

CALIFORNIA COASTAL COMMISSION

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August 25, 2017

W14a

TO: COMMISSIONERS AND INTERESTED PERSONS

**FROM: KARL SCHWING, DEPUTY DIRECTOR, SD COAST DISTRICT
GABRIEL BUHR, COASTAL PROGRAM MANAGER, SD COAST DISTRICT
SARAH RICHMOND, COASTAL ANALYST, SD COAST DISTRICT**

**SUBJECT: STAFF RECOMMENDATION ON CITY OF DEL MAR MAJOR
AMENDMENT LCP-6-DMR-17-0011-1 (Temporary Use Permits) for
Commission Meeting of September 13, 2017**

SYNOPSIS

The subject LCP Implementation Plan (IP) amendment (LCP-6-DMR-17-0011-1) was submitted and subsequently filed as complete on February 7, 2017. A one-year time extension was granted by the Commission on March 8, 2017. Therefore, the Commission must take action on this LCP amendment by March 9, 2018.

SUMMARY OF AMENDMENT REQUEST

The City of Del Mar has been issuing Operations Permits to approve temporary uses; however, this process does not cover the full range of requests that are typically associated with temporary use activities and temporary events on private property. The proposed amendment adds Chapter 30.73 - Temporary Use Permits (TUP) to the City's certified IP in order to establish a process for approval of temporary uses on private property in locations where the uses would not otherwise be allowed by the applicable zone, e.g., off-site construction parking and material storage, off-site event parking, outdoor retail sales, and other temporary special events. A two-tier approval process is proposed, where Minor TUPs would be subject to approval by the Director of Planning and Community Development, and Major TUPs would be subject to approval by the City Council. All TUPs would be subject to findings for approval to ensure that the site is appropriate for the temporary use; that operation will not be detrimental to the public health, safety, and welfare and will minimize impacts to surrounding properties; that the permit will not authorize a permanent use to occur in conflict with the applicable zone; and that operation of the use will not adversely affect the City's community plan. As a condition of approval, TUPs would also have to comply with applicable minimum performance standards, such as obtaining any other required permits including a Coastal Development Permit (CDP). In contrast to other coastal jurisdictions that define the

duration of a "temporary" use, in the case of the subject amendment, the decision maker can set the permit expiration date.

SUMMARY OF STAFF RECOMMENDATION

Staff is recommending that the Commission first reject the proposed amendment to the IP as submitted, and then approve it, with suggested modifications, to ensure that the proposed amendment will not result in unintended consequences to public access or coastal resources. Because the proposed amendment does not include language that explains a CDP is required to address potential impacts to coastal resources and public access, TUP applicants may not have sufficient direction regarding the need to prepare a CDP and develop a project consistent with LUP goals, and to provide for maximum public access in a way that also protects the City's coastal resources. Staff therefore recommends language to address this issue through **Special Modification #1**. In addition, the proposed amendment allows the decision maker to approve a temporary use without explicitly considering impacts to public access, water quality, or coastal resources in the required findings for approval. Thus, Staff recommends that the decision maker be required to make the finding that the temporary use would not adversely affect public access, water quality, or coastal resources (**Special Modification #2**). With these modifications, the proposed amendment is consistent with the City's intent to establish a process to authorize temporary uses on private property and with the City's LUP goals to provide maximum public access and protect natural resources. Staff has coordinated with the City on these suggested modifications and they are in agreement with the proposed changes.

The appropriate resolutions and motions begin on page 4. The suggested modifications begin on page 5. The findings for denial of the Implementation Plan Amendment as submitted begin on page 7. The findings for approval of the plan, if modified, begin on page 10.

ADDITIONAL INFORMATION

Further information on the City of Del Mar LCP amendment LCP-6-DMR-17-0011-1 (Temporary Use Permits) may be obtained from Sarah Richmond, Coastal Planner, at (619) 767-2370.

EXHIBITS

Exhibit 1 – Ordinance

PART I. OVERVIEW

A. LCP HISTORY

In May 1991, the City of Del Mar submitted its Land Use Plan (LUP) for Commission action. The Commission denied the LUP as submitted, but approved it with suggested modifications in September 1991. The City did not accept the suggested modifications within six months, so the City resubmitted the same documents and the Commission again approved the LUP with suggested modifications in June 1992. This time, the City Council adopted the modifications within the prescribed time and the Commission effectively certified the LUP in March 1993. The Implementation Plan (IP) was approved with suggested modifications on March 13, 2001. On September 11, 2001, the Commission concurred with the Executive Director's determination to effectively certify the City of Del Mar Local Coastal Program (LCP).

The certified LCP was first amended (LCPA No. 1-2000) in 2002 to incorporate the City's Multiple Species Conservation Program Subarea Plan. A second LCP amendment (DMR-MAJ-1-08), referenced as Garden del Mar, was approved with suggested modifications in March 2009 for the redesignation and rezoning of the property at the southeast corner of Camino del Mar and 10th Street. A third amendment (DMR-MAJ-1-09) was approved with suggested modifications in March 2010 to revise parking regulations to support revitalization of the City's downtown business district. A fourth amendment (DMR-MAJ-1-11) involved deleting a phrase regarding the processing for authorization of reduction in wetland setbacks so as to delete automatic deferral to California Department of Fish and Wildlife. A fifth amendment (LCP-6-DMR-17-0073-1) was approved with suggested modification in May 2017 to add and update various sections related to off-street parking to more efficiently utilize existing spaces in commercial zones, change in-lieu fee parking program requirements, and incentivize alternative transportation options.

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 LUP. The Commission shall take action by a majority vote of the Commissioners present.

C. PUBLIC PARTICIPATION

The City has held Planning Commission and City Council meetings with regard to the subject amendment request. All of those local hearings were duly noticed to the public. Notice of the subject amendment has been distributed to all known interested parties.

PART II. LOCAL COASTAL PROGRAM SUBMITTAL - RESOLUTIONS

Following a public hearing, staff recommends the Commission adopt the following resolutions and findings. The appropriate motion to introduce the resolution and a staff recommendation are provided just prior to each resolution.

- I. MOTION I:** *I move that the Commission reject the Implementation Program Amendment LCP-6-DMR-17-0011-1 for the City of Del Mar LCP as submitted.*

STAFF RECOMMENDATION OF REJECTION:

Staff recommends a **YES** vote. Passage of this motion will result in rejection of Implementation Program and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DENY CERTIFICATION OF THE IMPLEMENTATION PROGRAM AS SUBMITTED:

The Commission hereby denies certification of the Implementation Program Amendment LCP-6-DMR-17-0011-1 submitted for the City of Del Mar LCP and adopts the findings set forth below on grounds that the Implementation Program as submitted does not conform with, and is inadequate to carry out, the provisions of the certified Land Use Plan. Certification of the Implementation Program would not meet the requirements of the California Environmental Quality Act as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Implementation Program as submitted

- II. MOTION II:** *I move that the Commission certify the Implementation Program Amendment LCP-6-DMR-17-0011-1 for the City of Del Mar LCP if it is modified as suggested in this staff report.*

STAFF RECOMMENDATION:

Staff recommends a **YES** vote. Passage of this motion will result in certification of the Implementation Program Amendment with suggested modifications and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO CERTIFY THE IMPLEMENTATION PROGRAM AMENDMENT WITH SUGGESTED MODIFICATIONS:

The Commission hereby certifies the Implementation Program Amendment LCP-6-DMR-17-0011-1 for the City of Del Mar if modified as suggested and adopts the findings set forth below on grounds that the Implementation Program Amendment, with the suggested modifications, conforms with and is adequate to carry out the certified Land

Use Plan. Certification of the Implementation Program Amendment if modified as suggested complies with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Program Amendment on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.

PART III. SUGGESTED MODIFICATIONS

Staff recommends the following suggested revisions to the proposed Implementation Plan be adopted. The underlined sections represent language that the Commission suggests be added, and the ~~struck-out~~ sections represent language which the Commission suggests be deleted from the language as originally submitted.

1. Modify Section 30.73.020 – When a Temporary Use Permit is Required as follows:

[...]

D. Applications filed pursuant to this Chapter may also be subject to approval of other permit types in addition to the Temporary Use Permit.

- 1. A Coastal Development Permit shall be obtained for those uses that involve coastal development or potential impacts to coastal resources or public access pursuant to DMMC Chapter 30.75 (Coastal Development Permits) and that do not qualify for a permit exemption in accordance with Section 30.75.200.*

2. Modify Section 30.73.040 – Decision Process for Temporary Use Permits and Findings for Approval as follows:

[...]

C. A Temporary Use Permit, Minor or Major, may be approved or conditionally approved only if the decision maker makes all of the following Findings for Approval:

- 1. That the proposed site is adequate to accommodate the anticipated number of guests and vendors for the temporary use;*
- 2. That operation of the temporary use for a limited period of time consistent with the permit conditions will not be detrimental to the public health, safety, and welfare and will not adversely affect the surrounding neighborhood; ~~and~~*
- 3. That in consideration of the past and present use of the site, granting of the Temporary Use Permit would not authorize a*

- permanent use to occur in conflict with the allowed uses of the applicable zone-;*
4. *That operation of the temporary use would not adversely affect the community plan-;and*
 5. *That the temporary use would not adversely affect public access, water quality, or coastal resources.*

PART IV. FINDINGS FOR REJECTION OF THE DEL MAR LCP IMPLEMENTATION PLAN AMENDMENT, AS SUBMITTED

A. AMENDMENT DESCRIPTION

It is typical for a local jurisdiction to have a Temporary Use Permit (TUP) approval process to allow, on a temporary basis, for uses that are not otherwise allowed by right per the applicable zone of a private property. Currently, the City of Del Mar does not have a TUP approval process. Instead, the City uses Operations Permits to approve the private use of public property (such as the beach) and to approve a “large assemblage” (event attended by more than 50 people) on any property, public or private. The existing Operations Permit process has been used for events in commercial parking lots, private events in quasi-public spaces at the Plaza and L’Auberge Hotel, and private events at personal residences with constrained parking/access. Chapter 6.52 of the Del Mar Municipal Code (DMMC) contains Operations Permit regulations; this chapter is not included in the City’s certified LCP.

The problem the City is addressing through the subject LCP amendment is that the existing process has been inconsistently applied in the past, and does not cover the full range of requests that are typically made for temporary use activities and events on private property. As such, the proposed amendment adds Chapter 30.73 - Temporary Use Permits to the City’s certified Implementation Plan (IP) to establish a process for approval of temporary uses on private property in locations where the uses would not otherwise be allowed by the applicable zone ([Exhibit #1](#)). Examples of these temporary uses include:

- Off-site construction parking and material storage associated with an approved development permit occurring at a separate location (does not apply to on-street parking);
- Outdoor retail sales events related to holiday or seasonal activities held within a parking lot or off-site (e.g. pumpkin or holiday tree lots);
- Off-street parking for off-site special events;
- Special events and public assembly and entertainment of a temporary nature; and
- Private activities and events on quasi-public spaces in the Del Mar Plaza public plaza terrace or in the L’Auberge Hotel amphitheater where the use is not explicitly provided for by the Specific Plan (applicable zoning).

With the addition of Chapter 30.73 - Temporary Use Permits to the IP, the City will also revise Chapter 6.52 - Operations Permit: Large Assemblage to remove conflicting language. However, revised Chapter 6.52 will continue to be excluded from the City's certified LCP. Revised Chapter 6.52 establishes a process for approval of temporary uses on public property and large assemblages on a private property in a residential zone, which are exempt from the TUP regulations (Chapter 30.73.020.C). Chapter 6.52 does not remove the requirement that the City issue a coastal development permit when necessary.

B. SPECIFIC FINDINGS FOR REJECTION

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.

Purpose and Intent of the Ordinance. The purpose and intent of the ordinance is to establish a process for approval of temporary uses on private property.

Major Provisions of the Ordinance. The major provisions of the proposed amendment set procedures and standards of review for approval of temporary uses on private property where the use would otherwise not be allowed, e.g., off-site construction parking and material storage, off-site event parking, outdoor retail sales, and other special events. A two-tier approval process is proposed, where Minor TUPs would be subject to approval by the Director of Planning and Community Development, and Major TUPs would be subject to approval by the City Council. All TUPs would be subject to findings for approval to ensure that the site is appropriate for the temporary use, that operation will not be detrimental to the public health, safety, and welfare and will minimize impacts to surrounding properties, that the permit will not authorize a permanent use to occur in conflict with the applicable zone, and that operation of the use will not adversely affect the City's community plan. The decision maker can set the permit expiration date; otherwise the TUP expires 30 days after the event if no expiration is set in the permit.

Adequacy of the Ordinance to Implement the Certified LUP Segments. The standard of review for any proposed IP or an amendment to a certified IP is whether or not the proposed IP provision conforms with, and is adequate to carry out, the provisions of the certified LUP. The applicable LUP policies to consider are as follows:

COASTAL ACCESS GOAL IV-A: Provide physical and visual access to coastal recreation areas for all segments of the population without creating a public safety concern, overburdening the City's public improvements, degrading the City's natural resources, or causing substantial adverse impacts to adjacent private properties.

COASTAL ACCESS GOAL IV-D: Maximize the opportunity for access to beach areas by minimizing competition for public on-street parking spaces.

WETLAND PRESERVATION VI-B: Preserve, protect, and where feasible, enhance the wetland areas of Del Mar.

These LUP policies require that maximum access and recreational opportunities be provided to all people consistent with public safety needs, while still protecting natural resources from overuse. The language in the proposed LCP amendment regarding the Coastal Development Permit (CDP) requirement (Section 30.73.020.D.1) and the adequacy of the findings for approval of a TUP (Section 30.73.040.C) raises concerns described below.

Section 30.73.020.D.1 When a Temporary Use Permit is Required: This section specifies that, in addition to a TUP, a CDP shall be obtained for those uses that involve coastal development and do not qualify for an exemption (Chapter 30.75 - Coastal Development Permits). Chapter 30.75 - Coastal Development Permits is included in the City's certified LCP and is consistent with the Commission's 1993 guidelines that identify the types of temporary events that have the potential for significant adverse effect on coastal resources and public access and which, as a result, require a CDP, i.e., temporary events held between Memorial Day and Labor Day, that occupy all or a portion of the sandy beach area, and that involve a charge for previously free general public admission or seating. While the reference to Chapter 30.75 is precise, it may not be clear to applicants from the reference alone that temporary uses can constitute coastal development. For example, the definition of coastal development in the cited section includes a "change in the density or intensity of use of land" and "change in the intensity of use of water, or of access thereto," uses that may not be obvious to an applicant as a type of development. Thus, temporary uses such as special events, even for just a day, that increase the intensity of use of public street parking, beach or surf areas, coastal trails, etc. may constitute coastal development and therefore could require a CDP to ensure that impacts to coastal resources and public access (e.g., to habitat areas and recreational opportunities) can be appropriately avoided and minimized. Because the proposed amendment does not include language that explains a CDP is required to address potential impacts to coastal resources and public access, TUP applicants may not have sufficient direction regarding the need to prepare a CDP and design a project consistent with LUP goals, and specifically to provide for maximum public access in a way that protects the City's natural resources.

30.73.040.C Decision Process for Temporary Use Permits and Findings for Approval: To approve a TUP, it is the responsibility of the decision maker to make the findings that the site can accommodate the temporary use; that operation of the temporary use will not be detrimental to the public health, safety, and welfare and will not adversely affect the surrounding neighborhood; that the temporary use would not be in conflict with the allowed uses per the zoning; and that the temporary use would not adversely affect the community plan. Notably absent from the list of findings for approval is that the temporary use would not adversely affect public access, water quality, or coastal resources. While the proposed amendment includes separate language that acknowledges the applicant may be required to obtain a CDP for a temporary use that involves coastal development, the proposed amendment, as submitted, allows the decision maker to

approve a temporary use without explicitly considering impacts to public access, water quality, or coastal resources as a part of any required findings.

Del Mar is a popular coastal destination for visitors and the lack of explicit language to consider impacts to public access, water quality, or coastal resources could result in adverse impacts, especially because the proposed amendment does not define the duration of a temporary use. The Commission understands that the intent of the proposed amendment is to provide the City with “the necessary flexibility to accommodate the extent of requests for temporary uses that are unique to Del Mar” (City Staff Report dated December 19, 2017). As such, the proposed amendment states:

A “temporary use” shall mean any activity or land use of a temporary nature that extends beyond what is expressly allowed by the applicable base zone in terms of use and development standards ... temporary uses for a limited period of time in locations where the proposed use may be desirable and appropriate due to the limited and short-term nature of the activity ... (emphases added; Section 30.73.010).

In contrast, many other coastal jurisdictions include in their temporary use regulations a definition of “limited duration.” For example, the City of Encinitas, another coastal jurisdiction in North County San Diego, defines limited duration to mean “a period of time which does not exceed a two week period on a continual basis, or does not exceed a consecutive four month period on an intermittent basis” (IP Section 30.46.015). In discussions with the City, staff elaborated on the range of activities and the associated range of durations that, based on the details of a given proposal, could apply for a TUP. In some cases, only a 1-2 day duration would be considered appropriate, whereas in other cases, a weekly event over the course of a season or calendar year period would be considered appropriate. The longest possible duration TUP the City anticipates is for use of private property for construction parking or staging for construction occurring at a separate location. The City asserts that this scenario is unique to Del Mar because, unlike many other cities, it does not specify temporary construction parking as an allowed use per the zoning. Thus, the City would like to have discretion as to when, where, and for how long this type of temporary use can be permitted at a specified private property.

To accommodate the City’s desire for flexibility in approving TUPs and be consistent with LUP goals to provide public access and protect the City’s natural resources, the proposed amendment must include language that requires the decision maker to review potential impacts to public access, water quality, or coastal resources. Otherwise, without a definition of the duration of a “temporary” use, it is difficult to assess whether impacts to public access, water quality, or coastal resources would only be temporary in nature. Therefore, Section 30.73.020.D.1 and 30.73.040.C must be rejected as submitted.

**PART V. FINDINGS FOR APPROVAL OF THE DEL MAR LCP
IMPLEMENTATION PLAN AMENDMENT, IF MODIFIED**

The City's provisions for when a CDP is required (Section 30.73.020.D.1) and for findings for approval of a TUP (Section 30.73.040.C) were not found to conform with, and adequate to carry out, the certified LUP goals and policies as submitted. Coordination with City staff has resulted in agreement on the two suggested modifications described below.

Suggested Modifications #1 and #2 ensure that the proposed amendment will not result in adverse impacts to public access or coastal resources. **Suggested Modification #1** specifies that a CDP is required for temporary uses with potential impacts to coastal resources or public access. This additional language clarifies the CDP process for applicants, and puts applicants on notice that TUP proposals must be consistent with LUP goals to provide maximum access and recreational opportunities to all people, without creating a public safety concern or degrading natural resources. Similarly, **Suggested Modification #2** requires the decision maker, prior to approval of the TUP, to make the finding that the proposed temporary use does not adversely affect public access, water quality, and coastal resources. While the Commission understands that temporary uses involving coastal development would be analyzed and conditioned during the CDP process, this additional finding is necessary because the proposed amendment does not define the duration of a "temporary" use and therefore provides the decision maker with considerable discretion to authorize uses that could, if not explicitly considered, affect public access or coastal resources. Therefore, **Suggested Modification #2** provides the decision maker an opportunity to assess whether all impacts are avoided and approved uses would only be temporary in nature. With these modifications, the proposed amendment is consistent with the City's intent to establish a process to authorize temporary uses on private property and with LUP goals to provide maximum public access and protect natural resources.

**PART VI. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL
QUALITY ACT (CEQA)**

Section 21080.9 of the California Environmental Quality Act (CEQA) exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its local coastal program. Instead, the Coastal Commission acts as lead agency for the purposes of fulfilling CEQA. The Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under CEQA Section 21080.5, the Commission is relieved of the responsibility to prepare an EIR for each LCP submission. The City concluded that the proposed amendment is exempt from CEQA (Section 15061(b)(3) – General Rule) because the proposed regulations will not result in any physical development or significant effect on the environment. Each TUP application will require discretionary approval and will be subject to future CEQA review at the project level. The proposed fee is exempt from CEQA (Section 15273 – Rates, Tolls, Fares, and Charges).

Nevertheless, the Commission is required in an LCP submittal or, as in this case, an LCP amendment submittal, to find that the LCP, or LCP, as amended, does conform with CEQA provisions. In this particular case, the LCP amendment, with incorporation of the suggested modifications, will not have any significant adverse effects on the environment and there are no feasible alternatives or feasible mitigation measures available that would substantially lessen any significant adverse impact on the environment. The suggested modifications will ensure that there will be no temporary uses that adversely impact public access, water quality, or coastal resources. Therefore, the Commission finds the subject LCP IP, as amended, conform with CEQA provisions.