

**CALIFORNIA COASTAL COMMISSION**

SAN DIEGO AREA  
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 SAN DIEGO, CA 92108-4402  
 (619) 767-2370

**W16h**

Go to original staff report

**Addendum**

June 10, 2013

To: Commissioners and Interested Persons

From: California Coastal Commission  
 San Diego Staff

Subject: Addendum to **W16h**, City of San Diego Major LCP Amendment  
**No. SAN-MAJ-5-11B (7<sup>th</sup> Update to the Land Development Code)**, for  
 the Commission Meeting of June 12, 2013.

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Staff recommends the following changes be made to the above-referenced staff report, dated May 30, 2013. Language to be added is underlined; language to be deleted is shown in ~~strikeout~~:

1. On Pages 1 & 2 of the staff report, the paragraph starting on Page 1 and continuing onto Page 2 shall be revised as follows:

The significant issues raised in the 7<sup>th</sup> Update are the application of the Environmentally Sensitive Land (ESL) regulations to coastal development within the coastal zone and the proposed expansion of tolling of all development permits including coastal development permits. As submitted, the amendment would exempt certain development from obtaining Neighborhood Development Permits (NDP) or Site Development Permits (SDP), which are the regulatory vehicles for application of ESL regulations. The purpose of the ESL regulations is to assure that development occurs in a manner that protects the overall quality of the sensitive resources such as wetlands, steep hillsides, and coastal bluffs, the natural and topographic character of the area, and retains biodiversity and interconnected habitats. If a development project were to be exempted under the proposed amendment simply because it is not proposing impacts to ESL at that time, it is unclear how the City would still be able to ~~obtain~~ secure all of the protective measures that are common with development permits and which the Commission values for their protective benefits, such as wetland buffers and open space deed restrictions. While it is always beneficial to see projects not propose impacts to ESL, that in and of itself is not always sufficient to meet the intent of the certified LCPs. Protective measures including, but not limited to, recordation of open space easements, wetland buffers, and the like, in and of themselves, serve

beneficial, protective purposes above the parameters of the specific development being proposed. Commission staff is thus recommending a modification that would limit application of the proposed NDP and SDP exemptions to development outside of the Coastal Overlay Zone so as to preserve the application of ESL regulations to all development within the Coastal Overlay Zone where sensitive habitats are present. Furthermore, Commission staff is recommending a modification that will limit the expanded tolling provisions for development permits ~~to development outside of the Coastal Overlay Zone~~ so as to require the decision maker to make all of the findings already required by the LDC for the extension of time for coastal development permits prior to extending the expiration date of a coastal development permit due to a lawsuit. This modification will ~~so as to~~ ensure that prior to extending development permits within the Coastal Overlay Zone, a proper analysis of changed conditions or circumstances will be conducted.

2. On Page 6 of the staff report, Suggested Modification No. 2 shall be revised as follows:

**§126.0115 Tolling of a Development Permit**

- (a) ~~Outside of the Coastal Overlay Zone, a~~An *applicant* may request a tolling of the expiration of an approved or conditionally approved *development permit* for up to 5 years while a lawsuit involving the approval or conditional approval of the *development permit* is or was pending in a court of competent jurisdiction.
- (b) A request to toll the process must be submitted prior to expiration of the *development permit*.
- (c) A decision regarding a request to toll the expiration date for a *development permit* shall be made in accordance with Process One and, additionally, for development within the Coastal Overlay Zone, in accordance with the procedures in Section 126.111(g).
- (d) A request to toll the expiration date for a *development permit* shall be granted within 40 days of the date of application if it can be demonstrated to the satisfaction of the City Manager that:
  - (1) A lawsuit was filed that is related to the processing of an approved or conditionally approved *development permit*; and
  - (2) Tolling of the expiration date for up to 5 years during the lawsuit would allow time for the *applicant* to address associated court orders or procedures related to processing of the *development permit*.
- (e) Upon resolution of the lawsuit, the *applicant* shall contact the City Manager to request the adjusted expiration date for the approved or conditionally approved *development permit*. The adjusted expiration date shall allow tolling as follows:
  - (1) The credited time for the tolling period shall be limited to the time period between the date the petition or complaint in

the lawsuit was filed and the date the lawsuit was officially resolved.

- (2) The credited time for the tolling period shall not exceed 5 years.
- (3) Within the Coastal Overlay Zone, the adjusted expiration date for a coastal development permit may be granted only if the decision maker makes all of the findings required by Section 126.0111(g) Findings for Approval for Extension of Time for a Coastal Development Permit.

3. On Page 10 of the staff report, the final two paragraphs shall be revised as follows:

While it is always beneficial when development as proposed does not contain encroachments into or direct impacts to sensitive habitat, the specific siting of a particular project at a particular point in time is rarely sufficient in and of itself to ensure full resource protection policies of the certified LCP are carried out. Direct impacts are not the only manner in which development may impact sensitive resources. Noise, lighting, runoff, and brush management are just a few of the ways in which a project that does not propose any direct impacts to sensitive resources may nevertheless result in adverse impacts. Indirect impacts, due to their less obvious nature, are often only properly identified and mitigated after thorough analysis is performed, such as the analysis called for in the LDC's ESL regulations. Furthermore, measures commonly called for in the LCP, such as wetland buffers and deed restricted open space, are, in and of themselves, of great legal and protective benefit, independent of the specific parameters of a particular development. Such measures ensure not only that the particular development being applied for will meet ESL regulations, but that future owners, users, and the public in general will be given notice of, and bound by, the protective measures called for in the LCP.

The Commission finds the City's approach of excluding development from the discretionary review process afforded by ESL, if certain criteria are met, is not adequate to carry out all the provisions of the certified LUPs which address more than just the siting of a structure. In prior communications, City staff has stated that development exempted by their proposed amendment would still have to adhere to the Multi-Habitat Planning Area (MHPA) Adjacency Guidelines contained in the City's Multi-Species Conservation Plan (MSCP). While that may be relevant for most of the City, the City's MSCP, as well as the referenced Adjacency Guidelines, were never submitted to the Coastal Commission and is not part of the certified LCP. Therefore, for purposes of evaluating a coastal development permit, the Adjacency Guidelines cannot be relied upon to address or mitigate potential indirect or off-site resource impacts. Furthermore, in the discussions and hearings leading up to the certification of the original LDC in 1999, the City originally proposed several

exemptions similar to the exemption currently being proposed. At that time, the Commission similarly took issue and questioned how the application of all the resource protection provisions codified within the ESL regulations would be ensured if there was no discretionary permit, such as the Site Development Permit or Neighborhood Development Permit, being processed. Those same concerns surround this proposed amendment. The LDC needs to be clear that, in addition to precluding encroachment into sensitive habitats, all of the measures to protect a site's resources (i.e. establishment of a wetland buffer or execution of an open space deed restriction or covenant) are secured in any development entitlement even if there's no direct impact. The LDC and the Coastal Act are both very protective of such resources and allowed very limited impacts, but there are a myriad of indirect and potential off-site impacts (lighting, runoff, fuel mod, etc.) to sensitive resources that may arise even on projects that don't directly encroach into a wetland or steep hillside. For all of those reasons, the ESL regulations are where the Commission certified all the resource protection provisions. Absent the application of ESL regulations to development within the Coastal Overlay Zone being included in the proposed regulations, the Commission cannot be assured that sensitive coastal resources will be afforded the full protection provided by standard measures such as deed restrictions and wetland buffers for ESL present on the premises. Therefore, in order to ensure that the appropriate resource protection standards are considered and imposed, as applicable, the submitted ordinance must be rejected as submitted.

4. On Page 12 of the staff report, the following shall be added to the end of the first paragraph in Part V: Findings for Approval of the City of San Diego Implementation Plan Amendment, if Modified:

The Commission finds that modifications are required to the proposed permit process amendment in order to assure implementation of the certified LUPs and the Coastal Act. Regarding permit process, the most significant changes to the proposed amendments which will assure the analysis and protective measures, such as wetland buffers and open space deed restrictions, provided by the ESL regulations are applied to all coastal development on premises containing ESL is to eliminate the exemption of Section 143.0110 with respect to properties within the Coastal Overlay Zone. Beginning with the certification of the original Land Development Code in 1999, the consolidation of the development permit process and ESL regulations has assured the Commission that the ESL regulations will be applied to all development requiring a SDP and NDP, and with the elimination of the exemption from the SDP and NDP requirements in the Coastal Overlay Zone, such permits will be required for all development on which environmentally sensitive lands are present, regardless of whether or not the proposed development is proposing impacts to ESL. The City has not proposed any alternative language that would assure the Commission that, in the absence of requiring an NDP or SDP, the resource protection

policies of the ESL regulations would continue to be applied with the same consistency and thoroughness with which they have been applied to date.

5. On Page 13 of the staff report, the first paragraph shall be revised to read as follows:

The second modification to the proposed amendments will be to ~~limit the application of Section 126.0115's expanded tolling provisions for development permits to development that is located outside of the Coastal Overlay Zone~~ require, for coastal development permits, that the decision maker makes all the findings already required by Section 126.0111(g) regarding the extension of time for coastal development permits before the City adjusts the expiration date of a coastal development permit. Through the suggested modification to the proposed tolling amendment, the Commission ensures that coastal development permits for development within the Coastal Overlay Zone will not be able to avoid analysis of changed circumstances, be they legal or physical, for overly long periods of time, but instead will have to satisfy the legally required findings contained in the LDC before being granted a time extension.

**CALIFORNIA COASTAL COMMISSION**

SAN DIEGO AREA  
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May 30, 2013

**W16h**

**TO: COMMISSIONERS AND INTERESTED PERSONS**

**FROM: SHERILYN SARB, DEPUTY DIRECTOR, SAN DIEGO COAST DISTRICT  
DEBORAH LEE, DISTRICT MANAGER, SAN DIEGO COAST DISTRICT  
ALEXANDER LLERANDI, COASTAL PROGRAM ANALYST, SAN DIEGO  
COAST DISTRICT**

**SUBJECT: STAFF RECOMMENDATION ON CITY OF SAN DIEGO MAJOR LCP  
AMENDMENT NO. SAN-MAJ-5-11B (7<sup>th</sup> Update to the Land Development  
Code) for Commission Meeting of June 12-14, 2013**

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**SYNOPSIS**

On March 26, 2012, the City of San Diego's Local Coastal Program (LCP) Amendment No. 5-11 A and B was filed in the San Diego District office. This submittal involved two unrelated items: the subject proposed changes to the City's Land Development Code (LDC), and unrelated revisions to four community plans within the coastal zone along with a set of ordinance modifications to implement the Airport Land Use Compatibility Overlay Zone (ALUC). The Commission approved the ALUC component of the amendment submittal on March 7, 2013. A one-year time extension was granted on the amendment submittal on May 9, 2012. As such, the last date for Commission action on this item is the June 2013 hearing.

**SUMMARY OF AMENDMENT REQUEST**

The subject amendment request consists of approximately 65 separate items, and represents the 7<sup>th</sup> Update of the certified LDC, which went into effect in the coastal zone on January 1, 2000. The City periodically reviews the LDC and proposes corrections, modifications, clarifications, etc. to make the document easier to understand and enforce. This update is similar to past updates in that it covers a number of different issue categories of the LDC, including how to calculate certain measurements (such as building heights), permit process, landscaping, parking, compliance with State law, and minor corrections.

**SUMMARY OF STAFF RECOMMENDATION**

The significant raised in the 7<sup>th</sup> Update is the application of the Environmentally Sensitive Land (ESL) regulations to coastal development within the coastal zone. As submitted, the amendment would exempt certain development from obtaining

Neighborhood Development Permits (NDP) or Site Development Permits (SDP), which are the regulatory vehicles for application of ESL regulations. The purpose of the ESL regulations is to assure that development occurs in a manner that protects the overall quality of the resources, the natural and topographic character of the area, and retains biodiversity and interconnected habitats. If a development project were to be exempted under the proposed amendment simply because it is not proposing impacts to ESL at that time, it is unclear how the City would still be able to obtain all of the protective measures that are common with development permits and which the Commission values for their protective benefits, such as wetland buffers and open space deed restrictions. While it is always beneficial to see projects not propose impacts to ESL, that in and of itself is not always sufficient to meet the intent of the certified LCPs. Protective measures including, but not limited to, recordation of open space easements, wetland buffers, and the like, in and of themselves, serve beneficial, protective purposes above the parameters of the specific development being proposed. Commission staff is thus recommending a modification that would limit application of the proposed NDP and SDP exemptions to development outside of the Coastal Overlay Zone so as to preserve the application of ESL regulations to all development within the Coastal Overlay Zone where sensitive habitats are present. Furthermore, Commission staff is recommending a modification that will limit the expanded tolling provisions for development permits to development outside of the Coastal Overlay Zone so as to ensure that prior to extending development permits within the Coastal Overlay Zone, a proper analysis of changed conditions will be conducted.

Staff is recommending rejection of the proposed amendment, as submitted, and then approval of the amendment with suggested modifications. The amendment request, as modified, and the LDC would remain consistent with the City's many certified Land Use Plans (LUPs). The appropriate resolutions and motions begin on Page 4. The suggested modifications begin on Page 5. The findings for rejecting the amendment as submitted begin on Page 7. The findings for approval of the amendment, as modified, begin on Page 12.

## **BACKGROUND**

The City's first IP was certified in 1988, and the City then assumed permit authority. The IP consisted of portions of the City's Municipal Code, along with some Planned District Ordinances (PDOs) and Council Policies. In 1999, the Commission certified the City's LDC that primarily includes Chapters 11 through 14 of the municipal code. It replaced the first IP and took effect in the coastal zone on January 1, 2000. The Commission has certified many IP amendments since 2000.

## **ADDITIONAL INFORMATION**

Further information on the City of San Diego LCP Amendment SAN-MAJ-05-11B may be obtained from Alexander Llerandi, Coastal Planner, at (619) 767-2370.

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## **PART I. OVERVIEW**

### **A. LCP HISTORY**

The City of San Diego has a long history of involvement with the community planning process, and in 1977, requested that the Coastal Commission permit segmentation of its Land Use Plan (LUP) into twelve parts in order to conform, to the maximum extent feasible, with the City's various community plan boundaries. In the intervening years, the City has intermittently submitted all of its LUP segments, which are all presently certified, in whole or in part.

When the Commission approved segmentation of the LUP, it found that the implementation phase of the City's LCP would represent a single unifying element. This was achieved in January 1988, and the City of San Diego assumed permit authority on October 17, 1988, for the majority of its coastal zone. Several isolated areas of deferred certification remained at that time, but some have since been certified as LCP amendments. Other areas of deferred certification still remain today and will be acted on by the Coastal Commission in the future.

### **B. STANDARD OF REVIEW**

Pursuant to Section 30513 of the Coastal Act, the Commission may only reject zoning ordinances or other implementing actions, as well as their amendments, on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. The Commission shall take action by a majority vote of the Commissioners present.

### **C. PUBLIC PARTICIPATION**

Section 30503 of the Coastal Act requires local governments to provide the public with the maximum opportunities to participate in the development of the LCP amendment prior to submittal to the Commission for review.

The City has held Planning Commission and City Council meetings with regard to the subject amendment request. All of those local hearings were duly noticed to the public. Notice of the subject amendment has been distributed to all known interested parties.

## **PART II. LOCAL COASTAL PROGRAM SUBMITTAL - RESOLUTIONS**



Following a public hearing, staff recommends the Commission adopt the following resolutions and findings. The appropriate motion to introduce the resolution and a staff recommendation are provided just prior to each resolution.

- I. **MOTION I:** *I move that the Commission reject the Implementation Program Amendment No. 5-11B for the City of San Diego certified LCP, as submitted.*

**STAFF RECOMMENDATION OF REJECTION AS SUBMITTED:**

Staff recommends a **YES** vote. Passage of this motion will result in rejection 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 DENY IMPLEMENTATION PROGRAM AMENDMENT AS SUBMITTED:**

The Commission hereby denies certification of the Implementation Program Amendment submitted for the City of San Diego and adopts the findings set forth below on grounds that the Implementation Program as submitted does not conform with, and is inadequate to carry out, the provisions of the certified Land Use Plan(s). Certification of the Implementation Program would not meet the requirements of the California Environmental Quality Act as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Implementation Program as submitted.

- II. **MOTION II:** *I move that the Commission certify the Implementation Program Amendment No. 5-11B for the City of San Diego if it is modified as suggested in this staff report.*

**STAFF RECOMMENDATION OF CERTIFICATION AS MODIFIED:**

Staff recommends a **YES** vote. Passage of this motion will result in certification of the Implementation Program Amendment with suggested modifications 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 THE IMPLEMENTATION PROGRAM AMENDMENT WITH SUGGESTED MODIFICATIONS:**

The Commission hereby certifies the Implementation Program Amendment for the City of San Diego if modified as suggested and adopts the findings set forth below on grounds that the Implementation Program Amendment, with the suggested modifications, conforms with and is adequate to carry out the certified Land Use Plan(s). Certification of the Implementation Program 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 Implementation Program Amendment on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.

### **PART III. SUGGESTED MODIFICATIONS**

Staff recommends the following suggested modifications to the proposed Implementation Plan be adopted. The underlined sections represent language that the Commission suggests be added, and the ~~struck-out~~ sections represent language which the Commission suggests be deleted from the language as originally submitted.

1. Please revise Sub-section 143.0110(c), When Environmentally Sensitive Lands Regulations Apply, to read as follows:

#### **§143.0110 When Environmentally Sensitive Lands Regulations Apply**

This Division applies to all proposed *development* when *environmentally sensitive lands* are present on the *premises*.

(a) through (b) [No change in text.]

(c) A Neighborhood Development Permit or Site Development Permit is not required for the following *development* activity:

- (1) *Development* on a *premises* containing *environmentally sensitive lands* that is limited to interior modifications or repairs, or any exterior repairs, alterations or maintenance that does not increase the footprint of an existing building or *accessory structure*, and will not encroach into the *environmentally sensitive lands* during or after construction.
- (2) Outside of the Coastal Overlay Zone, ~~d~~*Development* on a *premises* containing *environmentally sensitive lands* where the *development*:
  - (A) Would not encroach into *environmentally sensitive lands* during or after construction;
  - (B) Would not expand brush management Zone One into *environmentally sensitive lands*;
  - (C) Would comply with the *MHPA* adjacency guidelines as applicable;
  - (D) Would maintain a minimum 40 foot *setback* from the *coastal bluff edge* of a *sensitive coastal bluff*; and
  - (E) Would either:
    - (i) Maintain at least a 100 feet separation distance from *sensitive biological resources* and at least a 40 feet separation distance from the top of slope of *steep hillsides*; or

- (ii) Locate *development* in a legally graded or developed portion of the *premises* separated from *environmentally sensitive lands* by an existing *fence* or other physical barrier.
- (3) through (8) [No change in text.]
- (9) *Development* in a *Special Flood Hazard Area* that is permitted in accordance with the underlying base zone and complies with the regulations in Sections 143.0145 and 143.0146.

2. Please revise Sub-section 126.0115(a), Tolling of a Development Permit, to read as follows:

**§126.0115 Tolling of a Development Permit**

- (a) Outside of the Coastal Overlay Zone, ~~a~~An *applicant* may request a tolling of the expiration of an approved or conditionally approved *development permit* for up to 5 years while a lawsuit involving the approval or conditional approval of the *development permit* is or was pending in a court of competent jurisdiction.
- (b) A request to toll the process must be submitted prior to expiration of the *development permit*.
- (c) A decision regarding a request to toll the expiration date for a *development permit* shall be made in accordance with Process One.
- (d) A request to toll the expiration date for a *development permit* shall be granted within 40 days of the date of application if it can be demonstrated to the satisfaction of the City Manager that:
  - (1) A lawsuit was filed that is related to the processing of an approved or conditionally approved *development permit*; and
  - (2) Tolling of the expiration date for up to 5 years during the lawsuit would allow time for the *applicant* to address associated court orders or procedures related to processing of the *development permit*.
- (e) Upon resolution of the lawsuit, the *applicant* shall contact the City Manager to request the adjusted expiration date for the approved or conditionally approved *development permit*. The adjusted expiration date shall allow tolling as follows:
  - (1) The credited time for the tolling period shall be limited to the time period between the date the petition or complaint in the lawsuit was filed and the date the lawsuit was officially resolved.
  - (2) The credited time for the tolling period shall not exceed 5 years.

## **A. AMENDMENT DESCRIPTION**

The subject amendment request consists of approximately 65 separate items, and represents the 7<sup>th</sup> Update of the certified LDC, which went into effect in the coastal zone on January 1, 2000. The City periodically reviews the LDC and proposes corrections, modifications, clarifications, etc. to make the document easier to understand and enforce.

This update is similar to past updates in that it addresses a number of different categories of the LDC, including how to calculate certain measurements (such as building height or setbacks), determining applicable permit process, landscaping, parking, compliance with State law, and minor corrections. Many of the requested updates are simple changes in nomenclature or correcting references to other regulations in the code. The proposed amendments synchronize the expiration dates for tentative maps and associated development permits, as well as clarify the findings required for approval of vacations of easements and public right-of-ways.

While much of the update addresses how measurements and calculations are to be obtained, the standards themselves, such as overall height limits, required setback width, etc., are not changed. Instead, the explanation of how to measure and calculate has been simplified to be more understandable for any developer, homeowner, or concerned citizen. These directions provide the appropriate methods to use to determine setbacks, calculate height or floor area ratio, etc. as well as making definitions of terms clearer. Similarly, although parking standards are not modified, some changes address underground parking structures, and what constitutes the term “underground” (i.e., how much of a basement, parking level, etc. can be above ground and still have it be considered an “underground” structure). Elsewhere, identical language found in more than one part of the IP is being deleted where possible to avoid duplication. Finally, some land uses that had been permitted by Process III (Planning Director approval) in the current LDC will now require a Process IV (Planning Commission approval) or V (City Council approval).

## **B. FINDINGS FOR REJECTION**

The standard of review for LCP implementation submittals or amendments is their consistency with and ability to carry out the provisions of the certified LUP.

### **Permit Process Amendments:**

The certified LUPs identify what uses will be allowed where, and the subject amendment does not modify these land use designations or corresponding zones. However, the LUPs do not include detail about what type of permit process different types of developments must follow. Thus, modifying a process to require a greater degree of discretion for some types of developments does not conflict with any LUP policies.

However, the subject amendment to the LCP contains a proposed provision within Section 143.0110 that lowers the permitting requirements and level of review given to some properties that contain Environmentally Sensitive Lands (ESL) by exempting them from obtaining a Neighborhood Development Permit (NDP) or Site Development Permit

(SDP) if certain listed criteria are met. Section 143.0110 as proposed to be amended states, in relevant part:

**§143.0110 When Environmentally Sensitive Lands Regulations Apply**

This ~~d~~Division applies to all proposed *development* when *environmentally sensitive lands* are present on the *premises*.

(a) through (b) [No change in text.]

(c) A Neighborhood Development Permit or Site Development Permit is not required for the following *development* activity:

~~(1) Outside the Coastal Overlay Zone, development on a premises containing environmentally sensitive lands when the development will not encroach into the environmentally sensitive lands during or after construction, if the property owner signs an acknowledgment that further development on the property is not permitted unless the development is reviewed and approved pursuant to this division and if the development proposal provides for the following:~~

~~(A) A 100-foot setback from sensitive biological resources;~~

~~(B) A 40-foot setback from the top of slope of steep hillsides;~~

~~(C) A 100-foot setback from floodplains.~~

~~(2)(1) Development on a premises containing environmentally sensitive lands that is limited to interior modifications or repairs, or any exterior repairs, alterations or maintenance that does not increase the footprint of an existing building or accessory structure, and will not encroach into the environmentally sensitive lands during or after construction. For a premises containing a sensitive coastal bluff, any addition shall observe a minimum 40-foot setback from the coastal bluff edge.~~

~~(2) Development on a premises containing environmentally sensitive lands where the development:~~

~~(A) Would not encroach into environmentally sensitive lands during or after construction;~~

~~(B) Would not expand brush management Zone One into environmentally sensitive lands;~~

~~(C) Would comply with the MHPA adjacency guidelines as applicable;~~

~~(D) Would maintain a minimum 40-foot setback from the coastal bluff edge of a sensitive coastal bluff; and~~

~~(E) Would either:~~

~~(i) Maintain at least a 100-foot separation distance from sensitive biological resources and at least a 40-foot separation distance from the top of slope of steep hillsides; or~~

(ii) Locate *development* in a legally graded or developed portion of the *premises* separated from *environmentally sensitive lands* by an existing *fence* or other physical barrier.

(3) through (8) [No change in text.]

(9) Development in a *Special Flood Hazard Area* that is permitted in accordance with the underlying base zone and complies with the regulations in Sections 143.0145 and 143.0146.

In the case of the City of San Diego, it has developed community planning areas based on its established neighborhoods and future urbanizing area. Predicated on those community planning areas, the City utilized the geographic segmentation provisions of the LCP regulations and developed its land use plan component covering twelve different communities (i.e., North City, La Jolla, Pacific Beach, Mission Beach, Ocean Beach, Peninsula, Otay-Mesa Nestor). Each community plan or LCP Land Use Plan contains policies that protect sensitive coastal resources including, but not limited to, environmentally sensitive lands in that community. The Commission's review of the proposed changes to the Land Development Code must assure that development is approved only when consistent with the certified LCP.

Listed below are typical resource protection policies contained in the certified Land Use Plan segments in the Coastal Overlay Zone for the City of San Diego.

#### **Torrey Pines Community Plan**

- Construction or improvements of roadways adjacent to biologically sensitive areas or open space shall be designed to avoid impacts, especially in wetlands and wetland buffer areas. Protection of sensitive habitats through buffers, realignments and reduced development areas shall also be considered.
- Protect, preserve and enhance the variety of natural features within the San Dieguito River Valley including the floodplain, the open waters of the lagoon and river, wetlands, marshlands and uplands.

#### **Mira Mesa Community Plan**

- No encroachment shall be permitted into wetlands, including vernal pools. [...]

#### **La Jolla LCP Land Use Plan**

- The City should preserve and protect the coastal bluffs, beaches and shoreline areas of La Jolla assuring that development occurs in a manner that protects these resources, encourages sensitive development, retains biodiversity and interconnected habitats and maximizes physical and visual public access to and along the shoreline.

In the case of a proposed development within the coastal zone also occurring on a site where environmentally sensitive lands are present, a Neighborhood Development Permit or a Site Development Permit would also be required by the ESL ordinance. The ESL regulations apply to sensitive biological resources; steep hillsides; coastal beaches; sensitive coastal bluffs and special flood hazard areas. Based on the certified policies of the City's land use plans, the ESL regulations establish the various resource protection measures and development standards in the LDC. The ESL regulations mandate the preservation of wetlands, the provision of wetland buffers, and the protection of sensitive hillsides and habitat areas. These regulations are very rigorous and define specifically what the requirements are for development on a site that contains any of these resources. So, in addition to the findings required for the issuance of any coastal development permit, if applicable, the findings necessary to support issuance of a site development permit under the ESL ordinance would also have to be met to establish development on a site containing sensitive habitat or resources. The proposed development must meet the findings of each of the respective permit processes or the development cannot be approved.

While it is always beneficial when development as proposed does not contain encroachments into or impacts to sensitive habitat, the specific siting of a particular project at a particular point in time is rarely sufficient in and of itself to ensure full resource protection policies of the certified LCP are carried out. Measures commonly called for in the LCP, such as wetland buffers and deed restricted open space, are, in and of themselves, of great legal and protective benefit, independent of the specific parameters of a particular development. Such measures ensure not only that the particular development being applied for will meet ESL regulations, but that future owners, users, and the public in general will be given notice of, and bound by, the protective measures called for in the LCP.

The Commission finds the City's approach of excluding development from the discretionary review process afforded by ESL, if certain criteria are met, is not adequate to carry out all the provisions of the certified LUPs which address more than just the siting of a structure. The LDC needs to be clear that, in addition to precluding encroachment into sensitive habitats, all of the measures to protect a site's resources (i.e. establishment of a wetland buffer or execution of an open space deed restriction or covenant) are secured in any development entitlement even if there's no direct impact. The LDC and the Coastal Act are both very protective of such resources and allowed very limited impacts, but there are a myriad of indirect and potential off-site impacts (lighting, runoff, fuel mod, etc.) to sensitive resources that may arise even on projects that don't directly encroach into a wetland or steep hillside. For all of those reasons, the ESL regulations are where the Commission certified all the resource protection provisions. Absent the application of ESL regulations to development within the Coastal Overlay Zone being included in the proposed regulations, the Commission cannot be assured that sensitive coastal resources will be afforded the full protection provided by standard measures such as deed restrictions and wetland buffers for ESL present on the premises. Therefore, in order to ensure that the appropriate resource protection standards are considered and imposed, as applicable, the submitted ordinance must be rejected as submitted.

### **Tolling of Development Permits:**

The certified LDC identifies the processes that govern the extension of development permits, as well as delineating the findings necessary for granting such applications. The tolling or extending of approved development permits presents coastal resource issues due to the possibility for development to occur, through tolling or extension of expiration dates, many years after initial approval, when changing conditions may have affected the development's conformance with the physical and legal environment. Because coastal development is rarely uniform and the coastal zone is by its very nature a constantly changing environment, the accuracy and timeliness of legal and scientific analysis that is involved in the approval of coastal development is of utmost importance, and provides reassurance that the policies and provisions of the certified LUPs and Coastal Act are being enacted.

The proposed amendments include provisions greatly expanding the class of development permits that may qualify for tolling of up to 5 years in duration. Whereas in the past, the City has granted extensions of time to permits tied to tentative maps, consistent with the Subdivision Map Act, the proposed amendment removes that relationship and instead provides for all development permits to be tolled. The proposed amendment states in relevant part:

#### **§126.0115 Tolling of a Development Permit**

- (a) An applicant may request a tolling of the expiration of an approved or conditionally approved development permit for up to 5 years while a lawsuit involving the approval or conditional approval of the development permit is or was pending in a court of competent jurisdiction.
- (b) A request to toll the process must be submitted prior to expiration of the development permit.
- (c) A decision regarding a request to toll the expiration date for a development permit shall be made in accordance with Process One.
- (d) A request to toll the expiration date for a development permit shall be granted within 40 days of the date of application if it can be demonstrated to the satisfaction of the City Manager that:
  - (1) A lawsuit was filed that is related to the processing of an approved or conditionally approved development permit;  
and
  - (2) Tolling of the expiration date for up to 5 years during the lawsuit would allow time for the applicant to address associated court orders or procedures related to processing of the development permit.
- (e) Upon resolution of the lawsuit, the applicant shall contact the City Manager to request the adjusted expiration date for the approved or conditionally approved development permit. The adjusted expiration date shall allow tolling as follows:
  - (1) The credited time for the tolling period shall be limited to the time period between the date the petition or complaint



in the lawsuit was filed and the date the lawsuit was officially resolved.

(2) The credited time for the tolling period shall not exceed 5 years.

The Commission finds that this provision, independent of the discretionary authority granted by the state through the Subdivision Map Act, is overly broad. The expansion of tolling ability with regard to coastal development could very readily undermine the timeliness and accuracy of analysis critical to the protection of coastal resources. Without knowing whether there are changed circumstances in either the legal or physical environment of the development, the Commission cannot be confident that all appropriate and applicable protective measures called for in the certified LCP have been applied to fully implement the intent of the Coastal Act. In summary, therefore, given the concerns with the discretionary permits exemption in the ESL regulations and the expanded application of tolling to all development permits, the City's LCP amendment must be rejected as submitted.

#### **PART V. FINDINGS FOR APPROVAL OF THE CITY OF SAN DIEGO IMPLEMENTATION PLAN AMENDMENT, IF MODIFIED**

##### **Permit Process Amendments:**

The Commission finds that modifications are required to the proposed permit process amendment in order to assure implementation of the certified LUPs and the Coastal Act. Regarding permit process, the most significant changes to the proposed amendments which will assure the analysis and protective measures, such as wetland buffers and open space deed restrictions, provided by the ESL regulations are applied to all coastal development on premises containing ESL is to eliminate the exemption of Section 143.0110 with respect to properties within the Coastal Overlay Zone.

Through the suggested modification to the amendment's proposed exemption from obtaining a NDP or SDP, deviations from the ESL regulations are not applicable within the Coastal Overlay Zone. By retaining the requirement for development on premises containing ESL to obtain an NDP or SDP, which are the recognized vehicles for application of ESL regulations, the proposed amendment, as modified, can be found consistent with the applicable certified LUPs.

##### **Tolling of Development Permits:**

The second modification to the proposed amendments will be to limit the application of Section 126.0115's expanded tolling provisions for development permits to development that is located outside of the Coastal Overlay Zone. Through the suggested modification to the proposed tolling amendment, the Commission ensures that development permits for development within the Coastal Overlay Zone will not be able to avoid analysis of changed circumstances, be they legal or physical, for overly long periods of time, but instead will have to satisfy the legally required findings contained in the LDC before being granted a time extension.

In addition to the above-mentioned amendments related to permit process, ESL regulations, and tolling, many of the proposed amendments represent changes in wording, corrections, and deletions. The more substantive proposed amendments provide directions on how to obtain permits for different types of development and how to measure/calculate various distances and features of a site. Although LUPs are required to have a great deal of specificity when identifying environmental standards, placement or prohibition of various uses, and development standards, they do not address how to obtain or provide the specific information required to assure a proposed development is consistent with those policies. Those measures are typically contained in the zoning code and implementation plan.

### **Measurement Amendments:**

Most, if not all, City of San Diego certified LUPs include a height limit, but do not always clearly address how, or from where, it is measured. The proposed changes to the IP clarify how to measure the height, but don't change the height limit itself. The changes primarily rearrange the structure of the measurement sections to make them more user-friendly without changing the basic parameters of the certified IP.

Currently, the City of San Diego LDC provides for a Coastal Height Limit Overlay Zone (CHLOZ) that was approved by voters as "Prop D" in 1972. The CHLOZ applies a 30-foot height limit on all development within the CHLOZ, as described in Section 132.0505 of the LDC, with subsection (c) stating that the base measurement of height for development within the CHLOZ will be in accordance with the Uniform Building Code of 1970. However, in addition to Section 132.0505(c), various zones of the City allow for an alternative base measurement of development. None of these alternative base measurement methodologies allow for development height higher than that allowed by Section 132.0505(c), but instead allow the same height or lower. Where there have been conflicting height requirements between the two methodologies, applicants for coastal development have attempted to argue that they should be able to build to the height permitted by CHLOZ methodology, not the applicable zone's alternative, lower height limit, or vice versa. In such cases, the City's practice has been to apply the lower, more restrictive height so as to bring development into compliance with all the applicable height restrictions. The proposed amendments will not change this practice, but instead will clarify it for readers of the LDC so as to reduce confusion and streamline permit processing times. Because the proposed amendments will not change the City's long practice of, when the Prop D height limit and the applicable zoning height limit conflict, applying the lower, more restrictive height limit, the modified regulations remain consistent with the certified LUPs.

### **Landscape Amendments:**

Certified LUPs contain provisions governing landscaping, including appearance, content, public safety, and impact on surrounding environment. The IP clarifies the landscape regulations and brush management requirements that apply to various developments. The proposed amendments do not change the parameters of Zone One brush management but instead clarifies its applicability to different types of development. Thus, the proposed amendments are consistent with the certified LUPs.

**Parking Amendments:**

The certified LUPs identify the need for sufficient public and private parking in order to promote the convenient use of transportation and public resources. However, LUPs rarely go into detail about the types of calculations required in order to compute required parking. The proposed amendments do not change parking ratios and, where the amendments exempt previously conforming uses from Neighborhood Development Permit requirements regarding parking, the regulatory language states that this amendment is not applicable within the Beach Impact Zone. This is demonstrated in Section 142.0510 which, as proposed, states in relevant part:

**§142.0510 General Parking Regulations**

- (a) through (c) [No change in text.]
- (d) ~~Previously Conforming Premises~~ Previously Conforming Premises. Enlargement or change in use, or resumption of a discontinued use, for a *premises* that is *previously conforming* for the reason that it does not provide the number of *off-street parking spaces* required by this ~~d~~Division shall ~~be required to~~ provide parking as follows:
  - (1) through (3) [No change in text.]
  - (4) A discontinued use may resume on a *premises* with *previously conforming parking* if:
    - (A) The use is permitted in accordance with the underlying base zone; and
    - (B) The *premises* is not located within the Parking Impact Overlay Zone; or
    - (C) The *premises* is located within the Parking Impact Overlay Zone, but the use has been discontinued for less than 2 years as determined in accordance with Section 142.0510(d)(5).
  - ~~(4)(5)~~ Within the Parking Impact Overlay Zone, When a use is proposed on a *premises* for which if the previous use has been discontinued for a period of 2 or more consecutive years, parking shall be required as provided in this ~~d~~Division for the new use, unless a property owner has obtained a Neighborhood Development Permit.
    - (A) through (B) [No change in text.]
- (e) through (g) [No change in text.]

Thus, the proposed amendments do not change the previously certified parking requirements and are consistent with certified LUPS.

**Flood Hazard Areas**

The proposed amendment adds provisions to the Special Flood Hazard Area regulations of the LDC that would include exceptions permitted under Federal Emergency

Management Agency (FEMA) regulations concerning development encroachment into floodways. While this change could be a cause for concern should it make it more likely that development in the coastal zone could encroach into floodways, the proposed amendment does not alter Section 143.0145(e)(7) of the LDC, which clearly states that within the Coastal Overlay Zone, no development shall occur in floodways with very limited exceptions:

#### **§142.0145 Development Regulations for Special Flood Hazard Areas**

[...]

(e) Floodways

[...]

7. Within the Coastal Overlay Zone, no *structure* or portion thereof shall be erected, constructed, converted, established, altered, or enlarged, or no landform alteration *grading*, placement or removal of vegetation except that related to a historic and ongoing agricultural operation, or land division shall be permitted, provided:
  - A. Parking lots, new roadways, and roadway expansions shall be allowed only where indicated on an adopted *Local Coastal Program land use plan*.
  - B. *Floodway* encroachments for utility and transportation crossing shall be offset by improvements or modifications to enable the passage of the *base flood*, in accordance with the FEMA standards and regulations provided in Section 143.0146.

City staff has concurred with the Commission's interpretation of the certified LCP that existing prohibitions on development in floodways within the Coastal Overlay Zone are still controlling and are not being modified with this proposed update.

#### **Minor Corrections:**

These amendments merely change the font or terminology used in describing various development references in the IP and do not affect consistency with the certified LUPS.

In summary, these amendments address the details of project development, without changing the basic concept of what is allowed in different areas. They do not modify or conflict with the policies or standards of individual certified LUP segments because they pertain to the "how" of things rather than the "where" or "when." For the most part, the proposed revisions do not significantly modify any development standards that would affect implementation of the City's LCP. Therefore, the 7<sup>th</sup> Update to the City of San Diego LCP, as modified, is consistent with, and adequate to carry out, the certified LUPS.

#### **PART VI. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**


Section 21080.5 of the California Environmental Quality Act (CEQA) exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its local coastal program. The Commission's LCP review and approval

program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under CEQA Section 21080.5, the Commission is relieved of the responsibility to prepare an EIR for each LCP.

An EIR (No. 96-0333) was prepared and certified by the City on October 28, 1997, for the original project – the adoption of the Land Development code. The proposed amendments to the LDC as part of the 7<sup>th</sup> Update were reviewed by the City's Environmental Analysis Section and they determined, in accordance with CEQA Guidelines Section 15162(a), that no subsequent EIR or other environmental document is needed for the adoption of the 7<sup>th</sup> Update, as all impacts were adequately addressed and disclosed in EIR No. 96-0333.

Nevertheless, the Commission is required in an LCP submittal or, as in this case, an LCP amendment submittal, to find that the LCP, or LCP, as amended, does conform with CEQA provisions. In this particular case, the LCP amendment will not have any significant adverse effects on the environment and there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact on the environment. Therefore, the Commission finds the subject LCP implementation plan, as amended, conforms with CEQA provisions.

Exhibit No. 1 may be found on the Commission's website at [www.coastal.ca.gov](http://www.coastal.ca.gov) under the June 12, 2013 meeting agenda, Item W16h.

EXHIBIT NO. 1
APPLICATION NO. <b>SAN-MAJ-5-11B</b>
Proposed Amendments
 California Coastal Commission