

**CALIFORNIA COASTAL COMMISSION**

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# F9a

DATE: April 27, 2018

TO: Commissioners and Interested Persons

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

SUBJECT: Major Amendment Request No. 2-16 (LCP-5-HNB-16-0031-1) to the City of Huntington Beach Certified Local Coastal Program, for Public Hearing and Commission Action at the May 11, 2018 meeting in Santa Rosa.

## **SUMMARY OF LCP AMENDMENT REQUEST NO. 2-16**

The City of Huntington Beach ("City") requests to amend the Implementation Plan (IP) of the certified Local Coastal Program (LCP). This LCP amendment includes changes to Chapter 204 *Use Classifications* regarding a prohibition on medical marijuana dispensaries; Chapter 233 *Signs* regarding regulation of non-commercial signs; Chapter 254 *Dedications and Reservations* regarding how City-required in lieu park fees are determined; Chapter 230 *Wireless Communication Facilities* revising the citywide permitting and entitlement process and other revisions; and Chapter 203 *Definitions*, Chapter 211 *Commercial Districts*, Chapter 212 *Industrial Districts*, Chapter 230 *Site Standards* to reorganize entitlements of certain applications to the lower hearing body, codify existing City policies, and make clarifications. The amendment request also proposes to create a new Chapter 228 *Senior Residential Overlay District*, with a related zoning map amendment to apply the Senior Residential Overlay District to two sites outside the City's coastal zone. Only the IP portion of the City's certified LCP will be amended. The proposed amendment would apply citywide. The LCP amendment request was submitted for Commission Action pursuant to City Council Resolution No. 2016-16 (Exhibit 1). The City's action included seven Zoning Text Amendments (ZTA) and one Zoning Map Amendment (ZMA). The proposed changes are reflected in Ordinance Numbers 4058, 4047, 4069, 4019, 4020, 4021, 3960, 3961, 4037, 4038, 4039, 4040, and 3934 (Exhibit 2).

## **SUMMARY OF STAFF RECOMMENDATION**

Staff is recommending that the Commission, after public hearing **APPROVE** the amendment to the Implementation Plan as submitted. As described in greater detail in the staff report, none of the proposed changes to the IP create issues of conformity with the certified Land Use Plan (LUP), and the IP amendment is adequate to carry out the certified LUP. Therefore, the proposed amendment, as submitted, is in conformance with and adequate to carry out the provisions of the certified LUP.

The motion and resolution to accomplish this recommendation are found on **Page 5**.

**DEADLINE FOR COMMISSION ACTION**

The proposed LCP amendment was deemed complete on May 3, 2017. A request to extend the deadline to act was granted on June 7, 2017. The final date by which the Commission must act on this LCP amendment request is July 2, 2018, or the Commission's June 6 -8, 2018 hearing.

**ADDITIONAL INFORMATION**

Copies of the staff report are available on the Commission's website at [www.coastal.ca.gov](http://www.coastal.ca.gov). For additional information, contact *Meg Vaughn* in the Long Beach office at (562) 590-5071.

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### EXHIBITS

- Exhibit 1 – Huntington Beach City Council Resolution No. 2016-16
- Exhibit 2 – ZTA No. 15-004 Medical Marijuana
- Exhibit 3 – ZTA No. 15-001 Signs
- Exhibit 4 – ZTA No.14-002 Data Collection Units
- Exhibit 5 – ZTA No. 13-002 & ZMP No. 13-002 Senior Mobile Home Park Overlay District
- Exhibit 6 – ZTA No. 12-002 Dedications & Reservations (Development Impact Fees)
- Exhibit 7 – ZTA No. 12-001 ZSO Maintenance
- Exhibit 8 – ZTA No. 09-002 Wireless Communication Facilities

## **I. PROCEDURAL ISSUES**

### **A. STANDARD OF REVIEW**

The standard of review for the proposed amendment to the Implementation Plan (Zoning & Subdivision Ordinance) of the City of Huntington Beach certified LCP, pursuant to Section 30513 and 30514 (regarding amendments) of the Coastal Act, is whether the Implementation Plan (IP) would be in conformance with, and adequate to carry out, the provisions of the Land Use Plan (LUP) portion of the City of Huntington Beach's certified LCP.

### **B. PUBLIC PARTICIPATION**

Section 30503 of the Coastal Act requires public input in LCP development. It states: "During the preparation, approval, certification, and amendment of any LCP, the public, as well as all affected governmental agencies, including special districts, shall be provided maximum opportunities to participate. Prior to submission of an LCP for approval, local governments shall hold a public hearing or hearings on that portion of the program, which has not been subjected to public hearings within four years of such submission."

Section 30503 of the Coastal Act requires local governments to provide the public with the maximum amount of opportunities to participate in the development of the LCP amendment prior to submittal to the Commission for review. The City has held Planning Commission and City Council meetings with regard to each of the Zoning Text Amendments and the Zoning Map Amendment, which comprise the subject amendment request. All of those local hearings were duly noticed to the public. Notice of the subject amendment has been distributed to all known interested parties.

### **C. PROCEDURAL REQUIREMENTS**

Pursuant to Section 13551(b) of Title 14 of the California Code of Regulations, the City resolution for submittal may specify that an LCP Amendment will either require formal local government adoption after the Commission approval, or that it is an amendment that will take effect automatically upon the Commission's approval pursuant to Public Resources Code Sections 30512, 30513, and 30519. In this case, if the Commission certifies the LCP amendment as submitted, no further City Council action will be necessary. The City's submittal resolution indicates that the ordinance will only become final after certification by the Commission, but no formal action is required. Should the Commission deny the LCP amendment, as submitted, without suggested modifications, no further action is required by either the Commission or the City, and the LCP amendment is not effective. Should the Commission deny the LCP amendment, as submitted, but then approve it with suggested modifications, then the City Council may consider accepting the suggested modifications and submitting them by resolution to the Executive Director for a determination that the City's acceptance is consistent with the Commission's action. The modified LCP amendment will become final at a subsequent Commission meeting if the Commission concurs with the Executive Director's Determination that the City's action in accepting the suggested modifications approved by the Commission for LCP Amendment 2-16 is legally adequate. If the City does not accept the suggested modifications within six months of the Commission's action, then the LCP amendment remains uncertified and not effective within the coastal zone.

## II. MOTION AND RESOLUTION

Motion:

*I move that the Commission reject the City of Huntington Beach Implementation Program Amendment No. 2-16 as submitted.*

Staff recommends a **NO** vote. Failure of this motion will result in certification of the Implementation Program Amendment as submitted and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

### Resolution:

*The Commission hereby certifies the Implementation Program Amendment for the City of Huntington Beach as submitted and adopts the findings set forth below on grounds that the Implementation Program Amendment conforms with, and is adequate to carry out, the provisions of the certified Huntington Beach LUP, and certification of the Implementation Program Amendment will meet the requirements of the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Program Amendment on the environment, or 2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts on the environment that will result from certification of the Implementation Program Amendment.*

## III. FINDINGS

### A. AMENDMENT DESCRIPTION

The City of Huntington Beach has requested an amendment to the Implementation Plan (IP) portion only of the certified Local Coastal Program (LCP). The City's certified IP consists of the Huntington Beach Zoning and Subdivision Ordinance, and also includes a number of Specific Plans. The LCP amendment request was submitted for Commission action pursuant to City of Huntington Beach City Council Resolution No. 2016-16. The City's action includes seven Zoning Text Amendments and one Zoning Map Amendment. Two of the Zoning Text Amendments affect the Wireless Communications Section of the IP, and so those are presented together. In addition, the Zoning Map Amendment is related to the Zoning Text Amendment regarding the proposed Senior Residential Overlay and so those are presented together. Otherwise, the various Zoning Texts amendments and their associated ordinances are unrelated to one another. Below is a list of the proposed Zoning Text and Map Amendments that make up the City's IP Amendment request. The proposed IP changes are then described in greater detail in Section C *Approval of the LCP Amendment as Submitted*.

Zoning Text Amendment No. 12-002  
Park In Lieu Fees/Development Impact Fees  
(Ordinance Nos. 3960 & 3961)

Zoning Text Amendment No. 09-002  
Wireless Communication Facilities (WCF)  
(Ordinance No. 3934)  
Zoning Text Amendment No. 14-002  
WCF: Data Collection Units  
(Ordinance No. 4069)

Zoning Text Amendment No. 13-002 & Zoning Map Amendment No. 13-002  
Senior Mobile Home Park Overlay District  
(Ordinance Nos. 4019, 4020, 4021)

Zoning Text Amendment No. 15-004  
Medical Marijuana Dispensaries Prohibition  
(Ordinance No. 4058)

Zoning Text Amendment No. 15-001  
Signs  
(Ordinance No. 4047)

Zoning Text Amendment No. 12-001  
ZSO Maintenance  
(Ordinance Nos. 4037, 4038, 4039, 4040)

## **B. BACKGROUND**

The LCP for the City of Huntington Beach, with the exception of two geographic areas, was effectively certified in March 1985. The two geographic areas that were initially excluded have since been certified and are incorporated into the LCP. A comprehensive update to the City's LUP was certified by the Commission on June 14, 2001 via Huntington Beach LCP Amendment 3-99. The City also updated the IP by replacing it with the Zoning and Subdivision Ordinance (while retaining existing specific plans without changes for areas located within the Coastal Zone). The updated IP was certified by the Coastal Commission in April 1996 via LCP Amendment 1-95. The City's certified LUP is the City's Coastal Element. The City's certified IP consists of the City's Zoning and Subdivision Ordinance and various specific plans. City of Huntington Beach LCPA 1-03 introduced Section 230.96 *Wireless Communication Facilities* into the IP. HNB LCPA 1-03 also made changes to Section 254.08 *Parkland Dedication*. HNB LCPA 1-03 was approved by the Commission with suggested mods on 6/10/2004. The City accepted the suggested mods and the Commission concurred with the Executive Director's determination that the City's action was legally adequate on 12/8/2004.

## **C. APPROVAL OF THE LCP AMENDMENT AS SUBMITTED**

As described above, the standard of review for the proposed amendment to the Implementation Plan (IP) of the certified Local Coastal Program (LCP) is whether the IP, as amended, is in conformance with, and adequate to carry out, the policies of the certified Land Use Plan (LUP) portion of the certified LCP. (Coastal Act sections 30513, 30514.)

### **1. Parkland Dedication**

Regarding public recreation, the certified LUP contains the following policies:

Policy C 3.2

*Ensure that new development and uses provide a variety of recreational facilities for a range of income groups, including low cost facilities and activities.*

Policy C 3.2.1

*Encourage, where feasible, facilities, programs and services that increase and enhance public recreational opportunities in the Coastal Zone.*

**Section 254.08 Parkland Dedication (Ordinance No.3960)**

The main change is the method used to determine the Parkland Dedication in lieu fee amount. Certified Section 254.08 includes a formula that determines the area of land to be dedicated for park use. The formula for land area is: *Area (acres) Required = 5.0 (density of project x number of dwelling units)/1000*. The certified formula for the amount (area) of parkland needed to offset project impacts is not being changed. The proposed change is to how the in lieu fee dollar amount is determined when the actual land area is not being dedicated as part of the proposed tract/parcel map.

An in lieu fee is required when all of the required land area is not provided with a development project. As currently certified, the required parkland dedication in lieu fee is determined based upon a site-specific appraisal of the value of the site and then tying the fee amount to the cost to purchase the equivalent land acreage (derived from the formula) based upon that site-specific value. As certified, the appraiser is selected and retained by the City and paid for by the subdivider (developer).

The proposed amendment would eliminate the requirement for a site-specific appraisal of the value of the land at the project site. Instead, the in lieu fee, if allowed, would be based upon the type and number of proposed residential units and on a citywide standard average per acre land value. Using this input, the fee will be applied based upon the number and type of units proposed. The per-unit fee is determined by resolution of the City Council. The City Council has adopted such a fee schedule (per City Council Resolution No. 2012-66). The per unit fee varies depending upon the type of residential unit, based upon the results of a study<sup>1</sup> which identified the average number of residents per each unit type. The in lieu park fees adopted by the City Council are:

*Detached Dwelling Units = \$17,857/unit*

*Attached Dwelling Units = \$13,385/unit*

*Mobile Home Dwelling Units = \$11,169/unit*

In addition, where only partial park land dedication is provided such partial dedication shall be credited towards the payment of in lieu fees at a rate of \$871,200 per acre for land acquisition and \$508,644 per acre of park development (improvements). The fee schedule adopted by the City Council (above) is not included in the proposed amendment or in the certified LCP/IP. It is referenced in Chapter 17.76 *Parkland Acquisition and Park Facilities Development Impact Fees* of the City's Municipal Code, wherein lie the standards for Park Development Impact Fees. Park Development Impact Fees are required of projects that do not involve a tentative map or parcel map.

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<sup>1</sup> Development Impact Fee Calculation and Nexus Report for the City of Huntington Beach, California; October, 2011 (amended April 27, 2012); prepared by Revenue & Cost Specialists, L.L.C.)

The Request for City Council Action staff report prepared for this ZTA (10/1/12) states that the proposed revision to the in lieu fee calculation method will make it comparable to the method by which the City already determines Development Impact Fee park fees for residential projects that do not require tentative maps. Such projects are typically rental units. Whether a residential development creates new rental units or new ownership units, the impact on parks is the same. Because the fees for projects that do not require tentative maps (typically rental units) were significantly lower than those required for residential projects requiring a tentative map, the City made changes to increase the Park Development Impact Fee on residential rental projects (i.e. projects that do not require a tentative map). These Development Impact Fees are found in Chapter 17.76 of the City's Municipal Code. The City is proposing the changes to Section 254.08 in order to make the two types of fees similar and thus, more equitable between development types.

The City's Planning Commission staff report prepared for the Zoning Text Amendment (8/14/12) states:

*"The intent of the proposed amendments to Chapter 254 of the HBZSO [LCP IP] is to apply the same standard citywide park in lieu fees for each unit type (detached, attached, and mobile home) whether it is a rental or for-sale unit. This is being accomplished by deleting the current site-specific appraisal approach in Chapter 254 and replacing it with the same standard citywide park in lieu fees recently approved by City Council recently for rental units. Currently, rental units pay significantly less in park fees than for-sale units that require tentative maps. Approval of ZTA No. 12-002 [subject of this LCPA] coupled with City Council's recent actions will result in equitable standard citywide park fees for both rental and for-sale residential units."*

In support of the proposed changes, the City staff states:

*"In addition, due to the built out nature of the City, the City receives very few tract/subdivision development proposals in the coastal zone and anticipates future residential development will more often be subject to the park and recreation development impact fees, which are regulated by the Municipal Code, rather than Chapter 254/Quimby fees. To that end, it should be noted that the park and recreation development impacts fees for non-subdivision residential development were adopted (via amendments to the Municipal Code) at the same time as the Chapter 254/Quimby fee changes under ZTA No. 12-002 and resulted in substantial increases in park and recreation fees for non-subdivision residential development such that they are now comparable to the Quimby fees. In this regard, the fee updates will result in more overall funding available for recreational opportunities in the City and Coastal Zone."*<sup>2</sup>

The 8/14/12 City Planning Commission staff report also states that the proposed change in the park fees process will make it easier for developers to assess their costs earlier and that it is expected to reduce the number of developers challenging the City's site-specific appraisals.

The amendment also proposes to add a new subsection (254.08.I) that would allow a developer to challenge the proposed park fee by paying for an appraisal of the subject property to determine

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<sup>2</sup> Letter correspondence from City staff to Commission staff, 5/2/2017

whether fair market value of the land is less than the park land acquisition cost per acre used in the City Council fee schedule. Conversely, Section 254.08.I also provides that the City retains the ability to increase the in lieu fee in areas where the fair market value of land exceeds the park land acquisition cost per acre. The fair market value would be determined by a qualified real estate appraiser selected and retained by the City at the expense of the subdivider (developer).

Currently, Section 254.08.G.4 *Standard Improvements* requires the developer “pay an amount equal to 20 percent of the required in lieu fee to provide curbs, gutters, drainage facilities, street lighting, stop lights, sidewalks, utility line services to the park facility, and all standard improvements required by the City for residential subdivisions” in those cases where the parkland dedication requirement is met entirely through in lieu fees. The proposed amendment would eliminate this requirement. The City has indicated that this fee is no longer needed because “land that is not connected to infrastructure is not representative of Huntington Beach. Since the implementation of the fee in 2002, park projects resulting from subdivisions have not necessitated these improvements.”<sup>3</sup>

The proposed amendment would also change the timing for when the park in lieu fee must be paid by the developer from “the time of the recording of the final map or parcel map”, to “prior to final building permit approval (Section 254.08.L).”

The proposed amendment would also eliminate the current exemption from park in lieu fee payment for subdivision of 50 foot wide parcels into two lots (Section 245.08.O.2). This would require that such subdivisions would now be subject to the park in lieu fee, increasing the funding available to promote parks and recreational activities.

### **Chapter 230 Site Standards, Section 230.20 Parkland Dedication (Ordinance No. 3960)**

The amendment proposes to delete this section in its entirety:

#### *230.20 Parkland Dedication*

*As a condition of development approval, all new commercial and industrial development and all new residential development not covered by Chapter 254 of Title 25, Subdivision Ordinance, except for mobile home parks, shall pay a park fee. The fees shall be paid and calculated according to a schedule adopted by the City Council resolution.*

The Request for City Council Action staff report prepared for this ZTA (10/1/12) states that this section is proposed to be deleted because it has been moved Chapter 17.76 of the City’s Municipal Code, where the Park Development Impact Fee (i.e., for non-subdivision projects) standards are contained.

### **Parkland Dedication - Conclusion**

The City imposes, collects, and implements the park fees. The City has proposed these changes to the parkland in lieu fees to be more equitable between types of developments with the same impacts on parks. With the changes already implemented by the City in its Municipal Code, the fees collected for non-subdivision development has resulted in a substantial increase in park and recreation fees collected. And, based upon information from the City, the fee updates will result in more overall funding available for recreational opportunities in the City and Coastal Zone. As

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<sup>3</sup> Letter correspondence from City staff to Commission staff, 5/2/2017

reflected in the policies cited above, the certified LUP promotes recreational opportunities and requires that public recreational opportunities be encouraged, and where feasible, increased and enhanced. The overall increased amount of park fees will result in more overall funding for recreational opportunities.

Section 254.08 *Parkland Dedication* requires that residential subdivisions must dedicate land as necessary to offset impacts to parks arising from the introduction of new residents into the City. However, outright land dedication is not required for parcel maps or subdivisions containing 50 parcels or less<sup>4</sup>. In such cases, a fee in lieu of outright land dedication may be paid, or a combination of the two is also an option. The parkland in lieu fee is acceptable in cases of 50 parcels or less because, depending on the size and location of a particular project, land dedication may not be feasible or may not be effective. For example, if the land available is very steep, payment of an in lieu fee would be preferred so that usable recreational land could be provided. Also, if the subdivision is small, dedication of a very small area of land for public park use also may not provide effective public park space. Allowing the option of a fee payment rather than actual land dedication allows the City to retain flexibility in acquiring and providing actual useful and useable park space.

The parkland in lieu fee requirements for subdivision projects are contained in the Subdivision Code, which is part of the IP; hence, the parkland in lieu fees for subdivision projects will remain a part of the IP. The non-subdivision parkland in lieu fee requirements (Section 230.20) will be deleted from the IP, but added elsewhere in the City's Municipal Code. That the City has an interest in organizing its parkland in lieu fees as proposed is reasonable from a coastal resource perspective.

The proposed method for calculating the parkland in lieu fee amount differs from the method currently certified. However, both methods will achieve the goals of the certified LUP policies regarding increasing and enhancing recreational opportunities. The changes proposed will still require the City to provide park and recreational opportunities in conjunction with new development. Thus, the fact that the in lieu fee amount (for subdivision projects), as well as the requirement for non-subdivision projects to pay an in lieu fee, will be moved from the IP to the City's Municipal Code is unlikely to have an impact on the recreational resources protected by the LUP Policies C 3.2 and C 3.2.1 because projects must still comply with those policies and section 254.08 will continue to require that proposed subdivisions offset impacts to parks.

Based upon all of the above, the Commission finds that the amendment, with regard to changes to the Parkland Dedication, conforms with and is adequate to carry out the policies of the city's certified Land Use Plan.

## **2. Wireless Communication Facilities**

The City's certified LUP includes policies that promote public coastal access and recreation, preservation and enhancement of scenic public views, and protection of sensitive habitat and other coastal resources. The LUP policies specific to Wireless Communication Facilities (WCF) are:

### *C 4.2.4*

*Wireless communication facilities shall be sited, to the maximum extent feasible, to minimize*

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<sup>4</sup> Although for condominium type projects with more than 50 dwelling units, land may be required even though the number of parcels may be less than 50.

*visual resource impacts. Minimization may be accomplished through one or more of the following techniques: co-locating antennas on one structure, stealth installations, locating facilities within existing building envelopes, or minimizing visual prominence through colorization or landscaping and removal of facilities that become obsolete.*

C 4.2.5

*New wireless communication facilities affecting the public view shed and/or located in areas designated Water Recreation, Conservation, Parks, and Shoreline shall be conditioned to require removal within six (6) months of termination of use and restoration of the site to its natural state.*

**Zoning Text Amendment No. 14-002 (Ordinance No. 4069)** proposes to add definitions for “City Property” and “Data Collection Unit (DCUs)”; would except DCUs from the requirements of Chapter 230 *Site Standards*, Section 230.96 *Wireless Communication Facilities* for DCUs that meet prescribed requirements (i.e. excepted from needing a Wireless Permit or a CUP); and, changes language in Section 230.96.H such that any Wireless Communication Facility (WCF) within a public right of way must comply with “all City Municipal Code requirements, including but not limited to Chapter 12.38 regarding Encroachments and Chapter 1764 regarding Undergrounding of Utilities”, where previously it only identified compliance with Chapter 1764.

The proposed definition for “Data Collection Unit” is:

*“A Wireless Communication Facility comprised of a collection unit, solar panel and whip antennas used for receiving and/or transmitting wireless signals from distributed gas and water data collector meters, which is a stand-alone facility not connected via fiber optic or other physical wiring to any other facility. No Wireless Communication Facility operated by an electric corporation, a telephone corporation, a personal wireless service provider, a commercial mobile service provider or a mobile telephone service provider shall be considered a DCU.*

*Size: Solar panels not larger than 7 square feet, whip antennas not longer than 40 inches, and collection units not larger than 1.5 cubic feet. DCUs shall be designed to blend into the surrounding environment and minimize the visual appearance by matching the color of the poles or buildings where the DCU is located.”*

DCUs are proposed to be excepted from the requirements of Section 230.96 when located on existing poles, or on any new poles within the Public-Right-of-Way, and when they comply with setback and height requirements for the zone in which they are located, and when they comply with all City Municipal Code requirements; and when located at least 500 feet from another DCU within the same network.

**Zoning Text Amendment 09-002/Ordinance 3934** – one of the primary changes proposed to Chapter 230 *Site Standards* Section 230.96 *Wireless Communication Facilities* is to change the way permits for WCFs are processed. Currently, all WCFs must obtain a Wireless Permit, whether or not they would also require a Conditional Use Permit (CUP). The proposed amendment would instead require either a Wireless Permit or a Conditional Use Permit. Rather than submitting an application for a Wireless Permit, an applicant for a WCF would submit a Wireless Application to the City for

review. Following submittal, the City will determine whether the WCF may be approved by the Director (Wireless Permit) or whether a CUP (or other entitlement) is required.

A Wireless Permit may be processed when no other discretionary permit is required, among other determining factors. A CUP will be reviewed by the Zoning Administrator. The type of permit required will be based upon the location and type of antennas, among other things. A CUP will be required for all ground and utility mounted (freestanding) WCFs. An action on either a Wireless Permit or a CUP may be appealed to the Planning Commission by the applicant or by an aggrieved party. The applicant for the WCF may, under appeal, make a claim that the denial of a permit is a Denial of Effective Service, which is inconsistent with Federal law.

Based upon required information outlined in Section 230.96.F, the approving authority shall make a determination regarding Denial of Effective Service in conjunction with the appeal of the Wireless Permit or the CUP. No changes are proposed to IP Chapter 245 *Coastal Development Permit*. Thus, there will be no change to when a WCF will require a Coastal Development Permit.

In addition, proposed changes to review of WCF projects include:

- A Shift from a requirement that the applicant demonstrate that a WCF is necessary to fill an existing gap in service and is located in the least obtrusive location, to instead considering typical planning questions raised (compatibility, etc.) by a proposed WCF. Gap in service and least obtrusive location may be evaluated on appeal if raised by applicant;
- Addition of a provision for Denial of Effective Service appeal to allow the applicant to justify that Federal law preempts the City from denying an application because a denial would effectively prohibit wireless service, inconsistent with Federal law;
- All WCF projects would now be subject to Design Review unless the project equipment is located underground or within an existing building or existing enclosure;
- New definitions are added for “modified facility” and “public right-of-way.”

The portion of the IP to be modified, Section 230.96 *Wireless Communication Facilities*, was originally added to the City’s IP via Huntington Beach LCPA 1-03, approved by the Commission with suggested modifications on 6/10/2004. The City accepted the suggested mods and the Commission concurred with the Executive Director’s determination that the City’s action was legally adequate on 12/8/2004.

When the Commission originally approved the addition of Section 230.96 *Wireless Communication Facilities* into the IP, it required a suggested modification to the language then proposed by the City, as follows:

**F. Site Selection**

5. *Significant adverse impacts to public visual resources shall be minimized by incorporating one or more of the following into project design and construction:*
  - a. *Co-locating antennas on one structure;*
  - b. *Stealth installations;*
  - c. *Locating facilities within existing building envelopes;*
  - d. *Minimizing visual prominence through colorization or landscaping;*
  - e. *Removal of facilities that become obsolete.*

6. *Wireless communication facilities affecting the public viewshed and/or located in areas designated water Recreation, Conservation, Parks, and Shoreline shall be removed within six (6) months of termination of use and the site restored to its natural state.*

As proposed in this IP amendment, Ordinance No. 3934 will rearrange much of the previously certified WCF ordinance. Many of the certified provisions (including those added as the suggested modification above), however, remain intact. For example, of the suggested modification cited above (which was required by the Commission in approving Huntington Beach LCPA 1-03 and accepted by the City via City Council Resolution No. 2004-73), although no longer found in the same context, still remains in the ordinance. For example, when considering whether a Wireless Application will be processed as a Wireless Permit or a Conditional Use Permit, proposed Section 230.96.E.2 provides that an application may be processed as a Wireless Permit when the proposed project is: co-located on an existing approved Wireless Facility, does not exceed the existing Wireless Facility heights (or for existing WCFs proposed to be modified, with the base district height limit plus up to ten feet as permitted in Section 230.72<sup>5</sup>), and employs Stealth Techniques such that it is compatible with surrounding buildings and land uses; and is not ground or utility mounted. When a CUP is processed for a WCF, Section 230.96.E.3 provides that the Zoning Administrator may require, as a condition of approval of the CUP, that the applicant minimize significant adverse impacts to the community and public visual resources by incorporating one or more of the following into project design and construction: Completely Stealth installation, Stealth Techniques, co-location and locating facilities within existing building envelopes, colorization or landscaping to minimize visual prominence; and/or removal or replacement of facilities that are obsolete. In addition, further conditions may be imposed.

In addition, Section 230.96.G provides Wireless Communication Facility Standards and requires all such facilities to provide visual screening, comply with the Huntington Beach Urban Design Guidelines; and the co-location of ground mounted facilities where feasible whenever such a facility is proposed within 1,000 feet of any existing Wireless Antenna; among other requirements. Further, Section 230.96.I requires that a Wireless Communication Facility affecting the public view and/or located in areas designated Water Recreation, Conservation, Parks and Shoreline, and Public Right of Ways shall be removed in its entirety within six (6) months of termination of use and restored to its natural state. Section 230.96.J establishes provisions for removal of Wireless Communication Facilities deemed to have been abandoned.

Moreover, no changes are proposed to Chapter 245 *Coastal Development Permits* and so there will be no change to when a proposed WCF project will require a coastal development permit. If a WCF constitutes development, as defined in Section 245.04.J, and is not otherwise exempt under Section 245.08, the project will require approval of a coastal development permit.

As proposed, the amendment regarding Section 230.96 Wireless Communication Facilities incorporates the requirements of the LUP policies cited above regarding WCFs and generally requires consideration of the protection of public views, and reviewing and imposing conditions on

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<sup>5</sup> Section 230.72 Chimneys; vents; cooling towers; flagpoles; towers; spires; domes; cupolas; parapet walls not more than 4 feet high; water tanks; fire towers; transmission antennae; radio and television antennas (except satellite dish antennae); and similar structures and necessary mechanical appurtenances (except wind-driven generators) may exceed the maximum permitted height in the district in which the site is located by no more than 10 feet. The Zoning Administrator may approve greater height with a conditional use permit. Within the coastal zone exceptions to height limits may be granted only when public visual resources are preserved and enhanced where feasible.

a project as necessary to adequately to carry out the certified LUP. The proposed changes that would allow issuance of either a Wireless Permit or a CUP for wireless facilities will not impact whether such approvals are appealable to the Coastal Commission. Based upon all of the above, the Commission finds that the amendment, with regard to changes to Wireless Communication Facilities, conforms with and is adequate to carry out the policies of the City's certified LUP.

### **3. Senior Mobile Home Park Overlay**

The City's certified LUP contains the following policies regarding priority of use:

#### **C 1.1.3**

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

Zoning Text Amendment No. 13-002 (Ordinance Nos. 4019) proposes to create a new "*Senior Residential*" overlay district; there is no such overlay currently in the LCP/IP. As proposed, the Senior Residential overlay district may overlay any property that allows mobile home park uses. The base zoning designations of any mobile home park will not be altered as a result of the proposed IP amendment. The City's stated intent (per City Planning Commission staff report dated 1/18/14) in creating this overlay district is to "*establish criteria that will protect those mobile home parks primarily occupied by seniors 55 years or age and older from conversion to family (non-age restricted) parks in an effort to preserve housing options for seniors.*" None of the mobile home parks where the new overlay is being applied are located within the coastal zone.

**Zoning Map Amendment No. 13-002** (Ordinance No. 4020 & 4021) Although none of the senior mobile home parks proposed for the overlay are located within the coastal zone, the zoning district map that includes Rancho Del Rey and Huntington Harbor senior mobile home parks also depicts areas laying within the coastal zone as well as outside the coastal zone boundary. Consequently, these two sites are located on a zoning district map that is included in the certified IP map. Thus, they have been included in this IP amendment request for Commission certification.

Although no sites in the coastal zone are proposed to include the newly proposed Senior Residential overlay at this time, there are mobile home parks located within the coastal zone for which a request to apply the overlay zone could be made in the future. Thus, the Zoning Text Amendment, must be considered for conformance with the policies of the certified LUP.

The certified LUP, like the Coastal Act, places a lower priority on residential development than on uses that provide public access and recreation and visitor serving commercial uses. Thus, there would be no significant LUP distinction between a mobile home park with no age requirements and one that is reserved for seniors only. As such, whether an existing residential use such as a mobile home park is subject to the proposed overlay raises no significant coastal issues. Placement of the proposed overlay on an existing residential area would only impose age restrictions but would not change the underlying residential zoning. Thus no new adverse impacts on coastal resources would be created. However, it should be noted that if there were to be a future proposal to apply the Senior Residential Overlay onto a mobile home park in the coastal zone, site specific information available at the time would need to be considered for consistency with the policies of the certified LUP. At this time, the creation of such an overlay alone does not result in any adverse impacts to coastal

resources. For these reasons, the Commission finds these proposed changes to the IP conform with and are adequate to carry out the policies of the certified LUP as proposed.

#### 4. Signs

The City's certified LUP contains the following policies regarding public access and public views:

##### C 2.5

*Maintain and enhance, where feasible, existing shoreline and coastal resource access sites.*

##### Policy C 2.6

*Promote and provide, where feasible, additional public access, including handicap access, to the shoreline and other coastal resources.*

##### C 4.1.1

*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 public views to and along the ocean and scenic coastal areas.*

Zoning Text Amendment No. 15-001 – Chapter 233 *Signs* (Ordinance No. 4047) proposes to amend Section 233.08 *Exempt Signs*, Section 233.10 *Prohibited Signs*, Section 233.28 *Definitions*, and add new Section 233.30 *Message Substitution*. The following changes are proposed:

Section 233.08 *Exempt Signs* – deletes references to examples of exempt temporary signs; clarifies regulations pertaining to sign type, location, size, number and other standards for non-commercial signs on private property and within public rights-of-way;

Section 233.10 *Prohibited Signs* – expressly exempts temporary signs within public rights-of-way pursuant to the provisions of Section 233.08 *Exempt Signs*;

Section 233.28 *Definitions* – defines “non-commercial sign” and “public right-of-way” and deletes “*political sign*” from the definitions section;

Section 233.30 *Message Substitution* – new section added to ensure that commercial sign copy is not inadvertently favored over non-commercial sign.

Proposed new Section 233.30 *Message Substitution*:

*The owner of any sign which is otherwise allowed by this Chapter may substitute non-commercial copy in lieu of any other commercial or non-commercial copy. The purpose of this provision is to prevent any inadvertent favoring of commercial speech over non-commercial speech, or favoring any particular non-commercial message over any other non-commercial message.*

Signage can adversely impact coastal access when it is used to discourage or prevent the public from gaining access to the coast and/or coastal zone amenities. Signs are sometimes inappropriately used to achieve such goals. In addition, signs can adversely impact public coastal views either by directly blocking views or by creating visual blight. In order to avoid these adverse impacts to public access and public views, Chapter 233 *Signs* already includes, under 233.10 *Prohibited Signs*,

Sections 233.10.O and 233.10.P. Sections 233.10.O and 233.10.P prohibit signs that limit or prohibit public access to public coastal areas, and signs that adversely affect scenic and visual qualities of coastal areas and public parks except subject to approval of a coastal development permit and when necessary for public safety, when no other feasible alternative exists, and when the signs are consistent with other LCP requirements. Sections 233.10 O & P also require that any such signs shall be removed as soon as the public safety issue is resolved. These sections are proposed to remain in the IP Chapter 233 *Signs* with no changes. The changes proposed by this IP amendment will provide clarity and do minor language clean-up to the sign ordinance. The proposed changes to the sign ordinance raise no significant coastal issues. For these reasons, the Commission finds these proposed changes to the IP conform with and are adequate to carry out the policies of the certified LUP as proposed.

### **5. Medical Marijuana**

Zoning Text Amendment No. 15-004 (Ordinance No. 4058) proposes to add new Section 204.18 *Prohibited Uses* to Chapter 204 *Use Classifications* in the IP. Proposed Section 204.18 includes three parts: 204.18.A provides the purpose section which states that any distribution of marijuana by medical marijuana businesses is expressly prohibited in the City of Huntington Beach. Section 204.18.B defines “*Medical Marijuana Business, Collective, Cooperative or Dispensary.*” Section 204.18.C states that “*Medical Marijuana Business, Collective, Cooperative or Dispensary or any other such business, no matter how so named, is not a permitted use in any zoning district or specific plan in the City*” and otherwise confirms that medical marijuana businesses are not allowed.

### **6. HB ZSO Maintenance/Cleanup**

Zoning Text Amendment No. 12-001 (Ordinance Nos. 4037, 4038, 4039, 4040) proposes to make changes to four chapters in the Zoning and Subdivision Ordinance/IP to reorganize entitlements of certain applications to the lower hearing body; codify existing policies; clarify certain sections, and minor language clean-up. Ordinance No. 4037 proposes changes to Chapter 203 *Definitions*; Ordinance No. 4038 proposes changes to Chapter 211 *Commercial Districts*; Ordinance No. 4039 proposes changes to Chapter 212 *Industrial Districts*; Ordinance No. 4040 proposes changes to Chapter 230 *Site Standards*.

The changes proposed regarding medical marijuana and the HBZSO clean-up raise no issue with regard to conformity with the certified LUP. As proposed, these changes will not create or result in adverse impacts on coastal resources. In past Commission actions regarding LCP amendments addressing marijuana, the Commission has consistently found that the subject of marijuana and its availability to the public was not a coastal issue. The proposed prohibition on medical marijuana businesses does not modify any of the otherwise required development standards, such as resource protection measures or parking. The rules regarding the sale or prohibition of sales of marijuana are outside the scope of the policies of the City’s certified LUP and raise no issue with regard to impacts on coastal resources. In addition, the changes proposed as maintenance and cleanup of the HBZSO will reorganize entitlements of certain applications to the lower hearing body; codify existing policies; clarify certain sections, and do minor language clean-up, and add a few new definitions. None of these changes raise coastal issues. For these reasons, the Commission finds these proposed changes to the IP conform with and are adequate to carry out the certified LUP as proposed.

**Conclusion**

For all the reasons described above, the proposed IP amendment can be found to conform with and is adequate to carry out the City's certified LUP. Therefore, the Commission approves the proposed LCP amendment as submitted.

**D. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

As set forth in Section 21080.9 of the California Public Resources Code, the California Environmental Quality Act (CEQA) exempts local governments from the requirement of preparing an environmental impact report (EIR) in connection with its activities and approvals necessary for the preparation and adoption of a local coastal program (LCP). The Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. (14 CCR § 15251(f).) Nevertheless, the Commission is required in approving an LCP submittal to find that the LCP does conform with the provisions of CEQA, including the requirement in CEQA section 21080.5(d)(2)(A) that the amended LCP will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment.

As outlined in this staff report, the proposed LCP IP Amendment as submitted will be in conformance with and adequate to carry out the policies of the City's certified LUP. There are no feasible alternatives or feasible mitigation measures available which would substantially lessen significant adverse impacts because the proposed IP amendment is not expected to result in adverse impacts with respect to public access, public views, and public recreation. Thus, the Commission finds that the LCP IP Amendment, as submitted, is in conformity with and adequate to carry out the land use policies of the certified LUP. Therefore, the Commission finds that approval of the LCP Amendment as submitted will not result in significant adverse environmental impacts under the meaning of CEQA. Therefore, the Commission certifies LCP Amendment request No. 2-16 to the City of Huntington Beach Implementation Plan portion of the certified LCP.