

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877
WEB: WWW.COASTAL.CA.GOV



Th21a

Prepared August 25, 2017 for September 14, 2017 Hearing

To: Commissioners and Interested Persons

From: Dan Carl, Central Coast District Director
Susan Craig, Central Coast District Manager
Kevin Kahn, Central Coast District Supervisor

Subject: **San Luis Obispo County LCP Amendment No. LCP-3-SLO-15-0013-1-Part B
(Resource Management System)**

SUMMARY OF STAFF RECOMMENDATION

San Luis Obispo County proposes to amend its Local Coastal Program (LCP) by updating the LCP's provisions regarding its Resource Management System (RMS). The RMS is a component of the LCP's Land Use Plan (LUP) and includes an overview of the health and status of the coastal zone's public and private services, including for water supply and wastewater treatment capacity. The overarching purpose of the RMS is to serve as an informational document that provides the County and the general public with an assessment of the public and private services in the coastal zone. It does so through a process whereby the County prepares resource inventories and ultimately authorizes the Board of Supervisors to designate the status and adequacy of those resources with respect to their ability to provide public and private services. On this point, the RMS describes a system for designating the adequacy of services based on those services' uses and capacities. These designations, called "Levels of Severity" (LOS), have three tiers: I, II, and III. Services with a higher LOS (e.g., III) have more severe use, capacity, and adequacy issues as compared to services with a lower LOS (e.g., I).

In addition to general cleanup and reorganization of the RMS component of the LUP, the amendment's primary proposed change is the recalculation of thresholds for determining LOS classifications for certain resources, including for water supply and wastewater treatment capacity. The proposed amendments generally strengthen such thresholds by setting more conservative thresholds for each LOS, and will continue to adequately ensure that such essential public and private services are monitored.

However, the RMS' stated purpose and primary objective is to serve as an *informational* tool for the County and the general public to understand and monitor the health and status of public and private services within the coastal zone. While the RMS identifies LOS threshold criteria, those criteria are meant as general guidelines and not mandatory requirements. Ultimately, such LOS designations must be approved by the Board of Supervisors. The Board has discretion to

designate these services at the calculated LOS or not based on the fact-specific circumstances and information available regarding the particular resource and the community/area served by the resource. In other words, the RMS is not a regulatory document with specific criteria that must be followed as legal standards of review, but rather is an informational tool. Still, some of the LCP's core regulatory policies and standards refer to the RMS and specifically apply only to areas designated by the RMS as LOS II or III with respect to water supply and wastewater treatment capacity, including critical LCP policies addressing subdivisions and other development outside of urban growth boundaries. There is thus a disconnect within the LCP in having the RMS be an informational tool but also having regulatory policies that only apply to areas designated in the RMS as having inadequate services. This is problematic in numerous ways, including that LOS thresholds are not automatic triggers but instead must be reviewed and approved by the Board of the Supervisors, outside of the LCP amendment process. Furthermore, relying on the RMS' designations may not reflect on-the-ground conditions, including if an area has known water supply or wastewater treatment capacity limitations but, for whatever reason, has not yet been designated LOS II or III by the Board of Supervisors. Such a situation may frustrate the coastal development permit (CDP) review process, whereby the County, or the Commission on appeal, must make affirmative findings based on substantial evidence in the record that services are available and adequate to serve new development. The existing LCP's reliance on the RMS' LOS designations to define whether services are or are not adequate to serve new development has the potential to circumvent current on-the-ground conditions identified through the CDP review process. The proposed amendment does not rectify this problem, and thus the proposed amendment, as submitted, cannot be found consistent with the Coastal Act.

This inconsistency can be rectified through modifications that address the LCP's regulatory policies' reliance on the RMS' LOS designations. Such modifications are meant to use the RMS in its intended function, i.e., as a tool to evaluate the health and condition of public and private services. The RMS is not the only tool, however, that can be used to make such an evaluation. Thus, the modifications clarify that the on-the-ground analysis and conclusions provided during the CDP application review process constitute other key tools (which also may still consider or rely upon LOS determinations under the RMS) in ensuring consistency with key Coastal Act requirements regarding adequacy of services.

In summary, the suggested modifications ensure that the RMS functions as an informational document to be used as a tool to help identify the health and status of public and private services in the coastal zone. The modifications also ensure that the CDP review process is another tool in this identification and analysis, and include clear and enforceable terms for defining when services are adequate or limited. As modified, the proposed LUP amendment conforms with the policies of Chapter 3 of the Coastal Act.

Commission staff has worked collaboratively with County staff to develop an LCP amendment that ensures the RMS and the CDP review process are both used to find that new development will be served by adequate public and private services, consistent with the Coastal Act.

The County has indicated that it is in agreement with the suggested modifications. Staff recommends that the Commission find the amendment, as modified, conforms with the policies

of the Coastal Act, and that the Commission approve the amendment with those modifications. The motions and resolutions are found on page 4 below.

Staff Note: LCP Amendment Action Deadline

This proposed LCP amendment was filed as complete on November 18, 2016. On February 8, 2017, the Commission voted to extend the action deadline by one year, to February 8, 2018. Thus, the Commission has until February 8, 2018 to take a final action on this LCP amendment.

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EXHIBITS

- Exhibit 1: Proposed LUP Amendment
- Exhibit 2: Coastal Commission Suggested Modifications

CORRESPONDENCE

- Correspondence 1: Public Comments Received
- Correspondence 2: San Luis Obispo County’s Response to Public Comments

I. MOTIONS AND RESOLUTIONS

Staff recommends that the Commission, after public hearing, approve the proposed LCP amendment if modified. The Commission needs to make two separate motions in order to act on this recommendation.

A. Deny the LUP Amendment as Submitted

Staff recommends a **NO** vote on the motion below. Failure of the motion will result in denial of the LUP 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 appointed Commissioners.

***Motion:** I move that the Commission certify Land Use Plan Amendment Number LCP-3-SLO-15-0013-1-Part B as submitted by the County of San Luis Obispo, and I recommend a **no** vote.*

***Resolution:** The Commission hereby denies Land Use Plan Amendment Number LCP-3-SLO-15-0013-1-Part B as submitted by the County of San Luis Obispo and adopts the findings set forth below on the grounds that the amendment does not conform with the policies of Chapter 3 of the Coastal Act. Certification of the Land Use Plan amendment would not comply with the California Environmental Quality Act because there are feasible mitigation measures and/or alternatives which could substantially lessen any significant adverse effect which the Land Use Plan may have on the environment.*

B. Approve the LUP Amendment with Suggested Modifications

Staff recommends a **YES** vote on the motion below. Passage of the motion will result in certification of the LUP 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 appointed Commissioners.

***Motion:** I move that the Commission certify Land Use Plan Amendment Number LCP-3-SLO-15-0013-1-Part B if it is modified as suggested in this staff report, and I recommend a **yes** vote.*

***Resolution:** The Commission hereby certifies Land Use Plan Amendment Number LCP-3-SLO-15-0013-1-Part B for the County of San Luis Obispo if modified as suggested and adopts the findings set forth below on the grounds that the amendment with suggested modifications will meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the Land Use Plan 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 plan on the environment, or 2) there are no further feasible mitigation measures and/or alternatives which could substantially lessen any significant adverse effect which the Land Use Plan may have on the environment.*

II. SUGGESTED MODIFICATIONS

The Commission hereby suggests the following modifications to the proposed LCP amendment, which are necessary to make the requisite Coastal Act consistency findings. If the County of San Luis Obispo, by formal resolution of the Board of Supervisors, accepts the suggested modifications within six months of Commission action¹ (i.e., by March 14, 2018), the modified amendment will become effective upon Commission concurrence with the Executive Director's finding that this acceptance has been properly accomplished. Where applicable, text in ~~cross-out~~ format and text in underline format denotes proposed text to be deleted/added by the Commission.

1. Amend the proposed LUP amendment as shown in **Exhibit 2**.

III. FINDINGS AND DECLARATIONS

A. DESCRIPTION OF PROPOSED LCP AMENDMENT

Background on the Resource Management System

The amendment proposes to update the LCP's Resource Management System (RMS). The RMS is part of the Land Use Plan's "Framework for Planning" document, which is the LCP's "toolbox" that describes how to interpret and implement the LCP.² As a chapter within the Framework for Planning document, the RMS includes an overview of the health and status of the coastal zone's public and private services, including for water supply, wastewater treatment capacity, traffic and circulation, parks, and schools. The RMS describes where each unincorporated community receives its services, includes data on demand, usage, and supply, and requires the County to routinely update the inventory of such services so as to ensure their continued adequacy. Specifically, per the LCP:

The RMS is an informational tool to be used in carrying out the Land Use Element's aims of directing development toward communities and assuring that the amount, location, and rate of growth are within the sustainable capacity of resources, public services and facilities.... The focus of the RMS is on collecting data, identifying problems and helping decision-makers develop solutions to resource capacity problems.³

The overarching purpose of the RMS is therefore to serve as an informational document that provides the County and general public with an assessment of the public and private services in the coastal zone. It does so through a process whereby the County produces resource inventories and ultimately authorizes the Board of Supervisors to designate the status and adequacy of those services. On this point, the RMS describes a system for designating the adequacy of services based on those services' use and capacity. These designations, called "Levels of Severity" (LOS), have three tiers: I, II, and III. Per the RMS: "The RMS uses three levels of alert (called levels of severity)—Levels I, II, and III—to identify potential and progressively more immediate

¹ 14 CCR § 13537(b)

² For example, the Framework for Planning includes the list of allowable land uses for each of the land use designations within the coastal zone (Table O) and whether those uses are principally permitted or conditional.

³ See pages 2 and 3 of **Exhibit 1**.

resource deficiencies. The alerts are intended to occur while sufficient time is available to avoid or correct a shortage before a crisis develops.”⁴ While the RMS includes specific thresholds that apply to each specific resource type (e.g., water supply, wastewater treatment, etc.), in general LOS III means that the use of the resource exceeds its capacity, with LOS I and II providing lead time for the County and service providers to address such potential capacity issues and ultimately avoid a future LOS III designation.

Two things are important to note at this point: the first is that while the RMS specifies the criteria by which each LOS designation is to be defined, it does not require strict adherence to those criteria. Rather, it is clear that: “The criteria for each level of severity are not absolute, as particular community conditions or circumstances may logically support alternative criteria. Instead, they offer general guidelines for determining when resource management measures should be enacted.”⁵ Thus, just because a resource meets a particular LOS designation criterion, it does not mean that such resource automatically de facto becomes so designated. Rather, the Board of Supervisors must formally adopt the specific LOS designation in a public hearing. In other words, the RMS does not compel the Board or any other agency to designate a particular resource with an LOS. Instead, the RMS’ purpose is to serve as an informational document alerting decision makers of the status of the service; it does not require the Board to designate a particular service’s LOS, nor does it include any regulatory standards to which new development must conform. The RMS simply is used as a tool that describes the process by which the County is to study the health and adequacy of public and private services in the coastal zone.

Resource Management System and the LCP’s Regulatory Policies

However, while the intent and purpose of the RMS is to serve as a non-regulatory informational document, many of the LCP’s regulatory standards for new development refer to and rely upon LOS designations as a key factor for determining whether services are adequate or not. For example, LUP Public Works Policy 1 requires a finding that new development shall demonstrate the availability of adequate public or private service capacities to serve such development *consistent with the Resource Management System* (emphasis added). This policy is then implemented via IP Section 23.04.430, which includes strict standards and findings for development outside of the Urban Services Line and Urban Reserve Line⁶ “in communities with limited water and sewage disposal service capacities *as defined by Resource Management System alert levels II or III* (emphasis added), as well as IP Section 23.04.021(c), which includes strict requirements on land divisions, including subdivisions, *only* for areas designated LOS II or III for water and wastewater treatment capacity. Thus, the LCP contains numerous strong standards for ensuring that new development is served by adequate services, but applies some of those standards only to areas designated via the RMS as being LOS II or III.

Proposed Amendment

In addition to general cleanup and reorganization of the RMS component of the LUP/LCP, the primary change proposed by the amendment is the recalculation of lead times for determining

⁴ See page 5 of **Exhibit 1**.

⁵ See page 5 of **Exhibit 1**.

⁶ These lines serve as the LCP’s urban/rural growth boundaries and help delimit where growth and development should be directed.

LOS classifications for certain resources, including for water supply and wastewater treatment capacity. The RMS defines the term “lead time” as the amount of time a resource’s supply can meet its demand. Thus, the longer the lead time, the greater the amount of supply that must be available to serve the demand over that specified time period. Specifically, the amendment proposes to change the lead time determinations for the three LOS categories for water supply as follows:

- LOS I: increasing the lead time from nine years to 25 years⁷;
- LOS II: increasing the lead time from seven years to 20 years;
- LOS III: increasing the lead time from the present time to 15 years.

For wastewater treatment capacity, the amendment modifies the LOS categories as follows:

- LOS I: Design capacity for monthly average daily flow reached within four years (currently defined at six years);
- LOS II: Design capacity for monthly average daily flow reached within two years (currently defined at five years).
- LOS III: Peak daily flow equals or exceeds the capacity of a wastewater treatment and/or disposal facility (no change proposed to this standard).

See **Exhibit 1** for the proposed LUP amendment text.

B. CONSISTENCY ANALYSIS

Standard of Review

The proposed amendment affects the LUP component of the San Luis Obispo County LCP. The standard of review for LUP amendments is that they must conform with the requirements of Chapter 3 of the Coastal Act. (*See* Pub. Res. Code §30512.2)

Applicable Coastal Act Policies

Section 30222. *The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.*

Section 30250(a). *New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been*

⁷ That is, ensuring that there is at least a 25-year supply of water to serve expected demand.

developed and the created parcels would be no smaller than the average size of surrounding parcels.

Section 30254. *New or expanded public works facilities shall be designed and limited to accommodate needs generated by development or uses permitted, consistent with the provisions of this division; provided, however, that it is the intent of the Legislature that State Highway 1 in rural areas of the coastal zone remain a scenic two-lane road. Special districts shall not be formed or expanded, except where assessment for, and provision of, the service would not induce new development inconsistent with this division. Where existing or planned public works facilities can accommodate only a limited amount of new development, services to coastal dependent land use, essential public services, and basic industries vital to the economic health of the region, state, or nation, public recreation, commercial recreation and visitor-serving land uses shall not be precluded by other development.*

The Coastal Act requires that development be served by adequate services, including water supply and wastewater treatment capacity (Coastal Act Section 30250(a)). The Act also describes a prioritization of allowed uses, with visitor-serving commercial recreational, agriculture, and coastal-dependent uses the highest priority (Coastal Act Section 30222). When services are limited, these uses are given priority to those services over general residential, commercial, and industrial uses (Coastal Act Sections 30222 and 30254). Such non-priority development must not divert scarce and limited water supply and wastewater treatment capacity from identified priority uses.

Analysis

As described previously, the proposed amendments seek to update the thresholds for defining LOS designation criteria, including for water supply and wastewater treatment capacity. The County indicates that, with the LOS changes, no areas within the coastal zone would have their current LOS designation for a particular service change at this time. With respect to water supply, the amendments extend for each LOS the amount of time by which a water source must have an adequate supply to serve its estimated demand, meaning that such supply must exceed its demand for longer time periods than the RMS currently requires. Thus, the amendments strengthen the existing RMS standards by setting more conservative thresholds for each LOS, and help to ensure that communities will have adequate water supplies for longer periods into the future. With respect to wastewater, while the proposed amendment reduces the time periods for the LOS I and II designations (i.e. instead of being able to treat the average daily flow projected in six years, an LOS I designation would potentially be triggered at treating the flow projected in four years), these changes are intended to reflect the Central Coast Regional Water Quality Control Board's requirements that review wastewater treatment infrastructure based on these timeframes.

The proposed amendments will continue to adequately ensure that such essential public and private services are monitored. Furthermore, regardless of the specific thresholds articulated for each service type, the RMS will continue to serve as a proactive tool that will describe how the County is to review and monitor the essential public and private services within the coastal zone, and will serve to alert the County and the general public about potential issues on the horizon. In other words, the RMS is an innovative tool that serves to proactively plan

for service capacities and requires significant lead time in continued service adequacy for development within the coastal zone.

However, as previously described, the RMS' stated purpose and objective is to serve as an informational tool for the County and general public to understand and monitor the health and status of public and private services within the coastal zone. While it identifies LOS threshold criteria, those criteria are meant as general guidelines and not mandatory requirements.⁸ Ultimately, such LOS designations must be approved by the Board of Supervisors, which has discretion to apply an LOS designation to these services or not based on the unique circumstances and information of the particular resource and the community/area served by the resource. In other words, the RMS is not a regulatory document with specific criteria that must be followed as legal standards of review, but rather is an informational tool. However, also as previously described, some of the LCP's core regulatory policies and standards refer to and specifically apply only to areas designated by the RMS as LOS II or III with respect to water supply and wastewater treatment capacity, including critical LCP policies addressing subdivisions and other development outside of urban growth boundaries. There is thus a disconnect within the LCP in having the RMS be a discretionary and optional informational tool but also having regulatory policies only applying to areas designated in the RMS as having inadequate services. In other words, this framework introduces a potential gap in regulatory oversight because many LCP regulatory policies are tethered to LOS determinations, yet the County Board of Supervisors is not obligated to necessarily make a particular LOS determination for a particular location/area. This is problematic in numerous ways, including that LOS thresholds are not automatic triggers but instead must be reviewed and approved by the Board of the Supervisors outside of the LCP amendment process. Furthermore, relying on the RMS' designations may not actually reflect on-the-ground conditions, including if an area has known water supply or wastewater treatment capacity limitations but, for whatever reason, has not yet been designated LOS II or III. Such a situation may frustrate the CDP review process, whereby the County, or the Commission on appeal, must make affirmative findings based on substantial evidence in the record that services are available and adequate to serve new development. The existing LCP's reliance on the RMS' LOS designations to define whether services are or are not adequate to serve new development has the potential to circumvent current on-the-ground conditions identified through the CDP review process. The proposed amendment does not rectify this problem, and thus the proposed amendment, as submitted, cannot be found consistent with Coastal Act policies that require all new development to be served by adequate services (Coastal Act Section 30250). The RMS should represent *a* tool to define when services are adequate or limited. However, it should not be, nor does the RMS envision it to be, the *only* tool. The proposed amendment also does not specify a hierarchy of uses to be prioritized in the coastal zone when services are deemed inadequate, as required by Coastal Act Sections 30222 and 30254. For these reasons, the amendment as submitted must be denied.

⁸ In addition, the RMS describes certain actions the County is to undertake if a particular service is designated with an LOS, including conservation measures and restrictions on further development. However, these actions should not be understood as mandatory, including because it is discretionary for the Board to designate the LOS in the first place. In other words, as described throughout this report, the RMS is not a regulatory document, but rather an information tool.

These inconsistencies can be addressed, however, and the amendment can be approved through modifications that address the LCP's regulatory policies' reliance on the RMS' LOS designations. Such modifications will serve to use the RMS in its intended function, i.e., as a tool in evaluating the health and condition of public and private services, but not the only tool, and certainly not a tool that preempts the on-the-ground conclusions provided during the CDP application review process. Thus, **Suggested Modification 1** (see **Exhibit 2**) modifies LUP Public Works Policies 1, 6, and 8 by requiring all new development to be served by adequate public or private service capacity, and by explicitly stating that the RMS as well as the CDP review process are tools to evaluate whether there are adequate services available to serve new development. Thus, in all cases, including regardless of whether a particular resource is designated via the RMS or not, on-the-ground conditions of the particular resource will be used to determine whether there in fact are adequate or limited services available for proposed development.⁹ Finally, the modification ensures that, if there is limited public or private service capacity (again, if the resource is found not to be adequate via the RMS or the CDP review process), certain uses are given priority to those limited services, including coastal-dependent uses and visitor-serving uses, but explicitly not including residential subdivisions outside of existing urban areas. As modified, the proposed amendment is consistent with Coastal Act Sections 30222, 30250(a), and 30254.

In summary, the suggested modifications ensure that the RMS functions in its intended way, i.e., as an informational document to be used as a tool to help identify the health and status of public and private services in the coastal zone. The modifications also ensure that the CDP review process is another tool in this identification and analysis by including clear and enforceable terms for defining when services are adequate or limited. As modified, the proposed LUP amendment conforms with the Chapter 3 policies of the Coastal Act.

Finally, it should be noted that some members of the public have voiced concerns about the proposed amendment, including inadequate noticing of local Planning Commission and Board of Supervisors' hearings and the amendment's modification from 'mandatory' to 'recommended' action items the County is to undertake when a resource is given a particular designation (see this correspondence in **Correspondence 1**). However, as explained in the County's letter responding to these assertions (see **Correspondence 2**), the County held four appropriately noticed public hearings on the proposed amendment (two at the Planning Commission on July 14 and September 11, 2014 and two at the Board of Supervisors on December 2 and December 16, 2014). In addition, the County notes that the RMS has always functioned as an informational tool about the status of public services, and not as a document containing regulatory policies to which development must conform. The amendment simply maintains this structure and clarifies how the RMS is to be used in terms of the LCP, including better articulating how the County is to address resource inadequacies. For example, if a resource is designated LOS III, the County cannot unilaterally amend the LCP to institute measures to address the inadequacy. Rather, such

⁹ Other LCP policies and standards that apply to resources designated LOS II or III are thus to be understood as *additional* policies and standards for those specifically designated resources, *not* that LCP requirements are *only* applicable to RMS designated resources. Again, in all cases, development must be found to have adequate public or private services, including water supply and wastewater treatment capacity and the lack of same, regardless of LOS designation, is grounds for reduced density or denial of a proposed project.

an LCP amendment would need to go through the amendment process specified in the Coastal Act and local regulations, including public notice. In other words, regardless of what the RMS does or does not say about what to do about a particular resource's inadequacies, the RMS does not 'override' the Coastal Act in terms of process. The proposed amendment thus provides additional clarity on these issues. Again, as modified, the RMS amendment strengthens the LCP by better articulating its function and by ensuring that on-the-ground conditions and best available information about resource capacity and demand are always used in the CDP review process.

C. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 21080.9 of the California Public Resources Code (within CEQA) exempts local government from the requirement of preparing environmental review documentation under CEQA in connection with its activities and approvals necessary for the preparation and adoption of a local coastal program. Therefore, local governments are not required to prepare any CEQA environmental review document in support of their proposed LCP amendments, although the Commission can and does use any environmental information that the local government submits in support of its proposed LCPA in carrying out its duties under CEQA and the Coastal Act when evaluating the LCPA. The Commission's LCP review and approval program has been found by the Resources Agency to be the functional equivalent of the environmental review required by CEQA, pursuant to CEQA Section 21080.5 and 14 CCR § 15251(f).

Nevertheless, the Commission is required, in approving an LCP amendment submittal, to find that the approval of the proposed LCP, as amended, does conform with certain CEQA provisions, including the requirement in Section 21080.5(d)(2)(A) that the amended LCP will not be approved or adopted as proposed if there are feasible alternative or feasible mitigation measures available that would substantially lessen any significant adverse impact which the activity may have on the environment. See also, CEQA Guidelines Sections 13542(a), 13540(f), and 13555(b).

The County's LCP amendment consists of a Land Use Plan (LUP) amendment. As part of its local action on the subject LCP amendment, the County of San Luis Obispo found that there is no possibility that this amendment may have a significant effect on the environment, and therefore determined that the amendment is not subject to CEQA. As discussed herein, the LUP amendment as originally submitted does not conform with the Chapter 3 policies of the Coastal Act. The Commission, therefore, has suggested modifications to bring the LUP amendment into full conformance with the Coastal Act, which will have the effect of substantially lessening any significant adverse impact which the LUP amendment may have on the environment. As modified, the Commission finds that approval of the LCP amendment will not result in significant adverse environmental impacts within the meaning of CEQA. Absent the incorporation of these suggested modifications to effectively mitigate potential resource impacts, such a finding could not be made.