

CALIFORNIA COASTAL COMMISSION

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DATE: January 26, 2018

TO: Coastal Commission and Interested Parties

FROM: Karl Schwing, Deputy Director
Charles Posner, Supervisor of Planning
Liliana Roman, Coastal Program Analyst

SUBJECT: City of San Clemente LCP Amendment No. 1-16 (LCP-5-SCL-16-0012-1 Comprehensive LUP Update) for the Commission meeting of February 8, 2018 in Cambria

SYNOPSIS

The City submitted the LCP amendment for Commission certification on March 17, 2016, and it was deemed complete on November 15, 2016. The Commission granted a one-year time extension on January 13, 2017. As such, the last date for Commission action on this item is February 13, 2018.

SUMMARY OF AMENDMENT REQUEST

This LCP amendment consists of a comprehensive update to the certified City of San Clemente Land Use Plan (LUP), including 28 changes to the LUP Map. All of the certified LUP policies are being amended and new policies introduced for consistency with the City's recent 2014 General Plan update and Coastal Act policies. This comprehensive update is essentially an entirely new LUP for the City of San Clemente intended to replace the currently certified LUP in its entirety. The LUP Update has been developed to address the coastal issues which have been identified by Commission and City staff, along with the citizens and property owners of San Clemente, as well as other interested parties. The Commission held a public hearing for the LCP amendment on December 14, 2017, but took no action.

SUMMARY OF STAFF RECOMMENDATION

Staff is recommending denial of the LCP amendment as submitted, then approval with suggested modifications.

As the LCP amendment is essentially an entirely new LUP intended to replace the currently certified LUP. Currently certified policies are either proposed to be carried over into the LUP or deleted and replaced by new updated equivalent policies that maintain the intent of the policy intact. Completely new policies that are not meant to replace a certified policy are also included in the LUP update submittal. Commission staff carefully reviewed each equivalent policy proposed to replace currently certified policy language to ensure that the intent of certified policy language was preserved. Many of the new policies pertain to the protection and enhancement of coastal resources and provide clearer procedures and mandates pertaining to development in the coastal zone. New policies provide guiding principles on current issues the certified LUP currently does not specifically address, such as, but not limited to, the alignment of the California Coastal Trail, pedestrian and bicycle trail connectivity, alternative parking strategies, limitations on preferential parking, protection of existing and provision of affordable overnight accommodations, bird-safe building standards, tree trimming and removal requirements, cultural resource protections, and policies addressing potential impacts due to sea level rise.

Some of the LUP Chapters as submitted are fragmented and inconsistent in their organization and flow. For example, chapter policies are provided a title, however, sometimes the same title is used for two different policies, the policy title does not match the policy content, or no title is provided at all. The vast majority of staff suggested modifications are aimed at restructuring the document to provide a more conventional, logical sequence to both the Chapter text and the policies themselves. A summary of the complete LUP Comprehensive Update submittal is provided in this report under Section IV. Findings and Declarations, Subsection B: Description of Proposed LUP Amendment.

Many suggested modifications serve to clarify the intent of proposed new policies including modifying the title of a policy, or providing a title where none was provided, correcting typos, providing uniform utilization of accepted terminology, and adding general clarifying language in the policies. Additionally, throughout the LUP Update, suggested modifications are required to reorder the policies for organizational purposes. Thus, the numeration of the policies as suggested to be modified in **Exhibit 2** of this staff report, differs from the numeration of the policies as originally submitted. The City is in agreement with all of the staff proposed suggested modifications pertaining to such formatting and streamlining changes.

In terms of an overview, the following Coastal Act issues and priority concerns are not sufficiently addressed in the comprehensive LUP Update as submitted. These issues must be addressed in order to certify an updated LUP that is consistent with the Chapter 3 policies of the Coastal Act and responsive to emerging issues such as lower cost visitor-serving accommodations, short-term rentals, sea level rise, and bluff/shoreline development standards currently being addressed by the Commission. This staff report organizes these issues into the following policy groups: (1) General LUP Policies, (2) Visitor-Serving Development and LUP Map changes, (3) Public Access and Recreation, (4) Marine and Land Resources, (5) Coastal Hazards, and (6) Visual and Historic Resources. These issues are cited here, along with a brief summary of proposed modifications:

1. **General LUP Policies**

Chapter 1: Introduction, of the proposed LUP Update amendment provides a brief history of the Coastal Act, an explanation of the purpose of a Local Coastal Program (LCP) and its components, a map of the City's coastal zone boundary, and in general, aims to set forth the City's intention that all development within the coastal zone must be consistent with the LUP in order to carry out the resource protection policies of the California Coastal Act of 1976. Additionally, in Chapter 7: Definitions, the City carries over the 26 terms defined in Chapter 5: Definitions of the currently certified LUP and proposes 79 additional new definitions (including acronyms) utilized throughout the comprehensive LUP Update.

As submitted, Chapter 1 contains an organization matrix referencing the relevant Coastal Act Chapter 3 policy sections and the LUP chapter which addresses each Coastal Act Chapter 3 policy section. However, no specific City-generated policies were included in Chapter 1. Commission staff suggested a modification to include policies in this introductory chapter that would apply citywide, and in general to all permitted land use and development. Such general policies pertain to CDP procedures, CDP findings of approval, general development setback requirements, a "takings" policy, environmental justice, and a policy specifically addressing the Capistrano Shores Mobile Home Park area, the only area in the City with oceanfront residential development.

2. **Visitor-Serving Development and Land Use Map Changes**

San Clemente contains, within the coastal zone, nine visitor-serving overnight accommodations with a total of 278 hotel/motel rooms, none of which the City considers lower cost, and a State Beach with 160 overnight camping sites. While the LUP Update laudably contains policies to discourage the loss of existing inventory of overnight visitor accommodations, the LUP Update policies do not sufficiently provide guidance on how to review a development proposal to demolish existing overnight accommodations, or clearly state the City's policy regarding the provision of lower cost accommodations as mitigation for the construction of new higher cost overnight accommodations. Suggested modifications are necessary to ensure the provision of lower cost options in new overnight accommodation developments, and requiring mitigation for new development that does not provide lower cost options. Suggested modifications require new visitor-serving overnight accommodation developments to provide a range of affordability such that at least 25% of the number of proposed units are lower cost; or, if this cannot feasibly be provided on-site, require new higher cost developments to provide mitigation off-site by contributing to the construction or funding of a new lower cost overnight accommodation development equal to 25% of the proposed high cost units.

Furthermore, the LUP Update does not clearly identify parcels that support existing overnight accommodations in its proposed "Visitor-Serving Commercial District (VSCD) Overlay," thus affording them extra protection, as the majority of the existing accommodations have a mixed-use land use designation. Therefore, suggested modifications are necessary to accurately identify the existing inventory of overnight accommodations, ensure they are identified under the VSCD overlay, require new

development provide a range of affordability, and require development of a mitigation program.

The City proposes twenty-eight (28) changes to land use designations in the certified Land Use Map as part of this LUP Update. **Exhibit 4** provides a table outlining the certified land use designation and the proposed new land use for each proposed change. The proposed Land Use Map designation changes are mostly characterized as “clean up” by the City. The majority of the proposed Land Use Map changes are minor except for a few notable proposed changes.

3. **Public Access and Recreation**

The proposed LUP Update contains important policies regarding the preservation, protection, and enhancement of public access to the coast. However, the plan does not adequately address implementation of the California Coastal Trail (CCT), a significant public coastal amenity that will span the coastline of the state upon completion. Therefore, suggested modifications are made to the City’s proposed CCT policy requiring the City identify the alignment of future segments of the CCT within the City, consistent with established criteria for siting the trail. Suggested modifications are also necessary to clarify the LUP policies regarding requirements for the provision of new public access in new development projects.

4. **Marine and Land Resources**

The City’s certified LUP contains policies for protection of coastal bluffs, canyons, beaches, and sensitive biological resources. The currently certified LUP labels all coastal canyons and bluffs as Environmentally Sensitive Habitat Areas (ESHA), although many of these areas do not rise to the level of ESHA. The proposed LUP Update includes a 2015 City Biological Inventory Report as an appendix. The Report focuses on coastal canyons and bluffs and maps “Potential Sensitive Habitat Areas.” Under Section 30240 of the Coastal Act, there are specific provisions for the identification and protection of ESHA. Land use plans and especially comprehensive updates should identify ESHA within each planning area and adopt policies for protecting them, consistent with Section 30240, both as currently identified and providing for future determinations to be made as resources and conditions change over time. Therefore, suggested modifications include identification of coastal sand dunes as existing ESHA in the community, provisions for site-specific determinations to identify and protect ESHA over time and for protection of beach resources during beach maintenance activities.

5. **Coastal Hazards**

The City has developed provisions to preserve the coastal bluffs in the proposed LUP Update, including policy language that would effectively restrict bluff and shoreline protective devices by adopting new policies for bluff-top and shoreline development and shoreline protective devices. The proposed language requires modifications to address the need to limit the construction of coastal protective devices and to remove such devices when feasible; limit the use of caisson foundations that can interfere with coastal processes; require a waiver of future shoreline protection for new development

or redevelopment; tie shoreline protective devices, when approved, to the life of the structure they are protecting; include mitigation for impacts to sand supply and public access and recreation from such devices and require periodic reassessment to consider the need for additional mitigation or changed conditions; and require previously conforming structures to be brought into conformance with current LCP standards when a redevelopment threshold is met. This is a statewide issue arising in many city planning policy documents exacerbated by current and projected climate change and sea level rise impacts. Furthermore, the subject comprehensive LUP update is the first to be acted on by the Commission since adoption of the 2015 Sea Level Rise Policy Guidance.

6. **Visual and Historic Resources**

Although the City effectively developed over a dozen new policies aimed to preserve historic resources, the LUP Update lacks adequate policies to sufficiently address Coastal Act Section 30244 concerning the protection of archaeological or paleontological resources, thus compelling a suggested modification. Additional suggested modifications are required to clarify figures depicting Public View Corridors and Scenic Roadway Corridors, and the clarification of terms. Furthermore, currently certified policies identifying coastal canyons as visual resources were deleted in the LUP Update submittal and suggested modifications are required to add them back in.

At the local level, separate from the issues identified above, a major point of interest for many members of the community is the issue of short-term rentals and how any newly proposed LUP policy regarding this topic may impact members of the community. The City and Commission staff collaborated on general policy language resulting in a suggested modification for Policy LU-49 Short-Term Lodging and Vacation Rentals stating that the City shall allow short-term rentals in residential and mixed-use zones subject to appropriate regulations minimizing potential adverse impacts to neighborhoods or coastal resources. The factual details of the regulations would be considered by the Commission in the final Implementation Plan phase of final LCP certification.

In summary, although it is clear that the City and other stakeholders involved have made a great effort to update and develop LUP policies that will protect and enhance the community's coastal resources, it is critical that the LUP update contain clear, specific, and detailed policy direction for each of the policy groups contained in Chapter 3 of the Coastal Act, to carry out the policies of the Coastal Act. As proposed, the update is lacking the detail and specificity required of an LUP in the policy groups summarized above. Therefore, the City and Commission staff have worked closely together to supplement and refine the proposed policies through suggested modifications to address all of the critical Coastal Act issues and to narrow the potential areas of disagreement. Commission staff and City staff worked together for over a year prior to the City's submittal of the comprehensive LUP Update on March 17, 2016 to clarify the LUP standards and LUP format and have continued to work together over the course of the time extension period since the submittal was deemed complete on November 15, 2016. City and Commission staff have resolved many issues related to coastal hazards, protection of biological resources, protection of water quality, and provisions for public access to the coast, and were able to find a

creative solution to the City's initial request to create an area of deferred certification (ADC) for the Capistrano Shores Mobile Home Park area. City staff has generated many of the suggested modifications contained herein, either in response to Commission staff concerns or to supplement various sections. Wherever possible, Commission staff has incorporated the City's suggestions and language changes.

Conclusion

In conclusion, the City of San Clemente has prepared and submitted an LUP Update with early collaboration with Commission staff, and Commission staff has continued to work closely with the City after the proposed LUP was submitted to the Commission for consideration. The end result of this ongoing collaboration is a comprehensive LUP Update, as suggested to be modified, that serves to ably protect the significant coastal resources of the San Clemente coastal zone for years to come. If modified as suggested in this report, staff believes that the LUP is consistent with and adequate to carry out the Chapter 3 policies of the Coastal Act. Staff recommends that the Commission hold a public hearing and approve the LUP Update subject to modifications. This will require the Commission to **deny** the LUP as submitted, and then **approve** the LUP if modified to incorporate the suggested modifications. The motions to accomplish this are on page 10 and 11. The suggested modifications begin on page 13. The findings for denial of the Land Use Plan Amendment as submitted and approval if modified begin on page 18.

ADDITIONAL INFORMATION

For further information on the City of San Clemente LUP Comprehensive Update or this report, please contact Liliana Roman, Coastal Program Analyst at (562) 590-5071. Correspondence should be sent to the South Coast District Office in Long Beach at 200 Oceangate, 10th floor, Long Beach, CA 90802 and at Liliana.Roman@coastal.ca.gov

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EXHIBITS

- Exhibit 1 – City of San Clemente 1996 Certified Coastal Land Use Plan (LUP)
- Exhibit 2 – Proposed Comprehensive LUP Update/Amendment Including Appendices with
 Commission Staff Suggested Modifications
- Exhibit 3 – Resolution 16-02 Approving the Update to the Coastal Land Use Plan
- Exhibit 4 – Proposed Land Use Map Changes “General Plan Changes Map Book and Index”

I. OVERVIEW

A. CITY SETTING AND EXISTING CONDITIONS

San Clemente is a city in the County of Orange with a population of 62,522 based on the 2010 census. It is the southernmost City in the County of Orange at the border with San Diego County. The City was founded in 1925 by Ole Hanson conceptualized to be a “Spanish Village-by-the Sea,” where the entire City would be a park with streets graded to fit into the natural topography of the land and buildings designed in the Spanish style of white stucco and red tile roofs. He built public structures such as the Beach Club, the Community Center, the Pier and San Clemente Plaza, now known as Max Berg Plaza Park, which were all later donated to the City. The area was officially incorporated as a City in 1928. The abundant visual and physical resources of the City’s coastline have helped establish the community’s character.

The City’s Coastal Zone extends approximately half a mile inland from the shoreline and is highly urbanized. Roughly, the Coastal Zone is the area of the City located seaward of Interstate-5. However, the majority of City land is located inland of I-5 outside of the Coastal Zone. Coastal bluffs and coastal canyons are the prominent topographic feature in the Coastal Zone. San Clemente’s beaches are also unique in that there is very little commercial or residential oceanfront development. Developed areas are for the most part, located on bluff top lots. At the toe of the bluffs, there is either a road (Pacific Coast Highway, or El Camino Real, as it is referred to in San Clemente) or the railroad corridor consisting of a single track owned and maintained by the Orange County Transportation Authority utilized by Amtrak and Metrolink. The City maintains 19 beach public access ways consisting of public stairs and ramps down the bluff face and at-grade railroad crossings, and railroad under and overpasses for safe access to beach areas.

B. LCP HISTORY

The City of San Clemente’s Land Use Plan (LUP) was certified by the Commission on May 11, 1988. In 1990, the City began a comprehensive update to the General Plan which was adopted by the City Council on May 6, 1993. The conclusion of the General Plan process created new coastal land uses which mandated that the certified LUP be updated to make it consistent with the Land Use Element of the General Plan. On January 18, 1995, this comprehensive LUP update was adopted by the City Council in Resolution No. 95-02, and was revised on December 20, 1995 under Resolution No. 95-91. On March 14, 1996, the Commission approved, and certified, an updated LUP.

Since then the City of San Clemente LUP has had several major amendments. Each major amendment is briefly described below.

On March 21, 2001, the City Council passed Resolution No. 1-13, adopting a Negative Declaration and approving General Plan Amendment No. 00-32, amending the General Plan Land Use Element and LCP Amendment 00-225. On June 14, 2001, the Commission approved LUP Amendment No. SCT-MAJ-1-01 (Avenida Granada Land Use Redesignation) as submitted.

The LUP amendment changed the land use designations of six lots located at 246 through 256 Avenida Granada from Mixed Use (MU3-p-A) to Residential Medium Density (RM-A).

On August 6, 2001, the Commission certified LCP Amendment No. SCT-MAJ-2-01 (Downtown Mixed Use Standards) with suggested modifications. The LUP amendment modified the standards for mixed-use projects (commercial with residential) on small lots and on lots with designated historic structures in the MU3 Zone of Downtown San Clemente. The amendment allows: 1) a reduction in the minimum commercial FAR (floor area ratio) required for mixed use developments on small lots (0.35 to 0.15); 2) a reduction in the minimum number of residential units required (2 to 1); and 3) residential development to be sited on the ground floor of historic structures under certain circumstances. On September 5, 2001, the City of San Clemente accepted, and agreed to, the Commission's suggested modifications by passing Resolution No. 01-51.

On November 6, 2002, the City of San Clemente City Council passed Resolution No. 02-104 amending Resolution No. 02-73 approving General Plan Amendment 01-093 and LUP Amendment 02-035, consisting of amendments to the land use and coastal elements for the coastline mixed use development on North El Camino Real. Then, on December 10, 2002, the Commission approved LUP Amendment No. SCL-MAJ-1-02 (MU2 Office Use FAR Increase), as submitted. This amendment increased the allowable FAR for office use components of mixed-use projects in the Mixed Use (MU2) land use designation throughout the San Clemente Coastal Zone. It allows increased office uses in lieu of residential uses on upper levels of mixed-use projects and did not affect the allowable ratio of retail commercial uses.

The Commission approved the City of San Clemente's LUP Amendment No. SCL-MAJ-1-05 with suggested modifications on January 11, 2006. The amendment involved an update to the water quality and watershed protection policies of the certified LUP. The City of San Clemente accepted and agreed to the Commission's suggested modifications by passing Resolution 06-13 on March 7, 2006, incorporating the Commission's suggested modifications into the City's certified LUP.

It has been 20 years since the major comprehensive LUP update certified in 1996. The subject LCP Amendment No. 1-16 (LCP-5-SCL-16-0012-1) consists of a new comprehensive LUP update to reflect current conditions and community goals. Like the previous LUP update, this LUP update follows a newly approved General Plan and will make the LUP consistent with the Land Use Element of the General Plan. This comprehensive update is essentially an entirely new LUP for the City of San Clemente intended to replace the certified LUP in its entirety.

The City currently has a certified LUP, but lacks an Implementation Plan (IP). As such, the Commission retains permit issuance authority.

C. STANDARD OF REVIEW

The standard of review for land use plans, or their amendments, is found in Section 30512 of the Coastal Act. This section requires the Commission to certify an LUP or LUP amendment if it

finds that it meets the requirements of and conforms with Chapter 3 of the Coastal Act. Specifically, it states:

Section 30512

(c) The Commission shall certify a land use plan, or any amendments thereto, if it finds that a land use plan meets the requirements of, and is in conformity with, the policies of Chapter 3 (commencing with Section 30200). Except as provided in paragraph (1) of subdivision (a), a decision to certify shall require a majority vote of the appointed membership of the Commission.

D. PUBLIC PARTICIPATON

Section 30503 of the Coastal Act requires local governments to provide the public with maximum opportunities to participate in the development of the LCP amendment prior to its submittal to the Commission for review. The City has held public meetings with regard to the subject amendment request between 2014 and 2015, beginning with a public workshop on August 21, 2014, Coastal Advisory Committee and Beaches, Parks, and Recreation Commission public meetings in January 2015, four Planning Commission meetings in May-June 2015, and two City Council meetings on December 15, 2015 and February 2, 2016. In addition, the Commission held a public hearing for the LCP amendment on December 14, 2017, but took no action. All of those local hearings were duly noticed to the public. Notice of the subject amendment has been distributed to all known interested parties.

II. MOTIONS AND 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.

1. DENIAL OF THE LAND USE PLAN AMENDMENT AS SUBMITTED

Motion I: *I move that the Commission certify the Land Use Plan Amendment # LCP-5-SCL-16-0012-1 for the comprehensive update of the City of San Clemente Land Use Plan as submitted.*

Staff recommends a **NO** vote to the motion. Failure of this motion will result in denial of the land use plan amendment as submitted and adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the appointed Commissioners.

Resolution to Deny as Submitted:

The Commission hereby denies certification of the Land Use Plan Amendment #LCP-5-SCL-16-0012-1 for the comprehensive update of the City of San Clemente's Land Use Plan as submitted and finds for the

reasons discussed below that the submitted Land Use Plan Amendment fails to meet the requirements of and does not conform to the policies of Chapter 3 of the California Coastal Act. Certification of the plan would not comply with the California Environmental Quality Act because there are feasible alternatives or mitigation measures that would substantially lessen any significant adverse impact which the Land Use Plan Amendment may have on the environment.

2. APPROVAL OF THE LAND USE PLAN AMENDMENT WITH SUGGESTED MODIFICATIONS

Motion II: *I move that the Commission certify the Land Use Plan Amendment #LCP-5-SCL-16-0012-1 for the comprehensive update of the City of San Clemente Land Use Plan if modified in accordance with the suggested changes set forth in this staff report.*

Staff recommends a **YES** vote on the motion. Passage of the motion will result in certification with suggested modifications of the submitted land use plan amendment and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the appointed Commissioners.

Resolution to Approve if Modified:

*Subject to the following modifications, the Commission hereby **CERTIFIES** the Land Use Plan Amendment #LCP-5-SCL-16-0012-1 for the comprehensive update of the City of San Clemente Land Use Plan and finds for the reasons discussed herein that, if modified as suggested below, the submitted Land Use Plan Amendment will meet the requirements of and conform to the policies of Chapter 3 of the California Coastal Act. Certification of the plan if modified as suggested below 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 alternatives or mitigation measures which could substantially lessen any significant adverse impact which the Land Use Plan Amendment may have on the environment.*

Procedural Requirements

Pursuant to Section 13551(b) of the California Code of Regulations, a resolution for submittal must indicate whether the Local Coastal Program amendment will require formal local government adoption after Commission approval, or is an amendment that will take effect automatically upon the Commission's approval pursuant to Public Resources Code Sections 30512, 30513 and 30519. The City's resolution of adoption (Resolution No. 16-02) states that this LUP amendment will take effect upon Commission certification. However, this certification is subject to the City's incorporation of suggested modifications made by the Commission.

Therefore, this local coastal program amendment will not become effective until the City of San Clemente formally adopts the suggested modifications and complies with all the requirements of Section 13544.5 and the Commission staff and Commission take the steps outlined in that section, including the requirement that the Executive Director determine the City's adoption of the amendment to the Land Use Plan is legally adequate.

III. SUGGESTED MODIFICATIONS

The Commission finds and suggests that the following changes (i.e., "suggested modifications") to the submitted San Clemente Land Use Plan (LUP) comprehensive update are necessary to ensure that the LUP is consistent with and adequate to carry out the policies of Chapter 3 of the Coastal Act. If the City accepts these suggested modifications on the LUP within six months of Commission action, by formal resolution of the City Council, the City's Land Use Plan will become effective upon Commission concurrence with the Executive Director finding that the City's action and the notification procedures for appealable development are legally adequate to satisfy and specific requirements set forth in the Commission's certification order. Chapter 3 of the Coastal Act will remain the standard of review for projects within the City's Coastal Zone, with the LUP as guidance, until the certification of an Implementation Plan (IP) and the City's Local Coastal Program (LCP).

As the LCP amendment submittal is a comprehensive LUP update to the existing LUP, this comprehensive update is essentially an entirely new LUP for the City of San Clemente and it would replace the certified LUP in its entirety. Suggested modification to the standards of the proposed Land Use Plan are shown in **Exhibit 2** (changes shown in ~~strike-out~~ are to be deleted, and changes shown in underline are to be added) chapter by chapter.

Commission staff and City staff worked together for over a year prior to LUP comprehensive plan update amendment submittal on March 17, 2016 to clarify the LUP standards and LUP format and have continued to work together over the course of the time extension period since the application was deemed complete on November 15, 2016. City and Commission staff have resolved issues related to coastal hazards, habitat protection, and were able to find a creative solution to the City's initial request to create an ADC for the Capistrano Shores Mobile Home Park area. City staff has generated many of the suggested modifications contained herein, either in response to Commission staff concerns or to supplement various sections. Wherever possible, Commission staff has incorporated the City's suggestions and language changes.

IV. FINDINGS AND DECLARATIONS

A. PURPOSE OF LUP AMENDMENT

As previously noted, the City of San Clemente's LUP was certified by the Commission in 1988. It has been 20 years since the major comprehensive LUP update certified in 1996. The proposed LUP amendment would update the San Clemente LUP to reflect current conditions and community goals. Like the previous LUP update, this LUP update follows a newly approved

General Plan and will make the LUP consistent with the Land Use Element of the General Plan. In addition, the City has expressed a commitment to becoming fully certified and thus have coastal development permit authority. Certification of an updated LUP is the first step for the City of San Clemente to obtain a fully certified Local Coastal Program (LCP).

Related Future Commission Actions

Implementation Plan and Sea Level Rise Vulnerability Assessment

Concurrent to the LUP Update submittal, the City is also working on a draft Implementation Plan, with the aid of grant funds from the Coastal Commission. A Sea Level Rise Vulnerability Assessment/Study is part of the scope of the grant for the drafting of the IP. As suggested to be modified, the LUP Update provides adequate general policies addressing possible future sea level rise and coastal hazards. The Sea Level Rise Vulnerability Assessment/Study will aid in the development of the IP implementing actions. However, a second LUP amendment may be necessary to incorporate more specific shoreline hazard policies into the LUP as may be recommended by the Study.

Following certification of an updated LUP, the City plans to submit an Implementation Plan and work with Commission staff towards full certification in the next few years.

Categorical Exclusion

In 1977 the Commission approved and adopted Categorical Exclusion Order E-77-19, then later in 1982 approved and adopted an amended Categorical Exclusion Order E-82-1 providing a categorical exclusion from coastal development permit requirements for the demolition and/or construction of certain residential and commercial structures within specifically defined geographic areas, and municipal improvement projects, as conditioned. The Categorical Exclusion did not include the first row of lots adjacent to the beach, coastal bluffs, coastal canyons, the Pier Bowl Area, and the entire Marblehead site. Unless renewed, existing Cat Ex Orders expire upon certification of an LCP.

From the beginning of the City and Commission staff collaboration on this comprehensive LUP Update, the City emphasized its request on continuation of a Cat Ex Order, though not much discussion has taken place regarding any changes to the terms and conditions of Cat Ex Order E-77-5 post IP certification and thus full City LCP certification. The City must submit a formal request that certain categories of development within specific geographic areas be excluded from the coastal development permit requirements of Chapter 7 of the Coastal Act. If it is the City's goal to ensure no lapse in the Categorical Exclusion, then the formal request must be made with the intent that the exclusion be effective upon certification of an IP as the Commission must take a separate action from an IP action in order to approve a new Categorical Exclusion per any future City request.

B. DESCRIPTION OF PROPOSED LCP AMENDMENT

Existing Land Use Plan (LUP)

The Land Use Plan (LUP) for the City of San Clemente was effectively certified on May 11, 1988, and subsequently amended multiple times. The City underwent a comprehensive LUP update approved by the Commission on March 14, 1996, and numerous project specific amendments. In 1996, a draft Implementation Plan (IP) was prepared by the City and submitted to the Commission for review; however, the IP review process was never completed. The standard of review for this LUP amendment is the Coastal Act.

In June 2014, the City initiated the comprehensive LUP update amendment process with the aid of a Coastal Commission Local Coastal Program (LCP) grant. Additionally, throughout 2014 and 2015, Commission staff provided comments and collaborated on the initial LUP draft over numerous meetings. On March 17, 2016, the City submitted the LUP amendment, deemed complete on November 15, 2016 after receipt of additional information requested from the applicant. At its January 13, 2017 hearing, the Commission extended the 90-day LCP deadline an additional year. Commission action on this LUP amendment is required by February 13, 2018.

Proposed LUP Comprehensive Update

An outline of the complete LUP comprehensive update submittal is provided below:

Chapter 1: Introduction

- 1.1 The Coastal Act
- 1.2 Local Coastal Program
 - 1.2.1 Local Coastal Program Components
 - 1.2.2 General Goals and Objectives
 - 1.2.3 Coastal Development Permit Authority
- 1.3 How to Use This Plan

Chapter 2: Land Use

- 2.1 Introduction
- 2.2 Coastal Act Policies
- 2.3 Land Use Designations
 - 2.3.1 Land Use Designations
 - 2.3.2 City Overlays
 - 2.3.3 Focus Areas and Marblehead Coastal Plan Area
- 2.4 Land Use and New Development Policies
 - 2.4.1 Residential Development Policy
 - 2.4.2 Commercial Development Policy
 - 2.4.3 Mixed Use Development Policies
 - 2.4.4 Industrial Development Policies
 - 2.4.5 Open Space Development Policies
 - 2.4.6 Public Development Policies
 - 2.4.7 Visitor-Serving Land Use Development Policies

- 2.4.8 Conservation and Sustainability
- 2.4.9 Focus Areas and Marblehead Coastal Area

Chapter 3: Public Access and Recreation

- 3.1 Introduction
 - 3.1.1 Mobility
 - 3.1.2 Shoreline Access
 - 3.1.3 California Coastal Trail
 - 3.1.4 Recreational Opportunities and Amenities
- 3.2 Coastal Act Policies
- 3.3 Goals and Policies
 - 3.3.1 Mobility
 - 3.3.2 Shoreline Access
 - 3.3.3 California Coastal Trail
 - 3.3.4 Recreational Opportunities and Amenities

Chapter 4: Marine and Land Resources

- 4.1 Introduction
 - 4.1.1 Environmentally Sensitive Habitat Areas
 - 4.1.2 Marine Environment
 - 4.1.3 Wetlands and Watershed
 - 4.1.4 Water Quality
 - 4.1.5 Coastal Canyons and Bluffs
- 4.2 Coastal Act Policies
- 4.3 Goals and Policies
 - 4.3.1 Environmentally Sensitive Habitat Areas
 - 4.3.2 Marine Resources
 - 4.3.3 Wetlands
 - 4.3.4 Water Quality
 - 4.3.5 Other Biological Resources

Chapter 5: Hazards & Shoreline/Bluff/Canyon/Development

- 5.1 Introduction
 - 5.1.1 Coastal Bluffs and Coastal Canyons
- 5.2 Coastal Act Policies
- 5.3 Goals and Policies
 - 5.3.1 Coastal Bluff and Shoreline Development
 - 5.3.2 Coastal Canyon Development
 - 5.3.3 Hazard Area Development
 - 5.3.4 Sand Replenishment/Beach Management
 - 5.3.5 Sea Level Rise
 - 5.3.6 Development in Flood Hazard Areas
 - 5.3.7 Emergency CDP Actions

Chapter 6: Visual and Historic Resources

- 6.1 Introduction
 - 6.1.1 Historic and Cultural Resources
 - 6.1.2 Community Character
 - 6.1.3 Bulk and Height Limits
 - 6.1.4 Paleontological and Archaeological Resources
- 6.2 Coastal Act Policies
- 6.3 Goals and Policies
 - 6.3.1 Viewpoints and Scenic Corridors
 - 6.3.2 Historic and Cultural Resources

Chapter 7: Definitions

Appendices

- Appendix A Biological Inventory
- Appendix B Beach Amenities
- Appendix C Overnight Accommodations Maps
- Appendix D Affordable Overnight Accommodations Analysis

Each of the seven (7) chapters is explained in more detail, below.

Chapter 1: Introduction

Chapter 1 is the introductory chapter of the proposed LUP amendment. It provides a brief history of the Coastal Act, an explanation of the purpose of a Local Coastal Program (LCP) and its components, a map of the City's coastal zone boundary, and an explanation of Coastal Development Permit authority after full LCP certification. Most importantly, this chapter provides the overriding City goals aimed to provide an LUP which conforms to Chapter 3 policies of the Coastal Act. Goals such as 1) Protect, maintain, where feasible, restore and enhance the coastal zone natural and manmade resources; 2) Ensure orderly, balanced conservation and utilization of coastal zone resources, taking into account the social and economic needs of the people of the State; 3) Maximize public access to and along the coast and public recreational opportunities in the coastal zone, consistent with best resource conservation principles and practices, and with constitutionally protected rights of private property owners; 4) Ensure that coastal-dependent and coastal-related development have land use priority over other types of coastal development; and 5) Coordinate with State and local agencies to encourage beneficial public uses, including educational uses in the coastal zone.

Lastly, contained in this chapter is an organization matrix referencing the relevant Coastal Act Chapter 3 policy sections and the LUP chapter which addresses each Coastal Act Chapter 3 policy section.

Chapter 2: Land Use and New Development

Chapter 2 includes the Coastal Land Use Map (Figure 2-1, A-G) depicting the land use designation for each land parcel within the City's Coastal Zone. Land use types include residential, commercial, mixed use, light industrial, public, recreational, and open space. Each Coastal Land Use Designation is listed on Table 2-1 along with the allowable land uses, building

height, and maximum density for each of those Coastal Land Use Designations. The table also includes a list of “overlay” designations that identify additional restrictions placed over distinct City areas, such overlays include, but is not limited to: architectural overlay, visitor-serving commercial district overlay, and a mixed-use overlay. There is also a section devoted to a description of “Focus Areas” and specific policies applicable to those areas....

LUP Chapter 2 policies are divided into two distinct subgroups, one subgroup of policies is based on the Land Use Designations identified in this chapter, such as “Residential, Commercial, and Mixed-Use” and a second subgroup of policies are organized based on broader topics such as “Visitor-Serving,” “Conservation and Sustainability,” and “Focus Areas” policies:

Chapter 3: Public Access

Chapter 3 provides a description of the City’s regional transportation system, public transportation services, bike routes, and pedestrian trails. The Chapter’s main focus is the description of existing coastal and shoreline access. There are 19 private and public coastal access points. Coastal Access Maps (Figures 3-4 through 3-21) identify these coastal access points and there is an accompanying description for each. A section is also dedicated to listing and describing all public recreational amenities in the Coastal Zone (e.g., the Municipal Pier, Ole Hanson Beach Club, and City parks and beaches).

LUP Chapter 2 includes 90 policies divided into subgroups pertaining to mobility and parking, shoreline access, and recreational amenities.

Chapter 4 – Marine and Land Resources

Chapter 4 provides a description of natural habitats found in the City’s Coastal Zone and provides figures identifying the location of coastal canyons, watersheds and ocean outfall locations, off-shore coastal reefs, and “Potential Habitat Study Areas” as identified by a recent 2015 City Biological Inventory Report. The full report is included as an LUP Appendix. Additionally, Chapter 4 contains a section devoted to coastal water quality concerns.

LUP Chapter 4 – Marine and Land Resources policies are divided into subgroups concerning environmentally sensitive habitat areas (ESHA), marine resources, wetlands, water quality, and other biological resource areas such as coastal canyons.

Chapter 5: Hazards & Shoreline/Bluff/Canyon Development

Chapter 5 provides the background setting of the potential coastal hazards in the City, which include, but are not limited to, coastal bluffs, coastal bluff and canyon slopes with low stability and high landslide potential, liquefaction, shoreline and bluff erosion, tsunami, storm and tidal surges, and coastal hazards associated with rising sea levels.

LUP Chapter 5 – Hazards & Shoreline/Bluff/Canyon Development policies pertaining to appropriate development setbacks from hazards such as beach/oceanfront setbacks, bluff edge and canyon edge setbacks, and development standards in hazard areas.

Chapter 6: Visual, Historic, and Cultural Resources

Chapter 6 focuses on the City's scenic resources, community character and unique cultural resources. The chapter incorporates policies aimed at protecting coastal scenic and visual qualities, archaeological or paleontological resources, and the minimization of adverse impacts of new development on these coastal resources. The chapter provides figures depicting public view corridors and scenic roadway corridors.

Chapter 6 – Visual, Historic, and Cultural Resources policies are aimed at identifying, protecting, and enhancing scenic and visual resources including coastal bluffs, visually significant ridgelines, coastal canyons, open spaces, mature trees, and significant public views. Development design policies are proposed to protect these resources such as building heights and setbacks, compatible landscaping and fencing, and to maintain the natural topographic and physiographic characteristics of a development site. Policies regarding the protection of cultural resources, including historic, archaeological and paleontological resources, emphasize avoidance and minimization of impacts.

Chapter 7: Definitions

Chapter 7, the final LUP chapter is a glossary providing definitions of terms and acronyms contained throughout the LUP. For example, terms such as coastal bluff, low impact development (LID), environmentally sensitive habitat area (ESHA), public trust lands, wetlands, and shoreline protective device are terms specific to an LUP document.

LUP Map - Proposed Land Use Designation Changes

Numerous land use designation changes were made as part of the City's 2015 General Plan Update. The City proposes to incorporate the land use changes in the coastal zone as part of the Comprehensive LUP Update. The Land Use Map included in Chapter 2 – Land Use and New Development as submitted, already depicts the land use changes proposed as part of the LUP Update. The majority of the proposed changes are “clean-up” corrections and clarifications with just a handful of proposed changes that are of significance. **Exhibit 4** depicts the geographic location of twenty-eight (28) proposed land use changes with a table identifying each change by specific number and describing each proposed change.

C. CHAPTER 3 OF THE COASTAL ACT CONSISTENCY ANALYSIS

The standard of review for land use plans, or their amendments, is found in Section 30512 of the Coastal Act. This section requires the Commission to certify an LUP or LUP amendment if it finds that it meets the requirements of and conforms with Chapter 3 of the Coastal Act.

1. General LUP Policies Applicable Throughout the Coastal Zone

A. Applicable Coastal Act Policies

Section 30010 The Legislature hereby finds and declares that this division is not intended, and shall not be construed as authorizing the commission, port governing body, or local government acting pursuant to this division to exercise their power to grant or

deny a permit in a manner which will take or damage private property for public use, without the payment of just compensation therefor. This section is not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or the United States.

Section 30107.3 “Environmental justice” means the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.

B. Proposed Land Use Plan Amendment

Chapter 1: Introduction, of the proposed LUP amendment provides a brief history of the Coastal Act, an explanation of the purpose of a Local Coastal Program (LCP) and its components, a map of the City’s coastal zone boundary, and in general, aims to set forth the City’s intention that all development within the coastal zone must be consistent with the LUP in order to carry out the resource protection policies of the California Coastal Act of 1976. Additionally, in Chapter 7: Definitions, the City carries over the 26 terms defined in Chapter 5: Definitions of the currently certified LUP and proposes 79 additional new definitions (including acronyms) utilized throughout the comprehensive LUP Update.

C. Consistency Analysis - Denial as Submitted and Approval with Suggested Modifications

Chapter Formatting and Organization

Minor suggested modifications to Chapter 1: Introduction are necessary to address formatting inconsistencies and provide clarifying language to the chapter text. A significant format-related suggested modification is required to strike out Section 1.2.2 General Goals and Objectives in its entirety and replace it with a new Section 1.4 General LUP Goals and Policies, thus, this suggested modification creates actual LUP policies out of language identified by the City as “standards that shall be applied by the City to achieve the goals and objectives of the Coastal Act in applying the policies of this LUP.” The City identified standards as background text in Chapter 1: Introduction, as suggested to be modified, would be converted to actual LUP policies as follow:

- GEN-1 Guiding Policies.** The policies of Chapter 3 (Coastal Resources Planning and Management Policies) of the Coastal Act (PRC Sections 30200 – 30263) are the guiding policies of the LUP.
- GEN-2 Policy Conflicts.** Where conflicts occur between the policies contained in the LUP and those contained in any element of the City’s General Plan, zoning or any other ordinance, the policies of the LUP shall take precedence in the City’s Coastal Zone.
- GEN-4 Coastal Development Permit (CDP) Procedures.** The City shall incorporate CDP procedures into the Implementation Plan in order to carry out the LUP.
- GEN-5 Findings of Approval.** Prior to approval of any CDP, the City shall make the finding that the development conforms to the policies and requirements contained in the LUP.

A suggested modification is also necessary to include the following general policy to reflect a recent amendment in the Coastal Act to include consideration of environmental justice issues on all CDP actions.

GEN-3 Environmental Justice. When acting on a CDP, the issuing agency, or the Coastal Commission on appeal, may consider environmental justice, or the equitable distribution of environmental benefits throughout the State. In all instances the standard of review for issuance of a CDP shall be the Coastal Act or certified LCP.

In Chapter 2: Land Use and Development, the City included Policy LU-9: Compensation for Taking Private Property under Section 2.4.1: Residential Development Policies, but not under Section 2.4.2: Commercial Development Policies, Section 2.4.3: Mixed-Use Development Policies, or the other policy sections. Additionally, in Chapter 5: Hazards, the City included the same exact Compensation for Taking Private Property language, but this time identified as HAZ-32. As the issue of just compensation for taking of private property applies throughout the coastal zone for many different scenarios and not restricted to just taking of residential property, for the sake of clarity and streamlining, a suggested modification is required delete Chapter 5 Policy HAZ-32 and Chapter 2 Policy LU-9 and replace them with a single policy in Chapter 1: Introduction utilizing the same language as submitted by the City:

GEN 8 Taking of Private Property. The City does not have the power to grant or deny a permit in a manner which will cause a physical or regulatory taking of private property, without the payment of just compensation. This policy is not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or the United States (Coastal Act Section 30010).

Thus as suggested to be modified, it is clear that the policy has a more general application.

Capistrano Shores Mobile Home Park

The Capistrano Shores Mobile Home Park is a single parcel developed with 90 mobile homes parallel to the shoreline on a perched beach protected from the ocean by a pre-Coastal Act rock revetment. The site is located between the first public road and the sea and seaward of the OCTA railroad tracks in San Clemente. The mobile home park use itself is a legal non-conforming use (i.e., pre-Coastal Act) on a stretch of beach on a lot designated OS2 Privately Owned Open Space (intended for open space – no formal easement) in the certified LUP. The City Council action to submit the LUP Update included an action to remove all mention of the Capistrano Shores Mobile Home Park (Capistrano Shores) from the LUP Update and to no longer depict the site on the Land Use Map as the existing land use designation of OS2 Privately Owned Open Space but instead depict the site as an “Area of Deferred Certification (ADC)”. Commission staff informed the City that only the Commission has the authority to create an ADC and that per Commission regulations an ADC is created upon request to the Commission at the time of initial LUP submittal or by the Commission when it originally certifies an LUP. As this action did not occur back in 1988 when the San Clemente LUP was originally certified, once an area/segment of a City is already part of a certified LUP, it cannot be de-certified. There is

simply no basis for such a procedure in the Coastal Act or Commission Regulations. Thus the creation of an ADC for Capistrano Shores cannot be created at this stage through the process undertaken by the City.

The City has since indicated that it is unwilling to certify the comprehensive LUP Update if the Commission suggests a modification to re-incorporate Capistrano Shores into the LUP Update (relative to the City's action to completely remove Capistrano Shores from the LUP update) or to apply the proposed LUP policies (including suggested modifications) to Capistrano Shores at all. Capistrano Shores does raise unique issues that do not pertain to other areas of San Clemente's shoreline. The City, Commission staff, and other interested persons have not fully resolved those issues, so it is appropriate to address Capistrano Shores separately as part of a future LCP amendment. A suggested modification is therefore proposed to bifurcate Capistrano Shores from the comprehensive LUP Update submittal, with the result being that the version of the LUP last certified in 1996, before this proposed LUP amendment, will continue to apply to Capistrano Shores until a subsequent LCP amendment is certified for Capistrano Shores. This "dual LUP" approach is effectuated with respect to Capistrano Shores on the one hand and the remainder of the City on the other hand through Policy GEN-10:

GEN-10 *Applicability of the LUP to Capistrano Shores Mobile Home Park.* The version of the LUP last certified in 1996 shall continue to apply to the Capistrano Shores mobile home park community, and subsequently-certified LUP policies and IP standards (including any LUP policies certified on the same date that this LUP policy was certified) shall not apply to Capistrano Shores until an LCP amendment which specifically addresses the mobile home park community has been certified, at which time the LUP policies and IP standards set forth in that Capistrano Shores-specific LCP amendment shall apply to the Capistrano Shores mobile home park community instead.

Thus, the site would effectively still be certified under the 1996 LUP and the certification of the LUP Update could go forward for the rest of the City. The Commission would continue to maintain permit authority over the site and the Coastal Act would continue to be the standard of review with the 1996 LUP used as guidance for any CDP applications for the site until an LCP amendment which specifically addresses the mobile home park community has been certified, at which time the LUP policies and IP standards set forth in that Capistrano Shores-specific LCP amendment shall apply to the Capistrano Shores mobile home park community instead. Furthermore, as the subject site is a mobile home park, governed directly by HCD, the City doesn't currently review or approve the replacement/remodels of the mobile home structures, (though the Commission does pursuant to its authority under the Coastal Act to regulate "development" within the Coastal Zone), thus there is no change in the current status quo.

Definitions

In Chapter 7: Definitions, minor formatting suggested modifications are made at the request of the City to delete the numbering of the definitions provided and to create a separate section identifying acronyms and spelling out the words of the acronym, as actual definitions of acronyms are not readily provided in the chapter. However, suggested modifications are

required to include additional definitions of undefined terms utilized throughout the LUP. Suggested modifications are made to add definitions of terms such as “Bicycle Tourism,” “Complete Streets,” “Living Streets,” “Factor of Safety,” and “Historic Resource.” Suggested modifications are also necessary to include definitions of new terms introduced to the LUPA in new policies added as suggested modifications. Such terms include “Environmental Justice,” “Short-Term Apartment Rental (STAR)” and “Short-Term Lodging Unit (STLU).” A definition of “Existing Development” is included in this chapter, the implications of this suggested modifications to this definition is discussed in Coastal Hazards discussion of this report.

2. Land Use and Visitor-Serving Development

A. Applicable Coastal Act Policies

Section 30213 Lower cost visitor and recreational facilities; encouragement and provision; overnight room rentals

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred. The commission shall not: (1) require that overnight room rentals be fixed at an amount certain for any privately owned and operated hotel, motel, or other similar visitor-serving facility located on either public or private lands; or (2) establish or approve any method for the identification of low or moderate income persons for the purpose of determining eligibility for overnight room rentals in any such facilities.

Section 30220 Protection of certain water-oriented activities

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

Section 30221 Oceanfront land; protection for recreational use and development

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30222 Private lands; priority of development purposes

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 no over agriculture or coastal-dependent industry.

Section 30223 Upland areas

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

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.
- (b) Where feasible, new hazardous industrial development shall be located away from existing developed areas.
- (c) Visitor-serving facilities that cannot feasibly be located in existing developed areas shall be located in existing isolated developments or at selected points of attraction for visitors.

Section 30252 Maintenance and enhancement of public access

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

Section 30253 Minimization of adverse impacts

New development shall do all of the following:

- (a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geological instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.
- (c) Be consistent with requirements imposed by an air pollution control district or the State Air Resources Control Board as to each particular development.
- (d) Minimize energy consumption and vehicle miles traveled.
- (e) Where appropriate, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.

Section 30255 Priority of coastal-dependent developments

Coastal-dependent developments shall have priority over other developments on or near the shoreline. Except as provided elsewhere in this division, coastal-dependent developments shall not be sited in a wetland. When appropriate, coastal-related developments should be accommodated within reasonable proximity to the coastal-dependent uses they support.

Section 30260 Location or expansion

Coastal-dependent industrial facilities shall be encouraged to locate or expand within existing sites and shall be permitted reasonable long-term growth where consistent with this division. However, where new or expanded coastal-dependent industrial facilities cannot feasibly be accommodated consistent with other policies of this division, they may nonetheless be permitted in accordance with this section and Section 30261 and 30262 if (1) alternative locations are infeasible or more environmentally damaging; (2) to do otherwise would adversely affect the public welfare; and (3) adverse environmental effects are mitigated to the maximum extent feasible.

B. Proposed Land Use Plan Amendment

As previously described, this comprehensive LUP Update amendment proposes to replace the currently certified LUP in its entirety. Chapter 2: Land Use and New Development includes the Coastal Land Use Map (Figure 2-1, A-G) which, as submitted, already depicts twenty-eight (28) land use designation changes proposed under this LUP Update to the currently certified Land Use Map. Numerous land use designation changes were made as part of the City's 2015 General Plan Update. Those 2015 land use designation changes (in the coastal zone) have been submitted for Commission certification with this LUP Update. **Exhibit 4** provides a table outlining the certified land use designations and the proposed new land use designations for each proposed change. The majority of these proposed changes are characterized as "clean-up" corrections and clarifications with a few that can be characterized as significant changes. These will be described later in this section.

The submitted LUP Update Chapter 2 follows the format of the currently certified chapter closely. It also provides a table, identified as Table 2-1 listing each proposed Coastal Land Use Classifications/Designation along with the allowable land uses, building height, and maximum density for each of those Coastal Land Use Classifications/Designations. The nomenclature of the Coastal Land Use Classifications/Designations remain the same as currently certified, however, the lists of allowable uses within each Land Use Designation are expanded and clarified. The Industrial (I) classification/designation is renamed to Light Industrial and a new Regional Commercial (RC) Land Use Plan classification/designation is added and new Overlays are identified and added to the Land Use Map and Table 2-1. The Overlay designations identify additional specific purpose-driven restrictions placed over distinct City areas. Such overlays include, but are not limited to: Architectural Overlay, Visitor-Serving Commercial District Overlay, and a Mixed-Use Overlay.

For example, the Visitor-Serving Commercial District Overlay (VSCD) is a new overlay proposed to ensure the preservation of existing visitor-serving uses and designation of suitable areas for these priority uses. New background text is provided explaining that the purpose of the VSCD overlay designation is to identify commercial and mixed-use parcels on which the City's LCP will require visitor-serving/pedestrian uses to be located on the ground floor of proposed developments in the VSCD overlay district.

The currently certified LUP references "Special Districts" that due to their unique community character and land uses, are given special consideration in regards to their functional role and physical form. The special districts include: Downtown, Pier Bowl, North Beach, and Marblehead. These special districts are distinct districts/neighborhoods referred to as "Focus Areas" where the City has identified specific development goals in order to maintain the distinct community character of each Focus Area. An additional Focus Area consisting of the Los Molinos industrial district is included, and the recently developed Marblehead site is no longer referred to as a Focus Area in the proposed LUP Update. Instead, the Marblehead site, with a previously certified land use designation of Mixed Use (MU5.2) and previously treated as an Area of Deferred Certification (ADC) under the certified LUP, is now fully developed as the Marblehead Coastal Plan Area per CDP 5-03-013 issued by the Commission. The LUP Update Land Use Map reflects the land subdivision and land use designation changes approved by the Commission as part of CDP 5-03-103, thus incorporating the Marblehead Coastal Plan Area in the LUP in this comprehensive update. The updated Land Use Map depicts the Marblehead subdivision with individual parcels designated as Open Space (OS) Residential Low Density (RL), Regional Commercial (RG), and Coastal and Recreational Serving (CRC) land use designations.

Policies set forth in LUP Chapter 2: Land Use and New Development are divided into two distinct subgroups. The first subgroup of policies is based on the Land Use Designations identified in this chapter, such as Residential, Commercial, and Mixed-Use. The second subgroup of policies are organized based on broader topics such as Visitor-Serving Land Use and Development, Open Space Development, Conservation and Sustainability, and Focus Areas policies, which are not specific to any particular Land Use Designation, but may be implicated in any of the Land Use Designations.

The certified LUP provides policies to protect visitor-serving facilities it identifies solely as beach facilities (such as beach restrooms, snack bars, and parking lots) but lacks sufficient policies to protect visitor-serving commercial uses, such as overnight accommodations and other tourist-oriented businesses. The proposed LUP Update attempts to rectify the problem through the creation of the VSCD Overlay and inclusion of policies such as LU-23 (now renumbered as proposed LU-20) Visitor-Serving Uses in the VSCD Overlay which clearly states that the VSCD Overlay protects visitor-serving uses and prevents the conversion of existing visitor-serving development to other uses.

C. Consistency Analysis - Denial as Submitted and Approval with Suggested Modifications

As further discussed below, suggested modifications are necessary to include additional Coastal Act Chapter 3 policies applicable to this chapter pertaining land use and development as listed at the start of this section of the staff report.

Chapter Formatting and Organization

Numerous suggested modifications are necessary to the Chapter 3 policy section for formatting changes and at the request of the City to delete specific goals identified for each land use designation subsection. The bulk of the suggested modifications are necessary to provide clarifying language for specific policies. Suggested modifications to delete entire policies are necessary as numerous policies are either repetitive or redundant and are therefore consolidated into fewer policies, or certain policies are simply transferred from this chapter to a more relevant chapter in the LUP.

For example, one suggested modification would delete LU-9 Compensation for Taking Private Property from Subsection 2.6.1 – Residential Development Policies. The “takings” policy is a broad policy that could be applicable to coastal development under many circumstances, not only to residential development. Therefore, the suggested modification would move the “takings” policy to Chapter 1 Section 1.4.2 General Policies so that it will be applicable in any necessary circumstance. Thus, instead of having similar or duplicative policies in every chapter addressing “taking of private property” the policy is transferred to Chapter 1 - General Policies, which sets forth the LUP policies that apply generally to all proposals for development.

Visitor-Serving Land Use and Development Policies

As previously stated, the currently certified LUP does not clearly identify parcels that support existing overnight accommodations in a “visitor-serving commercial district,” as the majority of the existing accommodations have a mixed-use land use designation. The LUP Update provides the VSCD Overlay which is intended to protect visitor-serving uses. However, as submitted the VSCD overlay simply “promotes” and “encourages” visitor-serving land uses such as commercial, lodging, and restaurants. Thus, suggested modifications are necessary to ensure that the VSCD Overlay goes beyond “promotes and encourages” to “protects and where feasible provides” visitor-serving uses, including overnight accommodations, in compliance with Coastal Act Section 30213. Additionally, a suggested modification is necessary to apply the VSCD Overlay on all hotels/motels/inns on the Land Use Map Figures 2-1E through 2-1G depicting the Overlay Zones, and to modify the figure provided as LUP Appendix C: Land Use Coastal Zone Overlays. Appendix C: Land Use Coastal Zone Overlays to the LUP Update is a figure depicting all parcels in the coastal zone with Overlay designations (i.e., Architectural, VSCD, Affordable Housing, Professional Business, and Mixed-Use) in a light blue color and specifically calls out City identified overnight accommodations by a number and in a dark blue color. It seems that this figure is intended to demonstrate that the overnight accommodations in the City are in the VSCD Overlay, however, as depicted with the overnight accommodations depicted in a darker shade of blue, this distinction is not at all clear. Therefore, a suggested modification is necessary to identify the location of overnight accommodations simply by number, thus making the color of the underlying overlay clearly distinguishable. Ensuring the that VSCD Overlay is applied to all overnight accommodations in the coastal zone, would facilitate conformance with

Coastal Act Section 30213 for the protection, encouragement and, where feasible provide opportunities for lower cost visitor and recreational facilities.

In Table 2-2, the City identifies nine visitor-serving overnight accommodations in the coastal zone, none of which are currently considered lower cost: five are high cost, and four are moderate cost facilities based on an analysis of 2014 Statewide average rates and 2015 San Clemente average rate data provided in LUP Appendix D: Affordable Overnight Accommodations Analysis. Table 2-2 doesn't indicate the number of rooms/units per site, however, the background texts makes the statement that there are 278 hotel/motel rooms and 160 campsites including 72 for RVs in the coastal zone. There is a greater number of overnight accommodations in the City, but many of them are outside of the coastal zone. A suggested modification is necessary to ensure that Table 2-2 is inclusive of all sites providing overnight accommodations in the coastal zone are included in the table and providing the number of rooms at each location.

Also, there are no policies in the currently certified LUP or the proposed LUP update that could be applied in the event that a new hotel development was proposed to be entirely high cost and possibly inconsistent with Section 30213 of the Coastal Act by precluding the ability and opportunity to develop lower-cost visitor-serving accommodations (such as a low-cost hotel) in an appropriate Land Use Designation. Nor is there adequate policy guidance for a future LCP implementing ordinance (IP) to establish a mitigation program to assist in the future development of lower cost overnight accommodations in the coastal zone due to development impacts precluding the ability to develop such lower cost overnight accommodations. While the proposed LUPA laudably contains policies to discourage a reduction in the total stock of overnight accommodations based on the 2015 inventory of existing visitor-serving overnight accommodations, the submitted policies require additional specificity to comply with Coastal Act Section 30213 in order to provide for the protection, encouragement, and, where feasible, provision of lower cost visitor and recreational facilities. For example, Policy LU-45 (renumbered to proposed LU-44) Lower and Moderate Cost Opportunities, as submitted states:

LU-45 Lower and Moderate Cost Opportunities. Prohibit the loss of existing lower cost facilities, including lower cost hotel, motel or inn units, or campsites, unless they are replaced with comparable facilities, mitigation, or in lieu fees are provided.

As suggested to be modified:

LU-45 LU-44 Lower and Moderate Cost Accommodations Opportunities. Prohibit the loss of existing lower-cost facilities, including lower cost hotel, motel or inn units, or campsites, ~~unless they are replaced with comparable facilities, mitigation, or in lieu fees are provided.~~ Any proposal to demolish existing overnight accommodations shall be required to demonstrate that rehabilitation of the units is not feasible. New development proposed to eliminate existing lower-cost accommodations shall provide lower-cost overnight accommodations commensurate with the impact of the proposed new development on lower cost overnight accommodations or pay an "in-lieu" fee in an amount to be determined through the CDP process that shall be disbursed to entities that

provide lower-cost overnight visitor accommodations. Mitigation shall be required for the loss of existing low cost overnight accommodations if they are not replaced on- or off-site prior to or concurrent with the demolition of the existing low cost overnight accommodations. In-lieu fees may also be used to provide other lower-cost overnight visitor accommodations in the Southern California coastal zone area.

Short-Term Lodging Units (STLUs)/Vacation Rentals

At the time the City transmitted the comprehensive LUP Update in March 2016, the City was also in the midst of consideration of a new City Ordinance to regulate short-term lodging/vacation rentals. However, as submitted the LUP Update does not include a policy regarding this emerging issue. The Commission has previously found that visitor-serving overnight accommodations including STLUs in residential areas maximize opportunities for public to access the coast. The Commission also recognizes the need to regulate this type of use with an enforceable permitting and rules-based process in order to minimize potential adverse effects on housing supply and neighborhood character. For compliance with Coastal Act Section 30213 and the public access policies, an LUP must provide policies that protect, encourage, and, where feasible, provide lower cost visitor and recreational facilities. This type of overnight visitor accommodation can increase public access by providing a wider selection of rental rooms/units in the coastal zone to groups and families and by including more rooms/units or rooms closer to the beachfront, and even some lower cost rooms that may be a little further from the shoreline. The currently certified LUP lacks a policy and/or standards regarding STLUs. The Commission's position typically has been that if a use is not allowed unless expressly allowed in an LUP, thus, effectively resulting in a ban of this use. Therefore, a suggested modification is necessary to add Policy LU-49 Short-Term Lodging and Vacation Rentals specifically stating that, "the City shall allow short-term rentals in residential and mixed-use zones." The policy provides further guidance that the use shall be "subject to appropriate regulations minimizing potential adverse impacts to neighborhoods or coastal resources" Addition of this policy to the LUP Update is necessary to ensure conformance with Chapter 3 policies, specifically Section 30213.

The specific zones and areas of the City where STLUs will be permitted or not permitted will be addressed at the IP stage of the LCP process, but this suggested LUP policy will provide the guidance and balance necessary to allow the regulation of this important and popular type of overnight accommodation. After City acceptance of the LUP Update with all suggested modifications and following Commission certification of the updated LUP, the factual details of any proposed STLU regulations would follow in the final Implementation Plan phase prior to full LCP certification.

Proposed Land Use Designation Changes

The LUP Update proposes twenty-eight (28) land use designation changes to the currently certified Land Use Map. **Exhibit 4** provides a table outlining the certified land use designations and the proposed new land use designations for each proposed change. The proposed Land Use Map changes are characterized as "clean up" by the City. The majority of the proposed Land Use Map changes are minor except for one notable change described below.

Shorecliffs Golf Course

A land parcel that is currently used as a golf drive range at the Shorecliffs Golf Course is identified by the currently certified Land Use Map as Coastal and Recreational Services (CRC), but is proposed to be re-designated as Residential High Density (RH) with an Affordable Housing Overlay. Only three parcels in the City are currently designated CRC: this one that is part of the Shorecliffs Golf Course, a parcel along Avenida Pico associated with the Marblehead development, and the Beachcomber Inn in the Pier Bowl District. Recognizing that there are only three such designated parcels in the City's entire coastal zone, the City created a new Visitor-Serving Commercial District (VSCD) Overlay which, as described in Chapter 2, identifies core commercial and mixed-use districts in which the City will require visitor-serving/pedestrian uses to be located in pedestrian spaces (on the ground floor) of any proposed development within the VSCD Overlay.

The CRC designation for this site in the certified LUP was not specifically required by the Coastal Commission in the previous LUP Update of 1996, but rather that land use designation was made by the City at the request of the previous owner of the golf course property, who anticipated a redevelopment of the golf course including the construction of a resort hotel. However, this vision for the property proved inconsistent with surrounding community and the reality of the hotel and golf industries. The City changed the land use designation to Residential High Density with an Affordable Housing Overlay in the City's 2015 General Plan Update in an effort to meet State affordable housing requirements. The site is in the very furthest inland portion of the City's Coastal zone adjacent to Interstate 5 and surrounded by residential uses. The property has no freeway visibility or convenient freeway or Coast Highway access, and as a result is less suitable for a hotel or other CRC uses in terms of facilitating lower-cost public access to the coast. The site does not provide any overnight accommodations at this time – it is an active driving range. The proposed land use designation change on this site will not reduce the overall supply of VSCD-designated sites because this LUP amendment includes the designation of several other properties with the new VSCD overlay, thus resulting in increased protection of lower-cost visitor-serving uses as compared to the existing certified LUP. Oceanfront sites are the most important to reserve for visitor-serving uses whenever possible. LUP policies promote/concentrate visitor-serving opportunities near the oceanfront in all areas in the City that are not already designated for residential uses (for example, the North Beach area; Pier Bowl, and downtown core commercial areas). Thus, high density affordable housing is more compatible with the surrounding community at the Shorecliffs Golf Course and furthers the housing goals of the City, and the property was seen as important to State Housing and Community Development when it reviewed the City's Housing Element, without impairing existing stock or opportunities for lower-cost visitor services.

Furthermore, the updated Land Use Map will reflect the development of the Marblehead Coastal Plan Area as approved by the Commission in 2003 under CDP 5-03-013. The land use designation for Marblehead is MU5.2, the site was subdivided and the land uses in this area now include Open Space Private (OS2), Residential Low (RL), Regional Commercial (RC), and Coastal and Recreation Serving Commercial (CRC) and a 125-room hotel is planned under the RC land use designation as part the Marblehead Coastal Plan Area (though outside of the coastal zone). Thus, overall, the proposed LUP Update Land Use Map changes would result in the loss

of the CRC parcel at the Shorecliffs Golf Course site (which is not critical for ensuring lower-cost visitor-serving uses or public coastal access), but would also augment the Land Use Map with the CRC parcel created out of the Marblehead Coastal Plan Area.

3. Public Access and Recreation

A. Applicable Coastal Act Policies

Section 30210 Access; recreational opportunities; posting

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211 Development not to interfere with access

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212 New development projects

- (a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) It is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) Adequate access exists nearby, or, (3) Agriculture would be adversely affected. Dedicated accessways shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway. [...]

Section 30212.5 Public facilities; distribution

Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

Section 30214 Implementation of public access policies; legislative intent

- (a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:
- (1) Topographic and geologic site characteristics.
 - (2) The capacity of the site to sustain use and at what level of intensity.
 - (3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.

- (4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter.
- (f) It is the intent of the Legislature that the public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public's constitutional right of access pursuant to Section 4 of Article X of the California Constitution. [...]
- (g) In carrying out the public access policies of this article, the commission and any other responsible public agency shall consider and encourage the utilization of innovative access management techniques, including, but not limited to, agreements with private organizations which would minimize management costs and encourage the use of volunteer programs.

Section 30220 Protection of certain water-oriented activities

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

Section 30221 Oceanfront land; protection for recreational use and development

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30222 Private lands; priority of development purposes

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 no over agriculture or coastal-dependent industry.

Section 30224 Recreational boating use; encouragement; facilities

Increased recreational boating use of coastal waters shall be encouraged, in accordance with this division, by developing dry storage areas, increasing public launching facilities, providing additional berthing space in existing harbors, limiting non-water-dependent land uses that congest access corridors and preclude boating support facilities, providing harbors of refuge, and by providing for new boating facilities in natural harbors, new protected water areas, and in areas dredged from dry land.

Section 30255 Priority of coastal-dependent developments

Coastal-dependent developments shall have priority over other developments on or near the shoreline. Except as provided elsewhere in this division, coastal-dependent developments shall not be sited in a wetland. When appropriate, coastal-related

developments should be accommodated within reasonable proximity to the coastal-dependent uses they support.

Section 30252 Maintenance and enhancement of public access

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing non-automobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

B. Proposed Land Use Plan Amendment

Chapter 3: Public Access and Recreation, of the LUP amendment provides background and descriptive text regarding the City's mobility resources (public transportation, and bike/pedestrian circulation), public and private shoreline access points, description of the City's California Coastal Trail segment, and the City's recreational opportunities and amenities. Chapter 3 policies are divided into the same categories: Mobility, Shoreline Access, California Coastal Trail, and lastly Recreational Opportunities and Amenities.

The LUP Update builds upon the few currently certified policies pertaining to bicycle transportation and provides over a dozen new policies encouraging and supporting non-automobile transportation.

In regards to coastal access policies, the currently certified LUP only references Coastal Act Sections 30211 and 30252, as applicable coastal access policies. The LUP Update rightfully incorporates Coastal Act Sections 30210, 30212, 30211.5, and 30214 as LUP policies. The LUP Update also endeavors to carry over the policies contained in the currently certified LUP or consolidate existing certified policies into fewer more succinct policies. For example, Policy PUB-40 New Development Public Access Requirements, as proposed reads:

PUB-40 New Development Public Access Requirements. New developments proposed on property lying between the first public roadway and the shoreline shall provide both physical and visual public access to the shoreline and along the coast in proportion to the public access impact resulting from the new development. The City is not to exercise its power to grant or deny a permit in a manner that will take or damage private property for public use, without the payment of just compensation or a reasonable nexus between the development and the impact. This section (1) is not intended to increase or decrease the rights of any owner of property under the Constitution of the State of California or the

United States and (2) reasonable justification and proportionality under the U.S. Supreme Court's Nollan/Dolan doctrine and subject to Section 30010 of the Coastal Act.

According to information provided by the City, PUB-40 is intended to replace certified Policy IX.15 requiring new development lying between the first public roadway and the shoreline shall provide both physical and visual access to the coastline; and replace certified Policy IX.17 which outlines the considerations that shall be taken in order to deem if a proposed project is required to provide access.

The proposed chapter update also includes a host of policies aimed at protecting, and where feasible, expanding lower-cost visitor-serving public recreational opportunities and availability of public beach amenities. Chapter 3 also contains a policy section containing a handful of policies regarding the California Coastal Trail (CCT).

C. Consistency Analysis - Denial as Submitted and Approval with Suggested Modifications

Minor suggested modifications are made for formatting changes and providing clarifying language to the chapter text and policies.

The currently certified LUP includes four general policies pertaining to the development of bike routes and bike facilities. The LUP Update builds upon these four policies and provides over a dozen new policies encouraging and supporting non-automobile transportation. Minor suggested modifications to these policies are necessary to clarify intent and streamline numerous repetitive policies. For example, staff suggests modifications to Policy PUB-16 (previously PUB-22) Bicycle Facilities to clarify that instead of the City “addressing bicycle needs,” the City will require that new or remodeled commercial, multiple-family residential, and mixed-use development projects meet bicycle needs.” Additionally, a suggested modification is necessary to include Policy PUB-26 specifically calling for Transportation Demand Management Measures to reduce vehicle miles travelled, consistent with Coastal Act Section 30253.

Chapter 3 Section 3.3.2 provides coastal access policies, as previously noted, the City’s intent is to carry over the policies contained in the currently certified LUP or consolidate existing certified policies into fewer succinct policies. However, Policy IX.14, a key certified policy tracking the language of Coastal Act Section 30212 was inadvertently left out.

Policy IX.14: Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

- a. It is inconsistent with public safety, military security needs or the protection of fragile coastal resources;*
- b. Adequate public access already exists nearby; or*
- c. Agriculture would be adversely affected.*

The LUP Update format identifies Coastal Act policies at the beginning of each chapter’s policy section and incorporates them as policies of the LUP itself. In this case, Section 30212 in its

entirety is included as a policy in LUP Chapter 3: Public Access and Recreation. Even so, there is no basis for the City to delete certified Policy IX.14. Therefore, a suggested modification is to add the language of Policy IX.14 back into the LUP Update as Policy PUB-38 - New Development Public Access Requirements.

The City is in agreement with all of the suggested modifications to Chapter 3: Public Access and Recreation.

4. Marine and Land Resources

A. Applicable Coastal Act Policies

Section 30107.5 Environmentally sensitive area

“Environmentally sensitive area” means any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.

Section 30116 Sensitive coastal resource areas

“Sensitive coastal resource areas” means those identifiable and geographically bounded land and water areas within the coastal zone of vital interest and sensitivity. “Sensitive coastal resource areas” include the following:

- (a) Special marine and land habitat areas, wetlands, lagoons, and estuaries as mapped and designated in Part 4 of the coastal plan .
- (b) Areas possessing significant recreational value.
- (c) Highly scenic areas.
- (d) Archaeological sites referenced in the California Coastline and Recreation Plan or as designated by the State Historic Preservation Officer.
- (e) Special communities or neighborhoods which are significant visitor destination areas.
- (f) Areas that provide existing coastal housing or recreational opportunities for low- and moderate-income persons.
- (g) Areas where division of land could substantially impair or restrict coastal access.

Section 30121 Wetland

“Wetland” means lands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens.

Section 30230 Marine resources; maintenance

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a

manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 Biological productivity; water quality

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30233 Diking, filling or dredging; continued movement of sediment and nutrients

- (a) The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:
- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.
 - (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.
 - (3) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.
 - (4) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.
 - (5) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.
 - (6) Restoration purposes.
 - (7) Nature study, aquaculture, or similar resource dependent activities.

- (b) Dredging and spoils disposal shall be planned and carried out to avoid significant disruption to marine and wildlife habitats and water circulation. Dredge spoils suitable for beach replenishment should be transported for these purposes to appropriate beaches or into suitable longshore current systems. [...]
- (d) Erosion control and flood control facilities constructed on watercourses can impede the movement of sediment and nutrients that would otherwise be carried by storm runoff into coastal waters. To facilitate the continued delivery of these sediments to the littoral zone, whenever feasible, the material removed from these facilities may be placed at appropriate points on the shoreline in accordance with other applicable provisions of this division, where feasible mitigation measures have been provided to minimize adverse environmental effects. Aspects that shall be considered before issuing a coastal development permit for these purposes are the method of placement, time of year of placement, and sensitivity of the placement area.

Section 30235 Construction altering natural shoreline

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 adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fishkills should be phased out or upgraded where feasible.

Section 30236 Water supply and flood control

Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the flood plain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.

Section 30240 Environmentally sensitive habitat areas; adjacent developments

- (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.
- (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

B. Proposed Land Use Plan Amendment

Chapter 4: Marine and Land Resources of the LUP Update provides a description of natural habitats found in the City's coastal zone and provides figures identifying the location of coastal canyons, watersheds and ocean outfall locations, off-shore coastal reefs, and "Potential Habitat Study Areas" as identified by a recent 2015 City Biological Inventory Report. The full Biological Inventory Report is included as an LUP Appendix. Additionally, Chapter 4 contains a section devoted to coastal water quality concerns. Chapter 4 policies are divided into subgroups concerning environmentally sensitive habitat areas (ESHA), marine resources, wetlands, water quality, and other biological resource areas such as coastal canyons.

Policies defining the designation of ESHA, and ESHA buffers, and overall ESHA protection, ESHA mitigation and mitigation ratios are included in Chapter 4 of the LUP Update.

Additionally, new policies affording special protection to areas and species of special biological or economic significance such as the sandy beach and kelp wrack are included.

As the certified LUP currently lacks policies that adequately protect wetlands and streams as required by Coastal Act Section 30231 for the maintenance and where feasible, restoration of biological productivity and quality of coastal waters, streams and wetlands, the LUP Update commendably undertakes the effort to provide a dozen new policies ranging from a simple policy tracking Section 30231 (*"Recognize and protect wetlands for their scenic, recreational, water quality and habitat values. The biological productivity and quality of wetlands shall be protected and, where feasible, restored."*) to more complex detailed policies providing guidance on wetland delineation, identifying wetland buffers, indicating when impacts to wetlands may be permitted pursuant to Coastal Act Section 30233, and policies requiring mitigation and stipulating specific mitigation ratios. Additionally, a definition of wetlands is included in Chapter 7: Definitions.

The water quality policies in the currently certified LUP vaguely focus primarily on provision of *"a clean and enjoyable marine environment that sufficiently meets the needs of beach users"* and to *"maintain and enhance the City's beaches and marine resources"* and *"Provide adequate marine safety and medical aid services."* There is only one certified policy, Policy XIV.12 identifying measures that the City can take to help further protect coastal waters, including encouraging a reduction in storm drain related pollution, promoting water conservation, encouraging the use of native plants, and requiring certain construction related Best Management Practices (BMPs). In the LUP Update submittal, the City proposes to replace these few policies with twenty-two (22) new policies addressing all aspects of development intended to meet the Coastal Act Section 30231 requirement to minimize adverse effects of wastewater discharges and entrainment, controlling runoff, and preventing substantial interference with surface water flow.

Chapter 4: Marine and Land Resources of the LUP Update also considerably increases overall habitat protection policies. New policies addressing the need for a fuel modification plan as part of new development proposals and the need for alternative fuel modification measures are included. Additionally, a policy is included to require new buildings and Major Remodels comply with bird-safe building standards as is a policy further protecting nesting birds by

requiring tree trimming and tree removal activities to be outside the roosting/nesting bird season. However, currently certified policies identifying coastal canyons not just for their habitat value but as visual resources as well, were deleted in the LUP Update submittal and suggested modifications are required to add those policies back in.

C. Consistency Analysis - Denial as Submitted and Approval with Suggested Modifications

Suggested modifications are necessary to ensure consistency with the Coastal Act and provide clarity on the intent of the proposed new policies. The majority of suggested modifications are simply aimed at restructuring the formatting and organization of Chapter 4: Marine and Land Resources to provide a more conventional, logical sequence to both the Chapter text and the policies themselves. Confusing and misleading policy language can be misinterpreted or misconstrued due to lack of clear intent. Based on past discussions and collaborations with City staff, Commission staff believes these suggested modifications are acceptable to the City.

Coastal Canyons

Policies in the currently certified LUP requiring development be designed and sited to “maintain the natural topographic and physiographic characteristics of the City’s hillsides and canyons” are not adequately carried over into the LUP Update, either verbatim or re-worked into the language of a new policy. Deletion and reworking of these policies in the LUP Update will not ensure conformity with Chapter 3 of the Coastal Act, thus, numerous suggested modifications are required to add these policies back into the LUP.

For example, certified LUP Policies XII.5 and XII.6 state:

Policy XII.5: Preserve the aesthetic resources of the City, including coastal bluffs, visually significant ridgelines, and coastal canyons, and significant public views.

Policy XII.6: Preserve the designated undeveloped “natural” coastal canyon areas where appropriate that were originally intended to be open space buffers (see Figure 2-1).

According to information provided by the City, both are proposed to be deleted and replaced by new Policy VIS-9 which states:

VIS-9: Coastal Canyon Restoration. Promote the restoration of coastal canyons as a visual resource in a manner consistent with the goals of the Coastal Act.”

The proposed policy is vague and the original intent to “preserve” designated coastal canyon areas as open space and “preserve the aesthetic resource” of the open space in coastal canyon is lost in the proposed updated policy. Therefore, numerous suggested modifications are required to Chapter 4 policies as outlined in **Exhibit 2** including the renumbered Policy RES-69 Natural Areas, RES-70 Coastal Canyon Areas Protection, and RES-72 Coastal Canyon Resources. Additionally VIS-9 (renumbered to proposed VIS-14) is suggested to be modified to clarify the intent of the policy is to promote the restoration of a coastal canyons with native landscaping to

enhance visual resources. And a suggested modification is made to add back certified Policy XII.6 as VIS-15 Preservation of Open Space in Coastal Canyons:

VIS-15 Preservation of Open Space in Coastal Canyons. Preserve the designated undeveloped “natural” coastal canyon areas where appropriate that were originally intended to function as open space (See Figure 4-1: Coastal Canyons in Chapter 4).

Water Quality

Suggested modifications are necessary to reorganize the order of the policies into Section 4.3.2 Water Quality and arrange the policies in a more cohesive flow beginning with policies pertaining to site design, to construction, to post-development. Suggested modifications are also required to clarify the titles of policies, provide simplicity, and explain confusing policy language.

One significant crucial suggested modification is necessary to break up the City’s proposed RES-51 Impervious Surfaces and Infiltration into two separate policies, since these two issues, though closely related are distinctly different. Thus a suggested modification is necessary to create Policy RES-29 Impervious Surfaces (previously RES-51) and new Policy RES-30 Infiltration as follows:

RES-51 RES-29 Impervious Surfaces and Infiltration. New development ~~shall~~ should be planned, sited and designed to minimize the installation of impervious surfaces, where feasible, especially impervious areas directly connected to the municipal storm drain system, in order to minimize increases in stormwater or dry weather runoff. Redevelopment projects shall, where feasible, increase the area of pervious surfaces consistent with RES-30. ~~Development shall be planned, sited, and designed to maintain or enhance on-site infiltration of runoff, where appropriate and feasible.~~

RES-30 Infiltration. Development shall be planned, sited, and designed to maintain or enhance on-site infiltration of runoff, where appropriate and feasible. If on-site infiltration of runoff may potentially result in adverse impacts, including, but not limited to, geologic instability, flooding, or pollution of coastal waters, the development shall substitute alternative BMPs (e.g., flow-through planter box, green roof, or cistern) that do not involve on-site infiltration in order to minimize changes in the runoff flow regime to the extent appropriate and feasible. Alternative BMPs shall also be used where infiltration BMPs are not adequate to treat a specific pollutant of concern attributed to the development, or where infiltration practices would conflict with regulations protecting groundwater.

As suggested to be modified, the policies recognize the City’s slope terrain including coastal canyons and bluffs and that infiltration may be discouraged in such areas to prevent soil and geologic instability that may result in landslides and maintains the caveat language of “where feasible” and “where appropriate and feasible.”

ESHA

The City conducted a 2015 City Biological Inventory Report, referred to simply as “the Report,” where “Potential Habitat Areas” were identified and are generally shown on Figures 4-1a through 4-1d and are also included in Chapter 4. The Report’s survey area focused primarily on coastal canyons and bluffs and thus, the entire northern shoreline section of the City from the northern boundary at the City of Dana Point all the way to north beach was not included in the inventory. The sandy beach area along the northern shoreline section of the City between Poche Beach and the Capistrano Shores Mobile Home Park is known to support native dune vegetation in sand hummocks thus forming dunes along the back beach. The City submitted Policy RES-26 (now renumbered as proposed RES-11) Native Beach Vegetation acknowledging native beach vegetation has a natural role in the ecological, structural, and aesthetic conditions of the City and requiring the City to protect existing native beach vegetation in established sand hummocks and dunes. However, as the California Department of Fish and Wildlife have identified coastal dunes among the rarest habitat in existence in Southern California, this single policy is not sufficient to protect sand dunes as ESHA. ESHA is defined as any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments. Coastal dunes naturally accrete and erode seasonally, vegetated or un-vegetated (back beach areas of sandy substrate exhibiting dune morphology) would be considered ESHA. Thus, a suggested modification is necessary to add a policy aimed at protecting sand dunes as ESHA:

RES-53 Sand Dunes. Protect as ESHA areas which have been identified as southern foredunes and southern dune scrub in a Biological Survey from adverse impacts due to a proposed development project and provide appropriate ESHA buffers.

Thus, if development requiring a CDP is proposed along a stretch of beach, per RES-2 Site-Specific Biological Surveys (now renumbered as proposed RES-77) a biological survey is required. If the Site Specific Biological Survey determines whether any southern foredunes and/or southern dune scrub are present on the project site or vicinity, appropriate protections granted to ESHA would be applicable.

Trees Providing Nesting and Foraging Habitat and Native Tree Protection

The LUP Update includes proposed Policy RES-93 Tree Trimming and Removal requiring tree trimming and removal be conducted during time periods of the year that does not disturb roosting/nesting birds and requiring every effort be made to preserve mature trees before considering tree removal. The City and Commission staff worked closely on suggested modifications to provide clearer more specific guidance language. As proposed to be modified, Policy RES-93 would apply to tree trimming and removal on public property. However, potentially, any tree, whether on public or private land, can provide important habitat which should be protected. Therefore, suggested modifications are deemed necessary to include additional policies to ensure the protection of nesting and foraging habitat. Thus, Policy RES-91 Nesting and Foraging Habitat and Policy RES-92 Construction Near Nesting and Foraging Habitat addressing construction phase noise levels are added to Chapter 4.

Furthermore, as submitted the LUP Update included Policy RES-91(now renumbered as proposed RES-88) Native Tree Protection requiring new development be sited and designed to preserve native trees and prevent encroachment into the tree's Protective Zone. However, if there is no feasible alternative that can prevent tree removal or encroachment, mitigation is required. As proposed, adverse impacts to mature native trees (examples of potentially appropriate species include Coast Live Oak, California Sycamore and White Alder as included in Policy RES-87 Native Trees) shall be fully mitigated at a 1:1 ratio. However, mitigation of loss of a mature native tree with a younger native tree at a 1:1 ratio does not make up for the loss of the habitat/biological function of a fully grown mature native tree. In addition, many newly planted trees do not survive for one reason or another and planting more than one is necessary to account for these loss factors and qualitative differences in lost trees versus mitigation in order to adequately ensure such loss of mature native trees does not result in significant adverse impacts to coastal biological resources. Thus, a suggested modification is made to Policy RES-91(now renumbered as proposed RES-88) Native Tree Protection requiring a higher mitigation ratio of 2:1 (unless a greater mitigation ratio is required by other regulation) for removal of a native tree in a natural habitat and a 1:1 mitigation ratio for removal of a native tree in a highly developed area. Additionally, the mitigation tree shall be planted in a proximal location with priority given to on-site mitigation.

5. Coastal Hazards & Shoreline/Bluff/Canyon Development

A. Applicable Coastal Act Policies

Section 30235

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 adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where feasible.

Section 30236

Channelizations, dams, or other substantial alterations of rivers and streams shall incorporate the best mitigation measures feasible, and be limited to (1) necessary water supply projects, (2) flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development, or (3) developments where the primary function is the improvement of fish and wildlife habitat.

Section 30250

(d) 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. [...]

Section 30251

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded area. [...]

Section 30253

New development shall do all of the following:

- (a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geological instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.
- (c) Be consistent with requirements imposed by an air pollution control district or the State Air Resources Control Board as to each particular development.
- (d) Minimize energy consumption and vehicle miles traveled.
- (e) Where appropriate, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.

Section 30260

Coastal-dependent industrial facilities shall be encouraged to locate or expand within existing sites and shall be permitted reasonable long-term growth where consistent with this division. However, where new or expanded coastal-dependent industrial facilities cannot feasibly be accommodated consistent with other policies of this division, they may nonetheless be permitted in accordance with this section and Section 30261 and 30262 if (1) alternative locations are infeasible or more environmentally damaging; (2) to do otherwise would adversely affect the public welfare; and (3) adverse environmental effects are mitigated to the maximum extent feasible.

B. Proposed Land Use Plan Amendment

The currently certified LUP contains a single policy under the “*Hazards Areas*” heading, Policy VII.5 which paraphrases Coastal Act Section 30253:

Policy VII.5 - New development shall:

- a. Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*

- b. Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter existing landforms along bluffs and cliff (PRC 30253).*

and seven policies, Policies VII.13 - VI.19 under the “*Alteration of Landform Policies*” requiring development be concentrated on level areas discouraging grading, cutting, or filling that alters landforms (e.g., bluffs, cliffs, ravines); requiring new development provide a minimum 25 foot setback from the bluff edge; providing development setback criteria from canyon edges; prohibiting new permanent structures on a bluff face, except for public beach access ways; requiring visual impact analysis; and development design goals aimed at maintaining the natural topography of canyons. Additionally, Policy XV.12 under the “*Environmentally Sensitive Habitat Goals and Policies*” requires geotechnical review for blufftop and canyon edge parcels, acknowledging that a greater setback shall apply if deemed necessary by the geotechnical review.

The submitted LUP Update proposes to carry over the nine aforementioned hazards policies in the currently certified LUP and greatly supplement these policies with additional, more detailed policies that take into consideration possible Sea Level Rise (SLR) hazards, includes new policies regarding wildfire hazards, and greatly expands the number and the scope of policies regarding bluff and shoreline protective devices. In total, the LUP Update includes 60 hazards policies contained in Chapter 5: Hazards & Shoreline/Bluff/Canyon Development and definitions of terms utilized throughout Chapter 5 such as “revetment,” “bluff retention device,” “major remodel,” and “sea level rise” in Chapter 7: Definitions. As submitted, Chapter 5 hazard policies are broken up into the following headings:

- 5.3.1 Coastal Bluff and Shoreline Development
- 5.3.2 Coastal Canyon Development
- 5.3.3 Hazard Area Development
- 5.3.4 Sand Replenishment/Beach Management
- 5.3.5 Sea Level Rise
- 5.3.6 Development in Flood Hazard Areas
- 5.3.7 Emergency CDP Actions

The LUP Update as submitted admirably tackles the challenges related to SLR hazards by defining Sea Level Rise in Chapter 7: Definitions and by adding numerous new policies in Chapter 5: Hazards & Shoreline/Bluff/Canyon Development that support efforts for ongoing study of the issue, encourage regional coordination with local, State and federal agencies, and acknowledge the need for best available scientific information regarding SLR projections in geotechnical and coastal hazards investigations (Policies including but not limited to HAZ-48 [now HAZ-11], HAZ-49 [now HAZ-14], HAZ-50 [now HAZ-15]) Most importantly, the LUP Update provides a few policies in Chapter 5 that endeavor to provide guidance for the preparation of a citywide coastal hazards vulnerability assessment (HAZ-53, now HAZ-12) and a citywide Shoreline Management Plan (HAZ-11, now HAZ-13).

Policies regarding bluff and shoreline protective devices also aim to incorporate consideration of SLR impacts in their review. Chapter 5 of the LUP Update as submitted contains numerous policies restricting and/or prohibiting what the City termed “bluff/canyon/shoreline retention devices.” For example:

HAZ-36: CDP Application for Bluff, Canyon or Shoreline Retention Devices – Findings and Conditions for Approval. No Permit shall be issued for retention, expansion, alteration or repair of a bluff, canyon or shoreline retention device unless the City finds:

- a. That the criteria for issuance set forth in policy HAZ-34 are met,
- b. That the bluff or shoreline retention device is still required to protect an existing principal structure in danger from erosion,
- c. That the device will minimize further alteration of the natural landform of the bluff/canyon, and
- d. That adequate mitigation for coastal resource impacts, including but not limited to impacts to the public beach, has been provided.

A condition of the CDP for all new development and Major Remodels on bluff, canyon or beach property shall require the property owner to record a deed restriction against the property that expressly waives any future right that may exist pursuant to Section 30253 of the Coastal Act to add new or additional bluff or shoreline retention devices. This policy requires the removal of any structures that become threatened by hazards if relocation is infeasible.

and

HAZ-24: Applicant’s Assumption of Risk. Applicants with a CDP for a development in a hazardous area must record a document exempting the City from liability for any personal or property damage caused by geologic or other hazards on such properties and acknowledging that future shoreline protective devices to protect structures authorized by such a CDP are prohibited.

C. Consistency Analysis - Denial as Submitted and Approval with Suggested Modifications

With this comprehensive LUP Update, the City is attempting to build upon currently certified policies to address larger coastal hazards issues such as SLR. Consideration of sea level rise impacts must be acknowledged in review of coastal development permit applications now and in the future as recognized in the proposed LUP Update, as the ultimately-certified LUP will serve as the standard of review for certification of a future Implementation Plan, and recognition of SLR as a factor exacerbating coastal hazards in relation to coastal development is essential to ensuring Chapter 3 consistency. The City aims to address the Coastal Act policies pertaining to development in coastal hazard areas that are applicable to the LUP update in Chapter 5: Hazards & Shoreline/Bluff/Canyon Development of the LUP Update.

However, the Commission finds that, as submitted, the LUP lacks the specificity required to adequately carry out Coastal Act Chapter 3 policies pertaining to development in coastal hazard areas, as further explained below. In particular, the proposed LUP fails to meet the requirements of , and is not in conformity with, Chapter 3 policies, addressing development along bluffs and

shoreline areas. Modifications are required to LUP Chapter 5 to assure that Coastal Act requirements are incorporated into the LUP.

Therefore, the proposed LUP Update is not in conformity with the hazards policies of Chapter 3 of the Coastal Act and must be denied as submitted. The LUP can be approved only with all the suggested modifications in **Exhibit 2**, which contains key suggested modifications that are explained below and are meant to correct discrepancies and include all necessary detail to fully implement the hazards policies of Chapter 3. Commission staff has worked with City staff in development of the proposed changes, the majority of which are acceptable to City staff.

Overall Chapter Organization

Suggested modifications are required to provide clarifying language in Chapter 5 Section 5.1- Introduction providing the background/descriptive text and providing subheadings to effectively organize the information provided in Section 5.1.

Suggested modifications are also necessary to streamline and clarify the intent of proposed new policies included in Chapter 5 Section 5.3-Policies. The simplest way to provide clarity in the proposed new policies involves formatting and organization, therefore multiple suggested modifications to Chapter 5 Section 5.3 will delete, consolidate, and rearrange the policy subsections for practical purposes as follow:

- ~~5.3.1 Coastal Bluff and Shoreline Development Hazards Review~~
- ~~5.3.2 Coastal Canyon Development Sea Level Rise~~
- ~~5.3.3 Hazard Area Development Shoreline & Bluff Protective Devices~~
- ~~5.3.4 Sand Replenishment/Beach Management Hazard Area Development~~
- ~~5.3.5 Sea Level Rise~~
- ~~5.3.6 Development in Flood Hazard Areas~~
- ~~5.3.7 Emergency CDP Actions~~

For example, Section 5.3.7-Emergency CDP Actions contains policies regarding procedures for Emergency CDP exceptions, the issuance of an Emergency CDP, its expiration, conditions, and monitoring. A section on Emergency CDP Actions is not necessary in the LUP, as provisions are already outlined in the Coastal Act implementing Regulations. Additionally, this type of language is more suitable in an IP than in the LUP anyway. Thus a suggested modification is made to delete the entire section. Furthermore, as only two policies were included under Section 5.3.6-Development in Flood Hazard Areas, a suggested modification is made to delete this section and incorporate these two policies in the renamed Section 5.3.4-Hazard Area Development.

More suggested modifications made to clarify the intent of proposed new policies include modifying the title of a policy, or providing a title where none was provided, correcting typos, providing uniform utilization of accepted terminology, and adding general clarifying language in the policies. Additionally, throughout the entire chapter, a suggested modification is required to reorder the policies for a clearer, more coherent organization. Thus, the numeration of the policies as suggested to be modified in **Exhibit 2** of this staff report, differs from the numeration

of the policies as originally submitted by the City. The City is in agreement with all of the staff proposed suggested modifications for minor formatting and streamlining changes.

“Major Remodel” Improvements, Alterations and Additions to Existing Structures

New development, including any major remodel/redevelopment, must be regulated to ensure it meets safety and structural stability standards and adequately protects coastal resources under expected future conditions. As required by California Code of Regulations Section 13252(b), at a minimum, improvements and alterations that result in replacement of 50% or more of the existing structure shall be considered a replacement structure and treated as a major remodel/new development/redevelopment. Additions that result in an enlargement of more than 50% can also be considered redevelopment that requires the whole structure to be brought into conformance with the LCP. The LCP also uses other triggers to ensure that existing structures aren't significantly redeveloped in hazardous areas unless the entire structure is brought into conformity with relevant Coastal Act and LCP coastal protection standards. These requirements help ensure that structures in hazardous areas are not completely redeveloped, in piecemeal fashion, over time.

When determining whether improvements meet the threshold of 50% replacement of major structural components or expansion of floor area, cumulative additions must be considered, taking into consideration previous additions approved on or after the effective date of the Coastal Act, January 1, 1977. Using this date as a standard cutoff for counting old improvements toward the cumulative redevelopment threshold promotes fairness. If clear evidence demonstrates that an old home was redeveloped—for example, if local permits show that it was completely demolished and rebuilt in a couple phases—since implementation of the Coastal Act, then it should not be considered an “existing structure” for purposes of the LCP. The City provides a definition of “Major Remodel” in Chapter 7: Definitions. In the definition, the date of certification of the land use plan is identified as the point from which cumulative additions are measured. The San Clemente LUP was originally certified in May 1988, which is a little more than 10 years after the effective date of the Coastal Act. Using this date instead of January 1, 1977, would ultimately lead to issues of inconsistency and fairness across certified plans in the State. The Commission therefore finds that a suggested modification to the definition of “Major Remodel” is necessary to identify the effective date of the Coastal Act as the point from which cumulative additions are measured, as this will be more equitable in the long term.

Additionally, policies and/or definitions in the LCP must clearly define the threshold of improvements that constitute a major remodel/redevelopment. If non-exempt improvements or repair and maintenance fall short of the definition of redevelopment, a landowner could maintain the existing structure for its remaining life and make any improvements that meet current LCP and, if applicable, Coastal Act standards. However, the whole structure need not be brought up to current standards so long as the improvements do not increase the structure's non-conformity with hazard or other LCP policies. On the other hand, when non-conforming structures are undergo a “Major Remodel” or in other terms “redeveloped,” those structures should be brought into conformity with all coastal resource protection standards in an LCP.

Definition of “Existing Structures” and Waiver of Potential Right to Shoreline Protective Device for New Development

As described in Section B above, the requirements of Section 30253 of the Coastal Act have been incorporated into currently certified LUP Policy VII.5. This proposed LUP Update attempts to carry over the intent of that certified policy in City-proposed HAZ-29: Infrastructure in Hazard Areas (see **Exhibit 2**). However, as submitted the policy only applies the requirements of Section 30253 to “new critical or replacement or rehabilitation or sensitive infrastructure and uses,” rather than all new development, as required by Section 30253. Therefore, a suggested modification is necessary to make the policy applicable to all types of new development and uses in order to maintain the intent of the originally certified policy language and to ensure consistency with Chapter 3 (30253) given the Commission’s current understanding of the risks posed by coastal hazards (as exacerbated by SLR) to development along bluffs, cliffs, and shorelines.

Additionally, to clearly differentiate between “new” and “existing” development for purposes of conformity with Coastal Act Sections 30253 and Section 30235, Commission staff included a suggested modification in Chapter 7 – Definitions to define the term “Existing Structures,” which is not currently defined in the certified LUP. The Commission has in recent years interpreted “existing structures” to mean a structure that was legally permitted prior to the effective date of the Coastal Act (January 1, 1977) and that has not undergone a Major Remodel (defined in Chapter 7 of the LUPA) since then. The term is used extensively throughout the proposed chapters of the LUP amendment, of particular importance in Chapter 5 – Hazards. The City has expressed a concern, noting that this definition is not explicitly included in (or in their view required by) the Coastal Act. Although it is true that the Coastal Act does not explicitly define what qualifies as an “existing structure” for purposes of Section 30235, how this term is interpreted in specific cases and through LCPs is critical to ensuring the protection of shoreline resources and public access and recreation consistent with the Coastal Act, especially in light of current planning efforts to address future sea level rise impacts. Thus, it is appropriate and necessary to define the term going forward to ensure consistent interpretation of what is and is not existing development and to determine which structures may be entitled to shoreline protection.

Harmonizing 30235 and 30253

Coastal Act Section 30235 reads, in relevant part: “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 adverse impacts on local shoreline sand supply.” (emphasis added.)

Coastal Act Section 30253 reads, in relevant part: New development shall do all of the following: (a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard. (b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.” (emphasis added.)

Read together, the most reasonable and straight-forward interpretation of Coastal Act Sections 30235 and 30253 is that they demonstrate/substantiate a broad legislative intent to allow shoreline protection for development that was in existence when the Coastal Act was passed, but to require any new development approved after that date to be designed and sited in a way that avoids the need for shoreline protection. Grandfathering existing structures and allowing owners to protect those structures would have been allowed in order to protect investment-backed expectations related to existing development that predated the regulatory requirements imposed by the Coastal Act (subject to other requirements of Section 30235 of the Coastal Act). However, for structures permitted after the Coastal Act went into effect, such protective structures would be disallowed due to the well-known adverse impacts to coastal resources typically caused by shoreline protection.¹ For post-Coastal Act development approvals, new development was required to “minimize risk to life and property” and to “assure stability and structural integrity” through siting and design measures rather than by relying on protective devices that would substantially alter natural landforms along bluffs and cliffs or have other negative coastal resource impacts.

In this way, the Coastal Act’s broad purpose to protect natural shoreline resources and public access and recreation would be implemented to the maximum extent when new, yet-to-be entitled post-Coastal Act development was under consideration while shoreline development that was already entitled in 1976 would be “grandfathered” and allowed to protect itself from shoreline hazards if it otherwise met the requirements of Section 30235, even if this resulted in adverse resource impacts. Such grandfathering of existing conditions is typical in the land use and permitting context when new land use and resource protection policies are enacted that would in turn, make existing development “legal non-conforming.” These provisions protect significant investment-backed expectations and assure orderly application of new laws (*i.e.*, the Coastal Act). To interpret “existing structures” otherwise (*i.e.*, to include post-Coastal Act structures) would undermine the design and siting requirements for new development set forth in 30253 to avoid coastal hazards by entitling shoreline protection to *any* structure existing at the time shoreline protection is necessary, thus dis-incentivizing applicants to make the hard decisions of actually ensuring post-Coastal Act structures are designed and sited in true compliance with 30253 (as opposed to justifying compliance on paper) since they would be able to seek shoreline protection to protect the structure *regardless*.

In addition, a plain language reading of Section 30235 demonstrates that the most logical interpretation of “existing structures” is that it means pre-Coastal Act structures. The term “existing” is used twice in the section: once to describe “existing structures” entitled to protective devices that alter natural shoreline processes, and once to describe how “[e]xisting marine structures causing water stagnation contributing to pollution problems and fishkills

¹ As the Commission has found on many occasions, shoreline protective devices, by their very nature, tend to conflict with Chapter 3 policies because they can have a variety of adverse impacts on coastal resources, including adverse effects on sand supply, public access, coastal views, natural landforms, and overall shoreline beach dynamics on and off site, ultimately resulting in the loss of beach. Shoreline protection devices also directly interfere with public access to tidelands by impeding the ambulatory nature of boundary between public and private lands. See, e.g., <https://documents.coastal.ca.gov/reports/2017/3/th18e-3-2017.pdf> (pp. 18-19).

should be phased out or upgraded where feasible.” The reference to existing marine structures clearly refers only to those structures in existence at the time the Coastal Act was adopted. Such structures should be phased out or upgraded, if feasible, and that provision would not make sense if applied to *new* marine structures constructed after the Coastal Act’s enactment. Rather, any such new structures would have to comply with all Coastal Act requirements. As a matter of statutory interpretation, it is most logical to interpret the term “existing structure” consistently within Section 30235 so that “existing structure” and “existing marine structure” both refer to structures that existed prior to the Coastal Act.

Legislative History

The legislative history of 30235 also supports an interpretation of “existing structures” to mean pre—Coastal Act. SB 1277 is the bill that eventually was codified as the Coastal Act in 1976. SB 1277 (as last amended on June 24, 1976) contained former 30204 which did not include the term “existing” to modify “structures.”² SB 1277 (as last amended on August 2, 1976) appears to wholesale replace the then-existing draft of SB 1277 and is the first instance where former 30204 was replaced with now 30235, which is also the first instance where the term “existing” was included to modify “structures.”³

This legislative history of 30235 demonstrates that the qualification of “structures” entitled to shoreline protection to “existing structures” was a deliberate legislative decision that reflects the understanding that “existing” should be understood to mean pre-Coastal Act. If “existing” structure should be interpreted to mean any structure in existence at the time shoreline protection is necessary, the deliberate decision by the bill author to insert the term “existing” in the 1976 version of the bill as compared to the 1975 version of the bill would have been superfluous and unnecessary because the language as originally drafted would have entitled such structures to shoreline protection anyway.

Recent Commission Interpretation + SLR Guidance

In recent years, the Commission has interpreted “existing structures” to mean that structures built after 1976 pursuant to a coastal development permit are not “existing” as that term is intended to be understood relative to applications for shoreline protective devices to protect post-Coastal Act structures, and that the details of the development history of the structure at issue and any prior coastal development approvals should be fully understood before concluding that a development is entitled to shoreline protection under Section 30235. This interpretation is

² 30204, as set forth in SB 1277, as last amended on June 24, 1976, stated: “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 **structures**, developments, beaches, or cliffs in danger from erosion and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fish kills should be phased out or upgraded where possible” (emphasis added).

³ 30235, as set forth in SB 1277 (as last amended on June 24, 1976) and in its current form, states: “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 adverse impacts on local shoreline sand supply. Existing marine structures causing water stagnation contributing to pollution problems and fishkills should be phased out or upgraded where feasible” (emphasis added).

consistent with many recent decisions by the Commission that interpret “existing structure” to mean pre-Coastal Act development. The Commission also unanimously adopted this interpretation in the 2015 Sea Level Rise Guidance Document. Section 30620(a)(3) of the Coastal Act authorizes the Commission to prepare interpretive guidelines designed to assist local governments and the Commission in determining how the policies of the Coastal Act should be applied in the Coastal Zone prior to the certification, and through the preparation and amendment, of local coastal programs (“LCPs”). The 2015 Sea Level Rise Guidance Document was adopted by the Commission pursuant to this authority and thus represents the Commission’s established, current interpretation of the term “existing structures” for purposes of 30235.

Notably, the Commission’s interpretation has not led to denial of all new oceanfront development. Rather, the Commission has used a number of different approaches to approve new development consistent with Section 30253 and related LUP policies without relying on shoreline and bluff armoring. Instead of permitting new shoreline protection for post-Coastal Act structures built in hazardous locations, the Commission has long used setback requirements, assumption of risk conditions and waivers of any potential rights under Section 30235 to allow development in these hazardous areas.

Interpretation Most Protective of Coastal Resources

Public Resources Code section 30009 states: “This division shall be liberally construed to accomplish its purposes and objectives.” (*See Pacific Palisades Bowl Mobile Estates LLC v. City of Los Angeles* (2012) 55 Cal.4th 783, 796 [expansive construction of term “development” is consistent with mandate to liberally construe Coastal Act to accomplish purposes and objectives].) Even assuming that the Coastal Act on its face does not settle the question of whether “existing” should be interpreted to mean pre-Coastal Act or to also include post-Coastal Act structures, as explained throughout this report, the interpretation which “liberally construes” the Coastal Act “to accomplish its purposes and objectives” supports an interpretation that “existing structures” means pre-Coastal Act. As explained above, consideration of Section 30253 in relation to 30235 supports a pre-Coastal Act interpretation of “existing structures.” For example, 30253 requires that new development “minimize risks to life and property in areas of high geologic, flood, and fire hazard” without “requir[ing] the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.”

In other words, if new development is designed and sited to comply with 30253, the approved development would never need to trigger 30235’s entitlement to shoreline protection for “existing structures,” thus supporting an interpretation that 30235 was intended to be a “grandfather” provision for established uses for which property expectations had been established. Given the myriad impacts that shoreline protective devices generally have on beach sand supply, public access, aesthetics, natural landforms, ecology, public trust land, and other coastal resources, the Coastal Act should be interpreted to limit the situations in which shoreline protection is required to be approved. Under the Commission’s current interpretation of Section 30235, there are only limited circumstances in which shoreline protection that has negative coastal impacts may be approved. However, if “existing structures” was interpreted to mean any structure currently in existence, the Commission and local governments would be required to

approve applications for shoreline protection in far more circumstances, leading to far greater coastal resource impacts.

Public Trust Considerations

Interpreting “existing structures” in Section 30235 as meaning only pre-Coastal Act structures is also more consistent with the Commission’s duty to protect public trust resources. Shoreline protection has well-known impacts to public trust resources, including but not limited to physical occupation of beaches, fixing of back beach and subsequent loss of creation of beach/sand, and scouring of beach due to wave impacts rebounding off seawalls. For example, when shoreline protection fixes the back of the beach and causes beach to be lost as the mean high tide line (MHTL) moves up to the protective device, the public loses land that would be—but for the shoreline protection—public land.

In describing the state’s duty to protect public trust lands, the California Supreme Court has ruled that state agencies have a duty to “exercise [...] continuous supervision and control over the navigable waters of the state and the lands underlying those waters.”⁴ Thus, when considering how to regulate development that may affect public trust lands, the Commission and local jurisdictions must consider the effects that the development will have on “interests protected by the public trust, and attempt, so far as feasible, to avoid or minimize any harm to those interests.”⁵ Interpreting “existing structures” in Section 30235 as meaning only pre-Coastal Act structures is more consistent with the Commission’s duty to protect the public trust and minimize harm to trust resources. This is because it ensures that shoreline protection is only constructed to protect new development if it is fully consistent with the Coastal Act and any relevant LCP provisions, including policies to protect public access and recreation and ecological resources. An interpretation of “existing structures” to include post-Coastal Act structures would undermine the Commission’s duty and ability to carry out its public trust obligations because it would allow, or even compel, the approval of many more shoreline protective devices that have adverse impacts on coastal and public trust resources.

Commission Briefing in *Surfrider Foundation v. Cal. Coastal Commission*

The City has previously argued that the Commission should interpret “existing structures” to mean any pre- or post-Coastal Act structure currently in existence, which is the position the Commission took nearly twelve years ago in 2006 in *Surfrider Foundation v. California Coastal Com’n* (Cal. Ct. App. June 5, 2006, No. A110033) 2006 WL 1430224.

It is worth noting that there is a ready explanation for why the Commission took the position that it did in the *Surfrider* case. In the 1990’s (at the time the development which resulted in the *Surfrider* lawsuit was initiated), the Commission did not often have to consider whether the Coastal Act compelled shoreline protection for post-Coastal Act structures. As a factual matter at that time the Commission was not often in the position of needing to contemplate the long-term ramifications of its interpretation of 30235. As stated in the 2015 Sea Level Rise Policy Guidance, there have not been many cases where the Commission has determined that structures

⁴ *Nat’l Audubon Soc’y v. Superior Court* (1983) 33 Cal.3d 419, 425.

⁵ *Id.* at 426.

built after 1976 should be treated as “existing” and thus entitled to shoreline protection pursuant to Section 30235. When it has been the case, the shoreline protection being proposed to protect the structure has often also been identified as necessary to protect adjacent pre-Coastal Act structures.

In the twelve years since the Commission briefed the *Surfrider* case, though, the issues of sea level rise and seawalls have become far more prominent, and the Commission has had the opportunity to comprehensively consider its position on the meaning of “existing structures.” In the Commission’s unanimous adoption of its 2015 Sea Level Rise Policy Guidance, it articulated and explained its current interpretation that structures built after 1976 pursuant to a coastal development permit are not “existing” as that term was originally intended relative to applications for shoreline protective devices.

Finally, although the trial court in that case ruled on the meaning of the term “existing structures,” that decision was appealed, and the Court of Appeal decision—which is the only controlling decision—did not rule on the meaning of the term “existing structures.” Rather, it disposed of the case on other grounds. Additionally, as the unpublished Court of Appeal opinion held, the underlying Commission action in that case involved application of LCP policies, not Section 30235. Accordingly, the case is not legal precedent that governs the interpretation of Section 30235. The fact that the Commission took one position in prior litigation does not prevent it from reconsidering its position at a later time, particularly in the context of Commission-adopted guidance that addresses the mounting threat of sea level rise and that specifically considers the Commission’s public trust obligations.

AB 1129

It is also worth noting that the Legislature recently considered, but did not pass, a bill (AB 1129) that would have modified Section 30235 to explicitly state that “‘existing structure’ means a structure that is legally authorized and in existence as of January 1, 1977.” The proposed legislation does not affect the Commission’s interpretation of the term “existing structure” for the purposes of Section 30235. By its terms, the bill was not intended to change the meaning of “existing structure,” but rather was intended to reiterate it. The bill would have created a subsection (b) in Section 30235 that stated: “For purposes of this section, *and consistent with existing practice*, ‘existing structure’ means a structure that is legally authorized and in existence as of January 1, 1977.” (emphasis added.)

Additionally, the bill contained changes to Coastal Act provisions other than Section 30235. Thus, the Legislature’s failure to pass the bill last session does not evince any clear Legislative intent regarding the meaning of the term “existing structures.” Rather, as the California State Supreme Court has noted, “[u]npassed bills, as evidences of legislative intent, have little value.”⁶ [Citations.]”⁶

⁶ (*Granberry v. Islay Investments* (1995) 9 Cal.4th 738, 746; *Ingersoll v. Palmer* (1987) 43 Cal.3d 1321, 1349.)

Suggested Modifications: HAZ-18 and HAZ-19

Notably, no appellate court decision addresses whether the term “existing structure” in this context includes only structures built prior to the Coastal Act or instead includes structures in existence at the time the Commission acts on an application for shoreline protection, or otherwise addresses the interplay between Sections 30235 and 30253. Thus, no binding legal precedent sheds light on this issue. However, for the reasons discussed above, the Commission interprets “existing structures” in Section 30235 to mean pre-Coastal Act structures, and this LUP update must protect coastal resources and minimize coastal hazards in a manner consistent with the distinction between existing and new development in Sections 30235 and 30253.

Thus extensive suggested modifications are required to policies contained in Chapter 5 of the LUP Update to clarify policy language in order to obtain an LUP which conforms to Sections 30235 and 30253.

For instance, returning to the examples of HAZ-36 and HAZ-24 discussed in Section B above, the original language of City-proposed HAZ-36 (renumbered to HAZ-23 as suggested to be modified by Commission staff) requires the property owner “*to record a deed restriction that expressly waives any future right that may exist pursuant to Section 30253 of the Coastal Act*” (note that this is the wrong citation, the policy should cite Section 30235) and City-proposed HAZ-24 (renumbered to HAZ-10 as suggested to be modified by Commission staff) confusingly clumps together a requirement that a property owner “*record a document exempting the City from liability for personal and property damage caused by geologic or other hazards on properties and acknowledging that future shoreline protective devices to protect structures authorized by a CDP are prohibited.*” These are important policy considerations that are unfortunately very muddled as proposed and HAZ-36 even references the wrong Coastal Act section. Suggested modifications are required to simplify and clarify the intent of these and all the other policies regarding bluff and shoreline protective devices by gleaning out underlying intent, separating the policy with two separate unrelated requirements into two separate clear policies, and ensuring consistency with Chapter 3 of the Coastal Act. Thus, a suggested modification is made to strike out the language requiring a deed restriction to waive any future right that may exist pursuant to Section 30253 of the Coastal Act from HAZ-10 (previously HAZ-24) and strike out the language for a deed restriction acknowledging that future shoreline protective devices to protect structures authorized by a CDP are prohibited from HAZ-22 (previously HAZ-36), and instead replace the stricken language with two new separate policies HAZ-18 and HAZ-19 which achieve the same intent in a manner that ensures full consistency with Chapter 3 as follow:

HAZ-18 Limits on Bluff or Shoreline Protective Devices. Limit the use of protective devices to the minimum required to protect coastal-dependent uses, or existing structures or public beaches in danger of erosion, unless such devices are otherwise consistent with the public access and recreational policies of the Coastal Act and the LCP, as described in HAZ-19(b). Protective devices 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 adverse impacts on local shoreline sand supply. Any approved protective devices shall also be designed to avoid, or mitigate

where unavoidable, impacts on public access and recreation, habitat, scenic views, beach width and other coastal resources, and they shall not substantially impair public trust resources. “Existing structures” for purposes of this policy, which is intended to implement Coastal Act Section 30235, shall consist only of a principal structure, e.g. residential dwelling, required garage, or second residential unit, that was legally permitted prior to the effective date of the Coastal Act (January 1, 1977), and has not undergone Major Remodel since that time and shall not include accessory or ancillary structures such as decks, patios, pools, tennis courts, cabanas, stairs, landscaping, etc.

HAZ-19 No Right to Future Bluff or Shoreline Protective Device for New Development.

Consideration of bluff or shoreline protective device(s) shall be reviewed as follows:

a. New development, including Major Remodels, shall be sited and designed to avoid the need for shoreline protective devices over the life of the structure(s), except when such development is coastal-dependent and there is no feasible alternative that avoids the need for a shoreline protective device (and in such cases such devices shall be limited to the maximum feasible degree). A condition of any CDP issued for new development, including Major Remodels, but excluding coastal-dependent development, in areas subject to coastal hazards, including but not limited to tidal and storm flooding, wave runup, and erosion, as influenced by sea level rise over time, shall require the property owner(s) to record deed restriction(s) on all properties on which proposed development is sited that acknowledges that, pursuant to Section 30235 of the Coastal Act and HAZ-18, the owner has no right to construct shoreline protection to protect the new development approved pursuant to the permit and that expressly waives any right to apply to construct such protection pursuant to Section 30235 of the Coastal Act and HAZ-18. Despite the waiver of any rights pursuant to Section 30235 of the Coastal Act and HAZ-18, this policy shall not be interpreted to prohibit or preclude a property owner from applying for a bluff or shoreline protective device as further outlined in HAZ-19(b).

b. When a property owner has no right and/or has waived any future right that may exist pursuant to Coastal Act Section 30235 and/or HAZ-18, but a Hazards or Geotechnical Report concludes that a bluff or shoreline protective device is necessary to protect a principal structure in danger from erosion, the property owner may seek discretionary approval of a bluff or shoreline protective device from the approving entity. However, the approving entity cannot consider such a request (i.e., cannot file the application) unless and until the LCP has been amended to include a plan for the area to adapt to sea level rise as described in Section 5.3.2 (Sea Level Rise). The sea level rise adaptation plan shall address resources and development that are vulnerable to coastal hazards, including as exacerbated by sea level rise, evaluate adaptation alternatives, identify preferred strategies to protect coastal resources consistent with the Coastal Act, and provide programs and policies to implement those strategies. Even after the adaptation plan is certified, the approving entity is not required to approve the bluff or shoreline protective device, and can only approve such a request if all of the following criteria are met: (1) the proposed bluff or shoreline protective device is the least environmentally damaging feasible alternative, including when considering retreat alternatives; (2) the

proposed bluff or shoreline protective device would not substantially impair public trust resources; (3) the proposed bluff or shoreline protective device would not substantially alter natural landforms along bluffs and cliffs; (4) the proposed bluff or shoreline protective device is consistent with the public access and recreation policies of the Coastal Act, as well as all relevant LCP policies, including but not limited to policies addressing access, recreation, sand supply, beach width, biological protection, and visual resources, and policies implementing the sea level rise adaptation plan for the area.

HAZ-18: Limits on Bluff or Shoreline Protective Devices is intended to implement Coastal Act Section 30235 and clarifies that shoreline protective devices shall be permitted but *limited* to the minimum necessary required to protect 1) coastal dependent uses, 2) or existing structures, 3) or public beaches in danger of erosion, and 4) unless such devices are otherwise consistent with the public access and recreational policies of the Coastal Act and the LCP, as described in HAZ-19(b), which is further discussed below. For purposes of policy HAZ-18: Limits on Bluff or Shoreline Protective Devices, which as previously stated is intended to implement Section 30235, “existing structures” is defined as principal structures that were legally permitted pre-Coastal Act (January 1, 1977). However, protection of existing secondary or ancillary structures with shoreline protection does not adequately balance important property rights and expectations with impacts to important coastal resources caused by shoreline protection.

HAZ-19(a) effectively explains how “new development including Major Remodels” must be constructed to avoid the need for a bluff or shoreline protective device. This policy incorporates the City’s original language requiring a property owner to record a deed restriction acknowledging that the owner has no right to construct shoreline protection to protect new development and expressly waives any potential right to future shoreline protection under Section 30235 and HAZ-18. Furthermore, the City argues that HAZ-19(a) impermissibly limits rights to shoreline protection under 30235 due a trial court decision (*Capistrano Shores Property LLC v. Cal. Coastal Com’n* (Sup. Ct. Orange County, 2016, No. 30-2015-00785032-CU-WM-CJC), which overturned such a condition. As a preliminary matter, this decision was only a trial court decision so has no binding precedential effect regarding the validity of a condition requiring waiver of any potential rights to future shoreline protection under 30235 taking into consideration the significant adverse impacts to coastal resources which would result from allowance of shoreline protection for a specific property (or for that matter, the validity of a policy such as HAZ-19(a), which requires waiver for the same reasons on a City-wide basis).

Furthermore, the situation in *Capistrano Shores* is readily distinguishable due to the unique factual circumstances addressed there. In that case the Commission had required a waiver of any future right to protect replacement of the applicant’s mobile home park by the existing revetment, despite the fact that the mobile home *park*, not the individual mobile home owner, owned the revetment. Moreover, the trial court’s ruling expressly pointed out that the Commission has the authority to deny future applications to change the revetment in ways that are inconsistent with Coastal Act policies (e.g., “In relation to any such future application and decision, the Commission seems to fully retain the power to prevent an seaward expansion of the revetment, considering the Coastal Act’s policies and goals” on page 7 of the court’s ruling.) However, in this case, HAZ-19(a) is suggested as modified to be adopted by the City as a

legislative matter as part of the City's LCP based on findings that virtually all shoreline protection in the City of San Clemente would result in significant adverse impacts to coastal resources.

Finally, it is also worth noting that Commission Staff's suggested modification adding Policy GEN-10 Capistrano Shores Mobile Home Park to the LUP Update, would continue to apply the version of the LUP last certified in 1996 (and not this proposed LUP Update amendment) to the Capistrano Shores Mobile Home Park area until a subsequent LUP/LCP amendment is certified for Capistrano Shores. Thus bifurcating Capistrano Shores from the comprehensive LUP Update submittal. This "dual LUP" approach is taken with respect to Capistrano Shores on the one hand and the remainder of the City on the other hand due to the City's reticence to certifying the proposed LUP hazards policies (among others) to Capistrano Shores. Capistrano Shores raises unique issues that do not pertain to other areas of San Clemente's shoreline. The City, Commission staff, and other interested persons have not fully resolved those issues, so it is appropriate to address Capistrano Shores separately as part of a future LCP amendment.

In conjunction with the Commission's initial public hearing on the Land Use Plan in December 2017, City staff expressed some reservation about the suggested modifications on the waiver of future rights that may exist under Coastal Act Section 30235. In their view, the proposed language left no room for consideration of any kind of protective device, even if such a device could be found consistent with all applicable LCP policies. Again, while shoreline protective devices, by their very nature, tend to conflict with Chapter 3 policies because they can have a variety of adverse impacts on coastal resources, there may be circumstances where consistency could be found. In fact, protective devices may be among the tools identified for sea level rise adaptation for some time horizons in some areas of the community. To address this possibility, HAZ-19(b) accounts for instances where "new development" (post-Coastal Act development) which has waived any future right that may exist under Coastal Act Section 30235 and/or HAZ-18 but is now deemed in danger from erosion may still seek discretionary approval of a bluff or shoreline protective device. The waiver required by HAZ-18 is not an absolute waiver to apply for a CDP application; rather, it is a waiver of any potential right to future shoreline armoring that may exist under Section 30235 and/or HAZ-18. The City or approving authority is not required to approve a request made pursuant to HAZ-19(b) in the same manner it is required to approve shoreline protection for "existing development" (pre-Coastal Act) under HAZ-18. Rather, the approving authority can only approve such a request if certain criteria outlined in HAZ-19(b) are met. Among the criteria is that the LCP has been amended to include a plan for the area to adapt to sea level rise. If those criteria cannot be met, and a bluff or shoreline protective device cannot be approved, then the new development will be required to be removed, pursuant to other LUP policies.

As proposed, the LUP Update is not in conformity with the hazards protection policies of Chapter 3 of the Coastal Act and must be denied as submitted. The LUP can be approved only with the suggested modifications discussed above and all other suggested modifications outlined in **Exhibit 2**, to correct and include all the necessary detail to fully implement the hazards policies of Chapter 3. Commission staff has worked with City staff in development of the proposed changes, which overall are acceptable to City staff.

6. Visual and Historic Resources

A. Applicable Coastal Act Policies

Section 30244 Archaeological or paleontological resources

Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

Section 30251 Scenic and visual qualities

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Section 30253 Minimization of adverse impacts

New development shall do all of the following:

- (b) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (f) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geological instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.
- (g) Be consistent with requirements imposed by an air pollution control district or the State Air Resources Control Board as to each particular development.
- (h) Minimize energy consumption and vehicle miles traveled.
- (i) Where appropriate, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.

B. Proposed Land Use Plan Amendment

The certified Land Use Plan currently only contains a single policy referencing impacts to archaeological or paleontological resources. The policy does not provide any locally relevant specificity. It simply includes Coastal Act Section 30244 language in Policy VII.6:

Policy VII.6 Where development would adversely impact archaeological or paleontological resources, as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

The LUP Update submittal includes Coastal Act Section 30244 and in addition proposes Policy CUL-1 Cultural Resources:

CUL-1 Cultural Resources. Protect cultural resources, including historical, archaeological or paleontological features in the Coastal Zone. Where necessary to protect cultural resources, new development shall include an appropriate pre-development investigation such that the new development may be designed to avoid and minimize impacts, protect and preserve resources from destruction, including requirements for in situ or site-capping preservation plans or, where in situ preservation isn't feasible, recovery plans to mitigate the effects of the development, notification requirements to native American tribes linked to the resources, and including on-site monitoring requirements to include scientific and cultural monitors.

Furthermore, the City thoroughly developed over a dozen new policies (such as CUL-2 thru CUL-14) aimed to preserve historic resources in the LUP Update. Additionally, the City proposes numerous new policies (such as VIS-1, VIS-2, VIS-3, VIS-10, VIS-13 and VIS-14) aimed to protect public views and view corridors.

C. Consistency Analysis - Denial as Submitted and Approval with Suggested Modifications

Cultural Resources

Although the City effectively developed over a dozen new policies aimed to preserve historic resources, the LUP Update only contains one policy, Policy CUL-1 pertaining to Coastal Act Section 30244 concerning the protection of archaeological or paleontological resources. For compliance with Coastal Act Section 30244, LUP Update should contain specific goals/objectives regarding protection of archaeological/cultural resources, specifically a requirement that significant archaeological resources be identified in order to *avoid adverse impact to the resources* before mitigation is considered.

When development of a site is contemplated where there is a high potential for the presence of archaeological resources, a higher degree of scrutiny is appropriate and necessary. Site development, including preliminary measures such as grading and trenching, can disturb (sometimes irreparably) cultural resources that may be present. Over the course of reviewing projects where archaeological resources have been present, the Commission has found that identifying the presence and significance of resources on a site prior to consideration of development proposals to be the far superior course of action. The alternative of simply monitoring for resources during grading has not provided optimum results in terms of protecting resources. If resources are identified up front, a project can be tailored to address the presence of cultural resources. In cases where resources are not discovered until the grading stage of a project, it becomes much more difficult to tailor that project in a way that is most protective of resources. However, in the case where the expectation for discovering archaeological or paleontological resources is high, greater protections must be put in place. There is a high expectation for the discovery of archaeological resources when a project site contains a mapped archaeological site, when the potential for the presence of archaeological/cultural resources is revealed through the CEQA process, and/or when archaeological/cultural resources are otherwise

known or reasonably suspected to be present. In cases where there is a low expectation for resources on site, conditioning the project to be monitored during grading can be sufficient to protect resources. A development decision that is most protective of the resource cannot be made without the necessary information regarding presence and significance of on-site resources. Furthermore, notification of proposed development that has the potential to adversely impact cultural resources should be made to cultural organizations, Native American tribal groups with cultural affiliation to the project area, and archaeologists. These groups should also have the right to monitor development at the site during grading/excavation and construction activities.

As such, the following suggested modifications to the proposed CUL-1 Cultural Resources policy are required. Only as modified can the LUP policy be found to be consistent with and adequate to carry out Section 30244 of the Coastal Act.

CUL-1 Cultural Resources. Protect cultural resources, including historical, archaeological and ~~and~~ paleontological features in the Coastal Zone. Where necessary to protect cultural resources, new development shall include an appropriate pre-development investigation to determine, in the least destructive manner, whether cultural resources are present. The pre-development investigation shall include recommendations as to how the site can be developed and designed to avoid or minimize significant impacts to cultural resources. In situ preservation and avoidance are the preferred alternative over recovery and/or relocation in the protection of paleontological and archaeological resources. When in situ preservation or site capping is not feasible, recovery and/or relocation may be considered. Native American tribal groups with cultural affiliation to the project site area as identified by the Native American Heritage Commission shall have the opportunity to review and comment on the pre-development plan as required by AB52 (2014). Archaeologists and representatives from Native American tribal groups shall provide monitoring during grading/excavation and construction activities of any approved development that has the potential to adversely impact any on-site significant cultural resources. such that the new development may be re-designed to avoid and minimize impacts, protect and preserve resources from destruction, including requirements for in situ or site-capping preservation plans or, where in situ preservation isn't feasible, recovery plans to mitigate the effects of the development, notification requirements to native American tribes linked to the resources, and including on-site monitoring requirements to include scientific and cultural monitors.

Public Views

Suggested modifications are necessary to clarify, improve, and correct the figures contained in Chapter 6: Visual, Historic and Cultural Resources. Additional suggested modifications are required to clarify figures depicting Public View Corridors and Scenic Roadway Corridors, and the clarification of these terms. For example proposed Policy VIS-8 (now VIS-6) Public View Corridors references Figure 6-1, however, there are two separate figures included as Figure 6-1. A suggested modification is necessary to revise the figure to: 1) revise the number of one of these figures to Figure 6-2 titled "Public View Corridors" to provide a clearer distinction from Figure 6-1 depicting "Scenic Corridors/Roadways"; 2) provide a legend identifying symbols and their meaning (e.g., a vista/viewpoint vs. a wider view cone); 3) identify and depict all public

view points at Marblehead (i.e., public views of/to coastal canyons and from coastal canyon vantage points and any that may exist along new public roadways are not depicted here), and 4) identify and depict all Public View Corridors as large areas of the City are not included in this exhibit, (i.e., Public View Corridors south of Trafalgar Canyon, at T-Street, Leslie Park, atop all bluff public access way points, along the beach trail, and from the State Park/Beach are left out).

Additionally, minor suggested modifications are required to clarify the intent of policy language throughout the chapter. Existing certified language carried over into the LUP Update clearly warrants updating to provide clearer policy guidance consistent with Chapter 3 policies as evident in this example:

Policy VII.18 All proposed large scale development projects which have, or will have, ocean views shall prepare an analysis of the effect of the proposed project on public views. This analysis shall pictorially or photographically indicate the proposed site in its current state and compare it with an illustration showing the proposed building volume (at the same scale) in its proposed location.

VIS-20 VIS-12 Public View Analysis Impacts from Shoreline. All proposed large scale ~~scale~~ When appropriate, new development and redevelopment projects which have, or will have, the potential to impact public-ocean views to and along the ocean and scenic coastal areas, shall ~~prepare~~ require an analysis of the effect of the proposed project on public views ~~to the ocean~~. This analysis shall accurately pictorially, digitally, photographically, or physically, indicate the proposed site in its current state and compare it with an illustration showing the proposed building volume (at the same scale) in its proposed location.

Conclusion

In summary, the LUP update, as proposed, has policies addressing all of the relevant policy groups in Chapter 3 of the Coastal Act as they apply to the resources present in the City of San Clemente. Deficiencies, though, have been identified in several critical policy areas that affect priority uses and resources, including lower cost visitor-serving overnight accommodations, environmentally sensitive habitat areas, and public access and recreation, sea level rise and bluff/shoreline protective devices. These deficiencies are such that the LUP update as submitted cannot be found in conformance with Chapter 3 of the Coastal Act. However, with pre-submittal coordination and exchange of information, along with the modifications suggested herein, these deficiencies have been addressed through policy revisions, clarifications, and additions. Therefore, as modified, the Commission finds the LUP update does conform with the Chapter 3 policies of the Coastal Act and that it may be approved.

D. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The California Environmental Quality Act (CEQA) exempts local government from the requirement of preparing CEQA documentation in connection with development of its local coastal program. (Pub. Res. Code § 21080.9; 14 CCR § 15265(a)(1).) The Commission notes that the City prepared a Notice of Exemption (pursuant to Article 18 Statutory Exceptions 15265 because the activities and approvals are pursuant to the Coastal Act) in association with their February 2, 2016 Resolution approving the Update to the Coastal Land Use Plan.

However, CEQA does apply to the certification of an LCP by the Coastal Commission. (14 CCR § 15265(b).) The Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the CEQA process. (14 CCR § 15251(f).) Thus, under CEQA Section 21080.5, the Commission is relieved of the responsibility to prepare CEQA documentation for certification of an LCP. 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 relevant 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 proposed City of San Clemente LUP Update is not consistent with the hazard, marine and land resource protection, scenic and visual qualities, archaeological or paleontological resources, and visitor-serving land use development policies of the Coastal Act, as submitted. Suggested modifications have been added as described and listed in this staff report. If modified as suggested, no significant adverse impacts to coastal resources will result from the LUP Update amendment. The commission has reviewed and evaluated the proposed amendment, and finds that potential coastal resource impacts have been mitigated, and that the amendment does not have the potential to result in significant individual or cumulative impacts to the hazard, marine and land resource protection, scenic and visual qualities, archaeological or paleontological resources, and visitor-serving land use development of the coastal zone. There are no further feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the amendment may have on the environment. The Commission therefore finds the proposed LCP amendment is consistent with the California Environmental Quality Act.

Any specific impacts associated with individual development projects would be assessed through the environmental review process provided under the Coastal Act at that time, and, an individual project's compliance with CEQA would be assured.