

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
(619) 767-2370



September 22, 2016

Th15a

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 PLANNER, SD COAST DISTRICT**

**SUBJECT: STAFF RECOMMENDATION ON CITY OF SAN DIEGO LCP
AMENDMENT NO. LCP-6-SAN-16-0043-3 (Previously Conforming
Development Resubmittal) for Commission Meeting of October 5-7, 2016**

SYNOPSIS

At the January 2016 Commission hearing, the City of San Diego proposed as part of its 9th Update to the Land Development Code (LDC), which serves as the Implementation Plan (IP) of the certified Local Coastal Program (LCP), amendments to the regulations governing improvements to previously conforming structures. The Commission rejected the amendment as proposed and approved it with suggested modifications that terminated the previously conforming rights of a structure located on properties abutting a coastal beach or bluff when more than fifty percent of the structure's exterior walls or vertical or lateral load bearing systems was demolished. The Commission also required that the amount of exterior walls demolished be tracked on a cumulative basis over time. However, at the hearing, neither the City nor the Commission could identify a reasonable method to perform such cumulative tracking, and thus the amendment was approved without a specific methodology being identified.

Subsequent to the Commission's January 2016 approval, the City devised a methodology of cumulatively accounting the demolition of exterior walls and added it to the amendment language that was approved by the Commission at the January 2016 hearing. This modified ordinance was then approved by the City Council. However, because of the presence of the new, substantive language that varies from the Commission action, the amendment now requires additional Commission review. Thus, on August 22, 2016, the City LCP Amendment No. LCP-6-SAN-16-0043-3 was filed in the San Diego District office as a resubmittal. As such, the last date for Commission action on this item is the October 2016 hearing.

SUMMARY OF AMENDMENT REQUEST

The subject amendment request consists of changes to the regulations in the certified LDC governing improvements to previously conforming structures. The changes identify that for properties that contain or abut a coastal beach or coastal bluff, improvements to previously conforming structures cannot increase the degree the nonconformity of the structure, and must comply with delineated criteria regarding: the amount of exterior wall

demolition, when existing non-conforming square footage must be removed in exchange for adding new conforming square footage, prohibiting basement additions, restricting gross floor area increases by more than fifty percent, prohibiting reliance on shoreline protection, and waiving rights to future shoreline protection. The amendment also clarifies calculating and measuring exterior walls for purposes of demolition.

The City originally brought this amendment before the Commission with suggested modifications at the January, 2016 hearing, whereupon the Commission approved the amendment but commented on the amendment's lack of identifying the methodology by which the City would track the cumulative demolition of exterior walls on previously conforming structures over time. The City subsequently added additional regulatory language requiring that applicants for improvements to previously conforming structures on premises that contain or abut a coastal beach or coastal bluff edge must rebut the presumption that such structures have already exceeded the fifty percent threshold for demolition of exterior walls since the date of certification of this amendment, and thus lost their previously conforming status. The proposed amendment identified the date of effectiveness for the exterior wall accounting as the date of this Commission action. The resubmitted amendment also contains minor restructuring of the amendment language to bring it in line with the organizational layout of the LDC as a whole.

SUMMARY OF STAFF RECOMMENDATION

Staff is recommending approval of the proposed amendment, as submitted. The proposed amendment seeks to inform property owners that while some level of improvement to a previously conforming structure can potentially be allowed without the entire structure needing to be brought into conformity with current regulations, there are certain thresholds that, once crossed, terminate previously conforming rights. The proposed amendment also places the burden of proof that the structure has not exceeded fifty percent demolition of exterior walls on the applicant.

While many improvements to existing structures, previously conforming or not, trigger the need for a CDP under the certified LCP, a requirement for a CDP is not always sufficient to meet the entire intent of the certified LCPs. There are certain levels of improvements to a structure even along the shoreline that do not trigger the need for a CDP (such as small additions), that could still increase the degree of non-conformity by extending or renewing the life of a previously conforming structure, such as a portion of a residence within a bluff top setback. Furthermore, while additions and alterations to an existing structure are assessed on a cumulative basis to determine whether or not a coastal development permit is required, they are not currently tracked on a cumulative basis to establish a threshold for when non-conforming rights should be considered for abatement. Thus, while an individual project may fall under the threshold for requiring that the entire structure be brought into conformance with current standards, over time separate alterations may be utilized to thwart the intent of the threshold and construct an essentially new structure in piecemeal fashion. This can perpetuate nonconforming uses along shoreline properties, where the risk from sea level rise, and thus the potential for future shoreline protective devices, is greatest. The Commission recognizes that the City's proposed amendment is directed at encouraging development in its large inventory of previously conforming properties city-wide. For the properties immediately adjacent to

the shoreline and bays, the patterns of development must be addressed in a manner that recognizes the changing nature of the coastline and the hazards therein. Protective measures including, but not limited to, recordation of waivers of shoreline protection, abating non-conformities, and siting new development away from coastal bluffs and beaches may be reasonable required for some of the potential improvements to previously conforming structures along the coastline. Recognizing that it is these properties along the coastline that are under the greatest risk from coastal hazards and where concerns for public access and views are greatest, the proposed amendment proposes that improvements to structures on such properties do not increase the level of non-conformity and focuses this stricter language on these oceanfront or bayfront properties within the coastal zone.

Thus, the proposed amendment raises no Coastal Act issues because the amended LDC may be found consistent with the City's many certified Land Use Plans (LUPs). The appropriate resolutions and motions begin on Page 5. The findings for approval begin on Page 5.

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. The LDC 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 LCP-6-SAN-16-0043-3 may be obtained from Alexander Llerandi, Coastal Planner, at (619) 767-2370.

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(s). 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 resolution and findings. The appropriate motion to introduce the resolution and a staff recommendation are provided just prior to this resolution.

- I. **MOTION I:** *I move that the Commission reject the Implementation Program Amendment for the City of San Diego certified LCP, 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 the Implementation Program Amendment for the City of San Diego LCP, 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 City of San Diego LUP, 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 Amendment 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, as amended.

PART III. FINDINGS FOR APPROVAL OF THE CITY OF SAN DIEGO IMPLEMENTATION PLAN AMENDMENT, AS SUBMITTED

A. AMENDMENT DESCRIPTION

The proposed amendment is a resubmittal of an amendment to the LDC's regulations governing improvements to previously conforming structures that the Commission approved at the January 2016 hearing. However, that action did not become effective and the City has resubmitted an amended ordinance that incorporates the actions taken in January with two additional substantive changes. The resubmitted ordinance now contains additional language requiring that applicants wishing to improve previously conforming structures on properties containing or abutting a coastal beach or bluff must rebut the presumption that the structure has already exceeded the fifty percent threshold with regard to demolition of exterior walls. The purpose of that amendment is to inform and clarify for the public that while improvements to previously conforming structures can be applied for, there exist certain thresholds beyond which a structure's previously conforming rights terminate, causing the entire structure to be considered a

redevelopment that must meet all current development standards. This amendment would thus allow owners of previously conforming structures to make improvements while limiting the possibility that previously conforming features could be exacerbated or substantially perpetuated in especially sensitive areas, along coastal beaches or bluffs.

At the January hearing, Commission staff incorporated into their suggested modifications, and the Commission approved, changes proposed by the City to tie the fifty percent threshold for terminating rights to a structure's exterior walls and its lateral or vertical load resisting system. However, while the final, approved amendment required that the demolition of exterior walls be tracked on a cumulative basis over time, the amendment did not identify the manner in which such accounting would occur. The City explained at the hearing that they do not require or retain plans for every type of permit that they process; that there could be certain small, non-discretionary permits in a property's permit history for which the City record may have no plans to reference. However, subsequent to the Commission's approval at the January hearing, the City added language to the amendment that is currently proposed whereby a previously conforming structure on a property containing or abutting a coastal beach or coastal bluff is presumed to already be beyond the fifty percent threshold unless the applicant can demonstrate otherwise, starting from the date of certification for this proposed amendment.

B. FINDINGS FOR APPROVAL

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. 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). These community plans or LCP Land Use Plans contain policies that seek to reduce risk from coastal hazards and protect, or where possible enhance, public access and public views. 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 LUPs.

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, such as the zoning code, are typically contained in the Implementation Plan.

Listed below are shoreline development and adaptation standards, hazard reduction, and resource protection policies contained in the certified Land Use Plan segments in the Coastal Overlay Zone for the City of San Diego.

1. Applicable LUP Policies

Ocean Beach Land Use Plan

- 7.3.5 Develop and implement shoreline management strategies to ensure all shoreline development will provide long term protection of the coastal bluffs, beaches, and public coastal access in the community.
 - a. Require assumption of risk and a waiver of rights to future shoreline protection for any new bluff top development or redevelopment.
 - b. Tie a shoreline protective device to the life of the structure it has been permitted to protect and address the feasibility of removing such devices when the structure it is authorized to protect is demolished, redeveloped, or no longer requires a protective device, whichever occurs first. Include mitigation for shoreline armoring, if allowed, for coastal resource impacts, including but not necessarily limited to ecological impacts and impacts to shoreline sand supply and public access and recreation over the life of the protective device. Require periodic assessment of the need for additional mitigation and of changed site conditions that may warrant removal or modification of the protective device.
- 7.3.8 Preserve and protect coastal bluffs, beaches, and shoreline areas. Encourage the retreat of existing development from the coastal bluff edge, and the removal of shoreline protective devices with proposals for development. Use the coastal development permit approval process to require additions and accessory structures to be landward of the bluff edge setback line.
 - a. Require removal or relocation of accessory structures located within the bluff edge setback if it is determined, in conjunction with proposed development on the site that such structures pose a threat to the bluff stability, or, such structures should be brought into conformance with current regulations.
 - b. When redevelopment of an existing previously conforming structure on a bluff top property includes the demolition or removal of 50 percent or more of the exterior walls or replacement of more than 50 percent of the structure, require the entire structure to be brought into conformance with all policies and standards of the Local Coastal Program, including, but not limited to, bluff edge setback.

La Jolla 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.
- Development on coastal bluffs should be set back sufficiently from the bluff edge to avoid the need for shoreline or bluff erosion devices so as not to impact the geology and visual quality of the bluff and/or public access along the shoreline.

- The City should establish incentives to encourage the location of new or redevelopment landward of the bluff edge setback line.
- Set back new development on property containing coastal bluffs at least 40 feet from the bluff edge so as to no impact the geology and visual quality of the bluff. This setback may be reduced to not less than 25 feet if evidence is provided that indicates the site is stable enough to support the development at the proposed location without requiring construction of shoreline protective measures throughout the economic lifespan of the structure (not less than 75 years). Require applicants to accept a deed restriction to waive all rights to protective devices associated with new development on coastal bluffs. Do not allow a bluff edge setback of less than 40 feet if erosion control measures or shoreline protective devices exist on the site which are necessary to protect the existing principal structure in danger from erosion. Require removal of obsolete or unnecessary protective devices, when feasible, and in a safe manner, or otherwise allow such devices to deteriorate naturally over time without any improvements allowed, to restore the natural integrity and visual quality of the coastal bluff over the long term. When appropriate, development may include open fencing to deter trespassing and protect fragile resources, and erosion control measures. These measures, such as seawalls and drainage conduits, are subject to the Environmentally Sensitive Lands regulations which will ensure that such measures do not alter the natural character of the bluff face, restrict public access, or encroach on public property. Do not allow erosion control measures on a site where development was approved with less than a 40 foot bluff edge setback, unless otherwise permitted in the Sensitive Coastal Bluff Regulations in the Land Development Code.
- Require removal or relocation of accessory structures located within the bluff edge setback if it is determined, in conjunction with proposed development on the site that such structures pose a threat to the bluff stability, or such structures should be brought into conformance with current regulations.
- For structures located partially or entirely within the bluff edge setback, require all additions (at grade and at upper floors) to be landward of the bluff edge setback line. Additions that increase the size of the structure by 50% or more, including all authorized additions that were undertaken after March 17, 1990 (effective certification of the LCP), shall not be authorized unless such structures are brought into conformance with the policies and standards of the Local Coastal Program.

Due to the age of the City of San Diego and many of its coastal communities, previously conforming structures commonly exist within the coastal zone. Some of these structures are previously conforming with regard to structural envelope, with portions of the structures within required front, side, or rear yard/bluff top setbacks. Over the years, many of these structures are the subject of applications to install new improvements, such as additions (both above and below grade), partial or complete demolition and reconstruction, or extensive remodels.

Because the properties along the coastline are at the greatest risk from coastal hazards, and development there poses the greatest potential to adversely impact public access and public views, special attention should be paid to ensure that improvements to those properties do not increase the degree of non-conformity, either in size or economic life. As such, for properties containing or abutting to coastal beaches and coastal bluffs, upon certification of this proposed amendment, the City will begin tracking cumulative demolition of exterior walls to ensure that previously conforming development is not inappropriately extended and that redevelopment of previously conforming structures is properly identified and current standards applied. By focusing the effect of the stricter language of the suggested modifications on these properties, property owners of these coastal parcels will still be able to improve their existing structures, being able to conduct common improvements such as remodels, while also being informed of a clear threshold for when the certified LCP would consider their structure to be completely redeveloped and their existing non-conforming rights terminated.

The proposed amendment language focusing on “premises that contains or abuts a coastal beach or coastal bluff” in order to identify the properties that fall under the stricter scrutiny of the suggested modification language is preferable to an arbitrary linear distance inland from those aforementioned geological features. Development along San Diego’s coast line, just like the coast line itself, is rarely uniform, with various factors affecting topography, lot size, structure location, drainage, views, and access opportunities. Lots and parcels along the coast line are of various depths and sizes, and it is possible that in stating an explicit distance inland, impacts to geological stability and coastal access from nonconforming structures would not be addressed. Therefore, because by their nature, the majority of properties along the coast will either abut or contain a defined coastal feature such as a coastal bluff or sandy beach, basing the applicability of the suggested modification language on the presence of such coastal features will reduce the likelihood that a previously conforming structure will not be properly regulated under the modified LCP language.

As mentioned earlier, one of the purposes of previously conforming regulations is to identify the thresholds beyond which a structure is no longer considered an existing structure, but instead constitutes new development for which previously conforming rights are terminated. The City’s proposed Section 127.0111 establishes how calculation of demolition of exterior walls – a factor used in determining if an improvement will create a new structure – will be carried out. In addition, the certified LUPs of the City of San Diego, such as the La Jolla Land Use Plan and the recently certified Ocean Beach Land Use Plan, recognize that the thresholds for determining when an existing structure has been modified to such an extent that its nonconforming elements should be abated can be calculated by more than just the exterior walls. For example, modification and renovation of interior walls, remodeling, foundation work, roofing components, etc. can all factor into the extent of work performed on an existing residence or structure, and can substantially affect its economic life. Such work can result in replacement of more than fifty percent of the existing structure or additions that cumulatively increase the internal floor area by more than fifty percent. Furthermore, recent Commission action in other LCPs, including nearby Solana Beach, has demonstrated that when determining whether a home is being improved or whether the project under consideration meets the definition of redevelopment, the analysis should look at changes to “major structural components,”

such as the foundation, roof structure, and floor area, in addition to exterior walls. At the January 2016 hearing, the City explained that such major structural components are captured by analyzing a structure's vertical and lateral resisting systems, as roofs and interior load bearing walls all serve the purpose of supporting a structure against vertical and lateral forces, such as gravity. Upon explanation and discussion, the Commission incorporated the language regarding the vertical and lateral resisting systems into the final amendment language, and that language is part of this resubmitted amendment.

Under the current certified LCP, the City is already required to track the cumulative changes to a structure over time to ensure that stated thresholds are not exceeded in a piecemeal manner (ref. Section 126.0704(a)(2) governing exemptions from coastal development permits). Such a cumulative analysis is important in maintaining consistent application of the provisions of the LCP over the multi-decade economic life of most structures, and the absence of cumulative analysis fails to carry out LUP policies that require previously conforming structures to be brought into conformity with current standards if fifty percent of a structure has been removed or replaced. This creates the potential for previously conforming elements to be rebuilt or renewed, even if reconstructed in the same footprint. The modifications to Section 127.0106(c), which governs expansions to previously conforming structures on parcels that contain or abut a coastal beach or coastal bluff, constitute substantial steps to encompassing measurement and analysis of major elements involved in structural improvements that could potentially increase the degree of non-conformity, such as foundations, exterior walls, and increases in interior floor area. Of note is the revision to Section 127.0106(c)(3), which limits any expansion to 500 square feet unless the applicant removes one square foot of non-conforming floor area for every new square foot of expansion area. This provision allows property owners to improve existing structures while providing an incentive to abate the non-conforming aspects of the structure. The additional specificity on foundations and the prohibition on caissons, coupled with the cumulative accounting of improvements to a structure over time, address most of the alterations and remodeling that are encompassed by "major structural components," greatly reducing the likelihood of a development increasing the degree of nonconformity of an existing structure. The prohibition on reliance on shoreline protection and requirement for a waiver of future rights to shoreline protection for improvements to previously conforming structures on coastal parcels ensures that while a property owner may wish to continue to use a previously conforming structure, doing so will not increase the likelihood that shoreline protection will be installed in the future to protect the improvements, meeting the bluff protection policies of the certified LUPs.

Related to the permissible expansion, the amended language in Section 127.0106(c)(5) recognizes the fact that many structures are previously conforming due to their age, and thus there exists structures along the coast that are substantially smaller in size compared to the neighboring properties. Thus, there could be a case of a 3,000 square foot structure on a coastal parcel with a portion of the structure located within the bluff setback, where the current Floor Area Ratio limit governing total square footage could permit a structure of significantly greater size, resulting from multiple 500 square foot additions over time. In the case of a structure of this type, it may be possible, even with the amended provision, that the property owner could expand the structure in 500 square foot segments over the years, until the end result is a structure over twice the size and retaining the non-conforming portions within the bluff top setback, greatly expanding the economic life of

the structure and thus its degree of non-conformity. To avoid such an outcome, and to provide property owners with a clear threshold beyond which development would lose its previously conforming rights, Section 127.0106(c)(5) clearly states that demolition of exterior walls and expansions to square footage shall be tracked on a cumulative basis from the date of amendment approval so as to identify when the fifty percent threshold is reached for a previously conforming structure.

Finally, a common source of confusion among property owners within San Diego's coastal zone has been what exactly constitutes "demolition" of an existing structure, and thus when the fifty percent threshold is crossed and the entire structure is required to be brought to current standards. By expanding upon and clarifying components are measured, as in the case of exterior walls for structures within the Coastal Overlay Zone, the proposed amendment will simplify the development review process for both property owners during the pre-application stage and the local government during the permit review process. Thus, the amendment as proposed can be found to conform to and carry out the policies of the certified LCPs by ensuring that development along the coastline will conform to current standards over time and ensure that existing risks from shoreline hazards and impacts to coastal resources are not exacerbated.

PART IV. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 21080.9 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 previously conforming regulations of the LDC were reviewed by the City's Environmental Analysis Section and City staff determined, in accordance with CEQA Guidelines Section 15162(a), that no subsequent EIR or other environmental document is needed for the adoption of this amendment, 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 to 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.

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ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 12, ARTICLE 7, DIVISION 1 OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTIONS 127.0104, 127.0105, 127.0106, AND 127.0111, ALL RELATING TO ACCEPTING THE CALIFORNIA COASTAL COMMISSION'S SUGGESTED MODIFICATIONS REQUIRED FOR CERTIFICATION OF THE PREVIOUSLY CONFORMING ORDINANCE ADOPTED AS PART OF THE 9TH UPDATE TO THE LAND DEVELOPMENT CODE.

§127.0104 Maintenance, Repair, Alteration, or Replacement of Previously Conforming Structures

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

(e) In the Coastal Overlay Zone, the *previously conforming* status for a *structure* located on a premises that contains or abuts a coastal beach or within 50 feet of a coastal bluff edge shall terminate upon:

- (1) destruction, demolition, or removal of 50 percent or more of the structure's exterior walls, on a cumulative basis, which is any destruction, demolition, or removal that has occurred on or after _____, which shall be measured in accordance with Section 127.0111, and for which the applicant shall provide sufficient evidence of the nature and extent of the cumulative changes at the time of application for any construction p

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rebut a presumption that the *development* is not entitled to
previously conforming status, or

- (2) destruction, demolition, or removal of 50 percent or more of the
capacity of the lateral or vertical load resisting system of the
previously conforming structure, as determined by the Building
Official.

Upon termination, the development standards applicable to new *structures*
shall then apply to the entire *structure*.

§127.0105 Reconstruction Following Fire, Natural Disaster, or Act of the Public Enemy

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

(d) In the Coastal Overlay Zone, the *previously conforming* status for a
structure located on a *premises* that contains or abuts a *coastal beach* or
~~within 50 feet of a~~ *coastal bluff edge* shall terminate upon:

- (1) ~~Such reconstruction is subject to Coastal Development Permit
regulations and other regulations applicable to *conforming*
development.~~ destruction, demolition, or removal of 50 percent or
more of the *structure*'s exterior walls, on a cumulative basis, which
is any destruction, demolition, or removal that has occurred on or
after _____, which shall be measured in accordance
with Section 127.0111, and for which the *applicant* shall provide
sufficient evidence of the nature and extent of the cumulative
changes at the time of application for any *construction permit* to
rebut a presumption that the *development* is not entitled to
previously conforming status, or

- (2) ~~The calculation of exterior walls shall be measured in accordance with Section 127.0111.~~ destruction, demolition, or removal of 50 percent or more of the capacity of the lateral or vertical load resisting system of the *previously conforming structure*, as determined by the Building Official.

Upon termination, the development standards applicable to new *structures* shall then apply to the entire *structure*.

- (e) Any reconstruction is subject to Coastal Development Permit regulations and other regulations applicable to conforming *development*. Section 127.0105 does not provide an exemption from any requirement to obtain applicable *construction permits* or *development permits*.

§127.0106 Expansion or Enlargement of Previously Conforming Structures or of Structures on a Premises with Previously Conforming Density

- (a) Proposed expansion or enlargement of a *structure* with a *previously conforming structural envelope* or of a *structure* on a *premises* with *previously conforming density* is permitted in accordance with Process One as follows, except that such *development* on a *premises* that contains or abuts a *coastal beach* or a *coastal bluff edge*, shall be subject to Section 127.0106(c):
- (1) through (2) [No change in text.]
- (b) Proposed expansion or enlargement of a *previously conforming structural envelope* within a *setback*, or of a *structure* on a *premises* with *previously conforming density* that does not meet the criteria for expansion or enlargement in accordance with Section 127.0106(a), requires a

Neighborhood Development Permit decided in accordance with Process Two, which shall only be granted if the proposed expansion or enlargement meets all of the following criteria:

(1) through (2) [No change in text.]

(3) Does not encroach into a front *yard* or extend outside of the developable area of the underlying base zone to within 10 feet of the front *yard setback* line, unless the proposed expansion or enlargement would reduce the non-conformity of existing *development on a coastal bluff*;

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

(9) Does not propose *development within a required coastal bluff setback on a premises that contains or abuts a coastal beach or coastal bluff edge*.

(c) For structures located on a premises that contains or abuts a coastal beach or a coastal bluff edge, new additions or improvements to existing structures may be permitted subject to a Coastal Development Permit, in accordance with Section 126.0707, provided that all such new additions or improvements themselves do not increase the degree of non-conformity and comply with all of the following:

(1) The proposed coastal development is in conformity with the certified Local Coastal Program land use plan;

- (2) The proposed *coastal development* does not alter more than 50 percent of the exterior walls of the *structure* as measured in accordance with Section 127.0111;
- (3) The proposed expansion does not exceed 500 square feet, except additional floor area may be permitted in exchange for the removal or relocation of an equivalent amount of existing floor area (from the *primary structure* or an *accessory structure*) from within a required *setback* from the *coastal bluff edge* or *side yard setback* to a location at least 40 feet from the *coastal bluff edge*;
- (4) The proposed expansion does not include *development* of a *basement* with building area 5 feet or more below *grade* or the use of *caisson foundations*;
- (5) The proposed expansion does not result in a cumulative increase greater than 50 percent of the *gross floor area* of the *structure*, where the total expansion area is measured over time and includes the sum of all additions to the *structure* approved on or after _____ . The *applicant* shall provide evidence of the nature and extent of the cumulative changes at the time of application for any *construction permit*.
- (6) The proposed *coastal development* does not rely on existing shoreline protection; and

(7) The applicant agrees to execute and record a waiver of future shoreline protection, and the execution and recordation shall occur prior to the issuance of the first building permit.

(ed) In the Coastal Overlay Zone, the *previously conforming* status for a structure located on a premises that contains or abuts a coastal beach or a coastal bluff edge ~~within 50 feet of a coastal bluff edge~~ shall terminate upon:

(1) destruction, demolition, or removal of 50 percent or more of the structure's exterior walls, on a cumulative basis, which is any destruction, demolition, or removal that has occurred on or after _____, which shall be measured in accordance with Section 127.0111, and for which the applicant shall provide sufficient evidence of the nature and extent of the cumulative changes at the time of application for any construction permit to rebut a presumption that the development is not entitled to previously conforming status, or

(2) upon destruction, demolition, or removal of 50 percent or more of the capacity of the lateral or vertical load resisting system of the previously conforming structure, as determined by the Building Official.

Upon termination, the development standards applicable to new structures shall then apply to the entire structure.

- (~~e~~) Proposed expansion or enlargement or a change in use of a *previously conforming large retail establishment* is subject to a Process One Construction Permit and the applicable supplemental regulations in Section 143.0355(e) except as described below. Proposed expansion or enlargement or a change in use of a *large retail establishment* that would result in a *structure* that is 100,000 or greater square feet of *gross floor area* and an increase in average daily trips is subject to a Site Development Permit in accordance with Section 126.0502.

§127.0111 Rules for Calculation and Measurement of Exterior Walls

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

- (d) When an exterior wall of a *previously conforming structure* is made an interior wall, the *development* shall comply with the regulations for expansion or enlargement in Section 127.0106.

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