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Staff: W. Horn-V
Staff Report: 8/24/17
Hearing Date: 9/14/17

STAFF REPORT: DISPUTE RESOLUTION APPLICATION COMPLETENESS

DISPUTE RESOLUTION NO.: PWP-4-CIH-16-0005-2-EDD
PWP AMENDMENT NO.: PWP-4-CIH-16-0005-2
LOCAL JURISDICTION: Ventura County Harbor Department
SITE: Fisherman's Wharf, corner of Channel Islands Boulevard
and Victoria Avenue, Oxnard, Ventura County

DESCRIPTION: Public hearing and Commission determination regarding filing requirements for the application by the Ventura County Harbor Department to amend the certified Channel Islands Harbor Public Works Plan to create a new land use designation sub-category of "Urban Village" with associated development standards and to change the land use designation of Harbor Parcels V-1, V-2, V-3, V-4 and a portion of Parcel N-2 from "Visitor Serving Harbor Oriented" to the new land use sub-category of "Urban Village" to accommodate a future residential and visitor-serving mixed use development.

SUMMARY OF STAFF RECOMMENDATION

The Ventura County Harbor Department has a certified Channel Islands Harbor Public Works Plan (PWP) that it wishes to amend, and it has submitted an amendment application to Commission staff. Pursuant to Section 13553 of the Commission's Regulations, the Executive Director has the authority to determine whether a PWP amendment application is complete; however, if the local government disagrees with the Executive Director's determination, the Commission may resolve the disagreement. For the reasons described below, the Executive Director has determined that the Harbor Department's application to amend its certified PWP is incomplete. Staff recommends that the Commission concur with the Executive Director's determination.

The area of the Channel Islands Harbor at issue in the proposed PWP amendment lies within the City of Oxnard's jurisdiction. The City of Oxnard Coastal Land Use Plan (LUP) and Coastal Zoning Ordinance (CZO), both part of the City's certified Local Coastal Program (LCP), designate the parcels subject to the proposed PWP amendment as "Harbor Channel Islands" (HCI). The purpose of this zoning designation is to provide, protect and encourage fishing, recreational boating, and related uses at the Channel Islands Harbor. Residential dwellings or mixed use developments that include residential uses are not a permitted use within the HCI designation. Given this fact, among others, the City of Oxnard has taken the position that the proposed PWP amendment is not consistent with its certified LCP and that the LCP would need to be amended before the proposed PWP amendment could be approved by the Commission.

Pursuant to Sections 13052 and 13352 of the Commission's Regulations, an application for a PWP amendment shall not be accepted for filing until other relevant government agencies with jurisdiction over aspects of the project issue particular project-related approvals. Here, the Executive Director has determined that the PWP amendment application is incomplete because the City of Oxnard has not issued necessary preliminary approvals for the PWP amendment. In particular, the City has not approved, much less obtained certification of, an LCP amendment that changes the zoning to accommodate the PWP amendment or allow the uses or intensities of use proposed by the PWP amendment. Although Section 13352 gives the Executive Director the discretion to waive the requirement for preliminary approval by the City of Oxnard, the Executive Director has chosen not to waive the requirement in this case due to the clear inconsistency of the proposed PWP amendment with the certified Oxnard LCP. The Executive Director has also determined that the application remains incomplete because it does not include an adequate analysis of the feasibility of alternative intensities of those uses that would provide more public and visitor serving amenities and commercial uses, especially along the waterfront and public parking lot portions of the site.

The Harbor Department, in contrast, believes that, pursuant to Coastal Act Section 30605 and Section 13371 of the Commission's Regulations, consistency with the certified Oxnard LCP is not a filing requirement for this PWP amendment application. It asserts that Commission staff does not have the authority to incomplete its PWP amendment application based on staff's determination that the PWP amendment is inconsistent with Oxnard's LCP. Rather, the Harbor Department asserts that LCP consistency is a determination that may be made only by the Commission itself once the PWP amendment has been filed and brought to hearing. This interpretation overlooks the filing requirement described above, for preliminary approval from the local government. The Harbor Department has also failed to provide an adequate analysis of possible alternative intensities for the project.

Section 30605 of the Coastal Act and Section 13357 of the Commission's Regulations require that, in situations such as this where a PWP amendment is submitted after the certification of the LCP for the jurisdiction affected by the plan, the PWP amendment shall be approved by the Commission only if it finds that the proposed PWP amendment is in conformity with the certified LCP. Accordingly, should the Commission not concur with the Executive Director's determination on the subject dispute resolution, the result would be that the application would be deemed complete, but Commission staff would have to recommend denial of the PWP amendment application because it is not in conformance with the certified Oxnard LCP. As

such, deeming the application complete without first obtaining the required amendment to the Oxnard LCP will not allow the Harbor Department to move toward obtaining its proposed PWP amendment because there is no feasible way to certify the PWP amendment without first certifying an amendment to the Oxnard LCP.

Additional Information: Please contact Wesley Horn at the South Central Coast District Office of the Coastal Commission at (805) 585-1800 or 89 S. California St., Second Floor, Ventura, CA 93001

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I. STAFF RECOMMENDATION: MOTION & RESOLUTION

The Executive Director has determined that the Harbor Department's application for PWP Amendment PWP-4-CIH-16-0005-2 is incomplete, and recommends that the Commission concur. If the Commission concurs, then notice of this Commission determination will be expeditiously forwarded to the Harbor Department.

The Executive Director recommends a **NO** vote on the motion below. Following the Executive Director's recommended "no" vote will cause the motion to fail, resulting in: (1) the Commission concurring with the Executive Director's determination that the application is incomplete; and (2) the adoption of the following resolution and findings. The affirmative vote of a majority of the Commissioners present is necessary to pass the motion.

MOTION: I move that the Commission **reject** the Executive Director's determination that the Ventura County Harbor Department's application for PWP Amendment PWP-4-CIH-16-005-2 is incomplete pursuant to Title 14 Sections 13352 through 13354 and 13365 of the California Code of Regulations and Section 30605 of the Coastal Act, and I recommend a **no** vote.

RESOLUTION: The Commission, by adoption of the attached findings, determines, consistent with Title 14 Sections 13352 through 13354 and 13365 of the California Code of Regulations and Section 30605 of the Coastal Act, that the application for PWP Amendment PWP-4-CIH-16-005-2 is incomplete.

II. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares as follows:

A. DISPUTE RESOLUTION PROCEDURES

Section 30605 of the Coastal Act states that any proposed amendment to a PWP shall be submitted to, and processed by, the Commission in the same manner as prescribed for an amendment to a Local Coastal Program (LCP). Title 14, Section 13553 of the California Code of Regulations (CCR) provides a resolution mechanism for disputes regarding LCP and Long Range Development Plan (LRDP) application information requirements and is applicable to the subject PWP amendment pursuant to Section 30605. Section 13553 states:

"An amendment to a certified LCP or LRDP together with all necessary attachments and exhibits shall be deemed "submitted" after having been received and found by the executive director of the Commission to be in proper order and legally adequate to comply with Public Resource Code Section 30510(b). Said review shall be completed within a reasonable time, but unless there are unusual circumstances, no later than ten (10) working days after the date it is received in the Commission offices during normal working hours. The executive director shall cause a date of receipt stamp to be affixed to all LCP or LRDP submissions on the day there are so received and a stamp of the date of submittal on the day

*they are found to be properly submitted. If the executive director determines that the materials received are not sufficient to satisfy the requirements of Public Resources Code Section 30510(b), the executive director shall transmit to the local government or governing authority specific written comments regarding the inadequacy of the submission no later than the aforementioned ten (10) working days. **Any disagreement between the executive director and the local government or governing authority as to information requirements may be resolved by the Commission.** If the amendment to the LCP or LRDP is found to be properly submitted, the executive director shall immediately notify the local government or governing authority that submitted the LCP or LRDP amendment.”*

The Coastal Act contains clear filing requirements for applications to amend certified plans. The Commission’s regulations anticipate that there could be disagreements regarding the necessary information required to file an application as complete and thus, the dispute resolution remedy in Section 13553 provides a definitive, public and prompt process for resolving the issue.

B. PROPOSED PWP AMENDMENT DESCRIPTION AND BACKGROUND

On September 19, 1986, the Channel Islands Harbor PWP was effectively certified by the Commission, and the City of Oxnard’s (Oxnard) LCP was effectively certified by the Commission soon after, in December, 1986. The purpose of the PWP, as certified, is to provide a “detailed and specific planning document to guide future Harbor development.” Jurisdiction within the Channel Islands Harbor is shared by both the County of Ventura (County) and City of Oxnard. While the County assumes planning and regulatory authority within the Harbor based on a previous agreement between the two governmental authorities and the Commission’s certification of the Channel Islands Harbor PWP, Oxnard’s City limits extend to all Harbor land areas, and the land areas of the Harbor are included within the City’s certified LCP. Coastal Act Section 30605 and Sections 13357 and 13371(4) of the Regulations state that where a PWP or PWP amendment is submitted after the certification of the LCP for the area under the purview of the PWP, the standard of review for the amendment shall be the certified LCP. Therefore, at such time as the PWP amendment comes before the Commission for consideration, the standard of review will be conformance with the certified City of Oxnard LCP. Because the City’s certified LCP contains all applicable Coastal Act policies, conformance with applicable Chapter 3 policies of the Coastal Act will also be required.

The subject PWP amendment proposes to create a new land use designation sub-category of “Urban Village” with associated development standards and to change the land use designation of Harbor parcels V-1, V-2, V-3, V-4 and a portion of Parcel N-2 from “Visitor Serving Harbor Oriented” to the new land use sub-category of “Urban Village” to accommodate a future residential and visitor-serving mixed use development at Fisherman’s Wharf, on the corner of Victoria Avenue and Channel Islands Boulevard within the City of Oxnard ([Exhibit 1](#)). Per the certified PWP, the subject site is designated Visitor Serving Harbor Oriented (V.S.H.O.) which allows for visitor serving uses including: picnicking and other passive recreation, lodging, dining, fast food and shopping in chandleries, gift shops and boutiques, motels, restaurants, convenience stores, gas stations, fire stations, community centers/meeting places, yacht clubs, park areas, marine museums, and marine research oriented research facilities. Currently the site

consists of a mix of retail and commercial uses totaling 48,000 sq. ft. The retail and commercial uses include five restaurants, nine retail spaces, one beauty salon, six commercial offices, one live theater, and four public restrooms.

The proposed PWP amendment is project-driven and proposes a land use change that would allow a mixed use development at the subject Fisherman's Wharf site consisting of 400 apartment units, 36,000 sq. ft of commercial space, 16 boat slips, and a 1.0 acre public park. The Ventura County Board of Supervisors (BOS) voted to approve the subject PWP amendment on June 14th, 2016. After receiving notice of the BOS action, but prior to the County formally submitting the PWP amendment to the Commission, Commission staff sent a letter to the Harbor Department on July 5th, 2016 summarizing the County actions' inconsistency with the City of Oxnard LCP (which is the standard of review) and stating that the project could not be recommended for approval by the Commission until an amendment to the City's LCP is approved by the Commission ([Exhibit 3](#)).

The City of Oxnard certified LCP designates the subject parcels identified for the proposed Urban Village sub-category as "Harbor Channel Islands (HCI)". The purpose of the HCI designation is to provide, protect and encourage commercial fishing, sport fishing, recreational boating, and related uses at the Channel Islands Harbor. Principally permitted uses in this designation include commercial sport fishing and recreational boating uses, while secondary permitted uses in this designation include visitor serving uses, commercial fishing support uses, and other harbor related uses. Residential dwellings or mixed use developments, including residential and other uses, are not a permitted use within the HCI designation. Therefore, the Urban Village sub-category that is proposed to be added to the PWP as part of the subject PWP amendment would allow uses that would be inconsistent with the uses allowed by the certified Oxnard LCP. To date, a full consistency review has not been carried out so it is possible that there are other inconsistencies between the proposed PWP amendment and the development standards and policies of the Oxnard LCP.

Commission staff met with the Harbor Department on July 21st, 2016 to discuss the pending PWP amendment submittal and how to resolve the inconsistency issue for processing the application. Staff outlined the necessary procedural requirements for processing an LCP amendment first, followed by processing of the subject PWP amendment, and also provided suggestions regarding an analysis of siting and design alternatives that would provide more visitor and commercial serving uses and the need for such an analysis as part of the PWP amendment submittal.

On August 17th, 2016 the Harbor Department submitted its formal application for the subject PWP amendment to the Commission, knowing that it could not be processed without a certified amendment to the Oxnard LCP, and without incorporating Commission staff's suggestions from the meeting on July 21st. Commission staff reviewed the PWP amendment application and sent an incomplete letter dated August 24th, 2016, noting the project's inconsistency with the City of Oxnard LCP and identifying the information that would be required in order to file the amendment application as complete ([Exhibit 4](#)). Specifically, the August 24, 2016 incomplete letter requested: (1) evidence that the required amendment to the Oxnard LCP has been approved by the City of Oxnard and effectively certified by the Commission, (2) an additional traffic

analysis using traffic counts collected during peak visitor times in summer, (3) an alternatives analysis that discusses how the proposed development intensities were chosen and also analyzes the feasibility of any alternative intensities of residential and commercial space that could provide more public and visitor serving amenities and commercial uses, (4) clarification on the proposed amended language to Visual Access Policy 1.d.1, the *Inventory of Existing Uses* under *Appendix A*, and the traffic study included in the *Technical Appendix*, (5) a signed copy of the resolution from the BOS approving the subject PWP amendment, and (6) a map showing the existing and proposed parcel configurations and totaling the existing and proposed parcel acreages.

Commission staff continued to work with the Harbor Department on five subsequent reviews of additional information provided by the Harbor Department in response to the incomplete letter, and Commission staff sent subsequent incomplete letters dated September 29, 2016, December 15, 2016, March 28, 2017, April 18, 2017, and May 4, 2017 respectively ([Exhibits 4-9](#)). Commission legal staff also sent a letter to the Harbor Department dated February 21, 2017 ([Exhibit 10](#)) reiterating the outstanding incomplete items and affirming Commission staff's position that the application will remain incomplete until the requested items—now consisting only of an alternatives analysis and evidence of Oxnard's preliminary approval of LCP modifications to facilitate the PWP amendment—have been submitted.

C. DISPUTE SUMMARY

On March 28, 2017, the Harbor Department submitted the subject dispute resolution ([Exhibit 11](#)), in which it has requested that the Commission review Commission staff's determination that the PWP amendment application is incomplete. The dispute centers primarily around the question of whether Commission staff may decline to file the Harbor Department's application as complete until the City of Oxnard has approved the required zoning and any other necessary changes as part of an LCP amendment in order to conform with the requested PWP amendment. The Harbor Department asserts that the Coastal Act gives the Commission itself exclusive authority to determine whether a PWP amendment is consistent with a relevant LCP, and it claims that Commission staff is usurping that authority by refusing to deem the PWP amendment complete until the City's LCP has been amended to allow residential uses. In its letter requesting dispute resolution, the Harbor Department asserts that there are "compelling and reasonable" arguments as to why the Commission could find its PWP amendment to be in conformity with the City's LCP. However, the Harbor Department does not describe any such arguments, either in the dispute resolution letter or in any of the other five letters it sent to Commission staff regarding the incomplete determination.

In contrast, the Executive Director's position is that the Coastal Act and its implementing regulations authorize him to determine that the PWP amendment application is incomplete until the City of Oxnard at least preliminarily approves the zoning and other changes in its LCP that correspond to the proposed zoning and mix of uses in the proposed PWP amendment. Contrary to the Harbor Department's assertion, Commission staff is not itself purporting to conclusively determine whether the PWP amendment conforms with Oxnard's LCP. Rather, pursuant to Commission regulations, the Executive Director is awaiting evidence that the *City of Oxnard* has at least preliminarily made this consistency determination by approving certain changes to its LCP.

The City has not approved any such changes yet; on the contrary, in a November 15th, 2016 letter to the County and Harbor Department, the City stated that, “[a]s currently proposed, development of the Project is not allowed under the LCP. The Project includes heights and densities substantially greater than the LCP authorizes. In addition, residential dwellings and mixed use developments in the specific area proposed for this Project are not permitted land uses under the LCP” ([Exhibit 14](#)). The City reiterated this position in a letter to the Commission dated August 16th, 2017 ([Exhibit 15](#)). In that letter, the City questioned whether the proposed housing development project constitutes a “public works” as defined by the Coastal Act and whether the amendment to the City’s LCP followed by an application for a Coastal Development Permit (CDP) is the correct procedure for processing the proposed project. These issues, however, are beyond the scope of the dispute resolution proceeding currently before the Commission, which relates only to whether the Harbor Department’s application for a PWP amendment should be deemed complete. The County and Harbor Department have also previously acknowledged that the PWP amendment calls for residential uses, which are not uses allowed pursuant to the City’s current LCP, and that the PWP amendment cannot be approved until the City amends its LCP. For example, in a letter to the City attached as [Exhibit 12](#), Ventura County Counsel asked that the City process a stand-alone LCP amendment in order to allow the County’s PWP amendment to proceed. As the County also described in that letter, the City did amend its General Plan in 2011 to place an “Urban Village” overlay on the subject Fisherman’s Wharf site, which would allow for mixed use development. The County asserts that the City now has a legal obligation to bring its LCP into conformity with that General Plan designation, which could pave the way for allowing the proposed PWPA. (See [Exhibit 12](#), p. 2.)

Regardless of whether the City must conform its LCP to its General Plan, at this point it clearly has not done so, and the General Plan designations therefore are not in effect in the coastal zone. Further, as described in more detail below, the City’s prior approval of the General Plan amendment does not qualify as a preliminary approval for purposes of deeming the PWP amendment application complete.

The Executive Director has the discretion to waive the general requirement for preliminary approvals from the City of Oxnard. However, he has not chosen to exercise this discretion in this instance because of the clear nature of the inconsistency between the certified LCP and the proposed PWP amendment. If the application was filed as complete, there is no evidence that the Commission could approve the PWP amendment until an LCP amendment is certified that resolves all of the apparent inconsistencies between the two plans. Filing the PWP amendment application as complete thus would not expedite the Harbor Department’s desire to have its proposed PWP amendment approved.

Correspondence Received from Interested Parties

Letters and correspondence received from interested parties regarding the Harbor Department’s dispute resolution request are included in [Exhibit 16](#). In summary, the letters and correspondence express support for Commission staff’s position. The letters and correspondence also comment on the proposed intensities and uses included as part of the project-driven PWP amendment; however Commission staff would note that the subject of the dispute resolution request is the procedural requirements for determining the PWP amendment application as

complete. Commission staff are not commenting on the proposed intensities and use of the site at this time.

D. ANALYSIS OF DISPUTE

In order for the Commission to ultimately certify the County's proposed PWP amendment, the Commission will need to find that the PWP amendment conforms to the City of Oxnard's Local Coastal Program ("LCP"). This requirement is contained in Public Resources Code section 30605, which states:

If any such plan for public works is submitted after the certification of local coastal programs, any such plan shall be approved by the commission only if it finds, after full consultation with the affected local governments, that the proposed plan for public works is in conformity with certified local coastal programs in jurisdictions affected by the proposed public works.

The Commission's regulations describe the same requirement for PWP amendments: "Approval of a public works plan amendment by the Commission shall be accompanied by specific factual findings supporting the conclusion that the public works plan amendment, as approved, is in conformity with the certified local coastal program in jurisdictions affected by the proposed public works plan amendment." 14 Cal. Code Regs ("Regulations") § 13371(4). See also *id.*, § 13357(a)(4).

The Commission's Regulations also describe the filing requirements for PWP amendments. In particular, Section 13365 requires that PWP amendments contain information required by Sections 13353 and 13354. Section 13354, in turn, states that the Commission's Executive Director "shall deem an application filed only at such time as the executive director determines that . . . all other requirements of law, and of these regulations, for a valid plan application have been met." One of the "other requirements" for a valid plan application is that the Commission must receive evidence that other government agencies have granted certain preliminary approvals for the proposed project that is the subject of the amendment. Specifically, Section 13052, which is made applicable to PWP amendments by Section 13352, states that an application to the Coastal Commission shall not be accepted for filing until other relevant government agencies with jurisdiction over aspects of the project issue particular project-related approvals.

Relevant here, the City of Oxnard has not yet approved necessary zoning changes nor the general uses and intensity of use proposed for each part of the area covered by the County's application. See Regulations § 13052(d), (i). Although the City's General Plan map shows a mixed-use "Urban Village" in the general Fisherman's Wharf area, this does not qualify as a "preliminary approval" within the meaning of Section 13052, for numerous reasons. First, although the City's General Plan contains this designation, the City has not amended its LCP to include the same designation, nor has the Commission certified any such amendment. Pursuant to state law and the General Plan itself, the urban village designation therefore has not been approved within the coastal zone and is of no legal effect. Pub. Resources Code § 30514 (LCP amendments are not effective until certified by the Commission); General Plan Goal CD-7.1(1) ("The Urban Village

designation shall not become effective in the Channel Islands Harbor Marina Village until a Local Coastal Plan amendment has been adopted”).

Second, even if it were relevant, the General Plan does not describe the intensity of use proposed for each part of the area covered by the County’s application. Rather, it contains very general descriptions of the types of uses allowed in urban villages, stating that urban villages should contain a “[m]ixture of land uses,” a “[m]ix of residential densities and housing types,” and at least 15 percent affordable housing. General Plan Goal CD-7.1. The General Plan’s description of the proposed Channel Islands Harbor Marina Village states only that the area may contain “[v]isitor serving commercial and medium/high density mixed use residential.” General Plan Goal CD-7.1(1). These generic goals do not describe the intensity of use proposed for each part of the County’s project area. On the contrary, the General Plan requires adoption of a specific plan to flesh out the precise uses and intensities of use allowed in any future urban village. General Plan Goal CD-7.1.1

Third, notwithstanding the Urban Village designation on the Fisherman’s Wharf area, the County’s General Plan and LCP zone the area with "Coastal Visitor-Serving Commercial" and "Harbor Channel Islands" designations. Neither of these zoning designations allow residential housing as either a principally permitted or secondary permitted use. Accordingly, far from having already granted approval of the zoning changes or the uses or intensities of use proposed by the project, the City has unequivocally indicated that it will need to adopt a specific plan and approve an LCP amendment (that would also have to be certified by the Commission) in order to allow the project to proceed. See [Exhibit 14](#) (City attorney stating that “the proposed Project is not consistent with the City's certified LCP”). For these reasons, the City of Oxnard has not given its preliminary approval to the proposed LCP amendment within the meaning of Section 13052 of the Commission’s Regulations.

Although Section 13352 gives the Executive Director the discretion to waive the requirement for preliminary approval by the City of Oxnard, the Executive Director has chosen not to waive the requirement in this case due to the clear inconsistency of the proposed PWP amendment with the certified Oxnard LCP.

In its dispute resolution letter, the Harbor Department asserts that, in this situation, Commission staff may not carry out the requirements of Sections 13052 and 13352 of the Regulations, pertaining to preliminary approvals by other government agencies. Instead, it claims that Coastal Act Section 30605 and Regulations Section 13371 “provide the exclusive procedures for determining whether an application for a PWPA is complete where there is a question as to whether the Amendment is in conformity with the after-enacted Local Coastal Program of a jurisdiction.” The Harbor Department claims that these latter two provisions are more specific provisions that govern in situations—like this one—where an LCP was certified *after* the PWP was approved. It therefore asserts that these allegedly more specific provisions effectively override the allegedly more general application completeness provisions in Sections 13052 and 13352. It also claims that, if the PWP amendment application is not deemed complete until the City of Oxnard gives its preliminary approval to necessary LCP changes, the “Commission will never be able to make the judgment the Legislature intended it to make. Rather, in the staff’s approach, only the City of Oxnard will decide whether, when and how the LCP amendment is to

be drafted, and then force the City's rather than the Commission's process on the County through the PWP amendment."

The Harbor Department's position is not supported by the law or the facts. When interpreting statutes and regulations, courts attempt to harmonize all sections of a statute or regulation and give effect to every word or phrase. In cases where all provisions cannot be harmonized and there is a clear conflict between provisions, courts will sometimes resolve the conflict by applying more specific provisions of a statute rather than more general ones. However, here there is no conflict between various provisions of the Coastal Act or its implementing Regulations; thus, there is no need to ignore Sections 13052 and 13352 as the Harbor District suggests. The most reasonable reading of the law, and the one that gives effect to all sections while carrying out the purposes of the Coastal Act, is as follows.

Coastal Act Section 30605 states that the Commission may approve a PWP that is submitted after the certification of an LCP only after 1) fully consulting with the affected local government regarding the consistency of the proposed PWP with the government's LCP, and 2) determining that the proposed PWP is in conformity with that LCP. This provision does not, as the Harbor District implies, divest a local jurisdiction with a certified LCP of authority to consider for itself the consistency of a proposed PWP with its LCP. On the contrary, it clearly states that the Commission must fully consult with the local government on the issue of consistency. Nor does the provision contain any PWP application requirements or purport to override otherwise applicable application requirements contained elsewhere in the law or Regulations

Section 13371 of the Regulations also does not support the Harbor District's argument. That provision contains specific procedural requirements for PWP amendments that are submitted for a PWP that was approved prior to certification of a relevant LCP. It states, in relevant part:

(1) At least 10 working days prior to the first public hearing on a proposed plan amendment directly affecting a portion of the coastal zone for which a local coastal program has been certified by the Commission, the Executive Director of the Commission shall direct the Commission staff to consult with the affected local government with respect to the impact of the proposed plan amendment on the coastal zone and on the certified local coastal program; the results of such consultation shall be reported to the Commission at the first public hearing on the proposed amendment.

(2) At least five (5) working days prior to transmitting a written recommendation on the proposed plan amendment to the Commission, the Executive Director shall request that the affected local government(s) transmit to the Commission its determination as to whether the proposed plan amendment is in conformity with the certified local coastal program(s) in the jurisdiction(s) affected by the proposed plan amendment.

(3) The affected local government may, within its discretion, transmit its determination as to the conformity of the proposed plan amendment with the local coastal program, in writing to the Commission prior to the Commission's

vote on the proposed plan amendment, and may include any recommended modifications of the proposed plan amendment that would conform it to the local coastal program; a local government may also indicate any proposed amendments to its local coastal program that would be necessary to accommodate the proposed public works plan amendment.

(4) Approval of a public works plan amendment by the Commission shall be accompanied by specific factual findings supporting the conclusion that the public works plan amendment, as approved, is in conformity with the certified local coastal program in jurisdictions affected by the proposed public works plan amendment.

Relevant here, the provision requires Commission staff to consult with the affected local government and solicit its determination as to whether the proposed PWP amendment is in conformity with its certified LCP. The provision (as well as Section 13357 of the Regulations, which pertains to PWP submissions, rather than PWP amendment submissions) does seem to anticipate that Commission staff might not consult local governments with relevant LCPs until soon before the Commission considers whether to approve a proposed PWP. In other words, the provisions could be construed to imply that Commission staff should 1) deem a PWP application complete before consulting with a local government with a relevant, certified LCP or obtaining preliminary approvals from that local government, and 2) wait until ten working days before the Commission's first public hearing on the proposed PWP amendment to consult the local government. This appears to be how the Harbor Department is interpreting the provision.

This interpretation, however, is not logical. First, it would make no sense for Commission staff to wait until a couple weeks before a hearing on a proposed PWP amendment to consult with the relevant local government regarding whether it believes the PWP amendment will be consistent with its certified LCP. Doing so would undermine Section 30605's mandate to engage in "full consultation" with the local government and would run afoul of general Coastal Act mandates to provide consultation and public participation early and often. See, e.g., Pub. Resources Code §§ 30336, 30339, 30503.

Second, even if these provisions *allow* Commission staff to accept PWP amendment applications prior to consulting with or obtaining preliminary approvals from local governments with certified LCPs, they do not *require* Commission staff to do so. Accordingly, nothing in those sections conflicts with 13352 and 13052 or purports to override those provisions, and all of these provisions should be read together and harmonized so that none is rendered a nullity. This is easily done, as all four provisions give the Executive Director the *discretion* to deem a PWP application complete before receiving local government approvals, but none of them *mandate* that he do so. Here, the City has strenuously asserted that the proposed PWP amendment is inconsistent with its LCP, and the Harbor Department itself has stated the same and has engaged in a course of action that assumes that the City will need to amend its LCP before the PWP amendment can be approved by the Commission. In this situation, proceeding with the PWP amendment application prior to obtaining at least the City's preliminary approval of necessary LCP changes would not be an efficient use of any party's time, as the Commission cannot certify the proposed PWP amendment until it can find that the PWP amendment is consistent with the

City's LCP. Thus, the Commission agrees that the Executive Director properly exercised his discretion to deem the PWP amendment application incomplete pending the City of Oxnard's preliminary approval of necessary LCP modifications.

Proceeding in this manner does not give the City of Oxnard veto authority over the Harbor Department's proposed PWP amendment in a manner that violates the Coastal Act. The Legislature specifically foresaw situations in which one local government could thwart another jurisdiction's efforts to undertake a public works project, and it provided a specific mechanism to prevent this. Coastal Act Section 30515 provides that any person authorized to undertake a public works project may request that a local government amend its LCP to allow that project if the purpose of the amendment is to meet public needs of an area greater than that included within the LCP. If the local government refuses to amend its LCP, the person may ask the Commission to amend the LCP. However, the Commission may only use this "override" authority if it finds that "to do otherwise would adversely affect the public welfare, that a public need of an area greater than that included within the certified local coastal program would be met, that there is no feasible, less environmentally damaging alternative way to meet such need, and that the proposed amendment is in conformity with the policies of this division." Accordingly, unless a PWP proponent successfully invokes this section, the local government retains discretion as to whether to amend its own LCP to facilitate a proposed PWP.

This process also does not allow the City to usurp the Commission's role in determining consistency between the proposed PWP amendment and the LCP. Pursuant to Coastal Act Section 30605, the Commission still retains ultimate authority to determine whether a PWP amendment is consistent with a relevant, certified LCP. In doing so, it could make a determination that is different from the local government whose LCP is at issue. Thus, there could be situations in which the Commission approves a PWP amendment as consistent with a local LCP even though the local government disagrees that it is consistent. In theory, a local government could interpret its LCP in an outrageous or unsupportable manner in an attempt to thwart a proposed PWP amendment or have the application for the PWP amendment deemed incomplete. If that situation were ever to arise, the Executive Director would have the discretion to find the application complete despite the local government's failure to grant preliminary local approvals such as allegedly necessary LCP amendments. The Commission would then have the ultimate authority to interpret the relevant LCP and determine whether the proposed PWP amendment was consistent with it.

However, this is not that type of situation. Here, there is no serious dispute about whether the proposed PWP amendment is consistent with the City's *current* LCP. Rather, the Harbor Department claims that the City is required by state law to modify its LCP to conform with its General Plan, which would in turn allegedly make its LCP consistent with the proposed PWP amendment. In this situation, the Commission sees no reason to waive the general requirement for preliminary approval from the City of Oxnard before deeming the PWP amendment application complete. Although the Harbor Department has stated that there are ways in which the PWP amendment could be interpreted to be consistent with the City's current LCP (see [Exhibit 11](#)), it has not provided any evidence to support this assertion. The Commission sees no reason at this stage to speculate for itself as to how it could find consistency between the proposed PWP amendment and the LCP; rather, it makes the most sense to wait for the City's

preliminary approvals before filing the PWP amendment application and proceeding to consider it.

APPENDIX A

Substantive File Documents

Certified Channel Islands Harbor Public Works Plan; Certified City of Oxnard Coastal Land Use Plan and Coastal Zoning Ordinance; Channel Islands Harbor Public Works Plan Amendment Application No. PWP-4-CIH-16-0005-2