

**CALIFORNIA COASTAL COMMISSION**

South Coast Area Office  
200 Oceangate, Suite 1000  
Long Beach, CA 90802-4302  
(562) 590-5071

**W7a**

December 22, 2005

**TO:** Commissioners and Interested Persons

**FROM:** Deborah Lee, Senior Deputy Director  
Teresa Henry, District Manager  
Karl Schwing, Orange County Area Supervisor  
Anne Blemker, Coastal Program Analyst

**SUBJECT: Major Amendment Request No. 1-05 to the City of San Clemente Certified Land Use Plan For Public Hearing and Commission Action at the January 11-13, 2006 (Hearing in Los Angeles).**

---

**SYNOPSIS**

The proposed Land Use Plan Amendment (LUPA) was submitted on May 18, 2005 and filed on August 16, 2005. A one-year time extension was granted on October 13, 2005. As such, the last date for Commission action on this item is November 9, 2006. When the time extension request was considered in October, City staff objected to the request based on concern that the item would not be considered until the Spring or Summer of 2006. Commission staff assured them that the item would be agendaized no later than January 2006.

**SUMMARY OF LUP AMENDMENT REQUEST NO. 1-05**

Request by the City of San Clemente to amend the certified Land Use Plan (LUP) by updating the water quality and watershed protection policies. The amendment involves the addition of ten (10) new policies to the Water and Marine Resource Goals and Policies of the LUP.

**SUMMARY OF STAFF RECOMMENDATION**

Staff is recommending that the Commission, after public hearing:

- 1. Deny the amendment request to the Land Use Plan as submitted;**
- 2. Approve, only if modified, the amendment request to the Land Use Plan.**

The motions to accomplish this recommendation are found on page 4. The suggested modifications, found on page 5, are necessary to ensure that the amendment is in conformity with and adequate to carry out the Chapter 3 policies of the Coastal Act. The suggested modifications add a number of new policies, but would not modify any of the proposed policies or policies already in the LUP which are not part of the amendment.

The modifications would augment the City's existing policies in order to assure that water quality protection is maximized consistent with the Chapter 3 policies of the Coastal Act. Only if modified, as suggested, will the Land Use Plan amendment be consistent with and adequate to carry out the provisions of the Coastal Act.

All of the suggested modifications are policies that the City has already adopted and placed in another section of the General Plan. The suggested modifications extract policies that were added to the Stormwater and Urban Runoff Pollution Section of the Utilities Element of the General Plan at the same time as the policies in the current LUP amendment were added to the Coastal Element of the General Plan. The Coastal Element also serves as the City's LUP. Therefore, it is necessary to carry all pertinent water quality policies over to the Coastal Element to ensure that those policies are used in the review of coastal development permit applications when the City gets certified. The City currently has a certified LUP, but lacks an Implementation Plan (IP). As such, the Commission retains permit issuance authority.

### **STANDARD OF REVIEW**

For the proposed Land Use Plan amendment, the standard of review is conformance with the Chapter 3 policies of the Coastal Act.

### **SUMMARY OF PUBLIC PARTICIPATION**

Section 30503 of the Coastal Act requires public input in Local Coastal Program development. It states:

*During the preparation, approval, certification, and amendment of any local coastal program, the public, as well as all affected governmental agencies, including special districts, shall be provided maximum opportunities to participate. Prior to submission of a local coastal program for approval, local governments shall hold a public hearing or hearings on that portion of the program which has not been subjected to public hearings within four years of such submission.*

The City of San Clemente Planning Commission held a public hearing on the proposed amendment on January 19, 2005. On February 15, 2005 the San Clemente City Council held a public hearing approving the proposed amendment and authorizing the submittal of the amendment for action by the Coastal Commission through Resolution No. 05-12. The City Council approved a revised resolution (Resolution No. 05-49) on July 5, 2005 that includes additional provisions required by the Coastal Commission, as well as all the provisions contained in Resolution No. 05-12. Public notices for the hearings were printed in the Sun Post News newspaper.

**ADDITIONAL INFORMATION**

Copies of the staff report are available at the South Coast District office located in the ARCO Center Towers, 200 Oceangate, Suite 1000, Long Beach, 90802. To obtain copies of the staff report by mail, or for additional information, contact *Anne Blemker* in the Long Beach office at (562) 590-5071. *Sheldon Ah-Sing* is the contact person for the City's Planning Division, and he may be reached by calling (949) 361-6190.

**EXHIBITS**

1. City of San Clemente Resolution No. 05-49
2. Section 306 (Water and Marine Resources Goals and Policies) of the City of San Clemente LUP

**I. STAFF RECOMMENDATION**

Staff recommends adoption of the following motions and resolutions:

**A. Denial as Submitted**

**Motion #1:**

*"I move that the Commission **CERTIFY** Land Use Plan Amendment 1-05 as submitted by the City of San Clemente."*

**Staff Recommendation to Deny:**

Staff recommends a **NO** vote. Failure of this motion will result in denial of the amendment as submitted and adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the appointed Commissioners.

**Resolution to Deny:**

The Commission hereby **DENIES** certification of the Land Use Plan Amendment 1-05 as submitted by the City of San Clemente and adopts the findings set forth below on the grounds that the amendment does not conform with the policies of Chapter 3 of the Coastal Act. Certification of the Land Use Plan amendment would not comply with the California Environmental Quality Act because there are feasible alternatives or mitigation measures which could substantially lessen any significant adverse impact which the Land Use Plan Amendment may have on the environment.

**B. Approval with Suggested Modifications**

**Motion #2:**

*"I move that the Commission **CERTIFY** the Land Use Plan Amendment 1-05 for the City of San Clemente if it is modified as suggested in this staff report."*

**Staff Recommendation to Certify with Suggested Modifications:**

Staff recommends a **YES** vote. Passage of the motion will result in the certification of the land use plan amendment with suggested modifications and adoption of the following resolution and findings. The motion to certify with suggested modifications passes only upon an affirmative vote of the majority of the appointed Commissioners.

**Resolution to Certify with Suggested Modifications:**

The Commission hereby **CERTIFIES** the Land Use Plan Amendment 1-05 for the City of San Clemente if modified as suggested and adopts the findings set forth below on the grounds that the Land Use Plan amendment with suggested modifications will meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the land use plan amendment if modified as suggested complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the plan on the environment, or 2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts which the Land Use Plan Amendment may have on the environment.

**II. PROCEDURAL REQUIREMENTS**

Pursuant to Section 13551(b) of the California Code of Regulations, a resolution for submittal must indicate whether the Local Coastal Program amendment will require formal local government adoption after Commission approval, or is an amendment that will take effect automatically upon the Commission's approval pursuant to Public Resources Code Sections 30512, 30513 and 30519. The City's resolution of adoption (Resolution No. 05-49) states that this LUP amendment will take effect upon Commission certification. However, this certification is subject to the City's incorporation of suggested modifications made by the Commission. Therefore, this local coastal program amendment will not become effective until the City of San Clemente formally adopts the suggested modifications and complies with all the requirements of Section 13544.5 and the Commission staff and Commission take the steps outlined in that section, including the requirement that the Executive Director determine the City's adoption of the amendment to the Land Use Plan is legally adequate.

### III. SUGGESTED MODIFICATIONS

Certification of City of San Clemente LUP Amendment Request No. 1-05 is subject to the following modifications. The suggested additions are shown in **bold, italic, underlined text**. No deletions are proposed.

**Add the following new policies to Section 306 (Water and Marine Resources Goals and Policies) of the Coastal Element/LUP:**

#### Suggested Modification 1

**Preserve, and when possible, create or restore areas that provide important water quality benefits, such as riparian corridors, wetlands, and buffer zones. Encourage land acquisition of such areas.**

#### Suggested Modification 2

**Require that developers implement adequate and appropriate site design, source control, and treatment control best management practices (BMPs) to reduce or eliminate stormwater and urban runoff pollution to the maximum extent practicable.**

#### Suggested Modification 3

**Minimize the amount of impervious surfaces and directly connected impervious surfaces in areas of new development and redevelopment and where feasible slow runoff to maximize on-site infiltration except where infiltration would exacerbate geologic hazards.**

#### Suggested Modification 4

**Limit disturbances of natural waterbodies and natural drainage systems caused by development including roads, highways, and bridges. Design drainage plans to complement and utilize existing drainage patterns and systems, conveying drainage from the developed area of the site in a non-erosive manner and preserving, where feasible, the natural functions of the drainage system. Restore disturbed or degraded natural drainage systems where feasible.**

**IV. FINDINGS FOR DENIAL OF CERTIFICATION OF THE CITY OF SAN CLEMENTE LAND USE PLAN AMENDMENT, AS SUBMITTED, AND FINDINGS FOR APPROVAL OF THE CITY OF SAN CLEMENTE LAND USE PLAN AMENDMENT, IF MODIFIED AS SUGGESTED**

The following findings support the Commission's denial of the LUP amendment as submitted, and approval of the LUP amendment if modified as indicated in Section III (Suggested Modifications) of this report.

The Commission hereby finds and declares as follows:

**A. Amendment Description**

The City of San Clemente has requested an amendment to their certified Land Use Plan (LUP) to supplement the Water and Marine Resource Goals and Policies of the LUP. The proposed amendment includes the addition of ten (10) new policies (Exhibit 1).

The City is required by the San Diego Regional Water Quality Control Board to comply with the Municipal Separate Storm Sewer System (MS4) permit which requires, among other things, that the City update their General Plan, as necessary, to add or modify water quality and watershed protection policies to comply with MS4. The MS4 permit implements requirements of the Clean Water Act and the National Pollutant Discharge Elimination System (NPDES) storm water regulations. The City's Local Coastal Program Land Use Plan is part of the General Plan. To meet the requirements of the MS4 permit, the City has submitted the proposed LUP amendment for Commission review and action.

Many of the newly proposed policies are the policies listed in the San Diego Regional Water Quality Control Board's MS4 permit. The proposed policies describe methods to maximize water quality protection. Some of the methods to maximize water quality that are described in the proposed new policies include: minimizing sedimentation, minimizing introduction of pollutants, requiring Best Management Practices in development projects, as well as other methods that would maximize the protection and restoration of water quality.

No changes to land use designations are proposed as part of this amendment request.

**B. Findings for Denial**

Section 30230 of the Coastal Act states:

*Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.*

Section 30231 of the Coastal Act states:

*The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.*

For the proposed Land Use Plan amendment, the standard of review is conformance with the Chapter 3 policies of the Coastal Act. One chief objective of the Coastal Act is the preservation, protection, and enhancement of coastal resources, including water quality. Section 30230 requires that marine resources be maintained, enhanced, and where feasible restored.

Section 30231 of the Coastal Act requires that the biological productivity and quality of coastal waters be protected. Section 30231 further requires that the quality of coastal waters be adequate to maintain healthy populations of marine organisms. Section 30231 also requires the use of means, including managing wastewater discharges, controlling runoff, protecting groundwater and surface water, encouraging wastewater reclamation, and protecting streams, which are necessary to maintain and enhance water quality. Section 30231 provides that natural vegetation buffer areas that protect riparian habitats be maintained, and that the alteration of natural streams be minimized. Natural vegetation buffers also protect riparian habitats by providing area for infiltration of runoff, and minimizing erosion and sedimentation. Section 30236 limits channelizations, dams, or other substantial alterations of rivers and streams to only three purposes: necessary water supply; protection of existing structures where there is no feasible alternative; or improvement of fish and wildlife habitat.

Development has the potential to adversely impact coastal water quality through the removal of native vegetation, increase of impervious surfaces, increase of runoff, erosion, and sedimentation, introduction of pollutants such as petroleum, cleaning products, pesticides, and other pollutant sources. In addition, water bodies in and adjacent to the City of San Clemente, such as San Juan Creek and Doheny Beach, currently suffer from water quality impairment.

When development increases impervious surface area, the infiltrative function and capacity of the project site is decreased. The reduction in permeable surface therefore leads to an increase in the volume and velocity of stormwater runoff that can be expected to leave the site. The cumulative effect of increased impervious surface is that the peak stream discharge is increased and the peak occurs much sooner after precipitation events. Changes in the stream flow result in modification to stream morphology. Additionally, runoff from impervious surfaces results in increased erosion and sedimentation.



Further, pollutants commonly found in runoff associated with new development include:

- petroleum hydrocarbons such as oil and grease from vehicles;
- heavy metals;
- synthetic organic chemicals including paint and household cleaners;
- soap and dirt from washing vehicles;
- dirt and vegetation from yard maintenance;
- litter and organic matter;
- fertilizers, herbicides, and pesticides from household gardening or more intensive agricultural land use;
- nutrients from wastewater discharge, animal waste and crop residue; and
- bacteria and pathogens from wastewater discharge and animal waste.

The discharge of these pollutants to coastal waters can cause cumulative impacts such as:

- eutrophication and anoxic conditions resulting in fish kills and diseases and the alteration of aquatic habitat, including adverse changes to species composition and size;
- excess nutrients causing algae blooms and sedimentation increasing turbidity, which both reduce the penetration of sunlight needed by aquatic vegetation that provide food and cover for aquatic species;
- disruptions to the reproductive cycle of aquatic species;
- acute and sublethal toxicity in marine organisms leading to adverse changes in reproduction and feeding behavior; and
- human diseases such as hepatitis and dysentery.

These impacts reduce the biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes, reduce optimum populations of marine organisms and have adverse impacts on human health. Also where streams outlet onto recreational sandy beach areas adverse impacts to public beach access can result.

The goal of LUP water quality policies is to protect and enhance water quality and the beneficial uses of local coastal waters and ground waters from adverse impacts related to land development. The objectives of the policies are three-fold:

- Protect, enhance and restore wetlands, streams, and groundwater recharge areas.
- Promote the elimination of pollutant discharge, including nonpoint source pollution, into the City's waters through new construction and development regulation including but not limited to site planning, environmental review and mitigation, and permit conditions of approval.
- Promote Best Management Practices to limit water quality impacts from existing development.

Best Management Practices include but are not limited to structural and nonstructural controls and operation and maintenance procedure. BMPs can be applied before, during and after pollution-producing activities to reduce or eliminate the introduction of pollutants into receiving waters. A site design BMP is a project design feature that reduces the generation of pollutants or reduces the alteration of the natural drainage features, such as minimizing impervious surfaces or minimizing grading. A source control BMP is a practice that prevents release of pollutants into areas where they may be carried by runoff, such as covering work areas and trash receptacles, practicing good housekeeping, and minimizing the use of irrigation and garden chemicals. A treatment control BMP is a system designed to remove pollutants from the runoff including the use of gravity settling, filtration, biological uptake, media adsorption or any other physical, biological, or chemical process.

The Commission and the San Diego Regional Water Quality Control Board (SDRWQCB) both work to protect water quality, although each has different authorities and responsibilities in that effort. The Commission has primary responsibility for protecting many coastal resources, including water quality, from the impacts of development in the coastal zone. The SWRCB and RWQCBs have primary responsibility for regulating discharges that may impact waters of the State through writing discharge permits, investigating water quality impacts, monitoring discharges, setting water quality standards and taking enforcement actions where standards are violated. Given the common goal of clean coastal water quality, there is a gray zone where the authorities of these agencies overlap. For example, based on the need to regulate land use in order to protect water quality, the SDRWQCB has approved the MS4 permit to reduce adverse impacts on water quality. The City of San Clemente is one of the co-permittees of the MS4 permit. The new policies proposed by the City are taken from the approved MS4 permit.

As provided in Exhibit 1, the City is proposing the addition of ten (10) new policies through this amendment. These policies will be placed in Section 306 (Water and Marine Resource Goals and Policies) of the Coastal Element/LUP. The context for the new policies is provided in Exhibit 2. The proposed policies include those relating to reduction of nuisance flows and pollutants, minimizing sedimentation, and implementation and sizing of best management practices, among others.

While the Commission recognizes that the City's proposed policy additions would increase the protection and enhancement of water quality within the City, it also recognizes that there are additional steps that could be taken to further protect, restore and/or enhance water quality within the City. There is no policy addressing the preservation and restoration of natural areas that provide water quality benefits. Policies must be included to preserve natural areas and limit the disturbance of natural waterbodies and natural drainage systems. There also lacks a policy that specifically requires developers to implement best management practices to reduce or eliminate stormwater and urban runoff pollution. Lastly, a policy is necessary to address minimization of impervious surfaces in new development.

The proposed amendment could not be found consistent with Sections 30230 and 30231 of the Coastal Act, if feasible measures known to positively impact water quality were not included in the policies added to the water quality section of the City's LUP as part of the current proposal. The Commission's standard of review, which requires the preservation, protection, and enhancement of coastal resources, including water quality, necessitates that the additional measures be imposed. Thus, the Commission finds that only if the amendment is modified as suggested can it be found consistent with and adequate to carry out the Chapter 3 policies of the Coastal Act. As submitted, the policies of the LUP are not sufficiently detailed to protect water quality in San Clemente's coastal zone and must be denied.

**C. Findings for Approval**

Additional water quality objectives and policies were generated by the City of San Clemente for inclusion in the Utilities Element of the General Plan at the same time the policies were generated for the Coastal Element/LUP. Many of those intended for the Utilities Element contain valuable policy direction that should also be carried over to the Coastal Element/LUP to ensure the preservation, protection, and enhancement of water quality. Toward that end, the Commission hereby incorporates the City's General Plan goals and policies relative to water quality protection and improvement into the current amendment as Suggested Modifications 1 through 4.

The LUP amendment, as modified to include the newly drafted General Plan language, meets the goal of protecting and enhancing water quality and the beneficial uses of local coastal waters and ground waters from adverse impacts related to land development. Several policies provide specifically for the requirement of Best Management Practices (BMPs) related to siting and design of the project, the construction phase of the project, and the post-construction phase of the project.

The modifications are suggested to augment the City's existing and proposed policies in order to assure that water quality protection is maximized. They also assure that the most protective policies will be used as the standard of review when the City reviews its own coastal development permits. The suggested modifications include policies to protect and restore water quality, including preservation of natural resource areas, implementation of best management practices such as filtration and treatment of stormwater, and limiting disturbances of natural waterbodies.

Suggested Modification 1 requires the preservation, and encourages creation and restoration, of natural areas that provide water quality benefits. Suggested Modification 2 requires developers to implement best management practices to reduce or eliminate stormwater and urban runoff pollution. Suggested Modification 3 necessitates the minimization of impervious surfaces in new development. Suggested Modification 4 limits the disturbance of natural waterbodies and natural drainage systems.

These policies will ensure that development is designed to ensure that biodiversity and optimum populations of marine organisms are protected from water quality impacts, as specified in Coastal Act Sections 30230 and 30231. Taken together, the existing, proposed, and new water quality policies added with suggested modifications will provide for improved water quality in the San Clemente area. The suggested modifications are necessary to provide consistency with Coastal Act Sections 30230 and 30231.

These policies, as modified, provide for the protection and enhancement of water quality and the beneficial uses of local coastal waters and ground waters from adverse impacts related to land development. Therefore, the Commission finds that, as modified, the LUP amendment meets the requirements of and is in conformity with Sections 30230 and 30231 of the Coastal Act.

**D. California Environmental Quality Act (CEQA)**

Pursuant to the California Environmental Quality Act (CEQA) and the California Code of Regulations [Title 14, Sections 13540(f) and 13555(b)] the Commission's certification of this LUP amendment must be based in part on a finding that it is consistent with CEQA Section 21080.5(d)(2)(A). That section of the Public Resources Code requires that the Commission not approve or adopt an LCP:

*...if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.*

The Land Use Plan amendment as proposed has been found not to be in conformance with the Chapter 3 policies of the Coastal Act regarding water quality. To resolve the concerns identified, suggested modifications have been made to the proposed amendment. Without incorporation of the suggested modifications, the Land Use Plan amendment as submitted, is not adequate to carry out and is not in conformity with the Chapter 3 policies of the Coastal Act. The suggested modifications minimize or mitigate any potentially significant environmental impacts of the Land Use Plan amendment. As modified, the Commission finds that approval of the Land Use Plan amendment will not result in significant adverse environmental impacts within the meaning of the California Environmental Quality Act.

The Commission finds that for the reasons discussed in this report, if the LUP amendment is modified as suggested, there are no additional feasible alternatives or feasible mitigation measures available that could substantially reduce any adverse environmental impacts. The Commission further finds that the proposed LUP amendment, if modified as suggested, is consistent with Section 21080.5(d)(2)(A) of the Public Resources Code.