

**CALIFORNIA COASTAL COMMISSION**

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June 22, 2017

**Th17a****TO: COMMISSIONERS AND INTERESTED PERSONS****FROM: KARL SCHWING, DEPUTY DIRECTOR, SD COAST DISTRICT  
GABRIEL BUHR, COASTAL PROGRAM MANAGER, SD COAST DISTRICT  
ERIC STEVENS COASTAL PROGRAM ANALYST, SD COAST DISTRICT****SUBJECT: STAFF RECOMMENDATION ON CITY OF OCEANSIDE LOCAL COASTAL PROGRAM AMENDMENT NO. LCP-6-OCN-17-0039-1 (Part A) (Open Space Zoning Ordinance Update) for Commission Meeting of July 12-14, 2017**

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**SYNOPSIS**

The subject Local Coastal Program (LCP) implementation plan amendment was submitted on May 4, 2017 and filed as complete on June 1, 2017. The date by which the Commission must take action, absent an extension of the time limits by the Commission, is July 31, 2017. This report addresses the entire submittal. The proposed amendment will affect the certified LCP Implementation Plan only.

**BACKGROUND**

Currently the City of Oceanside utilizes two different zoning ordinances, one of which applies to lands within the coastal zone and serves as the City's certified Implementation Plan (IP), the second of which applies to lands outside the coastal zone. However, moving forward, the City is working to consolidate these two documents in order to have one zoning document that would apply Citywide. As such, the City has begun to update and merge these two documents through a phased approach. City and Commission staffs have been working cooperatively to expedite those changes, which do not raise Land Use Plan (LUP) or Coastal Act consistency concerns. The Commission initially certified the changes that could be found to be minor in nature in December of 2015. A second City of Oceanside LCP amendment was approved by the Commission at the January 2017 hearing that continued this approach to merge the two zoning ordinances, and primarily focused on a number of items that were not likely to impact coastal resources, such as repealing unused zoning designations or repealing older designations and replacing them with comparable designations from the more recent zoning ordinance. Two more LCP amendments to merge the zoning ordinances were approved by the Commission at the March 2017 hearing. The subject amendment now represents the fifth LCP amendment that continues the merging of these two zoning ordinances. This current set of revisions was determined not to qualify as minor because the proposal includes the certification of new zoning designations, which is considered to be a change in land use. The

administrative component of the process is limited to repeal of unused articles and merging of articles the City wants to keep. It is anticipated that as the efforts to combine these two zoning ordinances continue to move forward, the City will submit the more substantive revisions to its certified IP as it continues toward the goal of having one certified zoning document to be applied Citywide. These substantive changes will include updating the City's stringline maps, modifying height restrictions, and updating definitions for terms that have historically caused issues for the City, among others. In addition, the City recently received a Commission LCP Local Assistance Grant to include a Sea Level Rise Vulnerability Assessment, Adaptation Plan, and overall LUP Update, and; as such, the City will include these specific components into its proposed LCP Update.

This LCP amendment request does contain one substantive revision that has the potential to impact coastal resources. As proposed, the City would add Chapter 30A - Special Events Permits of its municipal code to the Implementation Plan.

### **SUMMARY OF AMENDMENT REQUEST**

As detailed above, the City is currently undergoing efforts to merge two different zoning documents into one consolidated document. To that end, the City is requesting the repeal and certification of several articles. The request includes three articles proposed for repeal, three new articles proposed for certification, and one new municipal code chapter proposed for certification.

The City is requesting the repeal of Article 14.4 (Open Space Zone); Article 35 (PUT Zone – Public Utility and Transportation Zone); and Article 36 (Harbor Zone). The City is also requesting certification of Article 15 (Open Space Districts - Citywide), Article 16C (PUT/CZ Public Utility and Transportation – Coastal Zone except D - District); and Article 20 (H – Harbor District). In addition, the City is requesting certification of Chapter 30A (Special Events Permits).

The initial LCP Amendment request (and attached ordinance approving the subject amendment request) contained one additional article proposed for revision. Specifically, the amendment originally included request for the certification of Article 16 (Public and Semipublic District - Inland). However, this article would not have applicability within the Coastal Zone and is therefore not included as a part of this LCP amendment.

### **SUMMARY OF STAFF RECOMMENDATION**

Staff is recommending the Commission deny LCP Amendment No. LCPA-6-OCN-17-0039-1 (Part A) as submitted by the City and to approve the LCPA with one suggested modification. While the project includes a significant number of revisions to the City's Implementation Plan, only the proposed certification of the City's Special Events Permits chapter raises LUP consistency concerns.

In 2016, the City proposed to repeal Article 15.1 (Temporary and Minor Use Permits) which resulted in the elimination of any regulations in the City's LCP related to Temporary Use Permits with no substituting language. At that time, the City proposed to continue to use its "Special Events Permit" process to review and approve temporary events as a requirement of their citywide municipal code, with an acknowledgment that this chapter had never been a part of the City's certified LCP. The Commission approved the requested repeal of Article 15.1 with findings that until such time that the Commission approves a replacement ordinance, City staff will continue to utilize the Commission's "Guidelines for the Exclusion of Temporary Events from Coastal Commission Permit Requirements – Adopted 5/12/93" (Exhibit 5) when reviewing temporary event proposals in areas where the Commission retains jurisdiction and for review of City actions on temporary events in the Coastal Zone.

The City's current proposal to certify Chapter 30A (Special Events Permits) raises LUP consistency concerns because the process described in the chapter does not address the coastal resource concerns that are included in the Commission's temporary event guidance. Specifically, Chapter 30A does not include provisions to address potential impacts to public access or sensitive coastal resources related to events on the beach during the peak summer season, events that occupy all or a portion of a beach, or events that charge for admittance. Instead, Chapter 30A primarily relates to the City's administrative approval process for special events. In order to address these concerns, **Suggested Modification #1** requires that Chapter 30A not be incorporated into the city's Implementation Plan. City staff has indicated to Commission staff that they would support this modification and that a new LCPA would be submitted in the future to incorporate the provisions of the Commission's temporary event guidelines into a more appropriate location within the LCP. Thus, for the time being, the City's Special Events Permit chapter will continue to be used to review special events citywide and the Commission's temporary event guidelines will also be used as guidance for review of events that have the potential to impact beach access and coastal resources within the Coastal Zone.

No additional suggested modifications have been identified by Commission staff for the other six articles that are proposed for repeal or certification.

Therefore, staff is recommending denial as submitted, and subsequent approval with one suggested modification, of the LCPA-6-OCN-17-0039-1 (Part A).

The appropriate resolutions and motions begin on Page 5. The suggested modifications begin on Page 7. The findings for denial, as submitted, of the LCPA-6-OCN-17-0039-1 (Part A) begin on Page 7. The findings for approval, if modified, of the LCPA-6-OCN-17-0039-1 (Part A) begin on Page 10.

**ADDITIONAL INFORMATION**

Further information on the City of Oceanside LCP amendment LCPA-6-OCN-11-0039-1 (Part A) may be obtained from Gabriel Buhr, Coastal Program Manager, at (619) 767-2370.

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**EXHIBITS**

[Exhibit 1 – Resolution LCPA 16-RO845-1 & 16-RO846-3](#)

[Exhibit 2 – Ordinance 17-ORO018-1 & 17-ORO019-3](#)

[Exhibit 3 – Articles Proposed for Repeal \(Shown in Strike-Out\)](#)

[Exhibit 4 – Articles Proposed for Certification \(Includes all Text\)](#)

[Exhibit 5 – CCC Temporary Event Guidelines](#)

## **PART I. OVERVIEW**

### **A. LCP HISTORY**

The City of Oceanside first submitted its LCP Land Use Plan (LUP) to the Commission in July 1980, and it was certified with suggested modifications on February 19, 1981. This action, however, deferred certification on a portion of the San Luis Rey River valley where an extension of State Route 76 was proposed. On January 25, 1985, the Commission approved with suggested modifications the resubmitted LUP and Implementing Ordinances. The suggested modifications for this approval were related to the guaranteed provision of recreation and visitor-serving facilities, assurance of the safety of shorefront structures, and the provision of an environmentally sensitive routing of the proposed Route 76 east of Interstate 5. The suggested modifications to the Zoning/Implementation phase resulted in ordinances and other implementation measures that were consistent with the conditionally certified LUP policies.

With one exception, the conditionally certified LUP and Implementing Ordinances were reviewed and approved by the City on May 8, 1985. The City requested that certification be deferred on one parcel adjacent to Buena Vista Lagoon designated by the City for "commercial" use; the Commission's suggested modification designated it as "open space." On July 10, 1985, the Commission certified the City's LCP as resubmitted by the City, including deferred certification on the above parcel.

### **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**

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 for the City of Oceanside LCPA No. LCP-6-OCN-17-0039-1 (Part A) as submitted*

**STAFF RECOMMENDATION OF REJECTION:**

Staff recommends a **YES** vote. Passage of this motion will result in rejection of Implementation Program 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 CERTIFICATION OF THE IMPLEMENTATION PROGRAM AS SUBMITTED:**

The Commission hereby denies certification of the Implementation Program Amendment submitted for City of Oceanside LCPA No. LCP-6-OCN-17-0039-1 (Part A) 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. 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 for the City of Oceanside LCPA No. LCP-6-OCN-17-0039-1 (Part A) if it is modified as suggested in this staff report.*

**STAFF RECOMMENDATION:**

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 Oceanside LCPA No. LCP-6-OCN-17-0039-1 (Part A) 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. 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 revision to the proposed Implementation Plan be adopted.

#### **Suggested Modification #1:**

Chapter 30A (Special Events Permits) shall not be incorporated into the City's certified Local Coastal Program Implementation Plan.

### **PART IV. FINDINGS FOR REJECTION OF THE CITY OF OCEANSIDE IMPLEMENTATION PLAN AMENDMENT, AS SUBMITTED**

#### **A. AMENDMENT DESCRIPTION**

The subject LCP amendment request includes the repeal of three existing articles and the certification of three articles in order to further merge the City's two existing ordinances. These proposed changes are discussed separately and in greater detail in Subsection No. 1 (Articles Proposed for Repeal) and Subsection No. 2 (Articles Proposed for Certification) below. The LCP amendment also includes the certification of one new municipal code chapter to incorporate the City's existing process for reviewing Special Events Permits in the LCP.

#### **1. Articles Proposed for Repeal.**

- Article 14.4 (Open Space Zone): Includes a list of the types of areas within the City that possess natural and/or aesthetic attributes of open space and include a restriction to protect these areas from extensive building encroachment, excluding necessary amenities or appurtenant structures.
- Article 35 (PUT Zone – Public Utility and Transportation Zone): Details that this zoning designation applies to lands in which major transportation corridors or public utility facilities are existing or proposed and lists primary and secondary uses that are allowed in this zone.
- Article 36 (Harbor Zone): Details that the zoning designation applies to land and water areas owned and governed by the Oceanside Small Craft Harbor District and lists primary and secondary uses that are allowed in this zone.

#### **2. Articles Proposed for Certification**

- Article 15 (Open Space Districts - Citywide): Includes a list of the types of areas within the City that possess natural and/or aesthetic attributes of open space and contains a restriction to protect these areas from extensive building encroachment, excluding necessary amenities or appurtenant structures. Also

includes land use regulations for individual uses and details the necessary local discretionary permit required and the types of the development that can occur.

- Article 16C (PUT/CZ Public Utility and Transportation – Coastal Zone except D - District): Details that this zoning designation applies to lands in which major transportation corridors or public utility facilities are existing or proposed and lists primary and secondary uses that are allowed in this zone.
- Article 20 (H – Harbor District): Details that the zoning designation applies to land and water areas owned and governed by the Oceanside Small Craft Harbor District and lists primary and secondary uses that allowed in this zone.
- Chapter 30A (Special Event Permits): Includes the types of special events that can occur on private and public property and details the administrative process for approval of a special event permit.

**B. SPECIFIC FINDINGS FOR REJECTION**

The standard of review for LCP implementation submittals or amendments is their consistency with and adequacy in carrying out the provisions of the certified LUP.

Purpose and Intent of the Ordinance. The subject LCP amendment request includes the repeal of three existing articles, the certification of three articles in order to further merge the City’s two existing ordinances, and the certification of one new municipal code chapter to incorporate the City’s existing process for reviewing Special Events Permits in the LCP.

Major Provisions of the Ordinance. The existing articles in the certified IP related to Open Space Zone, Public Utility and Transportation Zone, and the Harbor Zone would be replaced with similar articles from the City’s 1992 zoning ordinance that contain updated references to decision making bodies, City departments and other staff titles. The portions of the subject LCP amendment related to the continued merger of the City’s two different zoning ordinances (1986 and 1992 versions) do not raise any issues regarding consistency with the City’s certified Land Use Plan.

The subject LCP amendment also includes certification of a section of the City’s municipal code (Section 30A) that identifies the types of special events that can occur within the City and the process necessary for the review of such events. It does not contain any direction regarding how potential impacts to public access or coastal resources should be considered as a part of this review.

Adequacy of the Ordinance to Implement the Certified LUP Segments. The standard of review for LCP implementation plan submittals or amendments is their consistency with and ability to carry out the provisions of the certified LUP. The City’s LUP contains a number of policies that address protection of public access and state, in part:



## City of Oceanside LCP Land Use Policies for Coastal Access

### *I. Coastal Access*

*Objective: Adequate access to and along the coast shall be provided and maintained*

### *VII. New Development and Public Works*

*1. The City shall deny any project which diminishes public access to the shoreline, degrades coastal aesthetics, or precludes adequate urban services for coastal-dependent, recreation, or visitor serving uses.*

As proposed, the City's proposal to certify Chapter 30A (Special Events Permit) raises LUP consistency concerns because the process described in the chapter does not address the coastal resource concerns that are included in the Commission's Temporary Event Guidance. Specifically, Chapter 30A does not include provisions to address potential impacts to public access or sensitive coastal resources related to events on the beach during the peak summer season, events that occupy all or a portion of a beach, or events that charge for admittance. Instead, Chapter 30A primarily relates to the administrative approval process for special events within the City.

The Commission approved an LCP amendment for the City of Oceanside in 2016 that included the repeal of Article 15.1 from the IP which referenced temporary and minor use permits. This article was primarily administrative in nature, and was removed at the time with an acknowledgement in the Commission findings that

*...the City has indicated that they intend to use an established "Special Events Permit" process to review and approve temporary events. This process is not currently a part of the City's certified LCP and will need to be certified by the Commission if the City intends to implement this process in the Coastal Zone. Thus, until such time that the Commission approves a replacement ordinance, the staff will defer to Commission's "Guidelines for the Exclusion of Temporary Events from Coastal Commission Permit Requirements – Adopted 5/12/93" ([Exhibit 5](#)) when issuing CDPs for temporary events.*

The subject LCP amendment includes a request to now certify the Special Events Permit section from the City's municipal code referenced above. However, as submitted, this municipal code section does not contain any reference to either the Commission's Guidelines for Temporary Events, or any similar type of language that would describe how potential impacts to public access or coastal resources would be considered as a part of the review of a proposed temporary or special event. Therefore, the proposed amendment as submitted cannot be found consistent with and adequate to carry out the certified Land Use Plan as proposed.

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

**Suggested Modification #1** requires that Chapter 30A not be incorporated into the City's Implementation Plan at this time. City staff has indicated to Commission staff that they would support this modification, and that a new LCPA would be submitted in the future to incorporate the provisions of the Commission's Temporary Event Guidelines into a more appropriate location within the LCP, and instead leave the administrative process for special event permits outside of the LCP. City staff has identified that this is preferable because the portion of their municipal code (Chapter 30) currently proposed to be incorporated in part into the LCP does not contain any other elements of the LCP, and thus a reference placed here to reference the need to protect coastal resources would be out of context with the surrounding regulations and could become overlooked. The City has committed to include details to identify when temporary events would require further coastal development permit review, consistent with the Commission's Temporary Events Guidance, as a part of their ongoing LCP update process, and this would therefore ensure this requirement is placed in a more appropriate location within their LCP. Thus, for the time being, the City's Special Events Permit chapter will continue to be used to review special events citywide and the Commission's Temporary Event Guidelines will also be used as guidance for review of events that have the potential to impact beach access and coastal resources within the Coastal Zone.

To conclude, the certified LUP requires that coastal resources such as public access be protected. For the reasons described above, only if modified as suggested can the proposed Implementation Plan amendment be found to be consistent with and adequate to carry out the City's certified LUP.

**PART VI. 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 LCP. Instead, the Coastal Commission acts as lead agency for the purposes of fulfilling CEQA. 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 submission. The City concluded that there was no possibility that the activity would have a significant effect on the environment and therefore determined that the LCP amendment was not subject to CEQA. (Cal. Code of Regs., tit. 14, § 15061(b)(3).)

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. This report has discussed the relevant coastal resource issues with the proposed amendment and found that the amendment would not result in an intensification of land uses, or have adverse impacts on coastal resources. The proposed amendment will

not result in any significant environmental effects for which feasible mitigation measures have not been employed consistent with CEQA Section 21080.5(d)(2)(A).

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