

CALIFORNIA COASTAL COMMISSION

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January 19, 2006

TO: Commissioners and Interested Persons

**FROM: Deborah Lee, Senior Deputy Director, South Coast Area Office
Teresa Henry, District Manager, South Coast Area Office
Karl Schwing, Supervisor, Regulation & Planning, Orange County Area
Ryan Todaro, Coastal Program Analyst**

SUBJECT: Major Amendment Request No. 3-05 to the City of Laguna Beach Certified Local Coastal Program (For Public Hearing and Commission Action at the February 8-10, 2006 meeting in San Diego).

SUMMARY OF LCP AMENDMENT REQUEST NO. 3-05

Request by the City of Laguna Beach to amend its certified Local Coastal Program (LCP) in order to modify Policy 14C of Topic 14 (Hillside Slopes) of the City's Open Space/Conservation Element of the Land Use Plan (LUP); and to revise the Implementation Plan (IP) by modifying Section 21.12.250 of Title 21 (Plats and Subdivision) and Section 25.52.008(l)(3)(a) of Title 25 (Zoning Code) of the City's Municipal Code.

SUMMARY OF STAFF RECOMMENDATION

Staff is recommending that the Commission, after public hearing:

- 1. Approve the amendment request to the Land Use Plan as proposed.**
- 2. Approve the amendment request to the Implementation Plan as proposed.**

The motions to accomplish this recommendation are found on pages 3 & 4. The Land Use Plan amendment meets the requirements of and is in conformity with the Chapter 3 policies of the Coastal Act. The Implementation Plan amendment is in conformity with and adequate to carry out the policies of the certified Land Use Plan, as they are proposed to be amended.

STANDARD OF REVIEW

For the proposed LUP amendment, the standard of review is conformance with the Chapter 3 policies of the Coastal Act. For the proposed Implementation Plan amendment the standard of review is conformance with the policies of the certified LUP and adequacy as an implementation tool for those policies.

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.

An Initial Study for this project was prepared and posted for public review and comment from June 5, 2005 to June 27, 2005. A notice with the project description was published in the Coastline Pilot Newspaper on June 6, 2005. The Initial Study and proposed Negative Declaration were posted at the City's front counter and at the County of Orange, County Clerk-Recorder during and after the public comment period.

The City of Laguna Beach Planning Commission held a public hearing on the proposed amendment on July 13, 2005. The notice for this project was published in the Coastline Pilot on July 1, 2005. The agenda and staff report was posted at City Hall and on the City's website on July 8, 2005. Two members of the public attended the Planning Commission meeting and spoke in favor of the project urging the Planning Commission to approve the project to address safety issues related to allowed street and driveway gradients. The Planning Commission unanimously recommended that the City Council adopt the Negative Declaration and approve the General Plan amendment, Zoning Ordinance amendment and Local Coastal Plan amendment.

On July 22, 2005, a notice was published in the Coastline Pilot Newspaper advising that the City Council would be considering the proposed project on August 2, 2005. The agenda and staff report were posted on the City's website and at the public counter on July 29, 2005. On August 2, 2005, the City Council held its first public hearing on the project. Eight individuals spoke at the hearing in favor of the amendments. Sixteen individuals spoke in opposition to the project. Opponents stated that the amendment would change the nature or character of the town, would not change the response time of emergency vehicles, was an attempt to halt new construction, would lengthen streets, would limit development, would increase grading, would increase surface runoff, would diminish open space and increase the need for retaining walls. The Findings section below discusses the landform alteration issues. The water quality policies established by LCP amendment No. 2-04, which was approved at the October 2004 hearing, will ensure protection of water quality regardless of the change proposed by this amendment. The City Council voted 4-0 with one abstention to approve the General Plan/Local Coastal Plan amendment and Negative Declaration. The ordinance amendment was introduced and set for second reading on September 6, 2005.

On September 6, 2005, the City Council approved submittal of the LCP amendment for action by the Coastal Commission. On September 6, the City Council voted 4-0, with one abstention to approve the ordinance amendments and requested certification by the Coastal Commission. At the hearing, seven individuals expressed opposition to the amendments and one individual representing Village Laguna spoke in favor of the amendments. Opponents accused the City of taking or stealing private property and violating their rights as property owners by preventing future development of their lots. Concern was also expressed that the affected property owners were not noticed and requests to send the item back to the Planning Commission were made. Although there were concerns by opponents in regards to noticing, the City has fully complied with Section 30503 of the Coastal Act.

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 Ryan Todaro in the Long Beach office at (562) 590-5071. In addition, Ann Larson, Planning Administrator for the City of Laguna Beach Community Development Department, can be reached at (949) 497-0320.

I. STAFF RECOMMENDATION

Staff recommends adoption of the following resolutions:

A. Approval of the Land Use Plan Amendment as submitted

MOTION: *I move that the Commission certify Land Use Plan Amendment 3-05 as submitted by the City of Laguna Beach.*

STAFF RECOMMENDATION TO CERTIFY AS SUBMITTED:

Staff recommends a **YES** vote. Passage of the motion will result in certification of the land use plan 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 CERTIFY THE LAND USE PLAN AMENDMENT AS SUBMITTED:

The Commission hereby certifies the Land Use Plan Amendment 3-05 as submitted by the City of Laguna Beach and adopts the findings set forth below on the grounds that the amendment meets the requirements of and conforms with the policies of Chapter 3 of the Coastal Act. Certification of the Land Use Plan amendment 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 which could substantially lessen any significant adverse impact which the Land Use Plan Amendment may have on the environment.

B. Approval of the Implementation Plan Amendment as Submitted

MOTION: *I move that the Commission reject the Implementation Program Amendment 3-05 for the City of Laguna Beach as submitted.*

STAFF RECOMMENDATION OF CERTIFICATION AS SUBMITTED:

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

RESOLUTION TO CERTIFY IMPLEMENTATION PROGRAM AMENDMENT AS SUBMITTED:

The Commission hereby certifies Implementation Program Amendment 3-05 for the City of Laguna Beach as submitted and adopts the findings set forth below on grounds that the Implementation Program amendment conforms with, and is adequate to carry out, the provisions of the certified Land Use Plan as amended, and certification of the Implementation Program amendment will meet the requirements of the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Program on the environment, or 2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts on the environment that will result from certification of the Implementation Program amendment.

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. 04.075) states that this LCP amendment will take effect upon Commission certification.

III. FINDINGS

The following findings support the Commission's approval of the LUP amendment as submitted, and, the Commission's approval of the IP amendment as submitted.

The Commission hereby finds and declares as follows:

A. Land Use Plan Amendment

1. Amendment Description

The City of Laguna Beach has requested an amendment to the Land Use Plan (LUP) portion of the certified Local Coastal Program (LCP) to modify Policy 14C of Topic 14 (Hillside Slopes) of the City's Open Space/Conservation Element of the LUP.

This amendment would modify the existing policy as follows (language to be added is underlined and language to be deleted is in ~~strike-out~~):

Policy 14-C ~~Prohibit new building sites that would require construction of a street of 15% or more in grade.~~ Discourage the creation of new building sites that would require construction of a new street or a street extension of more than 12% in grade. Prohibit the creation of new building sites that would require construction of a new street or a street extension of more than 14% in grade.

2. Consistency with Coastal Act Development

Section 30251 of the Coastal Act states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of the surrounding areas, and, where feasible, to restore and enhance the visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Section 30253 of the Coastal Act states in part:

New development shall:

(1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

For the proposed LUP amendment, the standard of review is conformance with the Chapter 3 policies of the Coastal Act and satisfaction of the requirements of those policies. One chief objective of the Coastal Act is the protection of the scenic and visual qualities of coastal areas. Section 30251 requires that natural landform alteration shall be minimized. Section 30253 of the Coastal Act requires that new development shall neither create nor contribute significantly to erosion or require construction that would substantially alter natural landforms. Development has the potential to adversely impact scenic and visual qualities of coastal areas through the alteration of natural landforms.

The City believes that steep street and driveway grades hamper emergency response capabilities and can impair vehicle operations, sight distance, pedestrian accessibility and drainage. Therefore, the goal of the proposed amendment is to improve emergency response capabilities, vehicle operations, sight distance, pedestrian accessibility and drainage.

The proposed policy would only apply to new streets (usually created through a subdivision) or extensions of existing streets and would not affect an existing street abutting a "building site." The City defines a "building site" as having among other things a street developed to City standards that abuts the entire length of the front lot line (see Exhibit #4 for complete definition). According to the City's LCP, existing lots that are not served by a street developed to City standards that abut the entire length of the front lot line are not "building sites." Any subdivision or extension of an existing street to such lots to establish a new building site would need to conform to the requirements of Policy 14-C.

The new policy would have the effect of discouraging the creation of new building sites in steep terrain because the property could be limited by space, which would have a positive effect relative to landform alteration, scenic and visual impacts. On the other hand, the new policy –if looked at in isolation of other LCP policies- has the potential to generate increased landform alteration through the creation of longer roads with increased grading in order to flatten the grade to conform with the preferred 12% maximum street grade. However, the policy does have an allowance for the creation of streets up to a 14% grade that could be exercised in circumstances where the steeper grade would result in a less environmentally damaging project. Furthermore, there are other policies in the LUP that would continue to ensure that development is designed to maximize protection of scenic and visual qualities of coastal areas and that natural landform alteration is minimized (see Appendix A for list of relevant policies). These policies remain in effect and are controlling with regard to any development.

The issue of community character was raised by some of the opponents. However they have not substantiated how the proposed amendment would affect community character

and therefore the Commission finds that the amendment is consistent with Section 30251 of the Coastal Act.

Therefore, the Commission finds that the City's proposed amendment would result in a land use plan that is consistent with and adequate to carry out the Chapter 3 policies of the Coastal Act.

B. Implementation Plan Amendment

1. Amendment Description

The City of Laguna Beach is requesting an amendment to the Implementation Plan portion of the certified LCP. The proposed amendment would revise the Implementation Plan (IP) by modifying Section 21.12.250 of Title 21 (Plats and Subdivision) and Section 25.52.008(l)(3)(a) of Title 25 (Zoning Code) of the City's Municipal Code.

Title 21 is currently part of the certified IP. This amendment would revise the existing policy as follows (language to be added is underlined and language to be deleted is in ~~strike-out~~):

21.12.250 Street Grades.

- (a) Minimum. Minimum ~~street~~ grades for new streets and street extensions shall be not less than one-half of one percent (0.5%).
- (b) Ten to ~~Fifteen~~ Twelve Percent Grades. ~~Street g~~Grades for new streets and street extensions between ten percent (10%) and ~~fifteen~~ twelve percent (12%) will be approved only for such distances as topographical conditions make a lesser grade impractical.
- (c) Variance. Grades for new streets or street extensions exceeding twelve percent (12%), but not in excess of fourteen percent (14%), are allowed only upon the approval of a variance in accordance with Section 25.05.025.
- (~~e~~) Maximum ~~G~~grades. Grades exceeding ~~fifteen~~ fourteen percent (14%) are prohibited for new streets and streets extensions.
- (~~e~~) Transitions. Grade breaks shall be transitioned by vertical curves in accordance with accepted and prevailing engineering practice.

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Title 25 is also currently part of the certified IP. This amendment would revise the existing policy as follows (language to be added is underlined and language to be deleted is in ~~strike-out~~):

25.52.008(I)(3) Driveway and Ramp Slopes.

- (A) Driveways and vehicle accessways shall not exceed an average gradient of ten percent (10%) within the first twenty feet off a street or alley right-of-way, ~~and the remaining slope of every driveway or accessway shall not exceed an average gradient (average rate of incline) of fifteen percent.~~ fourteen percent (14%) for the next 130 feet, and twelve percent (12%) for the remaining length of the driveway.

As with the proposed LUP policy, these proposed IP policies would only apply to new streets or extensions of existing streets and would not affect an existing street abutting a legal building site. The standard of review for an amendment to an Implementation Plan is consistency with and adequacy to carry out the policies of the certified LUP. It should be noted that, in this case, as discussed in the preceding section, Policy 14C of Topic 14 (Hillside Slopes) of the City's Open Space/Conservation Element of the LUP is proposed to be changed as part of this amendment. The recommendation for this IP amendment is based on the assumption that the LUP amendment has been approved as submitted.

2. Consistency with LUP Policies

The LUP (as amended) includes the following Hillside Slopes policy:

- 14-C Discourage the creation of new building sites that would require construction of a new street or a street extension of more than 12% in grade. Prohibit the creation of new building sites that would require construction of a new street or a street extension of more than 14% in grade.

The proposed IP amendment is consistent with this amended LUP policy because the amended LUP Policy indicates that creation of new building sites requiring street grades of more than 12% are discouraged and those requiring street grades in excess of 14% are prohibited. The proposed IP amendment limits the ability to create streets with grades of between 10% and 12% (which is not greater than 12%) and for streets more than 12%, but less than 14% gradient, a variance is necessary. Variance findings are difficult to make unless there are unusual circumstances applicable to the property involved that would prevent the property owner from being able to meet the standards. One of those findings is that the proposal is otherwise consistent with the City's General Plan and Local Coastal Plan. It's conceivable that situations may arise where street grades between 12% and 14% to serve a property with an unusual shape, size or location would have fewer impacts on the environment than streets of a flatter grade, and in those cases, that would warrant the granting of a variance. It is clear that the Policy discourages streets greater than 12% and the applicant would have to make a good argument as to the reason it is necessary to exceed 12% grade. The City has indicated that safety would be a key factor in the decision. The City has also indicated the Fire Department would likely argue against

steeper grades for safety reasons. A finding of consistency with the General Plan and Local Coastal Plan could never be made for streets over 14% because the policy does not give discretion to establish streets that would exceed a 14% grade.

The proposed IP amendment is consistent with existing Hillside Slopes LUP policies (see Appendix A for a list of these policies) because development is to be concentrated to areas (hillside slopes) on slopes of 30% or less and prohibited on slopes of 45% or greater (policies 14A and 14B) and streets with less steep gradients could be more readily accommodated in the less steep areas. A project, including the streets, would be required to minimize earth-moving operations and would be encouraged to preserve the natural topographic land features (policy 14F). If the project requires extensive grading to get a less steep gradient for the street, it would not be consistent with this policy and the project could be denied because it does not conform to this policy. Therefore the amendment is not inconsistent with Policy 14F. Allowing steeper streets allows increased access to more inaccessible hillside areas, so the amendment is consistent with 14H, 14I, 14K and 14L by further limiting possible access into steeper inaccessible areas. The proposed IP amendment does not apply to policies 14G or 14J. These policies are unaffected by the amendment and the amendment is therefore consistent.

Based on the changes described above and the entire language of the proposed IP amendment, the proposed amendment provides the required level of documentation detail necessary to implement the Hillside Slopes policies of the Land Use Plan, and it is consistent with those policies. The proposed ordinances, as submitted, provide for the protection and enhancement of hillside slopes from adverse impacts related to land development. Therefore, the Commission finds that, as submitted, the IP amendment is in conformity with and is adequate to carry out the Hillside Slopes policies of the certified Land Use Plan.

C. 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 LCP amendment must be based in part on a finding that it is consistent with CEQA, including Public Resources Code 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.

As described above, the LUP portion of the LCP amendment is consistent with and meets the requirements of the Chapter 3 policies of the Coastal Act, which are designed to protect environmental resources. In addition, as is also outlined above, the IP portion of the LCP amendment is consistent with and adequate to carry out the policies of the Land Use Plan. Therefore, the Commission finds that approval of the LCP amendment will not result in significant adverse environmental impacts under the meaning of CEQA. There

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are no feasible alternatives under the meaning of CEQA, which would reduce the potential for significant adverse environmental impacts. Therefore, the Commission certifies Laguna Beach LCP amendment request 3-05 as submitted.