very low income households, low income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low income households, low income households, or families of moderate income.

G. Condominium Conversions. When an applicant for approval to convert apartments to a condominium project agrees to provide at least thirty-three percent (33%) of the total units of the proposed condominium to persons and families of low or moderate income, or fifteen percent (15%) of the total units of the proposed condominium project to very low income households, and agrees to pay for the reasonably necessary administrative costs incurred by the City pursuant to this subsection, the City shall grant either:

- (1) A density bonus of twenty-five percent (25%) over the number of existing rental apartments, to be provided within the existing structure or structures proposed for conversion; or
- (2) An incentive of equivalent financial value.

The City may place such reasonable conditions on the granting of a density bonus or other incentives of equivalent financial value as it finds appropriate, including, but not limited to, conditions which assure

continued affordability of units to subsequent purchasers who are persons and families of very low, low or moderate income households. The City shall enforce an equity sharing agreement, as set forth by Section 65915 of the Government Code, for these units.

H. Density Bonus Agreement. To be eligible for a density bonus, the applicant must submit an Affordable Housing Plan and, prior to securing any discretionary permits or approvals for the market-rate units, sign a binding agreement with the City which sets forth the conditions and guidelines to be met in the implementation of this Ordinance. The agreement will also establish specific compliance standards and remedies upon failure by the applicant to make the affordable units available to intended residents. As the means of ensuring compliance, the agreement shall require the recordation of a deed restriction against both the market-rate and affordable components of the density bonus project. The deed restriction shall remain in place and preclude issuance of the certificate of occupancy for the market-rate units until such time as the affordable units have been constructed or other security acceptable to the City is provided in lieu of the deed restriction. If the applicant proposes to phase development of the market-rate units, deed restrictions shall be recorded and implemented on a phase by phase basis.

I. Density Bonus Application.

(1) Application for density bonus shall be made concurrent with submittals required for the processing of associated discretionary permits (e.g., development plans). The request for density bonus shall be articulated as part of the description and justification for the development project, in accordance with the City's Development Processing Guide. The request for density bonus shall specify the percentage of density bonus sought, per Subsections D(1) through

D(4) of this Ordinance, and indicate how the affordable housing obligations of this Ordinance will be met.

- (2) The review process for a density bonus project shall be the same as that required for associated discretionary permits. Discretionary actions on density bonus projects shall be subject to the same appeal process applied to associated discretionary permits.
- (3) The application and approval of a density bonus and any associated incentives or concessions shall not require a separate permit or approval process from that otherwise required for the same project without a density bonus request.
- (4) The granting of a density bonus shall not, in and of itself, require a general plan amendment, local coastal plan amendment, zone change, or other discretionary action.

J. Concessions and Incentives.

- (1) In addition to the applicable density bonus, qualifying projects shall receive the following number of incentives or concessions:
 - (a) One incentive or concession for projects that propose at least ten percent (10%) of the total units for lower income households, at least five percent (5%) for very low income households, or at least ten percent (10%) for persons and families of moderate income in a common interest development.
 - (b) Two incentives or concessions for projects that propose at least twenty percent (20%) of the total units for lower income households, at least ten percent (10%) for very low income households, or at least twenty percent (20%) for persons and families of moderate income in a common interest development.

- (c) Three incentives or concessions for projects that propose at least thirty percent (30%) of the total units for lower income households, at least fifteen percent (15%) for very low income households, or at least thirty percent (30%) for persons and families of moderate income in a common interest development.
 - (d) Proposals seeking concessions or incentives deemed necessary to exceed the base density allowance would not be subject to the otherwise required conditional use permit.
- (2) For purposes of this Ordinance, concessions or incentives shall include, without limitation:
- (a) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results in identifiable, financially sufficient, and actual cost reductions.
 - (b) Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

- (c) Other regulatory incentives or concessions proposed by the developer or the City that result in identifiable, financially sufficient, and actual cost reductions.
- (3) This section does not limit or require the City to provide direct financial incentives, including the provision of publicly owned land, or the waiver of fees or dedication requirements. However, the City will consider deferral of application processing fees on a case-by-case basis.
 - (4) The City shall grant the concession or incentive requested by the applicant unless the City makes a written finding, based upon substantial evidence, of any of the following:
 - (a) The concession or incentive is not required in order to provide for affordable housing costs as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified.
 - (b) The concession or incentive would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public 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 or moderate income households.
 - (c) The concession or incentive would be contrary to state or federal law.

K. Waiver or Reduction of Development Standards.

- (1) An applicant may submit to the City a proposal for the waiver or reduction of development standards that will have the effect of

physically precluding the construction of a development at the densities or with the concessions or incentives permitted under this section, and may request a meeting with the City. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources, or to grant any waiver or reduction that would be contrary to state or federal law.

- (2) A proposal for the waiver or reduction of development standards pursuant to this subdivision shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to subdivision (J) of this Ordinance.

L. Vehicular Parking Ratio. Upon request of the developer, the following maximum parking ratio, inclusive of handicapped and guest parking, shall apply, pursuant to Section 65915 of the Government Code:

- (1) Zero to one bedroom: one on site parking space.
- (2) Two to three bedrooms: two on site parking spaces.
- (3) Four or more bedrooms: two and one-half parking spaces.

If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number. A development may provide on site parking through tandem parking or uncovered parking, but not through on-street parking. The applicant may also request a concession or an incentive pursuant to

subsection (J), thereof to further lower the vehicle parking ratios from those described herein.

M. Requirements for Participation. In order for a developer/property owner to be eligible for density bonus or other incentives, the following requirements must be met:

- (1) A unit will be counted toward meeting the affordable housing requirement if it is either vacant or occupied by a very low, low or moderate income tenant, as applicable, or a Senior Citizen (if density bonus was based on a Senior Citizen Housing Development).
- (2) The affordable units must be proportional to the overall project in terms of unit mix, floor plan, square footage, and exterior design. Further, the range of affordable units must be reasonably dispersed throughout the development.
- (3) The time period of availability to the intended population shall be for at least thirty years. A longer period of availability may be required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program.
- (4) The maximum allowable rents to comply with the law are determined by a formula designated by the State Department of Housing and Community Development based on the area median income. This formula is indicated in Section 65915(c) of the Government Code.
- (5) Owner-occupied units shall be available at affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code.
- (6) For-sale affordable units may be subject to an equity sharing agreement, in the event that public subsidies are involved in the construction and/or purchase of said units.
- (7) The owner of the affordable units for which a density bonus was granted must provide to the Neighborhood Services Department a

yearly accounting of the total units occupied, the total units vacant, the total units occupied by lower or very low-income households, the total number of units occupied by Senior Citizens and the total units required to be set aside under all applicable affordability covenants.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL AND COMMUNITY DEVELOPMENT COMMISSION OF THE CITY OF OCEANSIDE AMENDING THE LOCAL COASTAL PROGRAM FOR THE PURPOSE OF ADOPTING STATE MANDATED AFFORDABLE HOUSING DENSITY BONUS REGULATIONS AND REQUESTING CALIFORNIA COASTAL COMMISSION CERTIFICATION OF SAID AMENDMENT

(City of Oceanside –Applicant)

(LCPA11-00001)

WHEREAS, the California Coastal Act (Public Resources Code §30000, et seq.) (the "Coastal Act") requires that the City adopt a Local Coastal Program (LCP) which meets the requirements of the Coastal Act at the local level and implements its provisions and policies;

WHEREAS, on January 25, 1985, the California Coastal Commission ("Commission") approved with suggested modifications, the City's Land Use Plan ("LUP") and, pursuant to Public Resources Code §30512.2, found the City's LUP to be consistent with the policies and requirements of Chapter 3 of the Coastal Act and to meet the basic stated goals specified in Public Resources Code §30001.5;

WHEREAS, on December 8, 2008, the California Coastal Commission (CCC) established with the City of Oceanside that development proposals in those portions of the Coastal Zone located outside of the Downtown Redevelopment Area would be reviewed for consistency under the standards of the City's 1986 Zoning Ordinance, in light of the fact that the previously applicable 1992 Zoning Ordinance had never received CCC certification; and

WHEREAS, on May 11, 2009, the City acknowledged in correspondence to the CCC an obligation to use the 1986 Zoning Ordinance as the standard for review of development proposals within those portions of the Coastal Zone located outside of the Downtown Redevelopment Area; and

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1 WHEREAS, Government Code Section 65915, commonly known as state density bonus
2 law, requires that all cities and counties in the State of California allow density bonus and other
3 regulatory concessions in exchange for specified percentages of affordable housing within
4 otherwise market-rate housing developments; and

5 WHEREAS, state density bonus law requires that all cities and counties in the State of
6 California adopt local density bonus provisions that conform to state density bonus law; and

7 WHEREAS, Program 3 of the City's 2005-2010 Housing Element, adopted on
8 June 17, 2009, establishes that the City will adopt local density bonus provisions that conform to
9 state law; and

10 WHEREAS, the 1986 Zoning Ordinance does not include density bonus provisions; and

11 WHEREAS, changes in state density bonus law, enacted on January 1, 1995, as State Bill
12 1818, require amendments to the City's density bonus provisions to achieve consistency with state
13 density bonus law; and

14 WHEREAS, the Planning Division has prepared recommendations for text amendments to
15 both the 1986 and the 1992 Zoning Ordinances to bring both documents into conformance with
16 state density bonus law, underscore the City's authority to allow the off-site provision of required
17 affordable units, and provide additional flexibility for land donation in exchange for density
18 bonus; and

19 WHEREAS, the Planning Commission did, on the 9th day of January, 2012, conduct a
20 duly-advertised public hearing as prescribed by law to consider said recommendations for text
21 amendments to the 1986 and 1992 Zoning Ordinances; and

22 WHEREAS, a Notice of Exemption was prepared by the Resource Officer of the City of
23 Oceanside for this project pursuant to the California Environmental Quality Act of 1970 and the
24 State Guidelines thereto amended to date and hereby approved by the City Council in
25 conjunction with its recommendations on the application; and

26 //

1 WHEREAS, the City Council/Community Development Commission conducted a duly
2 noticed public hearing on May 2, 2012, and hereby finds that the Local Coastal Program
3 Amendment (LCPA11-00001) conforms with and is adequate to carry out the land use plan of
4 the Local Coastal Program.

5 NOW, THEREFORE, the Oceanside City Council and Community Development
6 Commission of the City of Oceanside DOES RESOLVE as follows:
7

- 8 1. Pursuant to Public Resources Code §30510(a), the Oceanside City Council/ Community
9 Development Commission hereby certifies that the Local Coastal Program Amendment
10 (LCPA11-00001) is intended to be carried out in a manner fully in conformity with the
11 Coastal Act, and is hereby adopted.
- 12 2. Pursuant to the California Environmental Quality Act of 1970, and the State Guidelines
13 thereto amended to date, a Notice of Exemption has been issued for the project by the
14 Resource Officer for the City of Oceanside.
- 15 3. Pursuant to Coastal Commission Local Coastal Program Regulations §13551(b), this
16 Local Coastal Plan Amendment shall take effect upon Coastal Commission approval.
- 17 4. Notice is hereby given that the time within which judicial review must be sought on the
18 decision is governed by Public Resources Code §30801.

19 PASSED AND ADOPTED by the Oceanside City Council/Community Development
20 Commission this _____ day of _____, 2012, by the following vote:

21 AYES:

22 NAYS:

23 ABSENT:

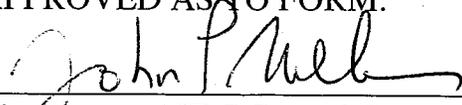
24 ABSTAIN:

25
26
27 ATTEST:

28 _____
City Clerk/ CDC Secretary

Mayor/CDC Chair of the City of Oceanside

APPROVED AS TO FORM:



City Attorney/ CDC General Counsel

CALIFORNIA CODES
GOVERNMENT CODE
SECTION 65915-65918

65915. (a) When an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within, the jurisdiction of a city, county, or city and county, that local **government** shall provide the applicant with incentives or concessions for the production of housing units and child care facilities as prescribed in this section. All cities, counties, or cities and counties shall adopt an ordinance that specifies how compliance with this section will be implemented. Failure to adopt an ordinance shall not relieve a city, county, or city and county from complying with this section.

(b) (1) A city, county, or city and county shall grant one density bonus, the amount of which shall be as specified in subdivision (f), and incentives or concessions, as described in subdivision (d), when an applicant for a housing development seeks and agrees to construct a housing development, excluding any units permitted by the density bonus awarded pursuant to this section, that will contain at least any one of the following:

(A) Ten percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety **Code**.

(B) Five percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety **Code**.

(C) A senior citizen housing development, as defined in Sections 51.3 and 51.12 of the Civil **Code**, or mobilehome park that limits residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the Civil **Code**.

(D) Ten percent of the total dwelling units in a common interest development as defined in Section 1351 of the Civil **Code** for persons and families of moderate income, as defined in Section 50093 of the Health and Safety **Code**, provided that all units in the development are offered to the public for purchase.

(2) For purposes of calculating the amount of the density bonus pursuant to subdivision (f), the applicant who requests a density bonus pursuant to this subdivision shall elect whether the bonus shall be awarded on the basis of subparagraph (A), (B), (C), or (D) of paragraph (1).

(3) For the purposes of this section, "total units" or "total dwelling units" does not include units added by a density bonus awarded pursuant to this section or any local law granting a greater density bonus.

(c) (1) An applicant shall agree to, and the city, county, or city and county shall ensure, continued affordability of all low- and very low income units that qualified the applicant for the award of the density bonus for 30 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. Rents for the lower income density bonus units shall be set at an affordable rent as defined in Section 50053 of the Health and Safety **Code**. Owner-occupied units shall be available at an affordable housing cost as defined in Section 50052.5 of the Health and Safety **Code**.

(2) An applicant shall agree to, and the city, county, or city and county shall ensure that, the initial occupant of the

moderate-income units that are directly related to the receipt of the density bonus in the common interest development, as defined in Section 1351 of the Civil Code, are persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, and that the units are offered at an affordable housing cost, as that cost is defined in Section 50052.5 of the Health and Safety Code. The local government shall enforce an equity sharing agreement, unless it is in conflict with the requirements of another public funding source or law. The following apply to the equity sharing agreement:

(A) Upon resale, the seller of the unit shall retain the value of any improvements, the downpayment, and the seller's proportionate share of appreciation. The local government shall recapture any initial subsidy, as defined in subparagraph (B), and its proportionate share of appreciation, as defined in subparagraph (C), which amount shall be used within five years for any of the purposes described in subdivision (e) of Section 33334.2 of the Health and Safety Code that promote home ownership.

(B) For purposes of this subdivision, the local government's initial subsidy shall be equal to the fair market value of the home at the time of initial sale minus the initial sale price to the moderate-income household, plus the amount of any downpayment assistance or mortgage assistance. If upon resale the market value is lower than the initial market value, then the value at the time of the resale shall be used as the initial market value.

(C) For purposes of this subdivision, the local government's proportionate share of appreciation shall be equal to the ratio of the local government's initial subsidy to the fair market value of the home at the time of initial sale.

(d) (1) An applicant for a density bonus pursuant to subdivision (b) may submit to a city, county, or city and county a proposal for the specific incentives or concessions that the applicant requests pursuant to this section, and may request a meeting with the city, county, or city and county. The city, county, or city and county shall grant the concession or incentive requested by the applicant unless the city, county, or city and county makes a written finding, based upon substantial evidence, of any of the following:

(A) The concession or incentive is not required in order to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(B) The concession or incentive would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public 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.

(C) The concession or incentive would be contrary to state or federal law.

(2) The applicant shall receive the following number of incentives or concessions:

(A) One incentive or concession for projects that include at least 10 percent of the total units for lower income households, at least 5 percent for very low income households, or at least 10 percent for persons and families of moderate income in a common interest development.

(B) Two incentives or concessions for projects that include at least 20 percent of the total units for lower income households, at

least 10 percent for very low income households, or at least 20 percent for persons and families of moderate income in a common interest development.

(C) Three incentives or concessions for projects that include at least 30 percent of the total units for lower income households, at least 15 percent for very low income households, or at least 30 percent for persons and families of moderate income in a common interest development.

(3) The applicant may initiate judicial proceedings if the city, county, or city and county refuses to grant a requested density bonus, incentive, or concession. If a court finds that the refusal to grant a requested density bonus, incentive, or concession is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local **government** to grant an incentive or concession that has a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local **government** to grant an incentive or concession that would have an adverse impact on any real property that is listed in the California Register of Historical Resources. The city, county, or city and county shall establish procedures for carrying out this section, that shall include legislative body approval of the means of compliance with this section.

(e) (1) In no case may a city, county, or city and county apply any development standard that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section. An applicant may submit to a city, county, or city and county a proposal for the waiver or reduction of development standards that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted under this section, and may request a meeting with the city, county, or city and county. If a court finds that the refusal to grant a waiver or reduction of development standards is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local **government** to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local **government** to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources, or to grant any waiver or reduction that would be contrary to state or federal law.

(2) A proposal for the waiver or reduction of development standards pursuant to this subdivision shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to subdivision (d).

(f) For the purposes of this chapter, "density bonus" means a density increase over the otherwise maximum allowable residential density as of the date of application by the applicant to the city, county, or city and county. The applicant may elect to accept a lesser percentage of density bonus. The amount of density bonus to

which the applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in subdivision (b).

(1) For housing developments meeting the criteria of subparagraph (A) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Low-Income Units	Percentage Density Bonus
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5
17	30.5
18	32
19	33.5
20	35

(2) For housing developments meeting the criteria of subparagraph (B) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Very Low Income Units	Percentage Density Bonus
5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35

(3) For housing developments meeting the criteria of subparagraph (C) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent of the number of senior housing units.

(4) For housing developments meeting the criteria of subparagraph (D) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Moderate-Income Units	Percentage Density Bonus
10	5
11	6
12	7
13	8
14	9
15	10
16	11
17	12
18	13
19	14
20	15
21	16
22	17
23	18
24	19
25	20
26	21

27	22
28	23
29	24
30	25
31	26
32	27
33	28
34	29
35	30
36	31
37	32
38	33
39	34
40	35

(5) All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval.

(g) (1) When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to a city, county, or city and county in accordance with this subdivision, the applicant shall be entitled to a 15-percent increase above the otherwise maximum allowable residential density for the entire development, as follows:

Percentage Very Low Income	Percentage Density Bonus
10	15
11	16
12	17
13	18
14	19
15	20
16	21
17	22
18	23
19	24
20	25
21	26
22	27
23	28
24	29
25	30
26	31
27	32
28	33
29	34
30	35

(2) This increase shall be in addition to any increase in density mandated by subdivision (b), up to a maximum combined mandated density increase of 35 percent if an applicant seeks an increase pursuant to both this subdivision and subdivision (b). All density calculations resulting in fractional units shall be rounded up to the next whole number. Nothing in this subdivision shall be construed to enlarge or diminish the authority of a city, county, or city and county to require a developer to donate land as a condition of development. An applicant shall be eligible for the increased density

bonus described in this subdivision if all of the following conditions are met:

(A) The applicant donates and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application.

(B) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than 10 percent of the number of residential units of the proposed development.

(C) The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units, has the appropriate general plan designation, is appropriately zoned with appropriate development standards for development at the density described in paragraph (3) of subdivision (c) of Section 65583.2, and is or will be served by adequate public facilities and infrastructure.

(D) The transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the very low income housing units on the transferred land, not later than the date of approval of the final subdivision map, parcel map, or residential development application, except that the local **government** may subject the proposed development to subsequent design review to the extent authorized by subdivision (i) of Section 65583.2 if the design is not reviewed by the local **government** prior to the time of transfer.

(E) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with paragraphs (1) and (2) of subdivision (c), which shall be recorded on the property at the time of the transfer.

(F) The land is transferred to the local agency or to a housing developer approved by the local agency. The local agency may require the applicant to identify and transfer the land to the developer.

(G) The transferred land shall be within the boundary of the proposed development or, if the local agency agrees, within one-quarter mile of the boundary of the proposed development.

(H) A proposed source of funding for the very low income units shall be identified not later than the date of approval of the final subdivision map, parcel map, or residential development application.

(h) (1) When an applicant proposes to construct a housing development that conforms to the requirements of subdivision (b) and includes a child care facility that will be located on the premises of, as part of, or adjacent to, the project, the city, county, or city and county shall grant either of the following:

(A) An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the child care facility.

(B) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility.

(2) The city, county, or city and county shall require, as a condition of approving the housing development, that the following occur:

(A) The child care facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the density bonus units are required to remain affordable pursuant to subdivision (c).

(B) Of the children who attend the child care facility, the children of very low income households, lower income households, or families of moderate income shall equal a percentage that is equal to

or greater than the percentage of dwelling units that are required for very low income households, lower income households, or families of moderate income pursuant to subdivision (b).

(3) Notwithstanding any requirement of this subdivision, a city, county, or a city and county shall not be required to provide a density bonus or concession for a child care facility if it finds, based upon substantial evidence, that the community has adequate child care facilities.

(4) "Child care facility," as used in this section, means a child day care facility other than a family day care home, including, but not limited to, infant centers, preschools, extended day care facilities, and schoolage child care centers.

(i) "Housing development," as used in this section, means a development project for five or more residential units. For the purposes of this section, "housing development" also includes a subdivision or common interest development, as defined in Section 1351 of the Civil Code, approved by a city, county, or city and county and consists of residential units or unimproved residential lots and either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multifamily dwelling, as defined in subdivision (d) of Section 65863.4, where the result of the rehabilitation would be a net increase in available residential units. For the purpose of calculating a density bonus, the residential units shall be on contiguous sites that are the subject of one development application, but do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located.

(j) The granting of a concession or incentive shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. This provision is declaratory of existing law.

(k) For the purposes of this chapter, concession or incentive means any of the following:

(1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results in identifiable, financially sufficient, and actual cost reductions.

(2) Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

(3) Other regulatory incentives or concessions proposed by the developer or the city, county, or city and county that result in identifiable, financially sufficient, and actual cost reductions.

(l) Subdivision (k) does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements.

(m) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California

Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources **Code**).

(n) If permitted by local ordinance, nothing in this section shall be construed to prohibit a city, county, or city and county from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section.

(o) For purposes of this section, the following definitions shall apply:

(1) "Development standard" includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.

(2) "Maximum allowable residential density" means the density allowed under the zoning ordinance and land use element of the general plan, or if a range of density is permitted, means the maximum allowable density for the specific zoning range and land use element of the general plan applicable to the project. Where the density allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan, the general plan density shall prevail.

(p) (1) Upon the request of the developer, no city, county, or city and county shall require a vehicular parking ratio, inclusive of handicapped and guest parking, of a development meeting the criteria of subdivision (b), that exceeds the following ratios:

(A) Zero to one bedroom: one onsite parking space.

(B) Two to three bedrooms: two onsite parking spaces.

(C) Four and more bedrooms: two and one-half parking spaces.

(2) If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this subdivision, a development may provide "onsite parking" through tandem parking or uncovered parking, but not through onstreet parking.

(3) This subdivision shall apply to a development that meets the requirements of subdivision (b) but only at the request of the applicant. An applicant may request parking incentives or concessions beyond those provided in this subdivision pursuant to subdivision (d).

65915.5. (a) When an applicant for approval to convert apartments to a condominium project agrees to provide at least 33 percent of the total units of the proposed condominium project to persons and families of low or moderate income as defined in Section 50093 of the Health and Safety **Code**, or 15 percent of the total units of the proposed condominium project to lower income households as defined in Section 50079.5 of the Health and Safety **Code**, and agrees to pay for the reasonably necessary administrative costs incurred by a city, county, or city and county pursuant to this section, the city, county, or city and county shall either (1) grant a density bonus or (2) provide other incentives of equivalent financial value. A city, county, or city and county may place such reasonable conditions on the granting of a density bonus or other incentives of equivalent financial value as it finds appropriate, including, but not limited

to, conditions which assure continued affordability of units to subsequent purchasers who are persons and families of low and moderate income or lower income households.

(b) For purposes of this section, "density bonus" means an increase in units of 25 percent over the number of apartments, to be provided within the existing structure or structures proposed for conversion.

(c) For purposes of this section, "other incentives of equivalent financial value" shall not be construed to require a city, county, or city and county to provide cash transfer payments or other monetary compensation but may include the reduction or waiver of requirements which the city, county, or city and county might otherwise apply as conditions of conversion approval.

(d) An applicant for approval to convert apartments to a condominium project may submit to a city, county, or city and county a preliminary proposal pursuant to this section prior to the submittal of any formal requests for subdivision map approvals. The city, county, or city and county shall, within 90 days of receipt of a written proposal, notify the applicant in writing of the manner in which it will comply with this section. The city, county, or city and county shall establish procedures for carrying out this section, which shall include legislative body approval of the means of compliance with this section.

(e) Nothing in this section shall be construed to require a city, county, or city and county to approve a proposal to convert apartments to condominiums.

(f) An applicant shall be ineligible for a density bonus or other incentives under this section if the apartments proposed for conversion constitute a housing development for which a density bonus or other incentives were provided under Section 65915.

65916. Where there is a direct financial contribution to a housing development pursuant to Section 65915 through participation in cost of infrastructure, write-down of land costs, or subsidizing the cost of construction, the city, county, or city and county shall assure continued availability for low- and moderate-income units for 30 years. When appropriate, the agreement provided for in Section 65915 shall specify the mechanisms and procedures necessary to carry out this section.

65917. In enacting this chapter it is the intent of the Legislature that the density bonus or other incentives offered by the city, county, or city and county pursuant to this chapter shall contribute significantly to the economic feasibility of lower income housing in proposed housing developments. In the absence of an agreement by a developer in accordance with Section 65915, a locality shall not offer a density bonus or any other incentive that would undermine the intent of this chapter.

65917.5. (a) As used in this section, the following terms shall have the following meanings:

(1) "Child care facility" means a facility installed, operated, and maintained under this section for the nonresidential care of

children as defined under applicable state licensing requirements for the facility.

(2) "Density bonus" means a floor area ratio bonus over the otherwise maximum allowable density permitted under the applicable zoning ordinance and land use elements of the general plan of a city, including a charter city, city and county, or county of:

(A) A maximum of five square feet of floor area for each one square foot of floor area contained in the child care facility for existing structures.

(B) A maximum of 10 square feet of floor area for each one square foot of floor area contained in the child care facility for new structures.

For purposes of calculating the density bonus under this section, both indoor and outdoor square footage requirements for the child care facility as set forth in applicable state child care licensing requirements shall be included in the floor area of the child care facility.

(3) "Developer" means the owner or other person, including a lessee, having the right under the applicable zoning ordinance of a city council, including a charter city council, city and county board of supervisors, or county board of supervisors to make an application for development approvals for the development or redevelopment of a commercial or industrial project.

(4) "Floor area" means as to a commercial or industrial project, the floor area as calculated under the applicable zoning ordinance of a city council, including a charter city council, city and county board of supervisors, or county board of supervisors and as to a child care facility, the total area contained within the exterior walls of the facility and all outdoor areas devoted to the use of the facility in accordance with applicable state child care licensing requirements.

(b) A city council, including a charter city council, city and county board of supervisors, or county board of supervisors may establish a procedure by ordinance to grant a developer of a commercial or industrial project, containing at least 50,000 square feet of floor area, a density bonus when that developer has set aside at least 2,000 square feet of floor area and 3,000 outdoor square feet to be used for a child care facility. The granting of a bonus shall not preclude a city council, including a charter city council, city and county board of supervisors, or county board of supervisors from imposing necessary conditions on the project or on the additional square footage. Projects constructed under this section shall conform to height, setback, lot coverage, architectural review, site plan review, fees, charges, and other health, safety, and zoning requirements generally applicable to construction in the zone in which the property is located. A consortium with more than one developer may be permitted to achieve the threshold amount for the available density bonus with each developer's density bonus equal to the percentage participation of the developer. This facility may be located on the project site or may be located offsite as agreed upon by the developer and local agency. If the child care facility is not located on the site of the project, the local agency shall determine whether the location of the child care facility is appropriate and whether it conforms with the intent of this section. The child care facility shall be of a size to comply with all state licensing requirements in order to accommodate at least 40 children.

(c) The developer may operate the child care facility itself or may contract with a licensed child care provider to operate the facility. In all cases, the developer shall show ongoing coordination with a local child care resource and referral network or local

governmental child care coordinator in order to qualify for the density bonus.

(d) If the developer uses space allocated for child care facility purposes, in accordance with subdivision (b), for purposes other than for a child care facility, an assessment based on the square footage of the project may be levied and collected by the city council, including a charter city council, city and county board of supervisors, or county board of supervisors. The assessment shall be consistent with the market value of the space. If the developer fails to have the space allocated for the child care facility within three years, from the date upon which the first temporary certificate of occupancy is granted, an assessment based on the square footage of the project may be levied and collected by the city council, including a charter city council, city and county board of supervisors, or county board of supervisors in accordance with procedures to be developed by the legislative body of the city council, including a charter city council, city and county board of supervisors, or county board of supervisors. The assessment shall be consistent with the market value of the space. A penalty levied against a consortium of developers shall be charged to each developer in an amount equal to the developer's percentage square feet participation. Funds collected pursuant to this subdivision shall be deposited by the city council, including a charter city council, city and county board of supervisors, or county board of supervisors into a special account to be used for child care services or child care facilities.

(e) Once the child care facility has been established, prior to the closure, change in use, or reduction in the physical size of, the facility, the city, city council, including a charter city council, city and county board of supervisors, or county board of supervisors shall be required to make a finding that the need for child care is no longer present, or is not present to the same degree as it was at the time the facility was established.

(f) The requirements of Chapter 5 (commencing with Section 66000) and of the amendments made to Sections 53077, 54997, and 54998 by Chapter 1002 of the Statutes of 1987 shall not apply to actions taken in accordance with this section.

(g) This section shall not apply to a voter-approved ordinance adopted by referendum or initiative.

65918. The provisions of this chapter shall apply to charter cities.

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
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August 6, 1996

MEMORANDUM TO: Planning Directors and Other Interested Parties

FROM: Cathy Creswell, Program Manager
Housing Policy Development Division

SUBJECT: **Model Density Bonus Ordinance**

State density bonus law (Government Code Section 65915) was created to offer a land use-based option to facilitate the economic feasibility of affordable housing development. Section 65915, as amended by Chapter 842, Statutes of 1989, required all cities and counties to adopt density bonus ordinances. The law provides that local governments shall grant density bonuses of at least 25 percent, plus an additional incentive(s) or equivalent financial incentives, to housing developers who agree to construct at least: 20% of the units affordable to lower-income households, 10% of the units affordable to very low-income households, or senior citizen housing.

The Department of Housing and Community Development (the Department) released a technical assistance paper in March of 1990 to assist local governments in complying with State density bonus requirements. The Department has prepared the enclosed model density bonus ordinance to further facilitate local government efforts to adopt and implement density bonus ordinances.

The model ordinance was designed by the Department to serve as a basic outline for local ordinances, and can be tailored to the particular needs of each community. The technical appendix to the model ordinance notes some variable points for local considerations, and is for use in drafting the ordinance only. We recommend that the specific provisions of the local ordinance be developed in consultation with other relevant staff, officials, housing developers, and other interested entities, including local legal counsel. Your jurisdiction may, of course, choose other approaches to implementing density bonus law.

Although the Statute requires the implementation of certain uniform development standards and incentives, considerable discretion is afforded for local administration of density bonus ordinances. Reflecting this flexibility, the model ordinance outlines the basic types of development incentives that can be provided in accordance with the Statute (Sections 3, 4, and 5), recommends provisions for the review of density bonus applications (Section 6), and for the terms of development agreements (Section 7). The model ordinance also includes provisions that the Department believes will best promote the purposes of the law and facilitate the development of housing for lower-income households.

Local agencies which wish to receive a copy of the model ordinance on computer disk may send a written request to the Department along with an IBM compatible 3.5" or 5" floppy disk.

If you have any questions concerning the model ordinance or the requirements of State density bonus law, please contact Linda Wheaton or Gary Collord, of our staff, at (916) 323-3176

Chapter _____

RESIDENTIAL DENSITY BONUS ORDINANCE

Sections:

- 1 Purpose and Intent**
- 2 Definitions**
- 3 Implementation**
- 4 Development Standards**
- 5 Development Incentives**
- 6 Application Requirements and Review**
- 7 Density Bonus Housing Agreement**

Section 1. Purpose and Intent.

This Density Bonus Ordinance is intended to provide incentives for the production of housing for very low, lower income, or senior households in accordance with Sections 65915 and 65917 of the California Government Code. In enacting this Chapter, it is the intent of the City/County of _____ to facilitate the development of affordable housing and to implement the goals, objectives, and policies of the City/County's Housing Element.

The regulations and procedures set forth in this Chapter shall be publicized by the City/County and shall apply throughout the City/County. Sections of the California Government Code referenced in this Chapter and application forms for complying with this Chapter, shall be available to the public.

Section 2. Definitions.

Whenever the following terms are used in this Chapter, they shall have the meaning established by this section:

"Additional Incentives" means such regulatory concessions as specified in California Government Code Subsections 65915 (d) and (h) to include, but not be limited to, the reduction of site development standards or zoning code requirements, direct financial assistance, approval of mixed-use zoning in conjunction with the Housing Development, or any other regulatory incentive which would result in identifiable cost avoidance or reductions that are offered in addition to a Density Bonus. See Section 5 of this Chapter.

"Affordable Rent" means monthly housing expenses, including a reasonable allowance for utilities, for rental Target Units reserved for Very Low or Lower Income Households, not exceeding the following calculations:

- (1) Very Low Income: 50 percent of the area median income for _____ County, adjusted for household size, multiplied by 30 percent and divided by 12.
- (2) Lower Income: 60 percent of the area median income for _____ County, adjusted for household size, multiplied by 30 percent and divided by 12.

"Affordable Sales Price" means a sales price at which Lower or Very Low Income Households can qualify for the purchase of Target Units, calculated on the basis of underwriting standards of mortgage financing available for the development.

"Density Bonus" means a minimum density increase of at least 25 percent over the otherwise Maximum Residential Density.

"Density Bonus Housing Agreement" means a legally binding agreement between a developer and the City/County to ensure that the requirements of this Chapter are satisfied. The agreement, among other things, shall establish: the number of Target Units, their size, location, terms and conditions of affordability, and production schedule. See Section 7 of this Chapter.

"Density Bonus Units" means those residential units granted pursuant to the provisions of this Chapter which exceed the otherwise Maximum Residential Density for the development site.

"Equivalent Financial Incentive" means a monetary contribution, based upon a land cost per dwelling unit value, equal to one of the following:

- (1) A Density Bonus and an Additional Incentive(s); or
- (2) A Density Bonus, where an Additional Incentive(s) is not requested or is determined to be unnecessary. See Section 4 of this Chapter.

"Housing Cost" means the sum of actual or projected monthly payments for all of the following associated with for-sale Target Units: principal and interest on a mortgage loan, including any loan insurance fees, property taxes and assessments, fire and casualty insurance, property maintenance and repairs, homeowner association fees, and a reasonable allowance for utilities.

"Housing Development" means construction projects consisting of five or more residential units, including single family, multifamily, and mobilehomes for sale or rent, pursuant to this Chapter.

"Lower Income Household" means households whose income does not exceed the lower income limits applicable to _____ County, as published and periodically updated by the State Department of Housing and Community Development pursuant to Section 50079.5 of the California Health and Safety Code.

"Maximum Residential Density" means the maximum number of residential units permitted by the City/County's General Plan Land Use Element and Zoning Ordinance at the time of application, excluding the provisions of this Chapter. If the housing development is within a planned development overlay zone, the maximum residential density shall be determined on the basis of the general plan and the maximum density of the underlying zone.

"Non-Restricted Unit" means all units within a Housing Development excluding the Target Units.

"Qualifying Resident" means senior citizens or other persons eligible to reside in Senior Citizen Housing.

"Senior Citizen Housing" means a housing development consistent with the California Fair Employment and Housing Act (Government Code Section 12900 et. seq., including 12955.9 in particular), which has been "designed to meet the physical and social needs of senior citizens," and which otherwise qualifies as "housing for older persons" as that phrase is used in the federal Fair Housing Amendments Act of 1988 (P.L. 100-430) and implementing regulations (24 CFR, part 100, subpart E), and as that phrase is used in California Civil Code Section 51.2 and 51.3.¹

"Target Unit" means a dwelling unit within a Housing Development which will be reserved for sale or rent to, and affordable to, Very Low or Lower Income Households, or Qualifying Residents.

"Very Low Income Household" means households whose income does not exceed the very low income limits applicable to _____ County, as published and periodically updated by the State Department of Housing and Community Development pursuant to Section 50105 of the California Health and Safety Code.

Section 3. Implementation.

The City/County shall grant either: a Density Bonus, or a Density Bonus with an Additional Incentive(s), or Equivalent Financial Incentives,² as set forth in Section 5 of this Chapter, to an applicant or developer of a Housing Development, who agrees to provide the following:

- (1) At least 20 percent of the total units of the Housing Development as Target Units affordable to Lower Income Households; or
- (2) At least 10 percent of the total units of the Housing Development as Target Units affordable to Very Low Income Households; or
- (3) Senior citizen housing.

In determining the minimum number of Density Bonus Units to be granted pursuant to this Section, the Maximum Residential Density for the site shall be multiplied by .25. When calculating the number of permitted Density Bonus Units, any fractions of units shall be rounded to the next larger integer.

In determining the number of Target Units to be provided pursuant to this Section, the Maximum Residential Density shall be multiplied by .10 where Very Low Income Households are targeted, or by .20 where Lower Income Households are targeted. The Density Bonus Units shall not be included when determining the total number of Target Units in the Housing Development. When calculating the required number of Target Units, any resulting decimal fraction shall be rounded to the next larger integer.

In cases where a density increase of less than 25 percent is requested, no reduction will be allowed in the number of Target Units required. In cases where a density increase of more than 25 percent is

requested, the requested density increase, if granted, shall be considered an Additional Incentive, as outlined in Section 5 of this Chapter.

In cases where the developer agrees to construct more than 20 percent of the total units for Lower Income Households, or more than 10 percent of the total units for Very Low Income Households, the developer is entitled to only one Density Bonus and an Additional Incentive(s) (or an Equivalent Financial Incentive) pursuant to Section 5 of this Chapter. Similarly, a developer who agrees to construct Senior Citizen Housing with 20 or 10 percent of the units reserved for Lower- or Very Low-Income Households, respectively, is only entitled to one Density Bonus and an Additional Incentive(s). The City/County may, however, grant multiple Additional Incentives to facilitate the inclusion of more Target Units than are required by this Chapter.

Section 4. Development Standards.

Target Units should be constructed concurrently with Non-Restricted Units unless both the City/County and the developer/applicant agree within the Density Bonus Housing Agreement to an alternative schedule for development.

Target Units shall remain restricted and affordable to the designated group for a period of 30 years (or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program), under the following circumstances:

- (1) Both a Density Bonus and an Additional Incentive(s) is granted; or
- (2) An Equivalent Financial Incentive equivalent to a Density Bonus and an Additional Incentive(s) is granted.

Target Units shall remain restricted and affordable to the designated group for a period of 10 years under the following circumstances:

- (1) Only a Density Bonus is granted and no Additional Incentives are granted; or
- (2) An Equivalent Financial Incentive equivalent to only a Density Bonus is granted.

In determining the maximum Affordable Rent or Affordable Sales Price of Target Units the following household and unit size assumptions shall be used,³ unless the Housing Development is subject to different assumptions imposed by other governmental regulations:

SRO (residential hotel) unit	75% of 1 person
0 bedroom (studio)	1 person
1 bedroom	2 person
2 bedroom	3 person
3 bedroom	4 person
4 bedroom	6 person

Target Units should be built on-site wherever possible and, when practical, be dispersed within the

Housing Development. Where feasible, the number of bedrooms of the Target Units should be equivalent to the bedroom mix of the non-Target units of the Housing Development; except that the Developer may include a higher proportion of Target Units with more bedrooms. The design and appearance of the Target Units shall be compatible with the design of the total Housing Development. Housing Developments shall comply with all applicable development standards, except those which may be modified as provided by this Chapter.

Circumstances may arise in which the public interest would be served by allowing some or all of the Target Units associated with one Housing Development to be produced and operated at an alternative development site. Where the developer and the City/County form such an agreement, the resulting linked developments shall be considered a single Housing Development for purposes of this Chapter. Under these circumstances, the developer shall be subject to the same requirements of this Chapter for the Target Units to be provided on the alternative site.

A Density Bonus Housing Agreement shall be made a condition of the discretionary planning permits (e.g., tract maps, parcel maps, site plans, planned development or conditional use permits, etc.) for all Housing Developments pursuant to this Chapter. The Agreement shall be recorded as a restriction on the parcel or parcels on which the Target Units will be constructed. The Agreement shall be consistent with Section 7 of this Chapter.

Section 5. Development Incentives.

The City/County shall provide a Density Bonus and an Additional Incentive(s), for qualified Housing Developments, upon the written request of a developer, unless the City/County makes a written finding that the Additional Incentive(s) is not necessary to make the Housing Development economically feasible and to accommodate a Density Bonus.

The development incentives granted shall contribute significantly to the economic feasibility of providing the Target Units. Applicants seeking a waiver or modification of development or zoning standards shall show that such waivers or modifications are necessary to make the Housing Development economically feasible in accordance with Government Code Section 65915(e). This requirement may be satisfied by reference to applicable sections of the City/County's general plan housing element.⁴

The need for incentives will vary for different Housing Developments. Therefore, the allocation of Additional Incentives shall be determined on a case-by-case basis. The Additional Incentives may include, but are not limited to, any of the following:⁵

- (1) A reduction of site development standards or a modification of zoning code or architectural design requirements which exceed the minimum building standards provided in Part 2.5 (commencing with Section 18901) of Division 13 of the California Health and Safety Code. These may include, but are not limited to, one or more of the following:⁶
 - (a) Reduced minimum lot sizes and/or dimensions.
 - (b) Reduced minimum lot setbacks.
 - (c) Reduced minimum outdoor and/or private outdoor living area.
 - (d) Increased maximum lot coverage.
 - (e) Increased maximum building height and/or stories.

- (f) Reduced on site parking standards, including the number or size of spaces and garage requirements.
 - (g) Reduced minimum building separation requirements.
 - (h) Reduced street standards, e.g., reduced minimum street widths.
 - (i) Other: _____
- (2) Allow the Housing Development to include non-residential uses and/or allow the Housing Development within a non-residential zone.
 - (3) Other regulatory incentives or concessions proposed by the developer or the City/County which result in identifiable cost reductions or avoidance.
 - (4) A Density Bonus of more than 25 percent.
 - (5) Waived, reduced, or deferred planning, plan check, construction permit, and/or development impact fees (e.g., capital facilities, park, or traffic fees).⁷
 - (6) Direct financial aid (e.g., redevelopment set-aside, Community Development Block Grant funding) in the form of a loan or a grant to subsidize or provide low interest financing for on or off site improvements, land or construction costs.

The City/County may offer an Equivalent Financial Incentive in lieu of granting a Density Bonus and an Additional Incentive(s). The value of the Equivalent Financial Incentive shall equal at least the land cost per dwelling unit savings that would result from a Density Bonus and must contribute significantly to the economic feasibility of providing the Target Units pursuant to this Chapter.

Section 6. Application Requirements and Review.

An application pursuant to this Chapter shall be processed concurrently with any other application(s) required for the Housing Development. Final approval or disapproval of an application (with right of appeal to the City Council/Board of Supervisors) shall be made by the planning commission unless direct financial assistance is requested. If direct financial assistance is requested, the planning commission shall make a recommendation to the City Council/Board of Supervisors who will have the authority to make the final decision on the application.⁸

An applicant/developer proposing a Housing Development pursuant to this Chapter, may submit a preliminary application prior to the submittal of any formal request for approval of a Housing Development. Applicants are encouraged to schedule a pre-application conference with the Planning Director or designated staff to discuss and identify potential application issues, including prospective Additional Incentives pursuant to Section 5 of this Chapter. No charge will be required for the pre-application conference. A preliminary application shall include the following information:

- (1) A brief description of the proposed Housing Development, including the total number of units, Target Units, and Density Bonus Units proposed.
- (2) The zoning and general plan designations and assessors parcel number(s) of the project site.

- (3) A vicinity map and preliminary site plan, drawn to scale, including building footprints, driveway and parking layout.
- (4) If an Additional Incentive(s) is requested, the application should describe why the Additional Incentive(s) is necessary to provide the Target Units, in accordance with Section 5 of this Chapter.

Within ____ days (maximum of 90 days)⁹ of receipt of the preliminary application the City/County shall provide to an applicant/developer, a letter which identifies project issues of concern, (the maximum financial assistance that the Planning Director can support when making a recommendation to the City Council/Board of Supervisors), and the procedures for compliance with this Chapter.

The Planning Director shall inform the applicant/developer that the requested Additional Incentives shall be recommended for consideration with the proposed Housing Development, or that alternative or modified Additional Incentives pursuant to Section 5 shall be recommended for consideration in lieu of the requested Incentives. If alternative or modified Incentives are recommended by the Planning Director, the recommendation shall establish how the alternative or modified Incentives can be expected to have an equivalent affordability effect as the requested Incentives.

Section 7. Density Bonus Housing Agreement.

Applicants/Developers requesting a Density Bonus, shall (draft and) agree to enter into a Density Bonus Housing Agreement with the City/County.¹⁰ The terms of the draft agreement shall be reviewed and revised as appropriate by the Planning Director, who shall formulate a recommendation to the planning commission for final approval.

Following execution of the agreement by all parties, the completed Density Bonus Housing Agreement, or memorandum thereof, shall be recorded and the conditions therefrom filed and recorded on the parcel or parcels designated for the construction of Target Units. The approval and recordation shall take place prior to final map approval, or, where a map is not being processed, prior to issuance of building permits for such parcels or units. The Density Bonus Housing Agreement shall be binding to all future owners and successors in interest.

The Density Bonus Housing Agreement shall include at least the following:

- (1) The total number of units approved for the Housing Development, including the number of Target Units.
- (2) A description of the household income group to be accommodated by the Housing Development, as outlined in Section 3 of this Chapter, and the standards for determining the corresponding Affordable Rent or Affordable Sales Price and Housing Cost.
- (3) The location, unit sizes (square feet), and number of bedrooms of Target Units.
- (4) Tenure of use restrictions for Target Units of at least 10 or 30 years, in accordance with Section 4 of this Chapter.

- (5) A schedule for completion and occupancy of Target Units.
 - (6) A description of the Additional Incentive(s) or Equivalent Financial Incentives being provided by the City/County.
 - (7) A description of remedies for breach of the agreement by either party (the City/County may identify tenants or qualified purchasers as third party beneficiaries under the agreement).
 - (8) Other provisions to ensure implementation and compliance with this Chapter.
- A. In the case of for-sale Housing Developments, the Density Bonus Housing Agreement shall provide for the following conditions governing the initial sale and use of Target Units during the applicable use restriction period:
- (1) Target Units shall, upon initial sale, be sold to eligible Very Low or Lower Income Households at an Affordable Sales Price and Housing Cost, or to Qualified Residents (i.e., maintained as Senior citizen housing) as defined by this Chapter.
 - (2) Target Units shall be initially owner-occupied by eligible Very Low or Lower Income Households, or by Qualified Residents in the case of Senior citizen housing.
 - (3) The initial purchaser of each Target Unit shall execute an instrument or agreement approved by the City/County restricting the sale of the Target Unit in accordance with this ordinance during the applicable use restriction period. Such instrument or agreement shall be recorded against the parcel containing the Target Unit and shall contain such provisions as the City/County may require to ensure continued compliance with this ordinance and the state Density Bonus Law.¹¹
- B. In the case of rental Housing Developments, the Density Bonus Housing Agreement shall provide for the following conditions governing the use of Target Units during the use restriction period:
- (1) The rules and procedures for qualifying tenants, establishing Affordable Rent, filling vacancies, and maintaining Target Units for qualified tenants;
 - (2) Provisions requiring owners to verify tenant incomes and maintain books and records to demonstrate compliance with this Chapter.
 - (3) Provisions requiring owners to submit an annual report to the City/County, which includes the name, address, and income of each person occupying Target Units, and which identifies the bedroom size and monthly rent or cost of each Target Unit.

TECHNICAL APPENDIX
[TO REMOVE ENDNOTES, DELETE NUMBERS FROM TEXT]

1. The definition of senior citizen housing in California law has been affected by recent amendments to state fair housing laws, including the Fair Employment and Housing Act, the Unruh Civil Rights Act, and the Mobile Home Residency Act. The definition of Senior Citizen Housing in a local ordinance should consider more restrictive provisions of either state or federal law relating to familial status and qualifying as "housing for older persons."

Notwithstanding Government Code Section 65915, pursuant to federal and state law, including Sections 12955, 12955.9, and 65008(b) of the Government Code, local governments are prohibited from administering ordinances which discriminate against residential development on the basis of age or familial status, unless subject to a statutory exemption. The only authorized exemption from discrimination on the basis of familial status is for housing which meets the federal and state statutory definition as "housing for older persons." Thus, housing for senior citizens pursuant to Section 65915 must comply with this criteria as defined by a combination of federal and state statutes and regulations.

The Housing for Older Persons Act of 1995 (Public Law 104-76), signed 12/28/95) amended Section 807(b) regarding qualifying criteria for housing intended and operated for occupancy by persons 55 years of age and older. Implementing regulations for the revised provision (for 24 CFR part 100, subpart E) were amended by 61 FR 18249, Apr. 25, 1996.

California Government Code Section 12955.9(c) places the burden of proof upon an applicant to show that a development qualifies as housing for older persons. The California Department of Fair Employment and Housing (Government Code Section 12955.9 et. seq.) has been delegated additional enforcement authority on this issue since California's fair housing act was found by HUD to be substantially equivalent with the Federal Fair Housing Amendments Act of 1988 (P.L. 100-430).

2. The local government has discretion to decide whether to offer equivalent financial incentives in lieu of a density bonus and an additional incentive(s). If equivalent financial incentives will not be offered or considered, then references to this option should not be included in the ordinance.
3. The proposed standards are an example; alternative standards may be used in the ordinance, or standards need not actually be included in the ordinance.
4. If the local government's housing element (or other planning documents) indicates that the development of housing affordable to lower-income households is generally not feasible within the community without financial or development incentives, such information and source may be referenced to satisfy the requirements of Government Code Section 65915 (e).

5. The incentives offered should be those that will provide the most meaningful development incentives for housing developers in the local housing market. The relevance of particular incentives may vary by community.
6. Incentives should be provided which, individually or in combination, will accommodate a density increase of at least 25 percent.
7. Deferrals for the payment of development impact fees otherwise required by Government Code Section 66007 do not qualify as an incentive for purposes of this ordinance.
8. Note that the decisions of the city/county approving or disapproving the proposed development may be subject to the provisions of Government Code section 65589.5 which requires certain findings where the city/county proposes to: 1) disapprove, or approve on conditions rendering the development infeasible, a proposed affordable housing development, or 2) disapprove, or approve at a lesser density, a housing development proposal which complies with the applicable general plan, zoning, and development policies in effect at the time the project's application is deemed complete.
9. While the statute allows a maximum of 90 days for the review of a preliminary application, shorter review periods are encouraged where possible.
10. The local government may prepare and provide developers with a standard housing development agreement format for purposes of this ordinance. If a state or federal government subsidy is used to finance the housing development, certain documentation procedures or monitoring provisions may be specified by the government program, provided they are consistent with the provisions of Section 65915. Where there is no state or federal government subsidy program involved, but whereby the local government proposes conditions other than those proposed here, use of standard conditions, e.g., those of prevailing federal housing subsidy programs, are encouraged to accommodate standardization objectives of development financing and refinancing.
11. Localities have the responsibility, and the flexibility, to create and implement a workable mechanism to "ensure the continued affordability" of the for-sale target units as required by the statute. Deed restrictions, conditions governing resale and forgivable second mortgages are methods that have been utilized in similar situations. The recorded instrument or document should be drafted to be compatible with the proposed sources of financing for the purchase of the target unit by the owner/occupant.



DATE: January 9, 2011

TO: Chairperson and Members of the Planning Commission

FROM: Development Services Department/Planning Division

SUBJECT: **ZONE AMENDMENT (ZA11-00003) AND LOCAL COASTAL PLAN AMENDMENT (LCPA11-00001) AMENDING SECTION 3032 OF THE 1992 ZONING ORDINANCE AND ESTABLISHING THE AMENDED TEXT AS PART OF THE IMPLEMENTING DOCUMENT OF THE LOCAL COASTAL PROGRAM IN ORDER TO BRING THE CITY'S AFFORDABLE HOUSING DENSITY BONUS PROVISIONS INTO CONFORMANCE WITH STATE LAW – APPLICANT: CITY OF OCEANSIDE**

RECOMMENDATION

Staff recommends that the Planning Commission recommend City Council approval of amendment of Section 3032 of the 1992 Zoning Ordinance and incorporation of the amended text into the implementing document of the Local Coastal Program in order to bring the City's affordable housing density bonus provisions into conformance with state housing law. In addition to specific standards outlined in Government Code Section 65915 *et seq*, the proposed amendments include general language found in the California Model Density Bonus Ordinance which affords local jurisdictions the discretion to allow the required affordable component of a density bonus project to be provided at a site other than that where the market-rate component of the project is to be located, when it can be found that such off-site provision is in the public interest.

Staff recommends that the Planning Commission:

- (1) Adopt Planning Commission Resolutions No 2012-P04 recommending approval of Zoning Amendment (ZA11-00003) and Local Coastal Plan Amendment (LCPA11-00001) to the City Council with findings of approval attached herein.

BACKGROUND

State Law

California Government Code Section 65915, *et seq*, commonly known as California Density Bonus Law, mandates that local jurisdictions allow residential projects to exceed maximum allowable densities when such projects include rental and/or for-sale dwelling units affordable to lower income households, defined by state and federal law as those households earning less than a specified percentage of the county median income, adjusted for household size. Established in 1979 and substantially amended in 2005, state density bonus law requires that local jurisdictions grant as much as a 35 percent density bonus to qualifying projects, with the percentage of density bonus based on two factors: 1) the percentage of affordable units provided; and 2) the household income level to which these units will be restricted (i.e., very low, low and/or moderate income). The following table provides two examples of how residential development can benefit from state-prescribed density bonus in exchange for the provision of a certain percentage and type of affordable housing.

**Table 1
Hypothetical Density Bonus Scenarios**

	% of Affordable Units	Targeted Income Level	Max. Units per Zoning	% of Density Bonus	Bonus Market-Rate Units
Project 1	10%	Low Income	100	20%	20
Project 2	10%	Very Low Income	100	32.5%	33

The above table compares two hypothetical projects contemplated for a common site with the potential to accommodate as many as 100 dwelling units per zoning standards. In exchange for bonus density, both projects would place affordability restrictions on 10 percent of the dwelling units allowed at maximum density (i.e. $100/10 = 10$ units). While Project 1 would restrict these ten affordable units to low income households, Project 2 would restrict these units to very low income households. In accordance with state law, Project 1 would be entitled to a 20 percent density bonus, which would allow for a total of 120 units, 10 of which would be restricted to low income households. By restricting the same number of units (10) to very low income households, Project 2 would be entitled to a substantially greater density bonus of 32.5 percent, allowing for a total of 133 units.

State density bonus law also mandates that cities grant concessions or incentives that make it physically and/or economically feasible for density bonus projects to achieve the bonus densities for which they qualify. Concessions or incentives are defined in state housing law as modifications in site development standards or architectural design requirements or other regulatory or financial dispensation that results in "identifiable, financially sufficient, and actual cost reductions" for density bonus projects. Examples of regulatory concessions/incentives would include: reduced setbacks, landscape area, driveway dimensions or parking ratios; additional building height or lot coverage; and/or

relaxed standards for exterior wall finishes, fenestration, exterior lighting or other architectural details. Concessions/incentives more directly financial in nature would include: waiver or deferral of off-site improvements or development impact fees; zero or low interest financing; land donation; and/or monetary subsidy through the contribution of public funds. The number of concessions/incentives that a city must grant is based on the percentage and type of affordable units proposed, with certain projects being eligible for as many as three concessions/incentives. The state-prescribed thresholds for concessions/incentives are outlined in Government Code Section 65915, attached to this staff report as Exhibit B.

Other components of state density bonus law are discussed in a subsequent section of this staff report.

As articulated in state law and implemented by local jurisdictions, density bonus is an option available to housing developers who choose to provide affordable units in exchange for increased density. It is thus considered a voluntary incentive for the development of affordable housing, as opposed to affordable housing mandates like the City's inclusionary housing program, which requires that housing developers either provide a percentage of affordable units in their projects or pay an in-lieu fee.

Density bonus provisions are currently incorporated into the 1992 Zoning Ordinance. The 1986 Zoning Ordinance, which governs those portions of the Coastal Zone located outside of the Downtown Redevelopment Area, does not presently include any density bonus provisions.

The density bonus provisions currently outlined in the 1992 Zoning Ordinance reflect state density bonus law prior to substantial amendments adopted in 2005 as Senate Bill 1818. These amendments produced the following changes to state density bonus law:

- Modified eligibility for density bonus (reducing the minimum percentage of affordable housing required to qualify for density bonus);
- New ratios between density bonus and the percentage and type of affordable units proposed (allowing as much as 35 percent density bonus);
- Density bonus for senior housing;
- Density bonus for land donation;
- Mandated additional concessions/incentives (requiring as many as three concessions/incentives) ;
- Waivers of development standards that render density bonus projects infeasible (irrespective of mandated concessions/incentives);
- Additional density bonus for childcare facilities;
- Allowance for density bonus in conjunction with condominium conversion (with affordable units offered for sale).

Each of these changes is outlined in Table 2 of this staff report, which compares the City's current density bonus provisions with current state density bonus law. Taken together, these changes constitute a significant revision of state density bonus law, not only by granting higher percentages of density bonus for qualifying projects but also by mandating that local jurisdictions afford a great deal of flexibility with development standards and other regulatory constraints that might otherwise render density bonus projects infeasible. While state density bonus law, as amended in 2005, does not preclude local jurisdictions from subjecting density bonus projects to discretionary review, it does make it somewhat more challenging for localities to deny concessions/incentives for such projects unless specific adverse impacts to public health and safety, the physical environment or designated historic structures can be identified.

Housing Element Action Item

The City's current Housing Element contains an action item, identified as Program 3, which calls for the City to update its density bonus provisions to achieve consistency with state law. It is the expectation of the California Department of Housing and Community Development (HCD) that the City will align its density bonus provisions with state law prior to adopting its next Housing Element update (for the state-defined 2013-2020 planning period). Failure to complete this action item could jeopardize state certification of the Housing Element update, which in turn could render the City ineligible for certain federal, state and regional grant programs that establish housing element certification as a prerequisite for application.

Density Bonus in the San Diego Region

To date, density bonus has never been sought in the City of Oceanside. However, density bonus projects have been implemented in other jurisdictions in the San Diego region, including Carlsbad, Vista and Encinitas. Examples of density bonus projects in the San Diego region range from single-family subdivisions to high-rise apartments, some of which benefit from the maximum allowable density bonus and others that invoke density bonus law only to receive concessions on development standards that make it difficult or impossible to achieve the maximum density allowed under local zoning. Density bonus in the San Diego region has been applied to both mixed-income development (where market-rate and affordable units are integrated) as well as exclusively affordable projects. Several market-rate projects granted density bonus in the City of Encinitas were allowed to provide the required affordable component on a site other than where the market-rate units were constructed.

PROJECT DESCRIPTION

Proposed revisions to the City's current Affordable Housing Density Bonus Ordinance would bring the City's density bonus provisions into conformance with state housing law as outlined in Government Code Section 65915, *et seq.* Additionally, in accordance with the State Model Density Bonus Ordinance (attached to this staff report as Exhibit C), the proposed revisions would allow for the off-site provision of affordable units associated with a density bonus project when the City finds that off-site provision is in the public interest. With respect to state provisions that allow density bonus in exchange for land donation,

the proposed revisions would allow land donation for both very low and low income housing, whereas state provisions require only that local jurisdictions allow land donation for very low income housing. In all other respects, the proposed changes to the City's density bonus provisions would simply align these provisions with state density bonus law.

The following table identifies where the City's current density bonus provisions do not align with state density bonus law as amended in 2005. In addition to modifying eligibility for density bonus and revising the ratios between density bonus and the percentage and type of affordable units proposed, the City is also obliged to add new language related to land donation, parking, childcare facilities and affordable for-sale units in conjunction with condominium conversions. As noted earlier in this staff report, the City is further required to grant waivers and/or reductions of development standards "that will have the effect of physically precluding the construction of a development meeting the criteria [for density bonus] at the densities or with the concessions or incentives permitted [by state law]."

**Table 2
City Density Bonus Ordinance vis-à-vis State Density Bonus Law**

Provision	Current City DBO	State DB Law
Percentage of Density Bonus	25% Density Bonus for 10% Low Income Units, 20% Very Low Income Units or 50% Senior Housing Units	20% to 35% Density Bonus, Based on % of Very Low, Low or Moderate Income Units
Land Donation	No Provisions	Density Bonus for Land Donated for Very low Income Housing ¹
Senior Housing	No Provisions	20% Density Bonus for Senior Housing
Concessions/Incentives	To Render Projects Feasible, Cities Authorized but Not Required to Provide Concessions/Incentives	Up to 3 Concessions/Incentives Required, Based on % of Very Low, Low or Moderate Income Units
Waivers of Development Standards	No Provisions	Cities Must Waive Standards that Render a Density Bonus Project Infeasible
Maximum Parking Requirements	No Provisions	Restrictions on the Amount of Per-Unit Parking Cities Can Require of Density Bonus Projects
Affordable For-Sale Units in Condominium Conversions	No Provisions	25% Density Bonus for 33% Low or Moderate Income Units or 15% Very Low Income Units
Childcare Facilities	No Provisions	Additional Density Bonus Based on the Floor Area of Childcare Facility

¹ Staff recommends that the City's density bonus provisions also grant density bonus for land donation for low income housing. State law requires that donated land be located within ¼ mile of the site where the market-rate component will be constructed.

While the City's current density bonus provisions establish a single density bonus percentage (25%) for projects providing a minimum percentage of affordable units, current state law includes tables that specify how the percentage of density bonus increases with the percentage and type of affordable units proposed. Residential development becomes eligible for density bonus when at least five percent of the total units allowed under local

zoning are restricted to very low income households, with the density bonus percentage increasing by 2.5 percent for every additional percentage point of *very low income* units proposed. Restricting at least ten percent of total units to *low income* households renders residential development eligible for density bonus, with the density bonus percentage increasing by 1.5 percent for every additional percentage point of low income units proposed. Condominium development becomes eligible for density bonus when at least ten percent of total units are made available for sale to *moderate income* households, with the density bonus percentage increasing by 1 percent for every additional percentage point of moderate income units proposed. As indicated above in Table 2, senior housing developments and condominium conversions are eligible for fixed density bonuses of 20 and 25 percent, respectively.

ANALYSIS

Because state density bonus law preempts local authority, the City must grant density bonus percentages and associated concessions and incentives as outlined in state law regardless of whether or not its own density bonus provisions accord with those prescribed by the state. Consequently, most of the revisions outlined above have been available to the development community in Oceanside since state density bonus law was last amended in 2005. Revising the City's density bonus provisions is therefore mostly a procedural effort – less about creating new incentives for affordable housing and more about providing clear and consistent guidance to City staff, the development community and other interested parties.

However, along with bringing the City into conformance with state density bonus law, the proposed revisions would also afford both the City and the private development community with additional flexibility in the implementation of density bonus, by: 1) granting the City the discretion to allow the affordable component of a density bonus project to be developed at a location removed from where the market-rate component would be sited, when decision-makers find that doing so would be in the public interest; and 2) allowing land donated in exchange for density bonus to be utilized for the provision of both very low and low income housing, rather than restricting donated land to use only for very low income housing. Although the off-site provision of the required affordable component of a density bonus project is not expressly authorized by state statute, it is staff's position that the City has the authority to allow such off-site provision, given that language to this effect is included in the State Model Density Bonus Ordinance (attached to this staff report as Exhibit D). Furthermore, there is precedent in the San Diego region for such off-site provision, as noted earlier in this staff report. With respect to land donation in exchange for density bonus, staff interprets state law to say that local jurisdictions can, but are not legally obligated to, grant density bonus in exchange for land to accommodate low income (and not just very low income) housing.

In February 2011, in conjunction with its decision to amend components of the City's Inclusionary Housing Ordinance (Article 14C), the City Council directed staff to consider additional voluntary incentives for affordable housing. In response to this direction, staff assembled an ad hoc committee of affordable housing advocates, building industry

representatives, real estate professionals and interested community members who, over the course of six public meetings between March 2011 and October 2011, contemplated a range of potential incentives, including density bonus for the off-site provision of affordable units. Guided by input from the ad hoc committee, staff drafted an amended density bonus ordinance that would have allowed density bonus projects to provide required affordable units on sites other than where the market-rate units would be constructed, via one of the following three approaches:

- 1) Constructing the required affordable units on a separate site, independently or in collaboration with other developers seeking density bonus;
- 2) Purchasing equity in an affordable housing project commensurate with the project's affordable housing requirement;
- 3) Purchasing, rehabilitating and placing affordability restrictions on existing market-rate units commensurate with the project's affordable housing requirement.

When staff discussed these alternative means of fulfilling affordability requirements with state housing officials, they expressed reservations about allowing such flexibility as a matter of right, stating that the definition of "housing development" in state density bonus law appears to preclude off-site provision.¹ These same officials further indicated that granting such flexibility to applicants could complicate state certification of the City's next Housing Element (which is currently being updated). In light of these comments, staff has amended its recommended density bonus revisions to include only the language from the State Model Density Bonus Ordinance which states that local jurisdictions can allow off-site provision of affordable units only when they find it in the public interest to do so.

Affordable Housing and Proposals to Exceed Base Density

Outside of the context of state density bonus law, staff has explored another potential incentive for affordable housing related to the City's residential density ranges, which establish base and maximum allowable densities for all residential zoning designations. The density ranges for the City's various residential zoning designations, as specified in both the 1992 and 1986 Zoning Ordinances, are depicted in the following table. The density ranges shown under the 1986 Zoning Ordinance apply to Coastal Zone properties located outside of the Downtown Redevelopment Area, while those shown under the 1992 Zoning Ordinance apply to all non-coastal properties located outside of the Downtown Redevelopment Area. Within the Downtown Redevelopment Area, a density range of 29 to 43 dwelling units per acre generally applies to all properties where residential development is allowed, with some exceptions.

¹ The following language is included in the definition of "Housing Development" in Government Code Section 65915(i): "For the purpose of calculating a density bonus, the residential units shall be on contiguous sites that are the subject of one development application, but do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located."

**Table 3
Residential Density Ranges**

Density Category	Zoning Designation	1992 Zoning Ordinance	1986 Zoning Ordinance
Low Density	RE-A	0.5 – 0.9 d.u./acre	
	RE-B	1.0 – 3.5 d.u./acre	
	RS	3.6 – 5.9 d.u./acre	
	R-1		0 – 7 d.u./acre

**Table 3 (Continued)
Residential Density Ranges**

Density Category	Zoning Designation	1992 Zoning Ordinance	1986 Zoning Ordinance
Medium Density	RM-A	6.0 – 9.9 d.u./acre	
	RM-B	10 – 15 d.u./acre	
	RM-C	15.1 – 20.9 d.u./acre	
High Density	RH	21.0 – 28.9 d.u./acre	
	RH-U	29.0 – 43.0 d.u./acre	
	R-3		15.0 – 43.0 d.u./acre

Under the 1992 Zoning Ordinance, proposals to exceed base density allowances require a Conditional Use Permit. To meet the required findings for a Conditional Use Permit, such proposals must fulfill several criteria outlined in the Land Use Element of the General Plan, including participation in the City's housing programs. While payment of affordable housing in-lieu fees in accordance with the City's inclusionary housing ordinance (Article 14C) has generally been considered a means of fulfilling this particular criterion, staff is recommending that proposals to exceed base density (i.e., to achieve densities within the ranges shown in Table 3) be required to restrict at least ten percent of the total units allowed under base density as affordable to low income households. Under this concept, the requirement to provide actual affordable units would be based on the number of units equivalent to the base density allowance for a given property, with the developer then having the option of satisfying the inclusionary housing requirement associated with additional units above base density through payment of in-lieu fees. For example, where base density under RH-U zoning would allow 29 units on a one-acre site, the developer would be required to provide three affordable units (ten percent of 29 units, rounded up) and then have the option of paying in-lieu fees for the additional units (as many as 14) achieved above base density.

In cases where maximum density would be more than twice that of the base density allowance (e.g., under RE-B and R-3 zoning), staff recommends that projects exceeding base density be required to place affordability restrictions on twenty percent of the total units allowed under base density.

Projects involving nine or fewer base density units would be exempt from these affordability requirements (these small-scale projects would have the option of paying in-lieu fees, as now established by Article 14C).

Because these provisions would fall outside the context of state density bonus law, the City would have the discretion to allow flexibility in how developers chose to fulfill their affordable housing requirements. Specifically, allowance for the off-site provision of required affordable units, previously considered for density bonus projects, could be applied to proposals to exceed base residential densities. The types of projects illustrated in Table 3 could thus fulfill their affordable housing requirements by either building the required affordable units on the same site as the market-rate units or by choosing one of the three off-site options outlined earlier in this staff report (i.e, building the affordable units elsewhere, purchasing equity in an affordable housing project or purchasing, rehabilitating and deed-restricting existing market-rate units).

The following table outlines how this proposed affordable housing provision would apply to projects of various types and scales. The first column establishes the size of the project site. The second column lists the zoning designation of the property. The third column indicates both the base and maximum density allowances for the project site, under the applicable zoning designation (e.g. RS, RM-A, RH-U). The fourth column shows the number of units the project site can accommodate under both the base and maximum density allowances. The fifth column shows the number of affordable units the project would have to provide in order to qualify for additional density above the base density allowance.

**Table 4
Affordable Housing Required for Projects Exceeding Base Density**

Lot Size	Zoning	Base/Max. Density	Units Allowed	Affordable Units Required
5,000 square feet	R-3	15 – 43 d.u./acre	1 – 4	None
20,000 square feet	RH-U	29 – 43 d.u./acre	13 – 19	1
Ten acres	RM-A	6.0 – 9.9 d.u./acre	60 – 99	6
Ten acres	RS	3.6 – 5.9 d.u./acre	36 – 59	3
Ten acres	RE-B ¹	1 – 3.5 d.u./acre	10 – 35	2

¹Because maximum allowable density for RE-B properties is more than twice the base density allowance, staff recommends a 20% affordable housing requirement for RE-B properties.

The examples provided in Table 3 are meant to reflect the range of new housing opportunities that currently exist in the City of Oceanside. As a largely built-out community, the City has few sizeable tracts of land remaining for new residential development. Most of the vacant and underutilized land inventory available for new housing consists of relatively small infill parcels located in high-density residential zones and commercial corridors that allow for mixed-use development. Much of this inventory lies within or in close proximity to the Coast Highway, Mission Avenue and Oceanside Boulevard commercial corridors, with additional inventory made up of larger properties scattered along the City's northern and eastern boundaries. If future housing growth in the City were to be focused in transit-oriented corridors, in keeping with regional smart

growth and sustainable development policies, most new housing would be comprised of medium to high-density attached units on lots of less than an acre in size. Even at densities approaching 43 dwelling units per acre, many of these projects would not be required to provide affordable units, as their base density allowance would often be less than 10 units. However, through lot consolidation and mixed-use redevelopment of larger commercial properties, it is possible that many projects in the City's urbanized areas would achieve a scale that would trigger a requirement to produce affordable units, either on or off-site.

Implementing such a policy would require amendment of the Land Use Element of the General Plan, to revise criteria now associated with proposals to exceed base density, as well as amendment of zoning standards and the Inclusionary Housing Ordinance (Article 14C). In order to apply the policy to mixed-use development in commercial zones, it would be necessary to establish density ranges for mixed-use development; at present, the 1986 and 1992 Zoning Ordinances establish only maximum allowable residential densities for mixed-use projects (43 d.u./acre and 29 d.u./acre, respectively).

In October 2011, SANDAG approved the Regional Housing Needs Allocation (RHNA) for the San Diego region, assigning the City of Oceanside an affordable housing obligation of 2,460 units to be accommodated through local zoning between 2013 and 2020. While the City is not directly responsible for producing these affordable units, eligibility for many federal, state and regional grant programs is based in part upon the extent to which actual affordable housing production corresponds to what the RHNA has determined to be the demand for affordable housing in Oceanside during the eight-year RHNA period. Given that density bonus has never been implemented in the City of Oceanside, and that existing density allowances in the City provide little incentive for developers to pursue density bonus in the foreseeable future (as they generally afford ample density for market-rate housing projects to be profitable), this particular affordable housing program is not expected to generate a significant number of affordable units. Staff finds that requiring affordable housing in conjunction with proposals to exceed base density would be a reasonable, viable and readily implementable alternative to density bonus, supplementing the City's affordable housing strategy and thereby contributing to the overall strength of the forthcoming Housing Element update. Along with its formal recommendation on the proposed revisions to the City's density bonus ordinance, staff is also seeking the Planning Commission's informal input on the concept of requiring affordable housing in conjunction with proposals to exceed base density. This informal input will assist staff in further refining the concept before presenting it to the City Council in March.

ENVIRONMENTAL DETERMINATION

In accordance with the provisions of the California Environmental Quality Act (CEQA) Guidelines Section 15061 (b) (3), the proposed project does not have the potential for causing a significant effect on the environment and therefore is not subject to CEQA review.

SUMMARY

The proposed revisions to the City's density bonus ordinance will render the ordinance consistent with state housing law while providing additional flexibility to both the City and the development community in the application of density bonus. City staff therefore recommends that the Planning Commission:

- Adopt Planning Commission Resolution No 2012-P04 recommending approval of Zoning Amendment (ZA11-00003) and Local Coastal Program Amendment (LCPA11-00001) to the City Council with findings of approval attached herein.

PREPARED BY:



Russ Cunningham
Senior Planner

SUBMITTED BY:



Jerry Hittlerian
City Planner

Attachments:

1. Planning Commission Resolution No. 2012-P04
2. Exhibit "A" – Proposed Zoning Ordinance Text Amendment
3. Exhibit "B" – California Government Code Section 65915
4. Exhibit "C" – California Model Density Bonus Ordinance

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PLANNING COMMISSION
RESOLUTION NO. 2012-P04

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF OCEANSIDE, CALIFORNIA RECOMMENDING APPROVAL OF AMENDMENTS TO THE CITY'S AFFORDABLE HOUSING DENSITY BONUS PROVISIONS (ZONING ORDINANCE ARTICLE 3032) IN ORDER TO ACHIEVE CONFORMANCE WITH STATE HOUSING LAW AS OUTLINED IN GOVERNMENT CODE SECTION 65915

APPLICATION NO: ZA11-00003, LCPA11-00001
APPLICANT: City of Oceanside
LOCATION: Citywide

THE PLANNING COMMISSION OF THE CITY OF OCEANSIDE, CALIFORNIA DOES RESOLVE AS FOLLOWS:

WHEREAS, Article 30, Section 3032 of the Zoning Ordinance entitled "Affordable Housing Density Bonus" sets forth policies which are intended to facilitate the development of affordable housing to serve a variety of economic needs within the City of Oceanside; and

WHEREAS, Section 3032 currently provides a density bonus of 25 percent in the number of dwelling units over the otherwise maximum allowable residential density provided at least 20 percent of the total units are designated for lower income households, 10 percent of the total units are designated for very low income households, or 50 percent of the total units are designated for Qualifying Residents (senior citizen housing) as defined in the Civil Code; and

WHEREAS, Section 3032 currently provides for approval of an additional concession or incentive beyond the density bonus unless the additional incentive is determined unnecessary for the affordability of the units; and

WHEREAS, pursuant to Senate Bill ("SB") 1818, California Government Code section 65915 was amended in 2005 making several changes to state density bonus law, including among other additions: 1. A bonus of 20 percent is available if 10 percent of the units in a project are affordable to low income residents, five percent of the units are affordable for very low income households, or the project is a senior citizen development as defined in the Civil Code; and 2. A bonus of five percent is available if 10 percent of the units are affordable to moderate income households; and

1 WHEREAS, Government Code section 65915(f) provides a density bonus of up to 35
2 percent for projects setting aside a required number of units for very low, low or moderate units
3 households; and

4 WHEREAS, Government Code section 65915(d) requires a city to provide at least one
5 incentive or concession for projects that include at least 10 percent of total units for lower
6 income households, five percent for very low income households or at least 10 percent for
7 persons and families of moderate income; two concessions or incentives must be provided for
8 projects that include at least 20 percent of the total units for lower income households, at least
9 10 percent for very low income households, or at least 20 percent for persons and families of
10 moderate income in a condominium or planned development; three concessions or incentives
11 must be provided to projects that include at least 30 percent of the total units for lower income
12 households, at least 15 percent for very low income households, or at least 30 percent for
13 persons and families of moderate income in a common interest development; and

14 WHEREAS, state density bonus law currently allows a density bonus of at least 15
15 percent when an applicant for a land development project donates land to a city in accordance
16 with the provisions of Government Code section 65915(g); and

17 WHEREAS, Government Code section 65915(h) provides for a density bonus when an
18 applicant proposes to construct a housing development that includes a child care facility; and

19 WHEREAS, the California Department of Housing and Community Development has
20 published a model density bonus law which includes the potential for off-site provision for
21 affordable units pursuant to an agreement between the City and a developer where the linked
22 developments are to be considered a single housing development; and

23 WHEREAS, the City's current Housing Element establishes that the City's density
24 bonus ordinance will be revised to accord with changes to state density bonus law adopted in
2005 as SB1818; and

 WHEREAS, on February 23, 2011, May 25, 2011 and August 17, 2011, the City
Council directed staff to research voluntary affordable housing incentives, including revisions to
the City's density bonus ordinance;

1 WHEREAS, city staff conducted six public meetings with affordable housing advocates,
2 building industry representatives, real estate professionals, and interested community members
3 between March 7, 2011 and October 11, 2011 to discuss proposed amendments to the City's
4 density bonus ordinance; and

5 WHEREAS, the Planning Commission did, on the 9th day of January, 2012, conduct a duly
6 advertised public hearing as prescribed by law to consider staff recommendations for zoning text
7 amendments to Section 3032 of the 1992 Zoning Ordinance; and

8 WHEREAS, in accordance with the provisions of the California Environmental Quality
9 Act (CEQA) Guidelines Section 15061 (b) (3), the proposed project does not have the potential
10 for causing a significant effect on the environment and therefore is not subject to CEQA review;
11 and

12 WHEREAS, a Notice of Exemption was prepared by the Resource Office of the City of
13 Oceanside for this project pursuant to the California Environmental Quality Act of the 1970 and
14 State Guidelines;

15 WHEREAS, studies and investigations made by this Commission and on its behalf reveal
16 the following facts pertaining to the proposed Zoning Text Amendments and Local Coastal Plan
17 Amendments:

- 18 1. The Zoning Text Amendments and Local Coastal Plan Amendments, as proposed, conform
19 to the City of Oceanside General Plan.
- 20 2. The Zoning Text Amendments and Local Coastal Plan Amendments, as proposed, conform
21 to the California Coastal Act and the City of Oceanside Local Coastal Plan.

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3. That the granting of the Zoning Text Amendments and Local Coastal Plan Amendments is consistent with the purposes of the 1992 Zoning Ordinance, as these amendments will help to facilitate the development of affordable housing to serve a variety of economic needs within the City.

NOW, THEREFORE, BE IT RESOLVED that the Planning Commission does hereby recommend approval of Zone Amendment (ZA11-00003) and Local Coastal Plan Amendment (LCPA11-00001), as represented in the attached Exhibit "A".

PASSED AND ADOPTED Resolution No. 2012-P04 on January 9, 2012 by the following vote, to wit:

- AYES:
- NAYS:
- ABSENT:
- ABSTAIN:

Tom Rosales, Chairperson
Oceanside Planning Commission

ATTEST:

Jerry Hittleman, Secretary

I, JERRY HITTLEMAN, Secretary of the Oceanside Planning Commission, hereby certify that this is a true and correct copy of Resolution No. 2012-P04.

Dated: January 9, 2012

3032 Affordable Housing Density Bonus

- A. Purpose. This section establishes policies which facilitate the development of affordable housing to serve a variety of economic needs within the City. To encourage provision of moderate, lower and very low-income housing, senior housing, the City shall provide ~~to~~ developers/property owners ~~who~~ meeting the requirements ~~established by~~ of this section a density bonus and additional incentives ~~if it is found that such incentives are necessary for affordability, or provide other incentives of equivalent financial value as specified in this section.~~ The regulations set forth in this section shall apply city wide.
- B. Definitions. As used in this section, the following terms shall have the following meanings:
- (1) "Density Bonus" means a ~~25 percent~~ density increase ~~in the number of dwelling units~~ over the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the General Plan as of the date of application ~~by the developer to the City of Oceanside.~~ The density bonus shall apply to residential developments of five or more units. The number of housing units to be reserved for ~~low or very low, low and moderate~~ income households or senior housing ~~Qualifying Residents~~ does not include the density bonus units.
 - (2) "Concession" or "incentive" shall have the meaning set forth in Government Code section 65915(k).
 - (23) "Equivalent Financial Value" concerns a condominium conversion project and refers to the cost to the developer/property owner based on the land cost per dwelling unit. The land cost per dwelling unit is determined by the difference in the value of the land with and without the density bonus.
 - (34) "Lower Income Households" as currently defined shall have the meaning set forth in section 50079.5 of the Health and Safety Code and any subsequent amendments or revisions.
 - (45) "Very Low Income Households" as currently defined shall have the meaning set forth in section 50105 of the Health and Safety Code and any subsequent amendments or revisions.
 - (5) "Qualifying Residents" as currently defined in section 51.3 of the Civil Code and any subsequent amendments or revisions. (Senior Citizen Housing)

- ~~(6) "Affordability" is determined by the economic feasibility of constructing lower income housing in the proposed development.~~
- (6) "Moderate Income Households" shall have the meaning set forth in section 50093 of the Health and Safety Code and any subsequent amendments or revisions.
- (7) "Senior Citizen Housing Development" as currently defined by Sections 51.3 and 51.12 of the Civil Code and any subsequent amendments or revisions.
- (8) "Common Interest Development" as currently defined in Section 1351 of the Civil Code and any subsequent amendments or revisions.
- (9) "Child Care Facility" means a child day care facility other than a family day care home, including, but not limited to, infant centers, preschools, extended day care facilities, and school-age child care center, as defined by Government Code Section 65915.

C. Implementation. In accordance with Government Code Section 65915, et seq., City shall grant either: The City shall grant a density bonus, in the amount specified in subsection D below, to an applicant who proposes a housing development consisting of five or more dwelling units and meeting at least one of the following criteria:

- ~~(1) A density bonus and an additional concession or incentive, unless the additional incentive is determined unnecessary for affordability. The increase in density must be at least 25% over the maximum density authorized by the City General Plan and Zoning Ordinance.~~
- ~~(2) An incentive of equivalent financial value.~~

~~In order to qualify for the density bonus a housing project must consist of five or more dwelling units and meet one or more of the following criteria:~~

- ~~(1) At least 20% of the total units allowed by the maximum permitted density are designated for lower income households as defined in the Health and Safety Code, or~~
- ~~(2) At least 10% of the total units allowed by the maximum permitted density are designated for very low income households as defined in the Health and~~

Safety Code; or

- ~~(3) At least 50% of the total units allowed by the maximum permitted density are designated for Qualifying Residents as defined in the Civil Code. (Senior Citizen Housing)~~
- (1) At least ten percent (10%) of the total units of the housing development are designated for low income households; or
- (2) At least five percent (5%) of the total units of the housing development are designated for very low income households; or
- (3) A senior citizen housing development, as defined in Sections 51.3 and 51.12 of the Civil Code, or mobilehome park that limits residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the Civil Code.
- (4) Ten percent (10%) of the total dwelling units in a common interest development as provided in Section 1351 of the Civil Code for persons and families of moderate income, provided that all units in the development are offered to the public for purchase.

Circumstances may arise in which the public interest would be served by allowing some or all of the designated affordable units associated with a density bonus project to be produced and operated at an alternative development site. Where the City and applicant form such an agreement, the both the market-rate and affordable components of the project shall be considered a single housing development for the purposes of this chapter, and the applicant shall be subject to the same requirements of this chapter pertinent to the designated affordable units to be provided on the alternative site.

- D- ~~Density Bonus Agreement. To be eligible for a density bonus, the developer/property owner must sign a binding agreement with the City which sets forth the conditions and guidelines to be met in the implementation of the Density Bonus law requirements. The agreement will also establish specific compliance standards and remedies available to the City upon failure by the developer/property owner to make units accessible to intended residents. To ensure compliance, the City shall require a security in the amount of \$50,000 per unit in a form acceptable to the Housing Director and City Attorney.~~

D. Amount of Density Bonus. The amount of density bonus granted to a qualifying project shall be based on the category and percentage of affordable units proposed, as reflected in the following matrices.

(1) For housing developments meeting the criteria of Section C(1) above, the density bonus shall be calculated as follows:

TABLE 1
Density Bonus for
Low Income Units

Percentage Low Income Units	Percentage Density Bonus
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5
16	29
17	30.5
18	32
19	33.5
20	35

(2) For housing developments meeting the criteria of Section C(2) above, the density bonus shall be calculated as follows:

TABLE 2
Density Bonus for
Very Low Income Units

Percentage VL Income Units	Percentage Density Bonus
5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35

(3) For housing development meeting the criteria of Section C(3) above, the density bonus shall be 20 percent (20%).

(4) For housing development meeting the criteria of Section C(4) above, the density bonus shall be calculated as follows:

TABLE 3

**Density Bonus for
Moderate Income Units**

Percentage Mod. Income Units	Percentage Density Bonus
10	5
11	6
12	7
13	8
14	9
15	10
16	11
17	12
18	13
19	14
20	15
21	16
22	17
23	18
24	19
25	20
26	21
27	22
28	23
29	24
30	25
31	26
32	27
33	28
34	29
35	30
36	31
37	32
38	33
39	34
40	35

- (5) All density calculations resulting in fractional units shall be rounded up to the next whole number, unless otherwise indicated.
- (6) The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval.
- (7) An applicant may elect to accept a lesser percentage of density bonus.
- (8) The calculations are in accordance with Government Code Section 65915 and are subject to any subsequent amendments or revisions thereto.

E. Density Bonus Application.

- (1) ~~To apply for a density bonus, the developer/property owner shall submit to the City a Density Bonus application for a project pursuant to this section. The Density Bonus application shall be submitted in conjunction with a subdivision application, development plan, or a use permit application. The proposal shall specify the number, type, location, size of housing units, and a construction schedule.~~
- (2) ~~The Density Bonus application shall consist of adequate information to determine the project cost per unit of the proposed development. This will include, but not be limited to, capital costs, equity investment, debt service, projected revenues, operating expenses, or other information requested by the City.~~
- (3) ~~City shall, within 90 days of receipt of a density bonus application, notify the developer/property owner in writing of the procedures required to comply with this section.~~

E. Land Donation. When an applicant donates land to the City to satisfy the affordable housing obligation established under this Ordinance, the applicant shall be entitled to a density bonus as follows:

**TABLE 4
Density Bonus for Land Donation**

Percentage VL Income Units	Percentage Density Bonus	Percentage Low Income Units	Percentage Density Bonus
10	15	10	7.5
11	16	11	8
12	17	12	8.5
13	18	13	9
14	19	14	9.5
15	20	15	10
16	21	16	10.5
17	22	17	11
18	23	18	11.5
19	24	19	12
20	25	20	12.5
21	26	21	13
22	27	22	13.5
23	28	23	14
24	29	24	14.5
25	30	25	15
26	31	26	15.5
27	32	27	16

Percentage VL Income Units	Percentage Density Bonus
28	33
29	34
30	35

Percentage Low Income Units	Percentage Density Bonus
28	16.5
29	17
30	17.5

Density bonus calculations are in accordance with Section 65915 of the Government Code and are subject to any amendments or revisions thereto. Applicants seeking density bonus for both the provision of affordable units and the donation of land shall be limited to a maximum combined density bonus of thirty-five percent (35%). In order to qualify for the above density bonus, the land donation must meet the following conditions:

- (1) The applicant donates and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application if no subdivision map is proposed.
- (2) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low or low income households in an amount not less than 10 percent (10%) of the total units of the housing development.
- (3) The transferred land is of sufficient size to permit development of the minimum number of units required by the prior paragraph (2), has the appropriate general plan and zoning designations, is appropriately zoned with appropriate development standards for development at the appropriate density, and is or will be served by adequate public facilities and infrastructure.
- (4) No later than the date of approval of the final subdivision map, parcel map, or residential development application for the first density bonus market-rate unit, the transferred land shall have all City required discretionary permits and approvals, other than building permits, necessary for the development of the very low or low income units on the transferred land, except the City may subject the proposed development to subsequent design review if the design is not otherwise reviewed by the City prior to the time of transfer.
- (5) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with Government Code Section 65915, which shall be

recorded on the property at the time of the transfer.

- (6) The land is transferred to the City or to a housing developer approved by the City. The City may require the applicant to identify and transfer the land to the developer.
- (7) The transferred land shall be within the boundary of the proposed development or, if the City agrees, within one-quarter mile of the boundary of the proposed development.
- (8) A financing plan for funding the affordable units shall be identified no later than the date of the approval of the final subdivision map, parcel map or residential development application for the market-rate component of the density bonus project.

~~F. Additional Incentives. City may grant additional concessions or incentives to the developer/property owner if it is found that the project with the proposed lower income units would not be feasible without said incentives. Such concessions shall be specific to the individual project and may include:~~

- ~~(1) A modification of development standards pertaining to building height, open space, lot size requirements, street access, off street parking, landscaping, fencing or other development standards, or off site improvements.~~
- ~~(2) Additional density bonus up to 25%.~~
- ~~(3) Reduction of development fees, not including impact fees.~~

~~The requested additional incentive shall not be materially detrimental to public health, safety, and welfare, nor injurious to property and/or improvements within the projects' vicinity.~~

~~The requested additional incentive shall not result in an overall development pattern that is incompatible with other structures in the immediate vicinity.~~

~~The Developer and staff shall negotiate to determine the incentives, which will make the project economically feasible with minimum deviations from established standards and minimal impacts to health, safety and welfare.~~

F. Child Care Facility.

- (1) When an applicant proposes to construct a housing development that conforms to the requirements of this section and includes a child care facility that will be located on the premises of, as a part of, or adjacent to, the project, the City shall grant either:
 - (a) An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the child care facility; or
 - (b) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility.
- (2) In order to qualify for the additional density bonus or incentive, the child care facility must meet the following criteria:
 - (a) The child care facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the density bonus units are required to remain affordable.
 - (b) Of the children who attend the child care facility, the children of very low income households, low income households, or families of moderate income shall equal a percentage that is equal to or greater than the percentage of dwelling units that are required for very low income households, low income households, or families of moderate income.

~~G. Requirements for Participation. In order for a developer/ property owner to participate in the program and be eligible for the density bonus or other incentives, the following requirements must be met:~~

- ~~(1) The developer/property owner shall set aside each month, at the completion of the project, the number of units which are designated for lower or very low income households. A unit will be counted toward meeting the set aside requirement if it is either vacant or occupied by a lower or very low income tenant or a Qualifying Resident (if density bonus was based on Qualifying Residents).~~
- ~~(2) The target units must be proportional to the overall project in unit mix, floor plan, square~~

~~footage, and exterior design. Further, the target units must be reasonably dispersed throughout the development.~~

- ~~(3) The time period of availability to the intended population shall be 30 years.~~
- ~~(4) The maximum allowable rents to comply with the law are determined by a formula designated by the State Department of Housing and Community Development based on the area median income. This formula is indicated in Section 65915(e) of the Government Code.~~
- ~~(5) Houses for sale must be affordable to lower or very low income households as defined pursuant to the definitions of affordability contained in the City's Housing Element.~~
- ~~(6) The developer/property owner must provide to the Housing Department a yearly accounting of the total units occupied, the total units vacant, the total units occupied by lower or very low income households, the total number of units occupied by Qualifying Residents and the total by which the units set aside fell short of the required number of units (default units).~~

G. Condominium Conversions. When an applicant for approval to convert apartments to a condominium project agrees to provide at least thirty-three percent (33%) of the total units of the proposed condominium to persons and families of low or moderate income, or fifteen percent (15%) of the total units of the proposed condominium project to very low income households, and agrees to pay for the reasonably necessary administrative costs incurred by the City pursuant to this subsection, the City shall grant either:

- (1) A density bonus of twenty-five percent (25%) over the number of existing rental apartments, to be provided within the existing structure or structures proposed for conversion; or
- (2) An incentive of equivalent financial value.

The City may place such reasonable conditions on the granting of a density bonus or other incentives of equivalent financial value as it finds appropriate, including, but not limited to, conditions which assure continued affordability of units to subsequent purchasers who are persons and families of very low,

low or moderate income households. The City shall enforce an equity sharing agreement, as set forth by Section 65915 of the Government Code, for these units.

H. Density Bonus Agreement. To be eligible for a density bonus, the applicant must submit an Affordable Housing Plan and, prior to securing any discretionary permits or approvals for the market-rate units, sign a binding agreement with the City which sets forth the conditions and guidelines to be met in the implementation of this Ordinance. The agreement will also establish specific compliance standards and remedies upon failure by the applicant to make the affordable units available to intended residents. As the means of ensuring compliance, the agreement shall require the recordation of a deed restriction against both the market-rate and affordable components of the density bonus project. The deed restriction shall remain in place and preclude issuance of the certificate of occupancy for the market-rate units until such time as the affordable units have been constructed or other security acceptable to the City is provided in lieu of the deed restriction. If the applicant proposes to phase development of the market-rate units, deed restrictions shall be recorded and implemented on a phase by phase basis.

I. Density Bonus Application.

(1) Application for density bonus shall be made concurrent with submittals required for the processing of associated discretionary permits (e.g. development plans). The request for density bonus shall be articulated as part of the description and justification for the development project, in accordance with the City's Development Processing Guide. The request for density bonus shall specify the percentage of density bonus sought, per Subsections D(1) through D(4) of this Ordinance, and indicate how the affordable housing obligations of this Ordinance will be met.

(2) The review process for a density bonus project shall be the same as that required for associated discretionary permits. Discretionary actions on density bonus projects shall be subject to the same appeal process applied to associated discretionary permits.

(3) The application and approval of a density bonus and any associated incentives or concessions shall not require a separate permit or approval process

from that otherwise required for the same project without a density bonus request.

- (4) The granting of a density bonus shall not, in and of itself, require a general plan amendment, local coastal plan amendment, zone change, or other discretionary action.

J. Concessions and Incentives.

- (1) In additional to the applicable density bonus, qualifying projects shall receive the following number of incentives or concessions:

(a) One incentive or concession for projects that propose at least ten percent (10%) of the total units for lower income households, at least five percent (5%) for very low income households, or at least ten percent (10%) for persons and families of moderate income in a common interest development.

(b) Two incentives or concessions for projects that propose at least twenty percent (20%) of the total units for lower income households, at least ten percent (10%) for very low income households, or at least twenty percent (20%) for persons and families of moderate income in a common interest development.

(c) Three incentives or concessions for projects that propose at least thirty percent (30%) of the total units for lower income households, at least fifteen percent (15%) for very low income households, or at least thirty percent (30%) for persons and families of moderate income in a common interest development.

(d) Proposals seeking concessions or incentives deemed necessary to exceed the base density allowance would not be subject to the otherwise required conditional use permit in accordance with subsection J of this Ordinance.

- (2) For purposes of this Ordinance, concessions or incentives shall include, without limitation:

(a) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited

to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results in identifiable, financially sufficient, and actual cost reductions.

(b) Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

(c) Other regulatory incentives or concessions proposed by the developer or the City that result in identifiable, financially sufficient, and actual cost reductions.

(3) This section does not limit or require the City to provide direct financial incentives, including the provision of publicly owned land, or the waiver of fees or dedication requirements. However, the City will consider deferral of application processing fees on a case-by-case basis.

(4) The City shall grant the concession or incentive requested by the applicant unless the City makes a written finding, based upon substantial evidence, of any of the following:

(a) The concession or incentive is not required in order to provide for affordable housing costs as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified.

(b) The concession or incentive would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public 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 or moderate income households.

(c) The concession or incentive would be contrary

to state or federal law.

K. Waiver or Reduction of Development Standards.

- (1) An applicant may submit to the City a proposal for the waiver or reduction of development standards that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted under this section, and may request a meeting with the City. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local government to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources, or to grant any waiver or reduction that would be contrary to state or federal law.
- (2) A proposal for the waiver or reduction of development standards pursuant to this subdivision shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to subdivision (L) of this Ordinance.

L. Vehicular Parking Ratio. Upon request of the developer, the following maximum parking ratio, inclusive of handicapped and guest parking, shall apply, pursuant to Section 65915 of the Government Code:

- (1) Zero to one bedroom: one on site parking space.
- (2) Two to three bedrooms: two on site parking spaces.
- (3) Four or more bedrooms: two and one-half parking spaces.

If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number. A development may provide on site parking through tandem

parking or uncovered parking, but not through on-street parking. The applicant may also request a concession or an incentive pursuant to subsection L thereof to further lower the vehicle parking ratios from those described herein.

M. Requirements for Participation. In order for a developer/property owner to be eligible for density bonus or other incentives, the following requirements must be met:

- (1) A unit will be counted toward meeting the affordable housing requirement if it is either vacant or occupied by a very low, low or moderate income tenant, as applicable, or a Senior Citizen (if density bonus was based on a Senior Citizen Housing Development).
- (2) The affordable units must be proportional to the overall project in terms of unit mix, floor plan, square footage, and exterior design. Further, the range of affordable units must be reasonably dispersed throughout the development.
- (3) The time period of availability to the intended population shall be for at least 30 years. A longer period of availability may be required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program.
- (4) The maximum allowable rents to comply with the law are determined by a formula designated by the State Department of Housing and Community Development based on the area median income. This formula is indicated in Section 65915(c) of the Government Code.
- (5) Owner-occupied units shall be available at affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code.
- (6) For-sale affordable units may be subject to an equity sharing agreement, in the event that public subsidies are involved in the construction and/or purchase of said units.
- (7) The owner of the affordable units for which a density bonus was granted must provide to the Neighborhood Services Department a yearly accounting of the total units occupied, the total units vacant, the total units occupied by lower or very low-income households, the total number of

units occupied by Senior Citizens and the total
units required to be set aside under all
applicable affordability covenants.

CALIFORNIA CODES
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65915. (a) When an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within, the jurisdiction of a city, county, or city and county, that local **government** shall provide the applicant with incentives or concessions for the production of housing units and child care facilities as prescribed in this section. All cities, counties, or cities and counties shall adopt an ordinance that specifies how compliance with this section will be implemented. Failure to adopt an ordinance shall not relieve a city, county, or city and county from complying with this section.

(b) (1) A city, county, or city and county shall grant one density bonus, the amount of which shall be as specified in subdivision (f), and incentives or concessions, as described in subdivision (d), when an applicant for a housing development seeks and agrees to construct a housing development, excluding any units permitted by the density bonus awarded pursuant to this section, that will contain at least any one of the following:

(A) Ten percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(B) Five percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code.

(C) A senior citizen housing development, as defined in Sections 51.3 and 51.12 of the Civil Code, or mobilehome park that limits residency based on age requirements for housing for older persons pursuant to Section 798.76 or 799.5 of the Civil Code.

(D) Ten percent of the total dwelling units in a common interest development as defined in Section 1351 of the Civil Code for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, provided that all units in the development are offered to the public for purchase.

(2) For purposes of calculating the amount of the density bonus pursuant to subdivision (f), the applicant who requests a density bonus pursuant to this subdivision shall elect whether the bonus shall be awarded on the basis of subparagraph (A), (B), (C), or (D) of paragraph (1).

(3) For the purposes of this section, "total units" or "total dwelling units" does not include units added by a density bonus awarded pursuant to this section or any local law granting a greater density bonus.

(c) (1) An applicant shall agree to, and the city, county, or city and county shall ensure, continued affordability of all low- and very low income units that qualified the applicant for the award of the density bonus for 30 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. Rents for the lower income density bonus units shall be set at an affordable rent as defined in Section 50053 of the Health and Safety Code. Owner-occupied units shall be available at an affordable housing cost as defined in Section 50052.5 of the Health and Safety Code.

(2) An applicant shall agree to, and the city, county, or city and county shall ensure that, the initial occupant of the

moderate-income units that are directly related to the receipt of the density bonus in the common interest development, as defined in Section 1351 of the Civil Code, are persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code, and that the units are offered at an affordable housing cost, as that cost is defined in Section 50052.5 of the Health and Safety Code. The local **government** shall enforce an equity sharing agreement, unless it is in conflict with the requirements of another public funding source or law. The following apply to the equity sharing agreement:

(A) Upon resale, the seller of the unit shall retain the value of any improvements, the downpayment, and the seller's proportionate share of appreciation. The local **government** shall recapture any initial subsidy, as defined in subparagraph (B), and its proportionate share of appreciation, as defined in subparagraph (C), which amount shall be used within five years for any of the purposes described in subdivision (e) of Section 33334.2 of the Health and Safety Code that promote home ownership.

(B) For purposes of this subdivision, the local **government's** initial subsidy shall be equal to the fair market value of the home at the time of initial sale minus the initial sale price to the moderate-income household, plus the amount of any downpayment assistance or mortgage assistance. If upon resale the market value is lower than the initial market value, then the value at the time of the resale shall be used as the initial market value.

(C) For purposes of this subdivision, the local **government's** proportionate share of appreciation shall be equal to the ratio of the local **government's** initial subsidy to the fair market value of the home at the time of initial sale.

(d) (1) An applicant for a density bonus pursuant to subdivision (b) may submit to a city, county, or city and county a proposal for the specific incentives or concessions that the applicant requests pursuant to this section, and may request a meeting with the city, county, or city and county. The city, county, or city and county shall grant the concession or incentive requested by the applicant unless the city, county, or city and county makes a written finding, based upon substantial evidence, of any of the following:

(A) The concession or incentive is not required in order to provide for affordable housing costs, as defined in Section 50052.5 of the Health and Safety Code, or for rents for the targeted units to be set as specified in subdivision (c).

(B) The concession or incentive would have a specific adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon public 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.

(C) The concession or incentive would be contrary to state or federal law.

(2) The applicant shall receive the following number of incentives or concessions:

(A) One incentive or concession for projects that include at least 10 percent of the total units for lower income households, at least 5 percent for very low income households, or at least 10 percent for persons and families of moderate income in a common interest development.

(B) Two incentives or concessions for projects that include at least 20 percent of the total units for lower income households, at

least 10 percent for very low income households, or at least 20 percent for persons and families of moderate income in a common interest development.

(C) Three incentives or concessions for projects that include at least 30 percent of the total units for lower income households, at least 15 percent for very low income households, or at least 30 percent for persons and families of moderate income in a common interest development.

(3) The applicant may initiate judicial proceedings if the city, county, or city and county refuses to grant a requested density bonus, incentive, or concession. If a court finds that the refusal to grant a requested density bonus, incentive, or concession is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local **government** to grant an incentive or concession that has a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local **government** to grant an incentive or concession that would have an adverse impact on any real property that is listed in the California Register of Historical Resources. The city, county, or city and county shall establish procedures for carrying out this section, that shall include legislative body approval of the means of compliance with this section.

(e) (1) In no case may a city, county, or city and county apply any development standard that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted by this section. An applicant may submit to a city, county, or city and county a proposal for the waiver or reduction of development standards that will have the effect of physically precluding the construction of a development meeting the criteria of subdivision (b) at the densities or with the concessions or incentives permitted under this section, and may request a meeting with the city, county, or city and county. If a court finds that the refusal to grant a waiver or reduction of development standards is in violation of this section, the court shall award the plaintiff reasonable attorney's fees and costs of suit. Nothing in this subdivision shall be interpreted to require a local **government** to waive or reduce development standards if the waiver or reduction would have a specific, adverse impact, as defined in paragraph (2) of subdivision (d) of Section 65589.5, upon health, safety, or the physical environment, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact. Nothing in this subdivision shall be interpreted to require a local **government** to waive or reduce development standards that would have an adverse impact on any real property that is listed in the California Register of Historical Resources, or to grant any waiver or reduction that would be contrary to state or federal law.

(2) A proposal for the waiver or reduction of development standards pursuant to this subdivision shall neither reduce nor increase the number of incentives or concessions to which the applicant is entitled pursuant to subdivision (d).

(f) For the purposes of this chapter, "density bonus" means a density increase over the otherwise maximum allowable residential density as of the date of application by the applicant to the city, county, or city and county. The applicant may elect to accept a lesser percentage of density bonus. The amount of density bonus to

which the applicant is entitled shall vary according to the amount by which the percentage of affordable housing units exceeds the percentage established in subdivision (b).

(1) For housing developments meeting the criteria of subparagraph (A) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Low-Income Units	Percentage Density Bonus
10	20
11	21.5
12	23
13	24.5
14	26
15	27.5
17	30.5
18	32
19	33.5
20	35

(2) For housing developments meeting the criteria of subparagraph (B) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Very Low Income Units	Percentage Density Bonus
5	20
6	22.5
7	25
8	27.5
9	30
10	32.5
11	35

(3) For housing developments meeting the criteria of subparagraph (C) of paragraph (1) of subdivision (b), the density bonus shall be 20 percent of the number of senior housing units.

(4) For housing developments meeting the criteria of subparagraph (D) of paragraph (1) of subdivision (b), the density bonus shall be calculated as follows:

Percentage Moderate-Income Units	Percentage Density Bonus
10	5
11	6
12	7
13	8
14	9
15	10
16	11
17	12
18	13
19	14
20	15
21	16
22	17
23	18
24	19
25	20
26	21

27	22
28	23
29	24
30	25
31	26
32	27
33	28
34	29
35	30
36	31
37	32
38	33
39	34
40	35

(5) All density calculations resulting in fractional units shall be rounded up to the next whole number. The granting of a density bonus shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval.

(g) (1) When an applicant for a tentative subdivision map, parcel map, or other residential development approval donates land to a city, county, or city and county in accordance with this subdivision, the applicant shall be entitled to a 15-percent increase above the otherwise maximum allowable residential density for the entire development, as follows:

Percentage Very Low Income	Percentage Density Bonus
10	15
11	16
12	17
13	18
14	19
15	20
16	21
17	22
18	23
19	24
20	25
21	26
22	27
23	28
24	29
25	30
26	31
27	32
28	33
29	34
30	35

(2) This increase shall be in addition to any increase in density mandated by subdivision (b), up to a maximum combined mandated density increase of 35 percent if an applicant seeks an increase pursuant to both this subdivision and subdivision (b). All density calculations resulting in fractional units shall be rounded up to the next whole number. Nothing in this subdivision shall be construed to enlarge or diminish the authority of a city, county, or city and county to require a developer to donate land as a condition of development. An applicant shall be eligible for the increased density

bonus described in this subdivision if all of the following conditions are met:

(A) The applicant donates and transfers the land no later than the date of approval of the final subdivision map, parcel map, or residential development application.

(B) The developable acreage and zoning classification of the land being transferred are sufficient to permit construction of units affordable to very low income households in an amount not less than 10 percent of the number of residential units of the proposed development.

(C) The transferred land is at least one acre in size or of sufficient size to permit development of at least 40 units, has the appropriate general plan designation, is appropriately zoned with appropriate development standards for development at the density described in paragraph (3) of subdivision (c) of Section 65583.2, and is or will be served by adequate public facilities and infrastructure.

(D) The transferred land shall have all of the permits and approvals, other than building permits, necessary for the development of the very low income housing units on the transferred land, not later than the date of approval of the final subdivision map, parcel map, or residential development application, except that the local **government** may subject the proposed development to subsequent design review to the extent authorized by subdivision (i) of Section 65583.2 if the design is not reviewed by the local **government** prior to the time of transfer.

(E) The transferred land and the affordable units shall be subject to a deed restriction ensuring continued affordability of the units consistent with paragraphs (1) and (2) of subdivision (c), which shall be recorded on the property at the time of the transfer.

(F) The land is transferred to the local agency or to a housing developer approved by the local agency. The local agency may require the applicant to identify and transfer the land to the developer.

(G) The transferred land shall be within the boundary of the proposed development or, if the local agency agrees, within one-quarter mile of the boundary of the proposed development.

(H) A proposed source of funding for the very low income units shall be identified not later than the date of approval of the final subdivision map, parcel map, or residential development application.

(h) (1) When an applicant proposes to construct a housing development that conforms to the requirements of subdivision (b) and includes a child care facility that will be located on the premises of, as part of, or adjacent to, the project, the city, county, or city and county shall grant either of the following:

(A) An additional density bonus that is an amount of square feet of residential space that is equal to or greater than the amount of square feet in the child care facility.

(B) An additional concession or incentive that contributes significantly to the economic feasibility of the construction of the child care facility.

(2) The city, county, or city and county shall require, as a condition of approving the housing development, that the following occur:

(A) The child care facility shall remain in operation for a period of time that is as long as or longer than the period of time during which the density bonus units are required to remain affordable pursuant to subdivision (c).

(B) Of the children who attend the child care facility, the children of very low income households, lower income households, or families of moderate income shall equal a percentage that is equal to

or greater than the percentage of dwelling units that are required for very low income households, lower income households, or families of moderate income pursuant to subdivision (b).

(3) Notwithstanding any requirement of this subdivision, a city, county, or a city and county shall not be required to provide a density bonus or concession for a child care facility if it finds, based upon substantial evidence, that the community has adequate child care facilities.

(4) "Child care facility," as used in this section, means a child day care facility other than a family day care home, including, but not limited to, infant centers, preschools, extended day care facilities, and schoolage child care centers.

(i) "Housing development," as used in this section, means a development project for five or more residential units. For the purposes of this section, "housing development" also includes a subdivision or common interest development, as defined in Section 1351 of the Civil Code, approved by a city, county, or city and county and consists of residential units or unimproved residential lots and either a project to substantially rehabilitate and convert an existing commercial building to residential use or the substantial rehabilitation of an existing multifamily dwelling, as defined in subdivision (d) of Section 65863.4, where the result of the rehabilitation would be a net increase in available residential units. For the purpose of calculating a density bonus, the residential units shall be on contiguous sites that are the subject of one development application, but do not have to be based upon individual subdivision maps or parcels. The density bonus shall be permitted in geographic areas of the housing development other than the areas where the units for the lower income households are located.

(j) The granting of a concession or incentive shall not be interpreted, in and of itself, to require a general plan amendment, local coastal plan amendment, zoning change, or other discretionary approval. This provision is declaratory of existing law.

(k) For the purposes of this chapter, concession or incentive means any of the following:

(1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results in identifiable, financially sufficient, and actual cost reductions.

(2) Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

(3) Other regulatory incentives or concessions proposed by the developer or the city, county, or city and county that result in identifiable, financially sufficient, and actual cost reductions.

(l) Subdivision (k) does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements.

(m) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California

Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code).

(n) If permitted by local ordinance, nothing in this section shall be construed to prohibit a city, county, or city and county from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section.

(o) For purposes of this section, the following definitions shall apply:

(1) "Development standard" includes a site or construction condition, including, but not limited to, a height limitation, a setback requirement, a floor area ratio, an onsite open-space requirement, or a parking ratio that applies to a residential development pursuant to any ordinance, general plan element, specific plan, charter, or other local condition, law, policy, resolution, or regulation.

(2) "Maximum allowable residential density" means the density allowed under the zoning ordinance and land use element of the general plan, or if a range of density is permitted, means the maximum allowable density for the specific zoning range and land use element of the general plan applicable to the project. Where the density allowed under the zoning ordinance is inconsistent with the density allowed under the land use element of the general plan, the general plan density shall prevail.

(p) (1) Upon the request of the developer, no city, county, or city and county shall require a vehicular parking ratio, inclusive of handicapped and guest parking, of a development meeting the criteria of subdivision (b), that exceeds the following ratios:

(A) Zero to one bedroom: one onsite parking space.

(B) Two to three bedrooms: two onsite parking spaces.

(C) Four and more bedrooms: two and one-half parking spaces.

(2) If the total number of parking spaces required for a development is other than a whole number, the number shall be rounded up to the next whole number. For purposes of this subdivision, a development may provide "onsite parking" through tandem parking or uncovered parking, but not through onstreet parking.

(3) This subdivision shall apply to a development that meets the requirements of subdivision (b) but only at the request of the applicant. An applicant may request parking incentives or concessions beyond those provided in this subdivision pursuant to subdivision (d).

65915.5. (a) When an applicant for approval to convert apartments to a condominium project agrees to provide at least 33 percent of the total units of the proposed condominium project to persons and families of low or moderate income as defined in Section 50093 of the Health and Safety Code, or 15 percent of the total units of the proposed condominium project to lower income households as defined in Section 50079.5 of the Health and Safety Code, and agrees to pay for the reasonably necessary administrative costs incurred by a city, county, or city and county pursuant to this section, the city, county, or city and county shall either (1) grant a density bonus or (2) provide other incentives of equivalent financial value. A city, county, or city and county may place such reasonable conditions on the granting of a density bonus or other incentives of equivalent financial value as it finds appropriate, including, but not limited

to, conditions which assure continued affordability of units to subsequent purchasers who are persons and families of low and moderate income or lower income households.

(b) For purposes of this section, "density bonus" means an increase in units of 25 percent over the number of apartments, to be provided within the existing structure or structures proposed for conversion.

(c) For purposes of this section, "other incentives of equivalent financial value" shall not be construed to require a city, county, or city and county to provide cash transfer payments or other monetary compensation but may include the reduction or waiver of requirements which the city, county, or city and county might otherwise apply as conditions of conversion approval.

(d) An applicant for approval to convert apartments to a condominium project may submit to a city, county, or city and county a preliminary proposal pursuant to this section prior to the submittal of any formal requests for subdivision map approvals. The city, county, or city and county shall, within 90 days of receipt of a written proposal, notify the applicant in writing of the manner in which it will comply with this section. The city, county, or city and county shall establish procedures for carrying out this section, which shall include legislative body approval of the means of compliance with this section.

(e) Nothing in this section shall be construed to require a city, county, or city and county to approve a proposal to convert apartments to condominiums.

(f) An applicant shall be ineligible for a density bonus or other incentives under this section if the apartments proposed for conversion constitute a housing development for which a density bonus or other incentives were provided under Section 65915.

65916. Where there is a direct financial contribution to a housing development pursuant to Section 65915 through participation in cost of infrastructure, write-down of land costs, or subsidizing the cost of construction, the city, county, or city and county shall assure continued availability for low- and moderate-income units for 30 years. When appropriate, the agreement provided for in Section 65915 shall specify the mechanisms and procedures necessary to carry out this section.

65917. In enacting this chapter it is the intent of the Legislature that the density bonus or other incentives offered by the city, county, or city and county pursuant to this chapter shall contribute significantly to the economic feasibility of lower income housing in proposed housing developments. In the absence of an agreement by a developer in accordance with Section 65915, a locality shall not offer a density bonus or any other incentive that would undermine the intent of this chapter.

65917.5. (a) As used in this section, the following terms shall have the following meanings:

(1) "Child care facility" means a facility installed, operated, and maintained under this section for the nonresidential care of

children as defined under applicable state licensing requirements for the facility.

(2) "Density bonus" means a floor area ratio bonus over the otherwise maximum allowable density permitted under the applicable zoning ordinance and land use elements of the general plan of a city, including a charter city, city and county, or county of:

(A) A maximum of five square feet of floor area for each one square foot of floor area contained in the child care facility for existing structures.

(B) A maximum of 10 square feet of floor area for each one square foot of floor area contained in the child care facility for new structures.

For purposes of calculating the density bonus under this section, both indoor and outdoor square footage requirements for the child care facility as set forth in applicable state child care licensing requirements shall be included in the floor area of the child care facility.

(3) "Developer" means the owner or other person, including a lessee, having the right under the applicable zoning ordinance of a city council, including a charter city council, city and county board of supervisors, or county board of supervisors to make an application for development approvals for the development or redevelopment of a commercial or industrial project.

(4) "Floor area" means as to a commercial or industrial project, the floor area as calculated under the applicable zoning ordinance of a city council, including a charter city council, city and county board of supervisors, or county board of supervisors and as to a child care facility, the total area contained within the exterior walls of the facility and all outdoor areas devoted to the use of the facility in accordance with applicable state child care licensing requirements.

(b) A city council, including a charter city council, city and county board of supervisors, or county board of supervisors may establish a procedure by ordinance to grant a developer of a commercial or industrial project, containing at least 50,000 square feet of floor area, a density bonus when that developer has set aside at least 2,000 square feet of floor area and 3,000 outdoor square feet to be used for a child care facility. The granting of a bonus shall not preclude a city council, including a charter city council, city and county board of supervisors, or county board of supervisors from imposing necessary conditions on the project or on the additional square footage. Projects constructed under this section shall conform to height, setback, lot coverage, architectural review, site plan review, fees, charges, and other health, safety, and zoning requirements generally applicable to construction in the zone in which the property is located. A consortium with more than one developer may be permitted to achieve the threshold amount for the available density bonus with each developer's density bonus equal to the percentage participation of the developer. This facility may be located on the project site or may be located offsite as agreed upon by the developer and local agency. If the child care facility is not located on the site of the project, the local agency shall determine whether the location of the child care facility is appropriate and whether it conforms with the intent of this section. The child care facility shall be of a size to comply with all state licensing requirements in order to accommodate at least 40 children.

(c) The developer may operate the child care facility itself or may contract with a licensed child care provider to operate the facility. In all cases, the developer shall show ongoing coordination with a local child care resource and referral network or local

governmental child care coordinator in order to qualify for the density bonus.

(d) If the developer uses space allocated for child care facility purposes, in accordance with subdivision (b), for purposes other than for a child care facility, an assessment based on the square footage of the project may be levied and collected by the city council, including a charter city council, city and county board of supervisors, or county board of supervisors. The assessment shall be consistent with the market value of the space. If the developer fails to have the space allocated for the child care facility within three years, from the date upon which the first temporary certificate of occupancy is granted, an assessment based on the square footage of the project may be levied and collected by the city council, including a charter city council, city and county board of supervisors, or county board of supervisors in accordance with procedures to be developed by the legislative body of the city council, including a charter city council, city and county board of supervisors, or county board of supervisors. The assessment shall be consistent with the market value of the space. A penalty levied against a consortium of developers shall be charged to each developer in an amount equal to the developer's percentage square feet participation. Funds collected pursuant to this subdivision shall be deposited by the city council, including a charter city council, city and county board of supervisors, or county board of supervisors into a special account to be used for child care services or child care facilities.

(e) Once the child care facility has been established, prior to the closure, change in use, or reduction in the physical size of, the facility, the city, city council, including a charter city council, city and county board of supervisors, or county board of supervisors shall be required to make a finding that the need for child care is no longer present, or is not present to the same degree as it was at the time the facility was established.

(f) The requirements of Chapter 5 (commencing with Section 66000) and of the amendments made to Sections 53077, 54997, and 54998 by Chapter 1002 of the Statutes of 1987 shall not apply to actions taken in accordance with this section.

(g) This section shall not apply to a voter-approved ordinance adopted by referendum or initiative.

65918. The provisions of this chapter shall apply to charter cities.

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

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EXHIBIT C

August 6, 1996

MEMORANDUM TO: Planning Directors and Other Interested Parties

FROM: Cathy Creswell, Program Manager
Housing Policy Development Division

SUBJECT: **Model Density Bonus Ordinance**

State density bonus law (Government Code Section 65915) was created to offer a land use-based option to facilitate the economic feasibility of affordable housing development. Section 65915, as amended by Chapter 842, Statutes of 1989, required all cities and counties to adopt density bonus ordinances. The law provides that local governments shall grant density bonuses of at least 25 percent, plus an additional incentive(s) or equivalent financial incentives, to housing developers who agree to construct at least: 20% of the units affordable to lower income households, 10% of the units affordable to very low-income households, or senior citizen housing.

The Department of Housing and Community Development (the Department) released a technical assistance paper in March of 1990 to assist local governments in complying with State density bonus requirements. The Department has prepared the enclosed model density bonus ordinance to further facilitate local government efforts to adopt and implement density bonus ordinances.

The model ordinance was designed by the Department to serve as a basic outline for local ordinances, and can be tailored to the particular needs of each community. The technical appendix to the model ordinance notes some variable points for local considerations, and is for use in drafting the ordinance only. We recommend that the specific provisions of the local ordinance be developed in consultation with other relevant staff, officials, housing developers, and other interested entities, including local legal counsel. Your jurisdiction may, of course choose other approaches to implementing density bonus law.

Although the Statute requires the implementation of certain uniform development standards and incentives, considerable discretion is afforded for local administration of density bonus ordinances. Reflecting this flexibility, the model ordinance outlines the basic types of development incentives that can be provided in accordance with the Statute (Sections 3, 4, and 5), recommends provisions for the review of density bonus applications (Section 6), and for the terms of development agreements (Section 7). The model ordinance also includes provisions that the Department believes will best promote the purposes of the law and facilitate the development of housing for lower-income households.

Local agencies which wish to receive a copy of the model ordinance on computer disk may send a written request to the Department along with an IBM compatible 3.5" or 5" floppy disk.

If you have any questions concerning the model ordinance or the requirements of State density bonus law, please contact Linda Wheaton or Gary Collord, of our staff, at (916) 323-3176

Chapter _____

RESIDENTIAL DENSITY BONUS ORDINANCE

Sections:

- 1 Purpose and Intent**
- 2 Definitions**
- 3 Implementation**
- 4 Development Standards**
- 5 Development Incentives**
- 6 Application Requirements and Review**
- 7 Density Bonus Housing Agreement**

Section 1. Purpose and Intent.

This Density Bonus Ordinance is intended to provide incentives for the production of housing for very low, lower income, or senior households in accordance with Sections 65915 and 65917 of the California Government Code. In enacting this Chapter, it is the intent of the City/County of _____ to facilitate the development of affordable housing and to implement the goals, objectives, and policies of the City/County's Housing Element.

The regulations and procedures set forth in this Chapter shall be publicized by the City/County and shall apply throughout the City/County. Sections of the California Government Code referenced in this Chapter and application forms for complying with this Chapter, shall be available to the public.

Section 2. Definitions.

Whenever the following terms are used in this Chapter, they shall have the meaning established by this section:

"Additional Incentives" means such regulatory concessions as specified in California Government Code Subsections 65915 (d) and (h) to include, but not be limited to, the reduction of site development standards or zoning code requirements, direct financial assistance, approval of mixed-use zoning in conjunction with the Housing Development, or any other regulatory incentive which would result in identifiable cost avoidance or reductions that are offered in addition to a Density Bonus. See Section 5 of this Chapter.

"Affordable Rent" means monthly housing expenses, including a reasonable allowance for utilities, for rental Target Units reserved for Very Low or Lower Income Households, not exceeding the following calculations:

- (1) Very Low Income: 50 percent of the area median income for _____ County, adjusted for household size, multiplied by 30 percent and divided by 12.
- (2) Lower Income: 60 percent of the area median income for _____ County, adjusted for household size, multiplied by 30 percent and divided by 12.

"Affordable Sales Price" means a sales price at which Lower or Very Low Income Households can qualify for the purchase of Target Units, calculated on the basis of underwriting standards of mortgage financing available for the development.

"Density Bonus" means a minimum density increase of at least 25 percent over the otherwise Maximum Residential Density.

"Density Bonus Housing Agreement" means a legally binding agreement between a developer and the City/County to ensure that the requirements of this Chapter are satisfied. The agreement, among other things, shall establish: the number of Target Units, their size, location, terms and conditions of affordability, and production schedule. See Section 7 of this Chapter.

"Density Bonus Units" means those residential units granted pursuant to the provisions of this Chapter which exceed the otherwise Maximum Residential Density for the development site.

"Equivalent Financial Incentive" means a monetary contribution, based upon a land cost per dwelling unit value, equal to one of the following:

- (1) A Density Bonus and an Additional Incentive(s); or
- (2) A Density Bonus, where an Additional Incentive(s) is not requested or is determined to be unnecessary. See Section 4 of this Chapter.

"Housing Cost" means the sum of actual or projected monthly payments for all of the following associated with for-sale Target Units: principal and interest on a mortgage loan, including any loan insurance fees, property taxes and assessments, fire and casualty insurance, property maintenance and repairs, homeowner association fees, and a reasonable allowance for utilities.

"Housing Development" means construction projects consisting of five or more residential units, including single family, multifamily, and mobilehomes for sale or rent, pursuant to this Chapter.

"Lower Income Household" means households whose income does not exceed the lower income limits applicable to _____ County, as published and periodically updated by the State Department of Housing and Community Development pursuant to Section 50079.5 of the California Health and Safety Code.

"Maximum Residential Density" means the maximum number of residential units permitted by the City/County's General Plan Land Use Element and Zoning Ordinance at the time of application, excluding the provisions of this Chapter. If the housing development is within a planned development overlay zone, the maximum residential density shall be determined on the basis of the general plan and the maximum density of the underlying zone.

"Non-Restricted Unit" means all units within a Housing Development excluding the Target Units.

"Qualifying Resident" means senior citizens or other persons eligible to reside in Senior Citizen Housing.

"Senior Citizen Housing" means a housing development consistent with the California Fair Employment and Housing Act (Government Code Section 12900 et. seq., including 12955.9 in particular), which has been "designed to meet the physical and social needs of senior citizens," and which otherwise qualifies as "housing for older persons" as that phrase is used in the federal Fair Housing Amendments Act of 1988 (P.L. 100-430) and implementing regulations (24 CFR, part 100, subpart E), and as that phrase is used in California Civil Code Section 51.2 and 51.3.¹

"Target Unit" means a dwelling unit within a Housing Development which will be reserved for sale or rent to, and affordable to, Very Low or Lower Income Households, or Qualifying Residents.

"Very Low Income Household" means households whose income does not exceed the very low income limits applicable to _____ County, as published and periodically updated by the State Department of Housing and Community Development pursuant to Section 50105 of the California Health and Safety Code.

Section 3. Implementation.

The City/County shall grant either: a Density Bonus, or a Density Bonus with an Additional Incentive(s), or Equivalent Financial Incentives,² as set forth in Section 5 of this Chapter, to an applicant or developer of a Housing Development, who agrees to provide the following:

- (1) At least 20 percent of the total units of the Housing Development as Target Units affordable to Lower Income Households; or
- (2) At least 10 percent of the total units of the Housing Development as Target Units affordable to Very Low Income Households; or
- (3) Senior citizen housing.

In determining the minimum number of Density Bonus Units to be granted pursuant to this Section, the Maximum Residential Density for the site shall be multiplied by .25. When calculating the number of permitted Density Bonus Units, any fractions of units shall be rounded to the next larger integer.

In determining the number of Target Units to be provided pursuant to this Section, the Maximum Residential Density shall be multiplied by .10 where Very Low Income Households are targeted, or by .20 where Lower Income Households are targeted. The Density Bonus Units shall not be included when determining the total number of Target Units in the Housing Development. When calculating the required number of Target Units, any resulting decimal fraction shall be rounded to the next larger integer.

In cases where a density increase of less than 25 percent is requested, no reduction will be allowed in the number of Target Units required. In cases where a density increase of more than 25 percent is

requested, the requested density increase, if granted, shall be considered an Additional Incentive, as outlined in Section 5 of this Chapter.

In cases where the developer agrees to construct more than 20 percent of the total units for Lower Income Households, or more than 10 percent of the total units for Very Low Income Households, the developer is entitled to only one Density Bonus and an Additional Incentive(s) (or an Equivalent Financial Incentive) pursuant to Section 5 of this Chapter. Similarly, a developer who agrees to construct Senior Citizen Housing with 20 or 10 percent of the units reserved for Lower- or Very Low-Income Households, respectively, is only entitled to one Density Bonus and an Additional Incentive(s). The City/County may, however, grant multiple Additional Incentives to facilitate the inclusion of more Target Units than are required by this Chapter.

Section 4. Development Standards.

Target Units should be constructed concurrently with Non-Restricted Units unless both the City/County and the developer/applicant agree within the Density Bonus Housing Agreement to an alternative schedule for development.

Target Units shall remain restricted and affordable to the designated group for a period of 30 years (or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program), under the following circumstances:

- (1) Both a Density Bonus and an Additional Incentive(s) is granted; or
- (2) An Equivalent Financial Incentive equivalent to a Density Bonus and an Additional Incentive(s) is granted.

Target Units shall remain restricted and affordable to the designated group for a period of 10 years under the following circumstances:

- (1) Only a Density Bonus is granted and no Additional Incentives are granted; or
- (2) An Equivalent Financial Incentive equivalent to only a Density Bonus is granted.

In determining the maximum Affordable Rent or Affordable Sales Price of Target Units the following household and unit size assumptions shall be used,³ unless the Housing Development is subject to different assumptions imposed by other governmental regulations:

SRO (residential hotel) unit	75% of 1 person
0 bedroom (studio)	1 person
1 bedroom	2 person
2 bedroom	3 person
3 bedroom	4 person
4 bedroom	6 person

Target Units should be built on-site wherever possible and, when practical, be dispersed within the

Housing Development. Where feasible, the number of bedrooms of the Target Units should be equivalent to the bedroom mix of the non-Target units of the Housing Development; except that the Developer may include a higher proportion of Target Units with more bedrooms. The design and appearance of the Target Units shall be compatible with the design of the total Housing Development. Housing Developments shall comply with all applicable development standards, except those which may be modified as provided by this Chapter.

Circumstances may arise in which the public interest would be served by allowing some or all of the Target Units associated with one Housing Development to be produced and operated at an alternative development site. Where the developer and the City/County form such an agreement, the resulting linked developments shall be considered a single Housing Development for purposes of this Chapter. Under these circumstances, the developer shall be subject to the same requirements of this Chapter for the Target Units to be provided on the alternative site.

A Density Bonus Housing Agreement shall be made a condition of the discretionary planning permits (e.g., tract maps, parcel maps, site plans, planned development or conditional use permits, etc.) for all Housing Developments pursuant to this Chapter. The Agreement shall be recorded as a restriction on the parcel or parcels on which the Target Units will be constructed. The Agreement shall be consistent with Section 7 of this Chapter.

Section 5. Development Incentives.

The City/County shall provide a Density Bonus and an Additional Incentive(s), for qualified Housing Developments, upon the written request of a developer, unless the City/County makes a written finding that the Additional Incentive(s) is not necessary to make the Housing Development economically feasible and to accommodate a Density Bonus.

The development incentives granted shall contribute significantly to the economic feasibility of providing the Target Units. Applicants seeking a waiver or modification of development or zoning standards shall show that such waivers or modifications are necessary to make the Housing Development economically feasible in accordance with Government Code Section 65915(e). This requirement may be satisfied by reference to applicable sections of the City/County's general plan housing element.⁴

The need for incentives will vary for different Housing Developments. Therefore, the allocation of Additional Incentives shall be determined on a case-by-case basis. The Additional Incentives may include, but are not limited to, any of the following:⁵

- (1) A reduction of site development standards or a modification of zoning code or architectural design requirements which exceed the minimum building standards provided in Part 2.5 (commencing with Section 18901) of Division 13 of the California Health and Safety Code. These may include, but are not limited to, one or more of the following:⁶
 - (a) Reduced minimum lot sizes and/or dimensions.
 - (b) Reduced minimum lot setbacks.
 - (c) Reduced minimum outdoor and/or private outdoor living area.
 - (d) Increased maximum lot coverage.
 - (e) Increased maximum building height and/or stories.

- (f) Reduced on site parking standards, including the number or size of spaces and garage requirements.
 - (g) Reduced minimum building separation requirements.
 - (h) Reduced street standards, e.g., reduced minimum street widths.
 - (i) Other: _____
- (2) Allow the Housing Development to include non-residential uses and/or allow the Housing Development within a non-residential zone.
 - (3) Other regulatory incentives or concessions proposed by the developer or the City/County which result in identifiable cost reductions or avoidance.
 - (4) A Density Bonus of more than 25 percent.
 - (5) Waived, reduced, or deferred planning, plan check, construction permit, and/or development impact fees (e.g., capital facilities, park, or traffic fees).⁷
 - (6) Direct financial aid (e.g., redevelopment set-aside, Community Development Block Grant funding) in the form of a loan or a grant to subsidize or provide low interest financing for on or off site improvements, land or construction costs.

The City/County may offer an Equivalent Financial Incentive in lieu of granting a Density Bonus and an Additional Incentive(s). The value of the Equivalent Financial Incentive shall equal at least the land cost per dwelling unit savings that would result from a Density Bonus and must contribute significantly to the economic feasibility of providing the Target Units pursuant to this Chapter.

Section 6. Application Requirements and Review.

An application pursuant to this Chapter shall be processed concurrently with any other application(s) required for the Housing Development. Final approval or disapproval of an application (with right of appeal to the City Council/Board of Supervisors) shall be made by the planning commission unless direct financial assistance is requested. If direct financial assistance is requested, the planning commission shall make a recommendation to the City Council/Board of Supervisors who will have the authority to make the final decision on the application.⁸

An applicant/developer proposing a Housing Development pursuant to this Chapter, may submit a preliminary application prior to the submittal of any formal request for approval of a Housing Development. Applicants are encouraged to schedule a pre-application conference with the Planning Director or designated staff to discuss and identify potential application issues, including prospective Additional Incentives pursuant to Section 5 of this Chapter. No charge will be required for the pre-application conference. A preliminary application shall include the following information:

- (1) A brief description of the proposed Housing Development, including the total number of units, Target Units, and Density Bonus Units proposed.
- (2) The zoning and general plan designations and assessors parcel number(s) of the project site.

- (3) A vicinity map and preliminary site plan, drawn to scale, including building footprints, driveway and parking layout.
- (4) If an Additional Incentive(s) is requested, the application should describe why the Additional Incentive(s) is necessary to provide the Target Units, in accordance with Section 5 of this Chapter.

Within ____ days (maximum of 90 days)⁹ of receipt of the preliminary application the City/County shall provide to an applicant/developer, a letter which identifies project issues of concern, (the maximum financial assistance that the Planning Director can support when making a recommendation to the City Council/Board of Supervisors), and the procedures for compliance with this Chapter.

The Planning Director shall inform the applicant/developer that the requested Additional Incentives shall be recommended for consideration with the proposed Housing Development, or that alternative or modified Additional Incentives pursuant to Section 5 shall be recommended for consideration in lieu of the requested Incentives. If alternative or modified Incentives are recommended by the Planning Director, the recommendation shall establish how the alternative or modified Incentives can be expected to have an equivalent affordability effect as the requested Incentives.

Section 7. Density Bonus Housing Agreement.

Applicants/Developers requesting a Density Bonus, shall (draft and) agree to enter into a Density Bonus Housing Agreement with the City/County.¹⁰ The terms of the draft agreement shall be reviewed and revised as appropriate by the Planning Director, who shall formulate a recommendation to the planning commission for final approval.

Following execution of the agreement by all parties, the completed Density Bonus Housing Agreement, or memorandum thereof, shall be recorded and the conditions therefrom filed and recorded on the parcel or parcels designated for the construction of Target Units. The approval and recordation shall take place prior to final map approval, or, where a map is not being processed, prior to issuance of building permits for such parcels or units. The Density Bonus Housing Agreement shall be binding to all future owners and successors in interest.

The Density Bonus Housing Agreement shall include at least the following:

- (1) The total number of units approved for the Housing Development, including the number of Target Units.
- (2) A description of the household income group to be accommodated by the Housing Development, as outlined in Section 3 of this Chapter, and the standards for determining the corresponding Affordable Rent or Affordable Sales Price and Housing Cost.
- (3) The location, unit sizes (square feet), and number of bedrooms of Target Units.
- (4) Tenure of use restrictions for Target Units of at least 10 or 30 years, in accordance with Section 4 of this Chapter.

- (5) A schedule for completion and occupancy of Target Units.
 - (6) A description of the Additional Incentive(s) or Equivalent Financial Incentives being provided by the City/County.
 - (7) A description of remedies for breach of the agreement by either party (the City/County may identify tenants or qualified purchasers as third party beneficiaries under the agreement).
 - (8) Other provisions to ensure implementation and compliance with this Chapter.
- A. In the case of for-sale Housing Developments, the Density Bonus Housing Agreement shall provide for the following conditions governing the initial sale and use of Target Units during the applicable use restriction period:
- (1) Target Units shall, upon initial sale, be sold to eligible Very Low or Lower Income Households at an Affordable Sales Price and Housing Cost, or to Qualified Residents (i.e., maintained as Senior citizen housing) as defined by this Chapter.
 - (2) Target Units shall be initially owner-occupied by eligible Very Low or Lower Income Households, or by Qualified Residents in the case of Senior citizen housing.
 - (3) The initial purchaser of each Target Unit shall execute an instrument or agreement approved by the City/County restricting the sale of the Target Unit in accordance with this ordinance during the applicable use restriction period. Such instrument or agreement shall be recorded against the parcel containing the Target Unit and shall contain such provisions as the City/County may require to ensure continued compliance with this ordinance and the state Density Bonus Law.¹¹
- B. In the case of rental Housing Developments, the Density Bonus Housing Agreement shall provide for the following conditions governing the use of Target Units during the use restriction period:
- (1) The rules and procedures for qualifying tenants, establishing Affordable Rent, filling vacancies, and maintaining Target Units for qualified tenants;
 - (2) Provisions requiring owners to verify tenant incomes and maintain books and records to demonstrate compliance with this Chapter.
 - (3) Provisions requiring owners to submit an annual report to the City/County, which includes the name, address, and income of each person occupying Target Units, and which identifies the bedroom size and monthly rent or cost of each Target Unit.

TECHNICAL APPENDIX
[TO REMOVE ENDNOTES, DELETE NUMBERS FROM TEXT]

1. The definition of senior citizen housing in California law has been affected by recent amendments to state fair housing laws, including the Fair Employment and Housing Act, the Unruh Civil Rights Act, and the Mobile Home Residency Act. The definition of Senior Citizen Housing in a local ordinance should consider more restrictive provisions of either state or federal law relating to familial status and qualifying as "housing for older persons."

Notwithstanding Government Code Section 65915, pursuant to federal and state law, including Sections 12955, 12955.9, and 65008(b) of the Government Code, local governments are prohibited from administering ordinances which discriminate against residential development on the basis of age or familial status, unless subject to a statutory exemption. The only authorized exemption from discrimination on the basis of familial status is for housing which meets the federal and state statutory definition as "housing for older persons." Thus, housing for senior citizens pursuant to Section 65915 must comply with this criteria as defined by a combination of federal and state statutes and regulations.

The Housing for Older Persons Act of 1995 (Public Law 104-76), signed 12/28/95) amended Section 807(b) regarding qualifying criteria for housing intended and operated for occupancy by persons 55 years of age and older. Implementing regulations for the revised provision (for 24 CFR part 100, subpart E) were amended by 61 FR 18249, Apr. 25, 1996.

California Government Code Section 12955.9(c) places the burden of proof upon an applicant to show that a development qualifies as housing for older persons. The California Department of Fair Employment and Housing (Government Code Section 12955.9 et. seq.) has been delegated additional enforcement authority on this issue since California's fair housing act was found by HUD to be substantially equivalent with the Federal Fair Housing Amendments Act of 1988 (P.L. 100-430).

2. The local government has discretion to decide whether to offer equivalent financial incentives in lieu of a density bonus and an additional incentive(s). If equivalent financial incentives will not be offered or considered, then references to this option should not be included in the ordinance.
3. The proposed standards are an example; alternative standards may be used in the ordinance, or standards need not actually be included in the ordinance.
4. If the local government's housing element (or other planning documents) indicates that the development of housing affordable to lower-income households is generally not feasible within the community without financial or development incentives, such information and source may be referenced to satisfy the requirements of Government Code Section 65915 (e).

5. The incentives offered should be those that will provide the most meaningful development incentives for housing developers in the local housing market. The relevance of particular incentives may vary by community.
6. Incentives should be provided which, individually or in combination, will accommodate a density increase of at least 25 percent.
7. Deferrals for the payment of development impact fees otherwise required by Government Code Section 66007 do not qualify as an incentive for purposes of this ordinance.
8. Note that the decisions of the city/county approving or disapproving the proposed development may be subject to the provisions of Government Code section 65589.5 which requires certain findings where the city/county proposes to: 1) disapprove, or approve on conditions rendering the development infeasible, a proposed affordable housing development, or 2) disapprove, or approve at a lesser density, a housing development proposal which complies with the applicable general plan, zoning, and development policies in effect at the time the project's application is deemed complete.
9. While the statute allows a maximum of 90 days for the review of a preliminary application, shorter review periods are encouraged where possible.
10. The local government may prepare and provide developers with a standard housing development agreement format for purposes of this ordinance. If a state or federal government subsidy is used to finance the housing development, certain documentation procedures or monitoring provisions may be specified by the government program, provided they are consistent with the provisions of Section 65915. Where there is no state or federal government subsidy program involved, but whereby the local government proposes conditions other than those proposed here, use of standard conditions, e.g., those of prevailing federal housing subsidy programs, are encouraged to accommodate standardization objectives of development financing and refinancing.
11. Localities have the responsibility, and the flexibility, to create and implement a workable mechanism to "ensure the continued affordability" of the for-sale target units as required by the statute. Deed restrictions, conditions governing resale and forgivable second mortgages are methods that have been utilized in similar situations. The recorded instrument or document should be drafted to be compatible with the proposed sources of financing for the purchase of the target unit by the owner/occupant.



Application for Discretionary Permit

Development Services Department / Planning Division
(760) 435-3520
Oceanside Civic Center 300 North Coast Highway
Oceanside, California 92054-2885

STAFF USE ONLY

ACCEPTED

12/6/11

BY

20

Please Print or Type All Information

PART I - APPLICANT INFORMATION

1. APPLICANT <i>City of Oceanside</i>	2. STATUS <i>Local jurisdiction</i>
3. ADDRESS <i>300 N. Coast Hwy</i>	4. PHONE/FAX/E-mail <i>760-435-3525</i>
5. APPLICANT'S REPRESENTATIVE (or person to be contacted for information during processing) <i>Russ Cunningham, Senior Planner</i>	
6. ADDRESS <i>300 N. Coast Hwy</i>	

MASTER/SP.PLAN

PAR. MAP

DEV. PL.

PART II - PROPERTY DESCRIPTION

8. LOCATION <i>Citywide</i>
10. GENERAL PLAN _____
14. LATITUDE _____

9. SIZE

13. ASSESSOR'S PARCEL NUMBER

15. LONGITUDE

PART III - PROJECT DESCRIPTION

16. GENERAL PROJECT DESCRIPTION <i>Revision of the City's Density Bonus Ordinance, codified as Article 303 of the City's Zoning Ordinance, to accord with state law</i>			
17. PROPOSED GENERAL PLAN _____	21. DENSITY _____		
23. PARKING SPACES _____	24. % LANDSCAPE _____	25. % LOT COVERAGE or FAR _____	

PART IV - ATTACHMENTS

26. DESCRIPTION/JUSTIFICATION	27. LEGAL DESCRIPTION	28. TITLE REPORT
30. ENVIRONMENTAL INFO FORM	31. PLOT PLANS	
32. FLOOR PLANS AND ELEVATIONS	33. CERTIFICATION OF POSTING	34. OTHER (See attachment for required reports)

PART V - SIGNATURES

SIGNATURES FROM ALL OWNERS OF THE SUBJECT PROPERTY ARE NECESSARY BEFORE THE APPLICATION CAN BE ACCEPTED. IN THE CASE OF PARTNERSHIPS OR CORPORATIONS, THE GENERAL PARTNER OR CORPORATION OFFICER SO AUTHORIZED MAY SIGN. (ATTACH ADDITIONAL PAGES AS NECESSARY).

35. APPLICANT OR REPRESENTATIVE (Print): <i>Russ Cunningham</i>	37. OWNER (Print): <i>Not applicable</i>	38. DATE
Sign: <i>[Signature]</i>	Sign:	

• I DECLARE UNDER PENALTY OF PERJURY THAT THE ABOVE INFORMATION IS TRUE AND CORRECT. FURTHER, I UNDERSTANDING THAT SUBMITTING FALSE STATEMENTS OR INFORMATION IN THIS APPLICATION MAY CONSTITUTE FRAUD, PUNISHABLE IN CIVIL AND CRIMINAL PROCEEDINGS.

• I HAVE READ AND AGREE TO ABIDE BY THE CITY OF OCEANSIDE DEVELOPMENT SERVICES DEPARTMENT AND ECONOMIC AND COMMUNITY DEVELOPMENT DEPARTMENT POLICY NO. 2011-01/POLICY AND PROCEDURE FOR DEVELOPMENT DEPOSIT ACCOUNT ADMINISTRATION.



DJ

CITY OF OCEANSIDE

Notice of Public Hearings to consider amendment of Section 3032 (Affordable Housing Density Bonus) of the 1992 Zoning Ordinance and establishment of the amended text as part of the implementing document of the Local Coastal Program in order to bring the City's affordable housing density bonus provisions into conformance with state law.

ZONE AMENDMENT (ZA11-00003)/ LOCAL COASTAL PROGRAM AMENDMENT (LCPA11-00001)

NOTICE IS HEREBY GIVEN THAT THE CITY OF OCEANSIDE will hold public hearings on the following dates in the Council Chambers at the City of Oceanside Civic Center, 300 North Coast Highway, Oceanside, CA 92054:

PLANNING COMMISSION PUBLIC HEARING

**Monday, January 9, 2012
7:00 p.m.**

CITY COUNCIL PUBLIC HEARING

**Wednesday, March 14, 2012
5:00 p.m.**

The purpose of these public hearings is to consider changes to the City's affordable housing density bonus provisions to bring them into conformance with state housing law as outlined in Government Code Section 65915, et seq. These changes involve revised qualifications for density bonus (including an allowance for density bonus in exchange for land donation), additional mandated concessions and incentives for affordable housing development, waiver of development standards that render density bonus infeasible, and maximum parking standards for density bonus projects. In accordance with the State Model Density Bonus Ordinance, the proposed changes also include an allowance for the off-site provision of affordable units associated with a density bonus project when the City finds that off-site provision is in the public interest.

In accordance with the provisions of the California Environmental Quality Act (CEQA), the project has been found to be exempt from CEQA per Article 5, Section 15061(b)(3), under the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment.

Should you wish to challenge this project in court at some future time, you may be limited to raising only those issues you or others introduced at the public hearings listed in this notice or in written correspondence delivered to the Planning Division or City Clerk prior to these public hearings.

The text of the proposed changes and other materials related to this project are available for public review at the Planning Division, 300 North Coast Hwy, during regular business hours. For further information, please contact the Planning Division at 760-435-3525.



NOTICE OF EXEMPTION

City of Oceanside, California

Post Date:
Removal:
(180 days)

1. **APPLICANT:** City of Oceanside
2. **ADDRESS:** 300 N. Coast Highway, Oceanside, CA 92054
3. **PHONE NUMBER:** (760) 435-3525
4. **LEAD AGENCY:** City of Oceanside
5. **PROJECT MGR.:** Russ Cunningham, Senior Planner
6. **PROJECT TITLE:** Zone Amendment (ZA11-00003) and Local Coastal Program Amendment (LCPA11-00001) to amend the City's Affordable Housing Density Bonus Ordinance to achieve conformance with state housing law as outlined in Government Code Section 65915
7. **DESCRIPTION:** The City of Oceanside is proposing to amend Zoning Ordinance Section 3032, Affordable Housing Density Bonus, to bring the City's density bonus provisions into conformance with state housing law. The proposed changes include the following:
 - Density bonus up to 35%, based on percentage and type of affordable units proposed;
 - Density bonus for land donation;
 - Density bonus for senior housing;
 - Density bonus for affordable units in conjunction with condominium conversion;
 - Additional concessions/incentives, based on percentage and type of affordable units proposed;
 - Waiver of development standards that render density bonus projects infeasible;
 - Density bonus for childcare facilities;
 - Maximum parking requirements for density bonus projects.

Application of the proposed zoning text amendments to properties within the City's Coastal Zone requires amendment of the City's Local Coastal Program.

ADMINISTRATIVE DETERMINATION: Planning Division staff has completed a preliminary review of this project in accordance with the City of Oceanside's Environmental Review Guidelines and the California Environmental Quality Act (CEQA), 1970. Based on that review, the Planning Division finds that the proposed project involves regulatory changes necessary to conform to state law and would not, in and of itself, occasion land development or any other material change to the environment. Projects seeking to implement the amended provisions would be subject to separate CEQA review. Therefore, the Planning Division has determined that further environmental evaluation is not required because:

- "The activity is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA" (Section 15061(b)(3)); or,
- The project is statutorily exempt, Section _____, <name> (Sections 15260-15277); or,
- The project is categorically exempt, Class 8, "Action by Regulatory Agencies for Protection of the Environment" per Section 15308 of the California Environmental Quality Act; or,
- The project does not constitute a "project" as defined by CEQA (Section 15378).

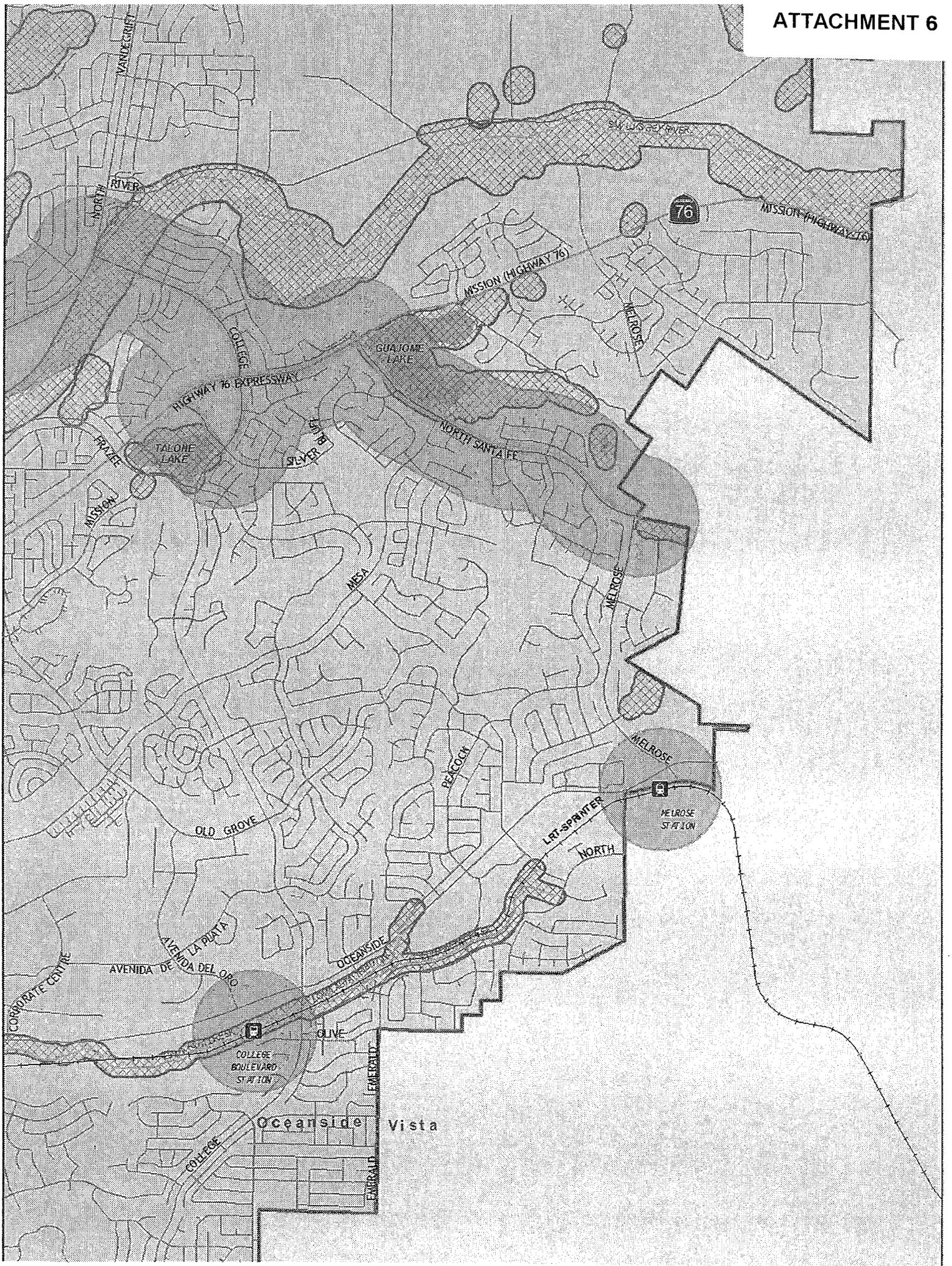


Russ Cunningham, Senior Planner

Date: January 3, 2012

cc: Project file Counter file Library

Posting: County Clerk \$50.00 Admin. Fee





Camp Pendleton
Oceanside

WHEELER LAKE

LIBBY LAKE

NORTH RIVER

COLLEGE

HIGHWAY 76 EXPRESSWAY

TALONE LAKE

SILVER BLUFF

76

NEW FOUNTAIN

MISSION

MISSION

OLD GROVE

COLLEGE

NESSA

EL CAMINO REAL

RANCHO DEL ORO

CORONATE CENTRE

AVENIDA DE LA PIATA

AVENIDA DEL ORO

OCEANSIDE

LRT-SPRINTER

RANCHO DEL ORO STATION

COLLEGE SQUARE STATION

EL CAMINO REAL STATION

SKYLINE

SONJA

EL CAMINO REAL

CAMEO

GLASER

BERNARD MEADOW

COLLEGE

OCE

VISTA

HIGHWAY 78

VISTA

PLAZA

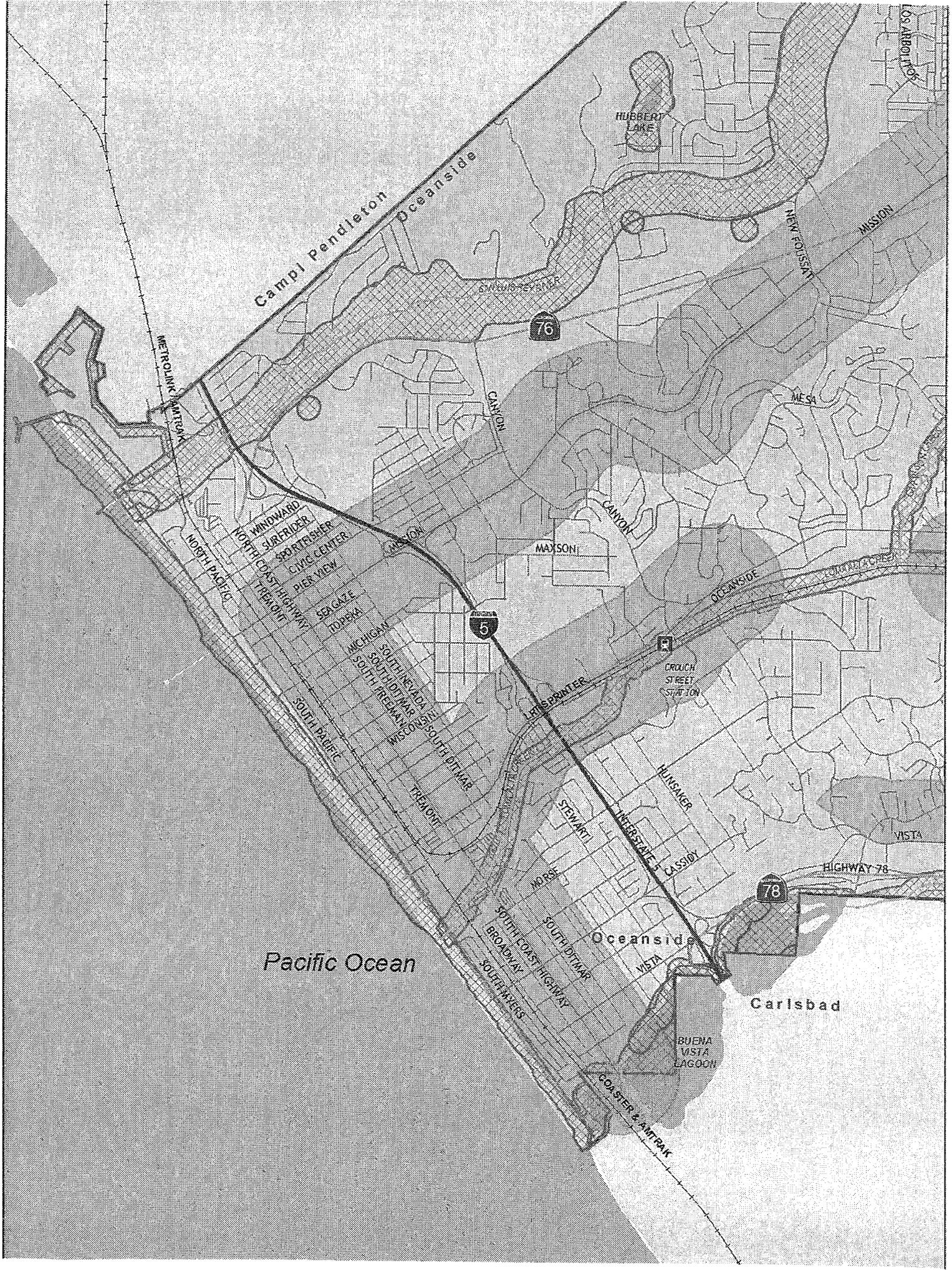
BUENA VISTA CREEK

78

ELI WALKER

JEFFERSON

LAKE



Camp Pendleton
Oceanside

HUBBERT LAKE

METROLINK
ANTERAM

76

MISSION

5

INDWARD
SLURIDER
SPORTS CENTER
CIVIC CENTER
PIER VIEW
SEA GAZE
TOPERA
NICHIGAN
SOUTH CALIFORNIA
SOUTH OF MAR
SOUTH FREEMAN
SOUTH PACIFIC

MAYSON

CROUCH
STREET
STATION

HISPRINTER

HUNSMER

VISTA

STEWART

INTERSTATE

CASSIDY

HIGHWAY 78

78

Pacific Ocean

Oceanside

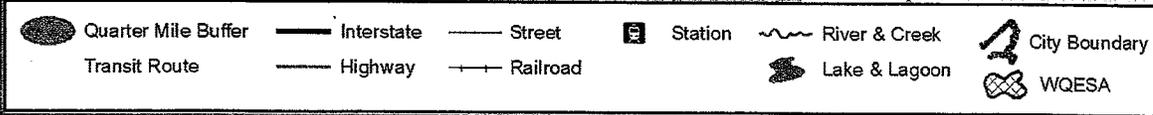
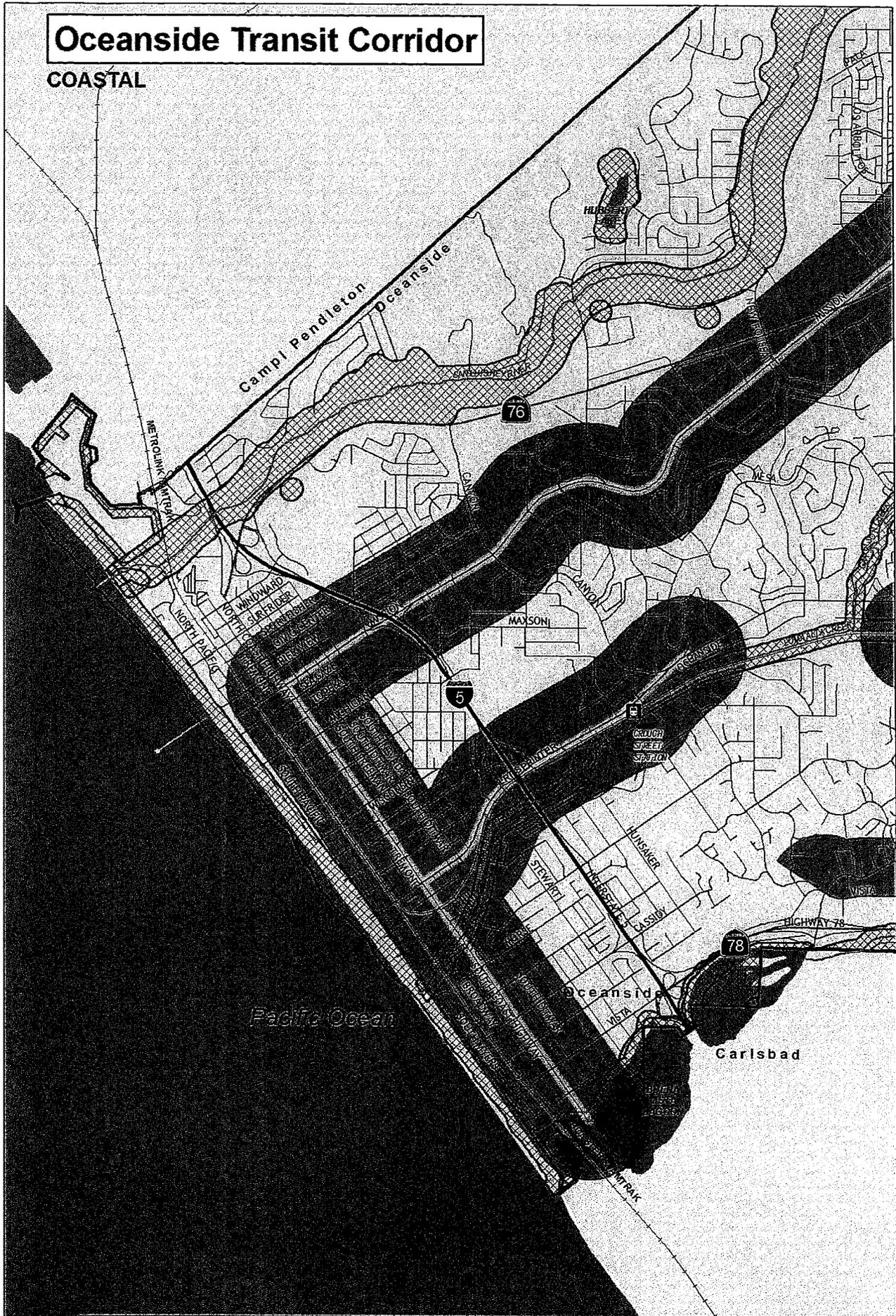
Carlsbad

BUENA
VISTA
LAGOON

COP-STER & ANTRAK

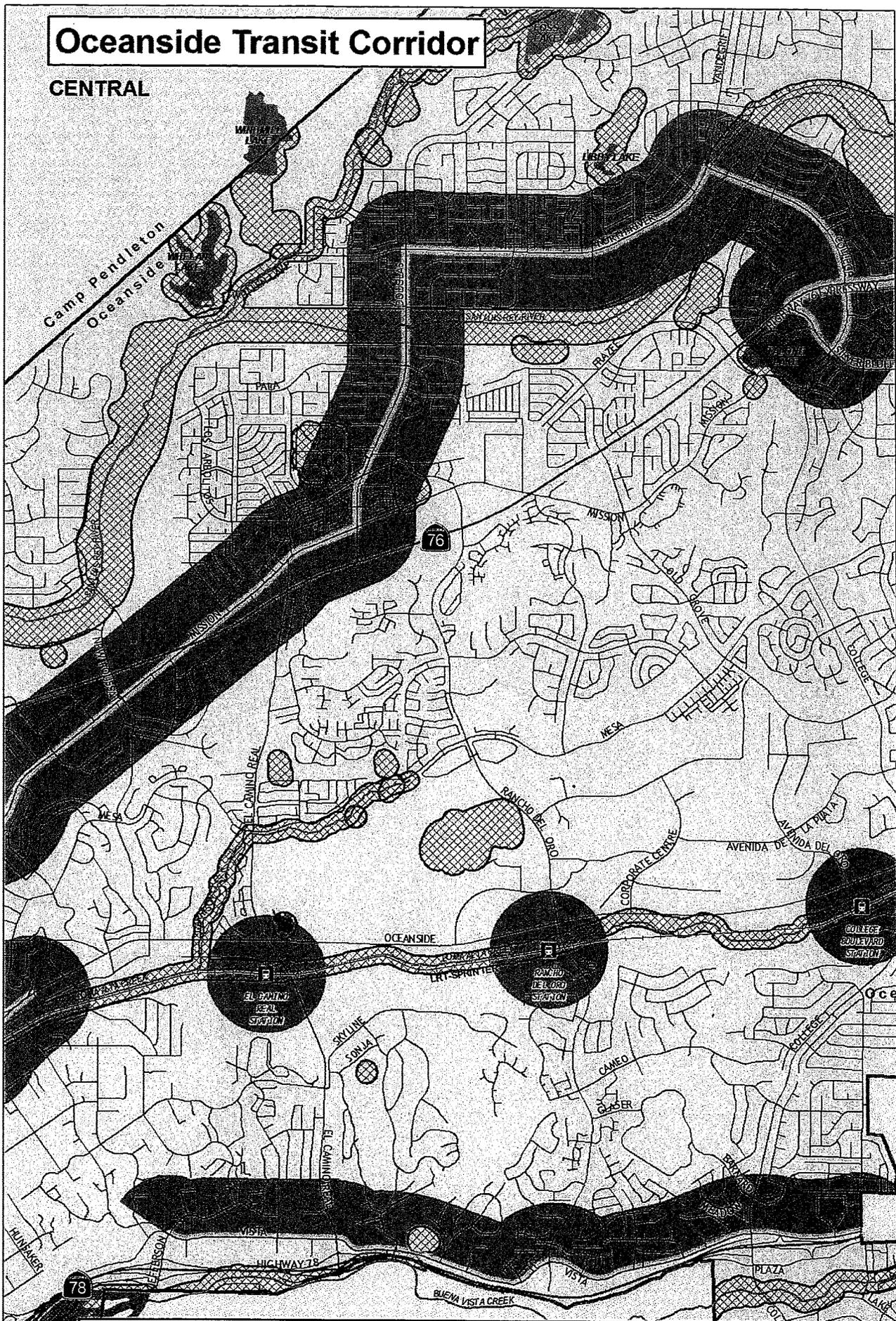
Oceanside Transit Corridor

COASTAL



Oceanside Transit Corridor

CENTRAL



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Oceanside Transit Corridor

