

**CALIFORNIA COASTAL COMMISSION**

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May 18, 2018

**Th14b****TO: COMMISSIONERS AND INTERESTED PERSONS****FROM: KARL SCHWING, DEPUTY DIRECTOR, SD COAST DISTRICT  
DEBORAH LEE, DISTRICT MANAGER, SD COAST DISTRICT  
ERIN PRAHLER, COASTAL PLANNER, SD COAST DISTRICT****SUBJECT: STAFF RECOMMENDATION ON CITY OF CARLSBAD LCP AMENDMENT  
NO. LCP-6-CAR-17-0054-2 for Commission Meeting of June 6-9, 2018**

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**SYNOPSIS**

The City of Carlsbad submitted Local Coastal Program (LCP) Amendment No. LCP-6-CAR-17-0054-2 on September 28, 2017. The subject LCP Land Use Plan (LUP) and Implementation Plan (IP) amendments were filed as complete on November 8, 2017. The Commission granted a one-year time extension on December 13, 2017; therefore, the last date for Commission action on this item is February 6, 2019. This report addresses the entire submittal.

**SUMMARY OF AMENDMENT REQUEST**

The City of Carlsbad proposes to amend the LUP portion of the Carlsbad Village Master Plan and Design Manual and Section 21.05.080 of the City's Zoning Ordinance, part of the certified IP, to clarify that uses that are prohibited elsewhere in the City's Municipal Code (outside of the certified LCP), are also prohibited as land uses within the LCP. At the present time, the following uses or activities would become prohibited in the LCP as a result of the proposed LUP/IP amendments: cardrooms; retail sales of dogs and cats; camping on public property; mini-satellite wagering and commercial cannabis activity. The proposed amendment consists of text changes only and the revisions will apply citywide in all segments of the City's certified LCP.

**SUMMARY OF STAFF RECOMMENDATION**

Staff is first recommending rejection of the LUP and IP as submitted, and then recommends certification of the LUP and IP amendments with two suggested modifications.

The LUP amendment request proposes to revise the Village Master Plan and Design Manual which comprises both the LUP and IP components for the Village area LCP segment. The City's Zoning Ordinance (Title 21 of the Municipal Code) serves as part of the certified IP for all geographic segments of the City's LCP, except the Village area.

Most of the remaining Municipal Code titles are not part of the LCP. The City's Zoning Ordinance is identified as a "permissive" code, which contrary to plain language, means that all uses not expressly allowed in the Zoning Ordinance are prohibited. Other portions of the Municipal Code also regulate or prohibit certain activities, including cardrooms (Chapter 5.12), retail sales of dogs and cats (Chapter 7.16), camping on public property (Chapter 8.36), mini-satellite wagering (Chapter 8.80), and commercial cannabis activity (Chapter 8.90).

The intent of the proposed LUP and IP amendments is to clarify how land uses or activities prohibited by other provisions of the Municipal Code relate to the land use regulations of the Village Master Plan and Design Manual and the Zoning Ordinance. However, as proposed by this amendment request, when the City Council acts to prohibit land uses in other chapters of the Municipal Code that are not part of the certified LCP, those land uses would automatically become prohibited within the LCP without benefit of an LCP amendment. Prospective land use changes could raise Coastal Act policy issues relative to public access, priority uses or the permissibility of certain uses in sensitive areas. Therefore, any change in land use must be reviewed and found by the Commission to be consistent with the Coastal Act or City's certified LUP through an LCP amendment. To ensure that such review occurs, the suggested modifications clarify that only the prohibitions already enacted within other sections of the Municipal Code at the present time are also now being prohibited in the LCP. This would add the prohibitions on cardrooms, retail sales of dogs and cats, camping on public property, mini-satellite wagering, and commercial cannabis activity to the City's LCP. Any land use prohibition adopted in the future, however, will require an LCP amendment approved by the Commission before the provision could become effective within the coastal zone.

The appropriate resolutions and motions begin on Page 5. The suggested modifications begin on Page 7. The findings for denial of the Land Use Plan Amendment as submitted begin on Page 8. The findings for approval of the plan, if modified, begin on Page 10. The findings for denial of the Implementation Plan Amendment as submitted begin on Page 12. The findings for approval of the plan, if modified, begin on Page 14.

### **ADDITIONAL INFORMATION**

Further information on the City of Carlsbad LCP Amendment No. LCP-6-CAR-17-0054-2 may be obtained from Erin Prahler, Coastal Planner, at (619) 767-2370.

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**EXHIBITS**

[Exhibit 1 – City Council Resolution No.2017-182](#)

[Exhibit 2 – City Council Ordinance No. CS-325](#)

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

[Exhibit 4 – Chapter 5.12 Cardrooms](#)

[Exhibit 5 – Chapter 7.16 Retail Sales of Dogs and Cats](#)

[Exhibit 6 – Chapter 8.36 Camping on Public Property](#)

[Exhibit 7 – Chapter 8.80 Mini-Satellite Wagering](#)

[Exhibit 8 – Chapter 8.90 Cannabis](#)

**APPENDICES**

Appendix A – Substantive File Documents

## **PART I. OVERVIEW**

### **A. LCP HISTORY**

The City of Carlsbad's certified LCP contains six geographic segments as follows: Agua Hedionda, Mello I, Mello II, West Batiquitos Lagoon/Sammis Properties, East Batiquitos Lagoon/Hunt Properties, and Village Area. Pursuant to Sections 30170(f) and 30171 of the Public Resources Code, the Coastal Commission prepared and approved two portions of the LCP, the Mello I and II segments in 1980 and 1981, respectively. The West Batiquitos Lagoon/Sammis Properties segment was certified in 1985. The East Batiquitos Lagoon/Hunt Properties segment was certified in 1988. The Village Redevelopment Area LCP was certified in 1988; the City has been issuing coastal development permits there since that time. On October 21, 1997, the City assumed permit jurisdiction and has been issuing coastal development permits for all segments except Agua Hedionda. The Agua Hedionda LCP segment is a deferred certification area until an implementation plan for that segment is certified. This LUP and IP amendment request affects all segments of the City's coastal zone.

### **B. 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)<sup>1</sup>, a decision to certify shall require a majority vote of the appointed membership of the Commission.

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

In those cases when a local government approves implementing ordinances in association with a land use plan amendment and both are submitted to the Commission for certification as part of one LCP amendment, pursuant to Section 13542(c) of the Commission's regulations, the standard of review of the implementing actions shall be the land use plan most recently certified by the Commission. Thus, if the land use plan is

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<sup>1</sup> Section 30512(a) sets a significant issue procedure for original LUP submittals.

conditionally certified subject to local government acceptance of the suggested modifications, the standard of review shall be the conditionally certified land use plan.

### **C. PUBLIC PARTICIPATION**

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 held Planning Commission and City Council meetings on July 19, 2017 and September 12, 2017 with regard to the subject amendment request. All of those local hearings were duly noticed to the public. Notice of the subject amendment has been distributed to all known interested parties.

## **PART II. LOCAL COASTAL PROGRAM SUBMITTAL - RESOLUTIONS**

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

- I. MOTION I:** *I move that the Commission certify Land Use Plan Amendment No. LCP-6-CAR-17-0054-2 for the City of Carlsbad as submitted.*

### **STAFF RECOMMENDATION OF DENIAL OF CERTIFICATION:**

Staff recommends a **NO** vote on 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 CERTIFICATION OF LAND USE PLAN AMENDMENT AS SUBMITTED:**

The Commission hereby denies certification of the Land Use Plan Amendment for the City of Carlsbad 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.

- II. MOTION:** *I move that the Commission certify Land Use Plan Amendment No. LCP-6-CAR-17-0054-2 for the City of Carlsbad if modified in accordance with the suggested changes set forth in the staff report.*

**STAFF RECOMMENDATION: CERTIFICATION IF MODIFIED AS SUGGESTED:**

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 CERTIFY SUBMITTED LAND USE PLAN AMENDMENT IF MODIFIED AS SUGGESTED:**

Subject to the following modifications, the Commission hereby certifies the Land Use Plan Amendment for the City of Carlsbad 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.

- III. MOTION:** *I move that the Commission reject Implementation Program Amendment No. LCP-6-CAR-17-0054-2 for the City of Carlsbad as submitted.*

**STAFF RECOMMENDATION OF REJECTION:**

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

**RESOLUTION TO DENY CERTIFICATION OF THE IMPLEMENTATION PROGRAM AMENDMENT AS SUBMITTED:**

The Commission hereby denies certification of the Implementation Program Amendment submitted for the City of Carlsbad and adopts the findings set forth below on grounds that the Implementation Program Amendment as submitted does not conform with, and is not adequate to carry out, the provisions of the certified Land Use Plan. Certification of the Implementation Program Amendment would not meet the requirements of the California Environmental Quality Act as there are feasible alternatives and mitigation measures that

would substantially lessen the significant adverse impacts on the environment that will result from certification of the Implementation Program Amendment as submitted.

**IV. MOTION:**     *I move that the Commission certify Implementation Program Amendment No. LCP-6-CAR-17-0054-2 for the City of Carlsbad if it is modified as suggested in this staff report.*

**STAFF RECOMMENDATION:**

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

**RESOLUTION TO CERTIFY THE IMPLEMENTATION PROGRAM AMENDMENT WITH SUGGESTED MODIFICATIONS:**

The Commission hereby certifies the Implementation Program Amendment for the City of Carlsbad if modified as suggested and adopts the findings set forth below on grounds that the Implementation Program Amendment with the suggested modifications conforms with, and is adequate to carry out, the provisions of the certified Land Use Plan. Certification of the Implementation Program Amendment if modified as suggested complies with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Program Amendment on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.

**PART III. SUGGESTED MODIFICATIONS**

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

1. Modify the General Notes under Allowable Land Uses on Page 42 of the Carlsbad Village Master Plan and Design Manual as follows:

General Notes

[...]

6. Actions Cardrooms (Ch. 5.12), retail sales of dogs and cats (Ch. 7.16), camping on public property (Ch. 8.36), mini-satellite wagering (Ch. 8.80) and cannabis activities (Ch. 8.90) prohibited in the Carlsbad Municipal Code are

also prohibited as land uses under the Village Master Plan and Design Manual.

2. Modify Section 21.05.080 – Limitation of land use, as follows:

Except as provided in this title, no building shall be erected, reconstructed or structurally altered, nor shall any building or land be used for any purpose except as hereinafter specifically provided and allowed in the same zone in which such building and land is located. Actions Cardrooms (Ch. 5.12), retail sales of dogs and cats (Ch. 7.16), camping on public property (Ch. 8.36), mini-satellite wagering (Ch. 8.80) and cannabis activities (Ch. 8.90) prohibited elsewhere in this code are also prohibited as land uses under this title.

#### **PART IV. FINDINGS FOR DENIAL OF CERTIFICATION OF THE CITY OF CARLSBAD LAND USE PLAN AMENDMENT, AS SUBMITTED**

##### **A. AMENDMENT DESCRIPTION**

The LUP amendment request proposes to revise the Village Master Plan and Design Manual which comprises both the LUP and IP components for the Village area LCP segment. The City's Zoning Ordinance (Title 21 of the Municipal Code) serves as part of the certified IP for all geographic segments of the City's LCP, except the Village area. To ensure consistency across all geographic LCP segments, the proposed LUP amendment revises the notes accompanying the Allowable Land Uses table in the LUP portion of the Village Master Plan to clarify that land uses that are prohibited elsewhere in the City's Municipal Code are also prohibited land uses within the Village area.

##### **B. CONFORMANCE WITH SECTION 30001.5 OF THE COASTAL ACT**

The Commission finds, pursuant to Section 30512.2(b) of the Coastal Act, that portions of the Land Use Plan as set forth in the preceding resolutions are not in conformance with the policies and requirements of Chapter 3 of the Coastal Act to the extent necessary to achieve the basic state goals specified in Section 30001.5 of the Coastal Act which states:

The legislature further finds and declares that the basic goals of the state for the Coastal Zone are to:

- a) Protect, maintain and, where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and manmade resources.
- b) Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state.
- c) Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resource conservation principles and constitutionally protected rights or private property owners.



(d) Assure priority for coastal-dependent and coastal-related development over other development on the coast.

(e) Encourage state and local initiatives and cooperation in preparing procedures to implement coordinated planning and development for mutually beneficial uses, including educational uses, in the coastal zone.

The Commission therefore finds, for the specific reasons detailed below, that the land use plan does not conform with Chapter 3 of the Coastal Act with regards to public access and priority uses.

**C. NONCONFORMITY OF THE CITY OF CARLSBAD LAND USE PLAN WITH CHAPTER 3**

Section 30210 states:

*In carrying out the requirements 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 30213 states:

*Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.*

Section 30222 states:

*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 agriculture or coastal-dependent industry.*

The Village Master Plan and Design Manual (Master Plan) serves as the LUP and IP for the City's Village area. The Master Plan identifies allowable land uses in each district of the Village area. The City Council has also prohibited certain uses and activities in portions of the Municipal Code that are not part of the LCP. This includes cardrooms (Chapter 5.12), retail sales of dogs and cats (Chapter 7.16), camping on public property (Chapter 8.36), mini-satellite wagering (Chapter 8.80), and commercial cannabis activity (Chapter 8.90). This amendment request is intended to clarify how activities prohibited by other provisions of the Municipal Code relate to the land use regulations of the Master Plan. As proposed, this amendment would ensure that all banned uses in other parts of the City are also prohibited under the LUP for the Village LCP segment.

However, the effect of the City's proposed LUP amendment would be to automatically prohibit within the Village LCP segment any land uses that the City Council prohibits in other Municipal Code titles, without an LCP amendment. As a change in the type of use, all land use prohibitions require Commission review and certification through the LCP amendment process in order to become effective within the coastal zone. Where such prohibition could have adverse impacts to coastal resources or coastal access, Commission review of the proposed regulation through an LCP amendment for consistency with the Chapter 3 policies of the Coastal Act is especially critical. There are several land use prohibitions or regulations the City Council could adopt that could have adverse effects on coastal resources and must be addressed through an LCP amendment, rather than incorporated by reference into the LCP in the Municipal Code without Commission review or certification. For example, the establishment of residential parking permit programs or more general public parking restrictions (time limits, parking fees, etc.) can adversely impact public coastal access and recreation in areas adjacent to beaches or other coastal recreational opportunities. As proposed, if the City Council adopted such programs outside of the LCP, this amendment could allow those parking changes to bypass Commission review for consistency with the public access and recreation policies of the Coastal Act.

Regulation of short term rentals is another example of a use that should be addressed in the LCP because short-term rentals are potentially a visitor-serving priority use under Sections 30213 and 30222 of the Coastal Act. Chapter 5.60 of the City's Municipal Code prohibits short-term rentals outside of the coastal zone and specifies permitting requirements and operational standards for short-term rentals located within the coastal zone. However, Title 5 Business Licenses and Regulations is not part of the LCP. If the proposed LUP amendment is certified as submitted and the City Council subsequently amends Title 5 to strike the exception allowing short term rentals in the coastal zone, these important options for visitors could automatically be prohibited within the Village segment without review by the Commission.

The identified examples illustrate potential conflicts with the public access and recreation policies of the Coastal Act and there could be other conflicts, such as changes to currently prohibited uses in sensitive resource areas. The possible changes over time and the lack of specificity in the amendment are problematic. Therefore, as proposed, the Commission cannot find the LUP amendment consistent with the Chapter 3 policies of the Coastal Act.

## **PART V. FINDINGS FOR APPROVAL OF THE CITY OF CARLSBAD LAND USE PLAN, IF MODIFIED**

### **A. SPECIFIC FINDINGS FOR APPROVAL**

In addition to Sections 30210 (maximum access) and 30213 (encourage lower cost visitor/recreational facilities) cited above, the following Coastal Act sections are relevant.

Section 30241 states:

*The maximum amount of prime agricultural land shall be maintained in agricultural production to assure the protection of the areas' agricultural economy, and conflicts shall be minimized between agricultural and urban land uses through all of the following:*

- (a) By establishing stable boundaries separating urban and rural areas, including, where necessary, clearly defined buffer areas to minimize conflicts between agricultural and urban land uses.*
- (b) By limiting conversions of agricultural lands around the periphery of urban areas to the lands where the viability of existing agricultural use is already severely limited by conflicts with urban uses or where the conversion of the lands would complete a logical and viable neighborhood and contribute to the establishment of a stable limit to urban development.*
- (c) By permitting the conversion of agricultural land surrounded by urban uses where the conversion of the land would be consistent with Section 30250.*
- (d) By developing available lands not suited for agriculture prior to the conversion of agricultural lands.*
- (e) By assuring that public service and facility expansions and nonagricultural development do not impair agricultural viability, either through increased assessment costs or degraded air and water quality.*
- (f) By assuring that all divisions of prime agricultural lands, except those conversions approved pursuant to subdivision (b), and all development adjacent to prime agricultural lands shall not diminish the productivity of such prime agricultural lands.*

Section 30242 states:

*All other lands suitable for agricultural use shall not be converted to nonagricultural uses unless (1) continued or renewed agricultural use is not feasible, or (2) such conversion would preserve prime agricultural land or concentrate development consistent with Section 30250. Any such permitted conversion shall be compatible with continued agricultural use on surrounding lands.*

In order to ensure that all future land use prohibitions will be subject to Commission review, Suggested Modification No. 1 clarifies that only land uses or activities prohibited outside of the Master Plan at the present time and cited in the modification are also prohibited within the Master Plan area. A separate LCP amendment will be necessary for any future prohibition enacted by the City Council outside of the Master Plan. This suggested modification would limit the scope of the City's proposed amendment and incorporate into the LCP the existing prohibitions to cardrooms, retail sales of dogs and cats, camping on public property, mini-satellite wagering, and commercial cannabis activity that currently exist in the Municipal Code. The prohibition of cardrooms, retail

sales of dogs and cats, and mini-satellite wagering raise no Coastal Act issues, and are consistent with the Chapter 3 policies.

Municipal Code Chapter 8.36 prohibits camping on public streets, public parks, public beaches and other public property, except at designated campgrounds. The prohibition is intended to maintain public access to, general public use of and recreational opportunities on public property. It is also meant to protect the public health and environment by ensuring that camping occurs only in those areas where appropriate provisions have been made for handling camping-related waste. The prohibition of camping on public property will not eliminate any existing authorized campsites and does not preclude development of new campsites on public property in the future. Campsites will remain an allowable use within all land zoned for Open Space with approval of a conditional use permit. As a result, the prohibition of camping on public property in Chapter 8.36 of the Municipal Code can be found consistent with the public access and recreation policies of the Coastal Act.

Municipal Code Chapter 8.90 prohibits commercial cannabis activity, including cultivation, possession, manufacture, distribution, processing, storage, laboratory testing, packaging, labeling, transportation, delivery or sales. The Commission has generally supported local restrictions on marijuana regulation. The proposed ban on commercial cannabis activity will not result in the conversion of any prime agricultural or non-prime agricultural land protected by Sections 30241 and 30242 of the Coastal Act. Existing prime or non-prime agricultural lands could still be used for all other agricultural purposes. Although someone might try to argue that marijuana production would be an agricultural use supported under the Coastal Act, the prohibition of one agricultural product would not be problematic as long as other agricultural crops would still be permissible. Further, there is no existing agricultural land within the Village LCP segment. As a result, incorporating the City's prohibition of commercial cannabis activity into the Village LUP does not raise any conflict with the Chapter 3 agricultural protection policies.

As modified to include only the existing prohibitions on cardrooms, retail sales of dogs and cats, camping on public property, mini-satellite wagering, and commercial cannabis activity, the Commission finds that the proposed LUP amendment to the Village Master Plan and Design Manual is consistent with the Chapter 3 policies of the Coastal Act. In addition, any future land use prohibitions/changes would also need to be considered by the Commission before enactment in the coastal zone.

## **PART VI. FINDINGS FOR REJECTION OF THE CITY OF CARLSBAD IMPLEMENTATION PLAN AMENDMENT, AS SUBMITTED**

### **A. AMENDMENT DESCRIPTION**

The City's Zoning Ordinance, Title 21 of the Municipal Code, is part of the certified Implementation Plan (IP). The IP amendment request proposes to revise Section 21.05.080 of the Zoning Ordinance to clarify that land uses that are expressly prohibited

elsewhere in the City's Municipal Code are also prohibited land uses within the Zoning Ordinance.

The City's Zoning Ordinance is a "permissive" code, meaning that any land use not expressly allowed is prohibited. However, as previously described in the findings for the LUP amendment, the City Council has also regulated or prohibited certain land uses and activities in other titles of the Municipal Code that are not part of the certified IP. The proposed amendment is intended to clarify how activities prohibited by other provisions of the Municipal Code relate the land use regulations of the Zoning Ordinance, as certified in the City's LCP.

### **B. SUMMARY FINDINGS FOR REJECTION**

As proposed, the amendment to Section 21.05.080 of the Zoning Ordinance would allow land use prohibitions and regulations adopted in other sections of the Municipal Code to be automatically applicable within the LCP and potentially exempt from Commission review. All land use prohibitions require Commission review and certification through the LCP amendment process in order to become effective within the coastal zone. Where regulation or prohibition of land uses or activities has potential to adversely impact coastal resources, including public access, and priority uses under the Coastal Act, Commission review of the change through an LCP amendment is especially critical to ensure consistency with the City's certified LUP.

### **C. SPECIFIC FINDINGS FOR REJECTION**

The standard of review for LCP implementation submittals or amendments is their consistency with and ability to carry out the provisions of the certified LUP.

a) **Purpose and Intent of the Ordinance.** Section 21.05.080 of the Zoning Ordinance describes limitations of land use and requires that buildings and land may only be used as allowed by the zone in which it is located.

b) **Major Provisions of the Ordinance.** The proposed amendment adds text to Section 21.05.080 clarifying that land uses prohibited elsewhere in the Municipal Code are also prohibited as land uses under the Zoning Ordinance, as certified in the City's LCP.

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

The City of Carlsbad has applicable policies within the Mello II segment of its certified LUP that state:

Policy 6-10 Lower Cost Visitor-Serving Recreational Uses

*Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided.*

*Encourage a range of affordability for overnight visitor accommodations. Evaluate the affordability of any new or redeveloped overnight visitor accommodations, including amenities that reduce the cost of stay. Mitigation may be applied to protect and encourage affordable overnight accommodations.*

As previously described in the findings for the LUP amendment, the proposed IP amendment creates the potential to exempt changes in land uses or activities from Commission review. Some changes could have adverse impacts on coastal resources and could be inconsistent with the certified LUP. For example, Policy 6-10 of the Mello II LUP requires protection of existing lower cost visitor and recreational facilities. Short term rentals within the coastal zone provide some lower cost visitor serving opportunities protected by Policy 6-10. However, the provision allowing short term rentals in the coastal zone is located outside of the LCP (Municipal Code Chapter 5.60). If the City Council amended Chapter 5.60 to prohibit short term rentals in the coastal zone, this proposed IP amendment could make such a prohibition effective within the LCP despite the potential conflict with Policy 6-10. Therefore, the Commission must reject the proposed code amendment as submitted.

**PART VII. FINDINGS FOR APPROVAL OF THE CITY OF CARLSBAD IMPLEMENTATION PLAN AMENDMENT, IF MODIFIED**

The City of Carlsbad has applicable policies within the Mello II segment of its certified LUP that state:

Policy 2-1 Conservation of Agricultural Lands

*(a)(1) Coastal Agriculture: Consistent with the provisions of Sections 30241 and 30242 of the Coastal Act, it is the policy of the City to contribute to the preservation of the maximum amount of prime agricultural land throughout the coastal zone by providing for the balanced, orderly conversion of designated non-prime coastal agricultural lands.*

[...]

*(c) Permitted Uses on Designated Coastal Agricultural Lands: The land uses described below shall apply to any designated coastal agricultural land which has not been approved for development.*

*(1) On any Class I through Class IV Agricultural Lands the following uses only are permitted:*

- a) Cattle, sheep, goats and swine production, provided that the number of any one or combination of said animals shall not exceed one animal per half acre of lot area. Structures for containing animals shall not be located within fifty feet of any habitable structure on the same parcel, nor within three hundred feet of an adjoining parcel zoned for residential uses.*
- b) Crop production.*

- c) Floriculture.
- d) Horses, private use.
- e) Nursery crop production.
- [...]

(2) *On any Class V through VIII Agricultural Lands the following uses only are permitted:*

- a) *All of the permitted uses listed above.*
- b) *Hay and feed stores.*
- c) *Nurseries, retail and wholesale.*
- d) *Packing sheds, processing plants and commercial outlets for farm crops, provided that such activities are not located within 100 feet of any lot line.*
- e) *Greenhouses, provided all requirements for yard setbacks and height as specified in Chapter 21.07 of the Code are met.*

#### Policy 6-4 Need for Additional Overnight Camping

*Additional overnight camping facilities, the main source of lower cost visitor and recreational facilities, are needed throughout the San Diego coastal region. Additional facilities of this kind should be provided in a regional park within the Carlsbad area. This can be accomplished in conjunction with an eventual Batiquitos Park, within the Agua Hedionda Specific Plan Area, and/or along with the development of private recreational facilities.*

#### Policy 7-3 Access Along Shoreline

*The City will cooperate with the State to ensure that lateral beach access is protected and enhanced to the maximum degree feasible, and will continue to formalize shoreline prescriptive rights.*

In order to address the potential inconsistencies with the City's LUP policies, Suggested Modification No. 2 clarifies that only land uses or activities currently prohibited outside of the Zoning Ordinance are also now being prohibited within the City's certified Zoning Ordinance. A separate LCP amendment will be necessary for any future prohibition enacted by the City Council. This suggested modification would limit the scope of the City's proposed amendment and incorporate into the LCP the existing prohibitions of cardrooms, retail sales of dogs and cats, camping on public property, mini-satellite wagering, and commercial cannabis activity that currently exist in the Municipal Code. The prohibition of cardrooms, retail sales of cats and dogs, and mini-satellite wagering are consistent with the policies of the certified LUP.

The City's certified LUP for the Mello II LCP segment contains policies related to the provision of additional overnight camping facilities and the protection and enhancement of lateral beach access. The prohibition of camping on public property in Municipal Code Chapter 8.36 clarifies that camping may only occur in those areas where appropriate provisions have been made for handling camping-related waste. The chapter also serves to protect general public access to and use of public areas. The prohibition of camping on

public property will not eliminate any existing authorized campsites and does not preclude development of new campsites on public property in the future. Campsites will remain an allowable use within all land zoned for Open Space with approval of a conditional use permit. As a result, the prohibition of camping on public property does not raise any conflict with the mandate for additional overnight camping facilities in LUP Policy 6-4. Further, the prohibition of camping on public beaches (except in designated campgrounds) is intended to ensure continued public lateral beach access. Therefore, the prohibition of camping on public property in Municipal Code Chapter 8.36 can be found consistent with LUP Policy 7-3.

LUP Policy 2-1 from the Mello II LCP segment protects lands designated for coastal agriculture from conversion to urban uses and specifically permits crop production and nursery crop production on designated coastal agricultural lands. The prohibition of commercial cannabis activity, including the cultivation of cannabis, will not convert any lands designated for coastal agriculture and will not prevent the use of agricultural lands for a wide variety of agricultural uses. Therefore, the prohibition of commercial cannabis activity described in Municipal Code Chapter 8.90 does not raise any conflict with the LUP policies related to agriculture.

As modified to include only the prohibitions on cardrooms, retail sales of dogs and cats, camping on public property, mini-satellite wagering, and commercial cannabis activity, the Commission finds that the proposed IP amendment to the Zoning Ordinance is consistent with the policies of the certified land use plans.

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

Section 21080.9 of the California Environmental Quality Act (CEQA) exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its local coastal program. The Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under CEQA Section 21080.5, the Commission is relieved of the responsibility to prepare an EIR for each LCP submission.

The City of Carlsbad determined that the proposed revisions were exempt from the provisions of CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines (Cal. Code of Regs., tit. 14) because amendments that refine or clarify existing land use standards do not have a significant effect on the environment.

Nevertheless, the Commission is required in an LCP submittal or, as in this case, an LCP amendment submittal, to find that the LCP, or LCP, as amended, does conform with CEQA provisions. The City's amendment request consists of a Land Use Plan amendment and an Implementation Plan amendment. The Land Use Plan amendment raises concerns regarding the public access and priority use policies of the Coastal Act and thus cannot be found to be consistent with and adequate to carry out the Chapter 3 policies of the Coastal Act. The Commission, therefore, has suggested one modification



to bring the Land Use Plan into full conformance with the requirements of the Coastal Act. As modified, the Commission finds that approval of the Land Use Plan amendment will not result in significant adverse environmental impacts under the meaning of the California Environmental Quality Act.

Further, the Commission finds that approval of the Implementation Plan amendment as submitted also raises concerns regarding public access and priority use policies of the City's certified LUP and thus cannot be found consistent with and adequate to carry out the provisions of the certified LUP. The Commission, therefore, has suggested one modification to bring the Implementation Plan into full conformance with the requirements of the LUP. As modified, the Commission finds that approval of the Implementation Plan amendment will not result in significant adverse environmental impacts under the meaning of the California Environmental Quality Act.