

CALIFORNIA COASTAL COMMISSION

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November 20, 2018

Th19a**TO: COMMISSIONERS AND INTERESTED PERSONS****FROM: KARL SCHWING, DEPUTY DIRECTOR, SAN DIEGO COAST DISTRICT
DEBORAH LEE, DISTRICT MANAGER, SAN DIEGO COAST DISTRICT
TONI ROSS, COASTAL PROGRAM ANALYST, SD COAST DISTRICT****SUBJECT: STAFF RECOMMENDATION ON CITY OF OCEANSIDE LOCAL COASTAL
PROGRAM AMENDMENT NO. LCP-6-OCN-18-0053-1 (Non-Conforming Uses
and Structures) for Commission Meeting of December 12-14, 2018**

SYNOPSIS

The City of Oceanside submitted Local Coastal Program Amendment No. LCP-6-OCN-18-0053-1 on June 22, 2018. The subject LCP implementation plan amendment was filed as complete on August 9, 2018. A one-year time extension was granted on September 14, 2018. As such, the last date for Commission action on this item is October 8, 2019. This report addresses one of three components of the City's submittal. LCP-6-OCN-18-0055-1 addressed accessory dwelling units and was certified by the Commission at its September 2018 meeting. LCP-6-OCN-18-0054-1 addressed wireless communication facilities and was certified by the Commission at its October 2018 meeting.

SUMMARY OF AMENDMENT REQUEST

The City of Oceanside is proposing to revise the City's Zoning Ordinance, part of the certified LCP implementation plan (IP), to update its regulation of nonconforming uses and structures. The amendment will repeal Article 18 (Nonconforming Uses and Structures) in its entirety and proposes certification of new Articles 27 (Nonconforming Use Amortization Overlay District) and 35 (Nonconforming Uses and Structures). Article 27 provides a process for the City to identify a number of nonconforming uses within a specific area of the City and determine an appropriate amortization time frame for those uses. Article 35 regulates both nonconforming uses and nonconforming structures on an individual basis. The article carries over all the provisions of existing Article 18 and adds new provisions that specify the burden of proof for any nonconforming use or structure is on the applicant and property owner. Article 35 also expands upon the existing regulations for nonconforming uses and structure and allows the reconstruction of multi-family residential buildings or commercial buildings within the South Oceanside area if those uses are destroyed by natural disaster.

SUMMARY OF STAFF RECOMMENDATION

Staff is first recommending denial of the Implementation Plan (IP) amendment as submitted, and then recommends approval of the IP amendment with one suggested modification. The proposed revisions to the City's certified Implementation Plan (IP) will merge the City's two ordinances pertaining to nonconforming uses and structures into one document. No major revisions are proposed at this time.

For the most part, the Commission is not chiefly concerned with the abatement or regulation of nonconforming buildings and uses. However, when there are nonconforming structures that are sited in inherently hazardous areas, such as coastal bluffs, or adjacent to the shoreline and lagoons where public access, either for recreational purposes or enjoying scenic amenities, may be affected, the Commission does have an interest in abating certain nonconforming structures or the nonconforming elements of specific buildings given they may adversely impact coastal resources or public recreational opportunities for an unspecified time.

The primary concern identified by staff relates to termination of any nonconforming status. As proposed, Article 35 includes two separate policies; one which applies to properties located outside the coastal zone, and one which applies only to properties in the coastal zone. For coastal zone properties, the regulations are clear regarding nonconforming uses; however, regulation of structural nonconformities is not clear. As such, staff is recommending language be added, through the incorporation of Suggested Modification No. 1, that includes the termination of structural nonconformities is regulated in the same manner as a nonconforming use. As modified, both structures and uses that do not conform to current standards must lose their nonconforming status and conform to all applicable standards when any change, expansion, enlargement or intensification is proposed.

The appropriate resolutions and motions begin on Page 5. The suggested modifications begin on Page 6. 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 11.

BACKGROUND

Currently, the City of Oceanside utilizes two different zoning ordinances, one of which applies to lands within the coastal zone and serves as the City's certified Implementation Plan (IP), the second of which applies to lands outside the coastal zone. However, the City is currently working to consolidate these two documents in order to have one zoning document that would apply Citywide. Since 2015, the City has been processing LCP amendments to update and merge these two documents through a phased approach. City and Commission staffs have been working cooperatively to expedite those changes that do not raise Land Use Plan (LUP) or Coastal Act consistency concerns. The Commission initially certified the re-organizational changes that could be found to be minor in nature

in December of 2015. A second City of Oceanside LCP amendment was approved by the Commission at the January 2017 hearing that continued this approach to merge the two zoning ordinances, and primarily focused on a number of items that were not likely to impact coastal resources, such as repealing unused zoning designations or repealing older designations and replacing them with comparable designations from the more recent zoning ordinance. Three more LCP amendments to merge the zoning ordinances were approved by the Commission in 2017. It is anticipated that as the efforts to combine these two zoning ordinances continue to move forward, the City will submit the more substantive revisions to its certified IP as it continues toward the goal of having one certified zoning document to be applied Citywide. These substantive changes will include updating the City's stringline maps, modifying height restrictions, and updating definitions for terms that have historically caused issues for the City, among others. In addition, the City recently received a Commission LCP Local Assistance Grant to include a Sea Level Rise Vulnerability Assessment, Adaptation Plan, and overall LUP Update, and; as such, the City will include these specific components into its proposed LCP Update.

ADDITIONAL INFORMATION

Further information on the City of Oceanside LCP Amendment No. LCP-6-OCN-18-0053-1 may be obtained from Toni Ross, Coastal Planner, at (619) 767-2370.

EXHIBITS

[Exhibit 1 – Resolution No. 18-R0101-1](#)

[Exhibit 2 – Ordinance No. 18-ORO116-1](#)

[Exhibit 3 – Proposed Text Changes in Strikeout/Underline](#)

PART I. OVERVIEW

A. LCP HISTORY

The City of Oceanside first submitted its Land Use Plan (LUP) to the Commission in July 1980, and it was certified with suggested modifications on February 19, 1981. This action, however, deferred certification on a portion of the San Luis Rey River valley where an extension of State Route 76 was proposed. On January 25, 1985, the Commission approved with suggested modifications the resubmitted LUP and Implementing Ordinances. The suggested modifications for this approval were related to the guaranteed provision of recreation and visitor-serving facilities, assurance of the safety of shorefront structures, and the provision of an environmentally sensitive routing of the proposed Route 76 east of Interstate 5. The suggested modifications to the Zoning/Implementation phase resulted in ordinances and other implementation measures that were consistent with the conditionally certified LUP policies.

With one exception, the conditionally certified LUP and Implementing Ordinances were reviewed and approved by the City on May 8, 1985. The City requested that certification be deferred on one parcel adjacent to Buena Vista Lagoon designated by the City for “Commercial” use; the Commission's suggested modification designated it as “Open Space.” On July 10, 1985, the Commission certified the City's LCP as resubmitted by the City, including deferred certification on the above parcel.

B. STANDARD OF REVIEW

Pursuant to Section 30513 of the Coastal Act, the Commission may only reject zoning ordinances or other implementing actions, as well as their amendments, on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. The Commission shall take action by a majority vote of the Commissioners present.

C. PUBLIC PARTICIPATION

The City has held a Planning Commission meeting with regard to the subject amendment request in January, 2016. The City held City Council meetings on March 14, 2018 and March 28, 2018. All 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 Implementation Program Amendment No. LCP-6-OCN-18-0053-1 for the City of Oceanside 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 submitted for the City of Oceanside and adopts the findings set forth below on grounds that the Implementation Program amendment 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 amendment 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 amendment as submitted

- II. MOTION II:** *I move that the Commission certify the Implementation Program Amendment No. LCP-6-OCN-18-0053-1 for the City of Oceanside 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 for the City of Oceanside 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 3509 of Article 35, as follows:

3509 Termination of Nonconforming Status

A nonconforming use or structure shall conform to the regulations of the district in which such property is located when one or more of the following events occur:

- A. Unless otherwise provided in this article, a nonconforming use which remains inactive for 180 consecutive days, shall be deemed to have ceased, and shall not thereafter be renewed (provision applicable citywide).
- B. If a nonconforming use or structural nonconformity is enlarged, extended, expanded or in any other manner changed to increase its inconsistency with the regulations of this Ordinance, then, in addition to any other consequences imposed by this Ordinance, any entitlement to thereafter maintain the nonconformity is terminated (provision applicable in non-coastal zone).
- C. A change, expansion, enlargement or intensification of any structural nonconformity or use or the addition of a new use of the property not specifically names or described in a resolution establishing an abatement period (provision applicable in the coastal zone properties).
- D. A nonconforming use or structure shall conform to the regulations of the district in which the property is located upon expiration of the period of time provided in a resolution establishing an abatement period (provision applicable citywide).

If a nonconforming, legally conducted use is changed to a use that conforms to or is more consistent with the regulations of this Ordinance, then any entitlement to maintain the nonconforming use is modified in that same degree.

**PART IV. FINDINGS FOR REJECTION OF THE CITY OF OCEANSIDE
IMPLEMENTATION PLAN AMENDMENT, AS SUBMITTED**

A. AMENDMENT DESCRIPTION

The amendment will repeal Article 18 (Nonconforming Uses and Structures) in its entirety and proposed subsequent certification of new Articles 27 (N Nonconforming Use Amortization Overlay District) and 35 (Nonconforming Uses and Structures). Article 27 provides a process for the City to identify and require removal a group of non-conforming uses within a specific area. Article 35 regulates both nonconforming uses and structures on an individual basis. The article carries over all the provisions of existing Article 18 and adds new provisions to specify that the burden of proof for any nonconforming is on the applicant/property owner and allows the reconstruction of multi-family residential buildings and commercial buildings within the South Oceanside area if those uses were destroyed by natural disaster.

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.

a) Purpose and Intent of the Ordinance.

The proposed amendment includes the certification of two articles, one addressing the amortization of nonconforming uses on a larger scale basis (Article 27 – N Nonconforming Use Amortization Overlay District) and one generally addressing procedures for the continuance or abatement of existing uses and structures that do not conform to the provisions of the Zoning Ordinance, and which may be detrimental to the orderly development of the City and adverse to the general welfare of persons or property (Article 35 – Nonconforming Uses and Structures).

b) Major Provisions of the Ordinance.

The major provisions of Article 27 include:

- The establishment of an “amortization overlay” for areas of the City that contain three or more nonconforming uses within a 50 acre area and if such an overlay would help reduce deterioration, blight or long term vacancies in the area; and
- Requirement for any properties affected by the “amortization overlay” to conform to allowable uses for the zone within a time frame to be determined by the City.

Major provisions of Article 35 include:

- Requirements for the determination of a nonconformity;
- Abatement periods for nonconformities;
- Exceptions for mobile home parks;
- Methods for termination of nonconforming status;
- The reconstruction of buildings or uses destroyed by fire, explosion or other acts of God; and
- Hearing and appeal requirements for processing of projects that include a nonconforming use or structure.

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

The Commission may only reject LCP implementation plan amendments where it can be shown that the amendment would be inconsistent with the certified land use plan (LUP) or render the IP inadequate to carry out the LUP. The applicable provisions of the City's LUP are listed below and state:

Section III. Water and Marine Resources; Diking, Dredging, Filling, and Shoreline Structures; and Hazard Areas

A. Coastal Act Policies: The Coastal Act requires maintenance, protection and restoration of marine resources and coastal water quality, as well as control of discharges and run-off into the ocean and coastal wetlands.

The Act also limits diking, dredging and filling of coastal waters to very specific circumstances, including maintenance dredging of channels, expansion of boating facilities and habitat restoration activities.

Shoreline structures such as breakwaters, groins and seawalls, are permitted to serve coastal dependent uses, or protect existing structures or public beaches. Impacts on shoreline sand transportation must be mitigated.

Local agencies are required to control risks in areas subject to geologic, flood, and fire hazard. New development must not create or contribute to erosion of geologic stability.

Policy 6 – Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate impacts on local shoreline sand supply. Such structures shall be designed and constructed to minimize erosive impacts on adjacent unprotected property and minimize encroachment on to the beach. The structures shall not interfere with

access along the beach. The property owner shall dedicate all area seaward of the shoreline structure for lateral access for the public.

Policy 10 – As an LCP implementing measure, the City has developed discretionary review procedures for all permanent or temporary artificial structures proposed for shoreline erosion control, including seawalls, revetments, retaining walls and breakwaters. Such structures shall be allowed if each of the criteria listed in Policy #6 is met.

Policy 11 – New development along the City’s coastal bluffs and hillsides should assure stability and protection of natural landforms and neither create nor contribute significantly to erosion or geological instability, or in any way require the construction of protective devices that would substantially alter natural landforms.

Policy 12 – Coastal bluff development shall be permitted if the design and setbacks are adequate to ensure stability for the expected economic life of the development, and measures are taken to control run-off, foot traffic, irrigation or other activities which could aggravate erosion.

Policy 13 – The demonstration of stability for bluff development shall occur at the time of building permit issuance and shall include a report prepared by a registered geologist, professional engineer and/or a certified engineering geologist acting within their area of expertise, based on an on-site evaluation.

Policy 14 – The Community Development Commission will adhere to the guidelines and recommendation of the “Geotechnical and Erosion Control Study Report, Bluff Area, Ninth Street to Wisconsin Avenue, Oceanside, California”.

Section V. Environmentally Sensitive Habitat Areas

A. Coastal Act Policies: The Coastal Act requires that environmentally sensitive habitat areas be protected against significant disruption. Development adjacent to such shall be sited and designed to prevent adverse environmental impacts.

Section VI. Visual Resources and Special Communities

A. Coastal Act Policies: The Coastal Act requires that the visual qualities of the Coastal Zone shall be protected and that new development be sited and designed to be visually compatible with the character of surrounding areas.

Policy 1 – In areas of significant natural aesthetic value, new developments shall be subordinate to the natural environment.

Policy 4 – The City shall maintain existing view corridors through public rights-of-way.

Policy 8 – The City shall ensure that all new development is compatible in height, scale, color and form with the surrounding neighborhood.

Section VII. New Development and Public Works

Policy 1 – The City shall deny any project which diminishes public access to the shoreline, degrades coastal aesthetics, or precludes adequate urban services for coastal-dependent, recreation, or visitor serving uses.

The City's LCP also includes a number of guidance documents, and relevant sections of these guidance documents are included below:

Design Standards for Preserving and Creating Views

The visual orientation to the Pacific Ocean is a major identity factor for the City of Oceanside. Traditional view corridors should be preserved and reinforced in the placement of buildings and landscaping. Additionally, some views not presently recognized deserve consideration in the design and location of further coastal improvements.

The Commission is primarily interested in regulation of nonconforming uses and structures when existing nonconformities would allow continuation of a non-priority *use* (such as residential, industrial or office) in an area designated for visitor-serving or marine related development, when an existing *structure* is located in a hazardous location or when nonconforming structures are located within view corridors, public accessways, or in close proximity to sensitive habitat. In all these situations, allowing continuation of such nonconformities could impair the public's ability to access and recreate along the coast, may result in the unsafe siting of a structure, or could extend impacts to coastal resources, inconsistent with the LUP policies cited above.

In recent actions, the Commission has worked with the City of Solana Beach (ref. Land Use Plan 2012) and the City of San Diego (ref. LCPA No. LCP-6-SAN-16-0043-3) in developing regulations for nonconforming uses and structures. In both of these cases, any existing nonconformity was required to be terminated and brought into conformity with current regulations when development increased the nonconformity or when development went beyond what would be considered repair and maintenance. Similar to Commission regulation Section 13252 (Cal. Code of Regulations, tit. 14), repair and maintenance is defined as less than 50% demolition or alteration of major structural components. Anything greater than 50% is determined as going beyond repair and maintenance, constituting new development which is then required to be brought into conformity.

In this case, the proposed amendment specifies that any nonconforming *use* will be required to conform to current regulations when the use is changed, expanded, enlarged or intensified. The article also requires, outside the coastal zone, that structural nonconformities be brought into conformance when the nonconformity is proposed to be enlarged, extended or expanded. However, there is no specification for when the termination of a nonconforming structure will occur, if located within the coastal zone. As proposed, an existing structure, located in a hazardous location, or within a view corridor, public accessway or within a sensitive habitat area, could potentially be completely rebuilt and maintain the nonconformity. Allowing substantial alteration or replacement of an existing structure located in a hazardous location would extend its economic life and may result in the need for shoreline protection, inconsistent with Policies 6 and 10 of Section III (3) of the City's LCP. These policies permit shoreline protection only when required to protect existing structures and prohibit protective devices for new development. Additionally, allowing substantial alteration or replacement to structures located within view corridors would be inconsistent with Policies 1 and 4 of Section VI (6) of the City's LCP, which require new development protect existing view corridors and be subordinate to the natural environment. Regarding public access and sensitive habitats, Section VII (7) of the LCP requires the City deny any project which diminishes public access and Section V (5) requires development adjacent to environmentally sensitive habitat areas be sited and designed to prevent adverse environmental impacts respectively. Therefore, the proposed amendment cannot be found consistent with or adequate to carry out a number of policies contained in the certified LUP.

**PART V. FINDINGS FOR APPROVAL OF THE CITY OF OCEANSIDE
IMPLEMENTATION PLAN AMENDMENT, IF MODIFIED**

As previously discussed, the primary concern of proposed amendment is that the amendment fails to establish when the termination of a structural nonconformity would occur for properties located in the coastal zone. As such, Commission has suggested one modification to address this concern.

Suggested Modification No. 1 has been included within the "Termination of Nonconforming Status" section of proposed Article 35. This section of the article details when the termination of any nonconformity will occur. Suggested Modification No. 1 would revise subsection "C" to include that any nonconforming use *or structure* be brought into conformity when any change, expansion, enlargement or intensification is proposed. As amended, any nonconformity (structure or use) will be required to be brought into conformity to current regulations in association with any proposal for development. As an example, if an addition is proposed to an existing home which is located adjacent to Buena Vista Lagoon, and within the required habitat buffer, removal of the nonconforming portion of the building and establishment of the appropriate buffer area would be required as a part of the approval of that Coastal Development Permit (CDP). This process would be similar for homes located in hazardous areas, within view corridors and within public accessways. Only as revised can Article 35 be found to be consistent with the City's certified LUP.

Regarding certification of Article 27, this article is a completely new section of the City's LCP and provides a mechanism for the City to identify a number of nonconforming uses within a specific area that is currently deteriorated, blighted or has long-term vacancies. Once an area of concern is identified by City staff, the Planning Commission will recommend that City Council adopt a period for required termination for all of the nonconforming uses within the identified area. Article 27 is a separate process, and does not affect the individual review of nonconforming uses or structures as regulated by Article 35, but also promotes the retirement of nonconforming uses. Therefore, Article 27 does not raise any LUP consistency concerns and can be approved as submitted.

Finally, some minor additional concerns have been identified with the proposed amendment that include grandfathering of certain nonconformities and allowing the reconstruction of nonconforming structures/uses lost due to an act of God based upon the value of the structure and not through a more precise threshold. However, the subject amendment request is part of the City's process to merge the two ordinances used by the City into one set of law, and the City is proposing no significant revisions at this time. Further, in 2016, the City received a Commission LCP Local Assistance Grant to support funding to comprehensively update its LCP to address Sea Level Rise, and specifically included completion of a sea level rise vulnerability assessment, adaptation plan, and overall LUP Update. The City has completed a draft Vulnerability Assessment which City staff intends to use to help develop an adaptation plan and the LUP update. It is expected that the adaptation plan will help guide regulations for nonconforming uses and structures, especially for those areas subject to hazards; and, therefore, the City has identified updating the regulations for nonconforming uses and structures as a task associated with this future general LUP update. Therefore, these identified concerns, as well as the larger effort to protect structures located in hazardous areas will be addressed in greater detail at that time and likely more closely resembling the approach certified by the Commission for the Cities of Solana Beach and San Diego. The one modification suggested by staff is necessary to find the amendment consistent with the LUP and is intended as an interim measure until the LUP update is approved by the City and certified by the Commission.

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. 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 of Oceanside found that the LCPA proposal is exempt, pursuant to Section 15061(b)(3) of CEQA [no possible effect on the environment].

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 modification, will not have any significant adverse effects on the environment and no significant coastal resource impacts are anticipated. The suggested modification will ensure that structural nonconformities become consistent with LCP provisions, including those related to protection of public views, adequate protection for wetlands and environmentally sensitive habitats, and minimization of hazards. Therefore, the Commission finds that the subject IP, as amended, conforms with CEQA.