

**CALIFORNIA COASTAL COMMISSION**

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June 29, 2017

# Th17c

**TO: COMMISSIONERS AND INTERESTED PERSONS**

**FROM: KARL SCHWING, DEPUTY DIRECTOR, SAN DIEGO COAST DISTRICT  
DEBORAH LEE, DISTRICT MANAGER, SAN DIEGO COAST DISTRICT  
ALEX LLERANDI, COASTAL PLANNER, SAN DIEGO COAST DISTRICT**

**SUBJECT: STAFF RECOMMENDATION ON CITY OF SAN DIEGO LOCAL COASTAL PROGRAM AMENDMENT NO. LCP-6-PEN-17-0028-1 (Peninsula RM Base Zone Height Limit) for Commission Meeting of July 12-14, 2017**

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## SYNOPSIS

On April 19, 2017, the City of San Diego (City) Local Coastal Program (LCP) Amendment No. LCP-6-PEN-17-0028-1 was filed in the San Diego District office as part of a batched submittal. The submittal included two other items, one involving commercial districts and the other involving the San Ysidro Community Plan Update. The amendment addressing the commercial districts will also be presented to the Commission at the July 2017 hearing as a separate item, whereas the Commission acted on the San Ysidro Community Plan Update at the May 2017. At the Commission's June 2017 hearing, a one-year time extension was granted for the submittal. Therefore, for the remaining items, the date by which the Commission must take action will be the June 2018 hearing.

## SUMMARY OF AMENDMENT REQUEST

On December 7, 1972, a voter initiative known as Proposition D ("Prop D") established a 30-foot maximum structure height in coastal areas of the City of San Diego known as the Coastal Height Limit Overlay Zone ("CHLOZ"). Separate from the CHLOZ, the City has city-wide zones that establish various maximum structure heights on properties based on the specific zone type. The CHLOZ and the city-wide zoning heights are separate requirements that are calculated by different methods – the Coastal Height Limit calculates the base measurement of height in accordance with the 1970 Uniform Building Code, which is from finished grade, while the city-wide zoning height is calculated from the lower of existing or finished grade. However, the CHLOZ height limit can only be modified by the approval of City voters, whereas the City can modify its maximum zoning heights, as well as their measurement means, through City Council action. Because of the confusion among property owners caused by the differences in the height limits and calculation methods applicable to a property and the resulting issues caused by certain multi-family residential structures under construction in the Peninsula Community Plan area potentially exceeding the CHLOZ height limit, the City is proposing to amend

the Land Development Code (LDC), which constitutes the bulk of its certified implementation plan, to include a new Footnote No. 37 that will reduce the maximum zoning height of certain RM-zoned (multi-family residential) property within the portion of the Peninsula Community Plan area under the Coastal Height Limit to 30 feet so as to bring it in accordance with the CHLOZ 30-foot limit, as well as clarify that structure height shall be measured in accordance with the more recent, up-to-date methodology contained in Section 113.0270(a)(4)(D) of the LDC, which requires that a structure height comply with both the Coastal Height Limit and the base zoning height.

### **SUMMARY OF STAFF RECOMMENDATION**

The Coastal Height Limit is a long-standing law that has helped to protect public views and preserve the community character of San Diego's coastal zone for decades. With the proposed amendment, the City is not changing the effective height limit that has long governed development in the Peninsula community, but is rather addressing potential confusion and application issues that may dilute the protections of the law by bringing applicable regulations into alignment and easing the process for the public to undertake development in conformance with the certified LCP. As described above, the proposed revisions lower the maximum height limit of specified RM base zones to 30 feet to be consistent with the Coastal Height Limit of 30 feet and the code amendments reinforce the calculation of building height for internal consistency. Because the proposed amendment does not change the resulting height limit that applies to structures in the Coastal Height Limit Overlay Zone – because the CHLOZ always took precedence – and the code amendments serve to reinforce the scale of development and public view protections of the certified land use plan, Commission staff recommends approval of the amendment as submitted.

The appropriate resolutions and motions begin on page 4. The findings for approval of the Implementation Plan Amendment as submitted begin on page 4.

### **BACKGROUND**

The City's first Implementation Plan (IP) was certified in 1988, and the City assumed permit authority shortly thereafter. The IP consisted of portions of the City's Municipal Code, along with a number of Planned District Ordinances (PDOs) and Council Policies. Late in 1999, the Commission effectively certified the City's Land Development Code (LDC) that includes Chapters 11 through 14 of the municipal code. It replaced the first IP in its entirety and went into 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 No. LCP-6-PEN-17-0028-1 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; as a result, in 1977, the City requested that the Coastal Commission permit segmentation of its Land Use Plan (LUP) into twelve parts in order to have the LCP process 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; some of these have been certified since through the LCP amendment process. Other areas of deferred certification remain today and the City is completing that planning; the Commission will consider those submittals in the future.

Since effective certification of the City's LCP, there have been numerous major and minor amendments processed. These have included everything from land use revisions in several segments, to the rezoning of single properties, to modifications of citywide ordinances. In November 1999, the Commission certified the City's Land Development Code (LDC), and associated documents, as the City's IP, replacing the original IP adopted in 1988. The LDC became effective in January 2000.

### **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 maximum opportunities to participate in development of the LCP amendment prior to its 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 move that the Commission reject the Implementation Program Amendment for the City of San Diego LCP Amendment No. LCP-6-PEN-0028-1 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 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 Land Use Plans, 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**

This amendment to the City's certified Implementation Plan (IP) involves the insertion of Footnote No. 37 to Table 131-04G of the Land Development Code (LDC) for the following RM base zones: RM-2, -3, -4, and -5, which reduces the zoning height of those properties within the portion of the Peninsula community plan area located within the Coastal Height Limit Overlay Zone (CHLOZ) to 30 feet and requires structure height to be calculated in accordance with the methodology contained in Section 113.0270(a)(4)(D), which measures height from existing or finished grade, whichever is lower. Specifically, Footnote No. 37 reads as follows:

*37 Within the Coastal Height Limit Overlay Zone in the Peninsula Community Plan area, the base zone maximum structure height shall be 30 feet, which shall be determined in accordance with Section 113.0270(a)(4)(D).*

## **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.

### **a) Purpose and Intent of the Ordinance.**

Properties within the City's coastal zone have two height limits applied to them: the underlying city-wide zoning height limit, which can vary, and the Coastal Height Limit, which is set at 30 feet. Where the zoning height limit is lower than the CHLOZ 30 feet limit, the zoning height limit applies; and where the CHLOZ 30 feet limit is lower than the zoning height limit, then the CHLOZ applies. Another area of divergence between the zoning height limit and the CHLOZ is the manner in which the structure height is calculated. The zoning height limit measures structure height from the existing or proposed grade of the site, whichever is lower, whereas the CHLOZ, being tied to the Uniform Building Code of 1970, measures from finished grade.

### **b) Major Provisions of the Ordinance.**

The major provision adds Footnote No. 37 to Table 131-04G and address which properties will have their zoning height lowered to 30 feet and what method of calculation will be used to determine structure height.

- RM-2, RM-3, RM-4, and RM-5 zoned properties (multi-family residential) within the portion of the Peninsula community under the CHLOZ will have their zoning height limits reduced to 30 feet to bring them in line with the CHLOZ.
- The method of calculating structure height will be as described in Section 113.0270(a)(4)(D), which measures structure height from finished or existing grade, whichever is lower.

### **c) Adequacy of the Ordinance to Implement the Certified LUP Segments.**

The standard of review for LCP implementation submittals or amendments is their consistency with and ability to carry out the provisions of the certified Land Use Plan(s), in this case the Peninsula Community Plan. Critical coastal resources are mandated for protection first in the Coastal Act's Chapter 3 policies and then applied, as appropriate, to each coastal community through the establishment of resource protection standards in their certified land use plans.

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 (including, but not limited to, North City, La Jolla, Pacific Beach, Mission Beach, Ocean Beach, and Otay-Mesa Nestor). Each community plan or LCP Land Use Plan contains policies that protect public views, scenic resources, public access, recreational opportunities and sensitive coastal resources including, but not limited to, beaches, bluffs, slopes, hillsides and 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 LUPs.

In this case, only one community plan segment is involved. Listed below are representative policy excerpts contained in the certified Peninsula Community Plan segment in the Coastal Overlay Zone for the City of San Diego.

### **Peninsula Community Plan**

- Encourage design compatible with existing residential development in all new infill housing.
- Increase equitability in development by simplifying the multifamily zoning pattern in areas where adjacent parcels with similar conditions have a variety of zoning designations.
- Maintain and complement the existing scale and character of the residential area of Peninsula.
- Preserve and enhance significant views of the bay and ocean.
- Structures should be designed to protect views of Peninsula's natural scenic amenities, especially the ocean shoreline and San Diego Bay.
- New development should be consistent with the scale and character of the existing development of the surrounding areas. The fitting of new development is, in a broad sense a matter of scale. It requires a careful assessment of each building site in terms of the size and texture of its surroundings, and a very conscious attempt to achieve balance and compatibility in design between old and new buildings.
- Abrupt differences in scale (building height) between new development and neighboring development should be avoided. Gradual transitions in scale are preferred.

The City's Coastal Height Limit has its origins in Proposition D, a voter initiative approved on December 7, 1972, by the voters of San Diego to prohibit any structure or addition constructed within the City's coastal zone from have a height in excess of 30 feet. The initiative was spurred by the approval and construction of tall residential and hotel developments along San Diego's coast and the subsequent desire by voters to

protect coastal views and community character by having a uniform height limit over the City's coastal zone.

Separate from the CHLOZ, the City has city-wide zones that establish various maximum structure heights on properties based on the specific zone type. The CHLOZ and the city-wide zoning heights are separate requirements that are calculated by different methods – the Coastal Height Limit calculates the base measurement of height in accordance with the 1970 Uniform Building Code, which is from finished grade, while the city-wide zoning height is calculated from the lower of existing or finished grade. However, the CHLOZ height limit can only be modified by the approval of City voters, whereas the City can modify its maximum zoning heights, as well as their measurement means, through City Council action.

The City's proposed amendment is meant to simplify and unify the applicable development standards for multi-family zoned properties within the Peninsula community by lowering the base zoning height limit to 30 feet – the same height as the Coastal Height Limit – so as to make it easier for the public to undertake development that is in conformance with the above policies of the certified LUP. As the long-standing height limit in the area of the Peninsula community within the Coastal Height Limit has been 30 feet, this amendment will ensure that the community character provisions and public view protections of the certified land use plan will be implemented. The amendment will not have substantial adverse impacts on coastal resources and can be found to be adequate to carry out the policies of the certified Land Use Plan. Therefore, the amendment can be approved as submitted.

#### **PART IV. 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.

For the City's action, an environmental impact report (EIR No. 96-0333) was completed for the original adoption of the Land Development Code and a Program EIR (No. 104495) was prepared and certified for the General Plan Update. The City has previously utilized these documents for CEQA compliance in association with other code amendments and has similarly found that no further CEQA analysis is needed for this amendment.

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. The updated ordinance ensures compliance with the height limit regulations and prohibits any deviation to the Coastal Height Limit. In summary, no adverse impacts to any coastal resources are anticipated.

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