

CALIFORNIA COASTAL COMMISSION

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W10a

August 25, 2017

TO: Commissioners and Interested Persons

FROM: Karl Schwing, Deputy Director
Charles Posner, Supervisor of Planning
Shannon Vaughn, Coastal Program Analyst

SUBJECT: Concurrence with the Executive Director's determination that the action of the City of Dana Point accepting certification with suggested modifications of Local Coastal Program Amendment No. 2-16 (LCP-5-DPT-16-0044-1) for the Headlands Development Conservation portion of the Land Use Plan and Implementing Plan is legally adequate. For Commission review at its September 13, 2017 meeting in Cambria.

STAFF RECOMMENDATION

Staff recommends that the Commission concur with the Executive Director's determination that the City's action is legally adequate.

BACKGROUND

On December 7, 2016, the Commission approved Local Coastal Program (LCP) Amendment No. 2-16 with suggested modifications. The subject amendment dealt with changes to hours of operation of the Mid- and Central-Strand public beach accessways, the South Strand Swithback Trail, Strand Beach Park, and the Strand Revetment Trail, as well as an enforcement mechanism for the hours of public access at the Mid- and Central-Strand accessways authorized by the certified LCP. The proposed amendment affects both the Land Use Plan and Implementation Plan portion of the certified LCP.

On April 18, 2017 and May 2, 2017, the City Council adopted a Resolution No. 17-04-18-01 (**Exhibit 2**) and Ordinance No. 17-03 (**Exhibit 3**), respectively, acknowledging receipt of the Commission's certification of LCP Amendment No. 2-16 and accepting and agreeing to all modifications suggested by the Commission. The signed resolution and ordinance was transmitted to Commission staff on May 5, 2017 and updated to correct typos on May 30, 2017.

Commission staff sent a letter to the City dated January 12, 2017 (**Exhibit 1**) that provided the City with direction for implementing the Commission-approved suggested modifications for the LCP Amendment. The letter included an attachment with the suggested modifications that were approved by the Commission. Modifications to the LUP and IP were adopted by the City verbatim. However,

Executive Director's Determination of Adequacy

Dana Point LCP Amendment 2-16

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there is a divergence in the understanding of the language between City staff and Commission staff with regard to updated Figures 4.4.15, 4.12.4, and 4.12.10.

Specifically, the suggested modifications for Figures 4.4.15, 4.12.4, and 4.12.10 approved by the Coastal Commission state:

Figures 4.4.15 and 4.12.4: Add call-out for *rope or similar device and remove any indication of a fence or gate across the accessway from the illustration "Fully Retractable Public Access Gate"*

Figure 4.12.10: Mid-Strand Beach Access *Rope Gate*
Remove any indication of a fence or gate across the accessway from the illustration and add single strand of rope or similar device positioned at approximately 48 inches above the ground surface to the illustration of the 'closed' condition.

The language accompanying Figures 4.4.15, 4.12.4, and 4.12.10 submitted by the City in response to the Coastal Commission's suggested modification for the LCP Amendment states:

Figures 4.4.15 and 4.12.4: *"Fully retractable rope or similar device"*

Figure 4.12.10 *"Fully Retractable Rope (Or Similar Device) – Closed"*

Commission staff has expressed concern regarding the use of the word "retractable" while referring to the rope (i.e. retractable rope or similar device) in the figures because it could imply the use of a mechanized apparatus at the accessways, which was not the intent of the Commission's action on the LCP Amendment. Commission staff requested the City to remove the word "retractable" from the figures and replace it with "single strand" (i.e. single strand of rope or similar device). In a letter from the City dated July 21, 2017 (**Exhibit 4**), City staff specified that they reviewed the Commission staff report for the LCP Amendment dated November 23, 2016 and the suggested modifications included with the letter from the Commission dated January 12, 2017 and they cannot locate a reference to deleting the use of the word retractable in either document. As such, it is the City's opinion that the Commission has not granted the City the authority to remove the word "retractable" from Figures 4.4.15, 4.12.4, and 4.12.10. Nevertheless, the City understands Commission staff's concern regarding the use of the word "retractable" and has expressed in its July 21, 2017 letter that the City has no intention, whatsoever, of interpreting the word "retractable" in such a manner that would or could lead to the request for the installation of gates or mechanized equipment at the Mid- and Central Strand accessways. Further, the City states that it fully intends to comply with the suggested modifications of the LCP Amendment approved by the Coastal Commission on December 7, 2016.

Therefore, pursuant to Section 13544 of the California Code of Regulations, Title 14, Division 5.5, the Executive Director must determine whether the action taken by the City of Dana Point acknowledging receipt and acceptance of and agreement with the Commission's certification of the above-referenced LCP amendment with suggested modifications is legally adequate and report that determination to the Commission. In this case, the Executive Director has determined that the City's action is legally adequate. Unless a majority of the Commissioners present object to the Executive Director's determination, the certification of City of Dana Point Headlands Development Conservation Plan LCP Amendment No. 2-16 shall become effective upon the filing of the required Notice of Certification with the Secretary of Resources as provided in Public Resources Code Section 21080.5(d)(2)(E).