

CALIFORNIA COASTAL COMMISSION

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June 19, 2019

W30b**TO: COMMISSIONERS AND INTERESTED PERSONS****FROM: JOHN AINSWORTH, EXECUTIVE DIRECTOR****SUBJECT: CITY OF SAN DIEGO DE MINIMIS LOCAL COASTAL PROGRAM
AMENDMENT LCP-6-SAN-19-0032-1 (Appeal Procedures) FOR
COMMISSION REVIEW AT ITS MEETING OF July 10-12, 2019**

The Coastal Act was amended January 1, 1995 to provide for a more streamlined method to review amendments to local coastal programs. Section 30514(d) allows the Executive Director to make a determination that a proposed Local Coastal Program (LCP) amendment is de minimis in nature. The Executive Director must determine that the proposed amendment: 1) has no impact, either individually or cumulatively, on coastal resources; 2) is consistent with the policies of Chapter 3; and 3) does not propose any change in land use or water use or any change in the allowable use of property. Section 30514(d) requires the local government to notice the proposed de minimis LCP amendment 21 days prior to submitting it to the Executive Director either through: 1) publication in a newspaper of general circulation; 2) posting onsite and offsite the area affected by the amendment; or 3) direct mailing to owners of contiguous property. If the Executive Director makes the determination that the proposed amendment qualifies as a "de minimis" amendment and finds the public notice measures have been satisfied, such determination is then reported to the Commission.

PROPOSED AMENDMENT

On May 7, 2019, the City of San Diego's LCP amendment request was filed in the San Diego Coast District office. The request was submitted as a separate de minimis LCP amendment and involves one item for Commission concurrence that is associated with amending regulations governing administrative appeal procedures. The proposed amendment to the Land Development Code (LDC), which serves as the certified Implementation Plan (IP), requires that appeal hearings be held within sixty days of the filing of the appeal, except in certain circumstances, and allows appellants to withdraw their appeal at any time prior to the appeal hearing and qualify for a reimbursement of appeal fees. The amendment is presented in the attached Ordinance Number O-20863.

DISCUSSION

Currently, appeals of City approvals only have to be scheduled within sixty days of the filing of an appeal, with the average time to have appeals heard being 105 days. The City determined that this substantially impacted the ability of local government to approve projects, especially for housing, which in turned increased costs for the applicants and detrimentally affected the City's ability to address development needs in a timely

manner. Compounding this delay was that, under current regulatory language, even if an appeal is withdrawn by the appellant, the City is still required to hold the appeal hearing.

Under the proposed amendment, the LDC would be amended to require that appeals be heard, not just scheduled, within sixty days of the filing of an appeal, unless the first regularly scheduled meeting is after the sixty calendar days have passed, in which case the appeal may be heard at the subsequent hearing. Furthermore, the amendment will clarify that if all appeals are withdrawn, the appeal hearing is not required to be held. Finally, appellants withdrawing their appeals may be eligible for reimbursement of the filing fee, minus any appeal-related costs incurred by the City prior to the time of withdrawal. Separately, the City is also increasing the fees for local appeals to one thousand dollars from the current one hundred dollars, so the opportunity to recoup all or a portion of the appeal fee for issues that have been resolved is good at encouraging public participation.

The ability of the public to appeal a formal determination by the local government of a coastal action is a fundamental part of public involvement in the coastal planning process, as well as in ensuring a thorough and transparent review of coastal development and regulatory changes. The proposed amendment does not alter the ability of the public to appeal local government decisions regarding any coastal development permit. The coastal development permit procedures are found in Chapter 12, Article 6 of the LDC, and they are not being revised herein. In addition, as mandated by the Coastal Act and Commission regulations, the charging of a local appeals fee for any appealable coastal development permit allows any concerned party with standing to file an appeal directly to the Coastal Commission. (Cal. Code of Regs. Tit. 14. § 13573(a)(4).) All of the appeal procedures for coastal development permits remain as certified by the Commission.

Thus, because the proposed amendment to the LDC does not change any coastal zone property, any land uses, or have any potential to impact, either individually or cumulatively, coastal resources, the proposed amendment can be found consistent with Chapter 3 of the Coastal Act and be supported.

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 Coastal Commission and 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.

For its CEQA determination, the City found that the proposed amendment is not a project as defined by CEQA Guidelines Section 15378(b)(5) and is therefore not subject to CEQA in accordance with CEQA Guidelines Section 15060(c)(3). 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 to CEQA provisions. In the case of the subject LCP amendment request, the Commission finds that approval of the de minimis LCP amendment, as submitted, would not result in any significant adverse environmental impacts under the meaning of the California Environmental Quality Act.

DETERMINATION

The Executive Director determines that the City of San Diego LCP Amendment No. LCP-6-SAN-19-0032-1 is de minimis. Based on the information submitted by the City, the proposed LCP amendment will have no impact, either individually or cumulatively, on coastal resources. It is consistent with the policies of Chapter 3 of the Coastal Act. The amendment does not propose any change in land use or any change in the allowable use of property. The City has properly noticed the proposed amendment. As such, the amendment is de minimis pursuant to Section 30514(d).

MOTION: *I move that the Commission concur with the Executive Director's determination that the LCP amendment, as submitted, is de minimis.*

STAFF RECOMMENDATION:

The Executive Director recommends that the Commission **concur** in this determination. Unless three or more members of the Commission object to this determination, the amendment shall become effective and part of the certified LCP ten (10) days after the date of the Commission meeting.