

CALIFORNIA COASTAL COMMISSION

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August 29, 2019

W18a**TO: COMMISSIONERS AND INTERESTED PERSONS****FROM: KARL SCHWING, DEPUTY DIRECTOR, SAN DIEGO COAST DISTRICT
DEBORAH LEE, DISTRICT MANAGER, SAN DIEGO COAST DISTRICT
TONI ROSS, COASTAL PROGRAM ANALYST, SD COAST DISTRICT****SUBJECT: STAFF RECOMMENDATION ON CITY OF OCEANSIDE LOCAL COASTAL
PROGRAM AMENDMENT NO. LCP-6-OCN-19-0053-1 (Building Height
Exceptions) for Commission Meeting of September 11-13, 2019**

SYNOPSIS

The subject LCP implementation plan amendment was submitted and filed as complete on July 25, 2019. The date by which the Commission must take action, absent an extension of the time limits by the Commission, is October 21, 2019. This report, regarding exceptions to height limits, addresses one of two components of the City's submittal. The other item is LCP-6-OCN-19-0054-1, which provides an update to the City's affordable housing regulations. Both items are scheduled for the September 2019 Commission meeting. This amendment request affects the City's certified implementation plan only.

SUMMARY OF AMENDMENT REQUEST

The City of Oceanside currently has two regulations for allowing structures to exceed the height limit of a particular zone. One, certified in 1986, applies to properties located in the coastal zone and the other, applying to properties outside the coastal zone; both of which are contained within Section 3018 of Article 30 (Site Regulations). The City has indicated that both regulations are problematic as they are outdated, subject to misinterpretation, and; as a result, often confuse applicants and the public. To remedy this, the City is proposing to repeal all current regulations for exceptions to height limits and certify one updated policy to apply citywide. The new provisions are considered to be more protective of views and community character. They attempt to provide a compromise between prohibiting all development (which constrains normal appurtenances such as stairwells or utilities) beyond the height limit while curtailing encroachments facilitating additional living space or storage area. As proposed, Section 3018 will limit the types of structures permitted beyond the height limit to elevator and stairway enclosures, HVAC or similar equipment, chimneys, antennas, and roof vents, spires, false fronts, and other similar architectural elements. Structures will be limited to a maximum of 10 feet above the established height limit, but there is an allowance for additional height deviation on a case-by-case basis when approved through a Conditional

Use Permit (CUP). The City is proposing two processes for review of applications for exceptions to height limits; one ministerial and one requiring full discretionary review. The types of development that can be permitted ministerially include elevator and stairway enclosures and chimneys, antenna and roof vents on single family homes if they are located outside the Commission's appeal jurisdiction. Restrictions include that all development must be the minimum size to accommodate the use of the structure or based on minimum building code requirements and in no case may include accessory dwelling or storage areas. Development subject to discretionary review includes the same limitations to development as the ministerial process; however, additional development types permitted include HVAC or similar units, and architectural elements. Additionally, the discretionary process allows more flexibility to include architectural elements within the elevator or stairway enclosure and limits any/all structures to a maximum of 10% of the roof top footprint. Discretionary review will be required for any request located within the Commission's appeal jurisdiction.

The revised regulations will not apply to The Strand area, which is subject to the height limitations of Proposition A (passed in 1982), prohibiting any structures higher than the elevation of Pacific Street.

SUMMARY OF STAFF RECOMMENDATION

Staff is recommending the amendment be approved as submitted. The primary concerns identified by staff relate to the potential public view obstruction or community character implications associated with allowing development beyond the maximum height limit established for that zone. The primary purposes of providing exceptions to height limits are: 1) to allow access to rooftop decks (a use permitted in residential developments); 2) the housing of utilities or 3) to allow various architectural elements. Currently, the City's regulations for height exceptions are vague and do not specify limits for height or size of structures. These regulations have permitted development that includes oversized elevator shafts or stairwells containing storage areas, small covered decks, or in some cases additional square footage specifically designed to prevent being classified as habitable floor space. As revised by the City, the policy language will restrict the types of development permitted above the established height limit, limit the size and height of roof projections, and will require any proposed structures to be the minimum necessary. The subject LCP amendment will therefore improve the protection of public views as well as help maintain community character within the coastal zone, consistent with the certified LUP.

The appropriate resolutions and motions begin on Page 5. The findings for approval of the Implementation Plan Amendment as submitted begin on Page 6.

BACKGROUND

In 2017, prompted by community concerns over a number of projects which benefitted from current regulations for exceptions to building height limits, the City issued a memorandum recognizing the community's concerns over such structures, and

established interim interpretation parameters for future height exception requests, and committed the City to pursue an update to the ordinance to eliminate such concerns. The memorandum addressed residents' concerns regarding exceptions to height limits that resulted in bulky and massive structures that included covered living area and storage space. The City has indicated that prior to the 2017 memorandum, application of the regulations for exceptions to height limits appeared to be based only on the provision that any such protrusion shall not exceed 10% of roof area upon which they are located. In November 2018, the City Council directed City staff to address the issues related to the misinterpretation of these regulations. In response, staff held a number of stake holder interviews to obtain input from residents, community group members and design professionals. The subject amendment request is a response to the City Council's request and the comments received from the various stake holder interviews.

ADDITIONAL INFORMATION

Further information on the Oceanside LCP Amendment No. LCP-6-OCN-19-0053-1 may be obtained from **Toni Ross**, Coastal Planner, at (619) 767-2370.

EXHIBITS

[Exhibit 1 – Resolution No. 19-R0124-1](#)

[Exhibit 2 – Ordinance No. 19-OR0201-1](#)

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

PART I. OVERVIEW

A. LCP HISTORY

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

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

B. STANDARD OF REVIEW

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

C. PUBLIC PARTICIPATION

The City held a Planning Commission meeting on this matter on February 25, 2019. The City also held a City Council meeting on March 27, 2019. Both of the 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 move that the Commission reject the Implementation Program Amendment No. LCP-6-OCN-19-0053-1 for the City of Oceanside as submitted.*

STAFF RECOMMENDATION OF CERTIFICATION 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 TO CERTIFY IMPLEMENTATION PROGRAM AMENDMENT AS SUBMITTED:

The Commission hereby certifies the Implementation Program Amendment for the City of Oceanside 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 Land Use Plan, 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.

PART III. FINDINGS FOR APPROVAL OF THE OCEANSIDE IMPLEMENTATION PLAN AMENDMENT, AS SUBMITTED

A. AMENDMENT DESCRIPTION

The City is proposing to repeal all current regulations for exceptions to height limits and certify one updated policy to apply citywide, with the exception of Proposition A properties designated along The Strand. As proposed, Section 3018 will limit the types of structures permitted beyond the height limit to elevator and stairway enclosures, HVAC or similar equipment, chimneys, antennas, and roof vents, spires, false fronts and other similar architectural elements. Regardless, structures will be limited to a maximum of 10 feet above the established height limit but there is an allowance for additional height deviation on a case-by-case basis with discretionary review. The City is proposing two processes for review of applications for exceptions to height limits; one ministerial and one requiring full discretionary review. The types of development that can be

permitted ministerially include elevator and stairway enclosures and chimneys, antenna and roof vents on single family homes. Limitations include that all development must be the minimum size to accommodate the use of the structure or based on minimum building code requirements and in no case may include accessory dwelling or storage areas. Development subject to discretionary review includes the same limitations to development as the ministerial process; however, additional development types permitted include HVAC or similar units, and architectural elements. Additionally, the discretionary process allows more flexibility to include architectural elements within the elevator or stairway enclosure. All development subject to discretionary review will be limited to a total coverage that any/all structures not exceed 10% of the roof top footprint.

B. FINDINGS FOR APPROVAL

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

a) **Purpose and Intent of the Ordinance.** The purpose of the regulations for exceptions to height limits is to provide the limits to which development can be approved beyond the established height limit for the underlying zone. Additional height is often sought by applicants for access to a roof top deck (via elevator or stairway), chimneys, antennas, housing utility equipment such as HVAC, and to provide architectural elements such as parapet walls, skylights and flag poles, or similar structures. The intent of the ordinance is to allow such structures when supportable.

b) **Major Provisions of the Ordinance.** The major provisions of revised Section 3018 include limits for the types of structures permitted beyond the height limit to elevator and stairway enclosures, HVAC or similar equipment, chimneys, antennas, and roof vents, spires, false fronts, and other similar architectural elements. Structures will be limited to a maximum of 10 feet above the established height limit, but in some cases there will be allowance made for additional height deviation subject to issuance of a Conditional Use Permit (CUP). The City is proposing two processes for review of applications for exceptions to height limits; one ministerial and one requiring full discretionary review. The types of development that can be permitted ministerially include elevator and stairway enclosures, chimneys, antenna and roof vents on single family homes located outside the Commission's appeals jurisdiction. Limitations to development include that it must be the minimum size to accommodate the use of the structure or based on minimum building code requirements and in no case may include accessory dwelling or storage areas. Development subject to discretionary review includes the same limitations to development as the ministerial process; however, additional development types permitted include HVAC or similar units, and architectural elements. Additionally, the discretionary process allows more flexibility to include architectural elements within the elevator or stairway enclosure. All development subject to discretionary review will be limited to a total coverage that any/all structures not exceed 10% of the roof top footprint. Discretionary review will be required for any request located within the Commission's appeal jurisdiction.

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

The primary LCP consistency concerns regarding exceptions to height limits are potential visual resource impacts and maintenance of community character. The City's LCP contains the following applicable provisions which state:

VI. Visual Resources and Special Communities

C. Objectives and Policies

Policies

- 1. In areas of significant natural aesthetic value, new developments shall be subordinate to the natural environment. [...]*

- 4. The City shall maintain existing view corridors through public rights-of-way. [...]*

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

City of Oceanside LCP – Design Standards for Preserving and Creating Views

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

VII. New Development and Public Works

C. Objectives and Policies

Policies

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

The standard of review for LCP implementation submittals or amendments is their consistency with and ability to carry out the provisions of the certified LUP. In the case of the subject LCP amendment, the City is proposing to revise its regulations for exceptions to height limits contained within Section 3018 of Article 30 (Site Regulations). Exceptions to height limits are traditionally utilized to provide elevator or stairway access to rooftop decks, to house HVAC and other utility equipment, or to incorporate custom architectural elements into the design of the structure. The

Commission's primary concerns with allowing development beyond the established height limits are the potential impacts on visual resources and community character. The City's LCP contains a number of provisions that require development to protect, and where feasible enhance, the scenic and visual qualities of the coastal zone. Visual resources include public views to and along the ocean and additionally call for the visual and physical mass of structures to be consistent with the unique character and visual scale of their neighborhoods.

Currently, the regulations contained within the certified IP allow a number of different development types to extend beyond the height limits established by zoning, provided that they are safely erected and do not provide additional floor space. Additionally, while not a part of the LCP, the City typically limits these exceptions to a maximum of ten feet higher than the permitted height limit and to 10% of the roof area upon which they are located. As an example, an applicant could apply for an elevator shaft to access a rooftop deck on a 3,000 sq. ft. home up to 45 feet tall and 300 sq. ft. large. However, what has become increasingly common is that applicants apply for the maximum sized elevator or stairway shafts and then use that additional area for storage or a small covered deck. In some cases, these designs also create additional living area such that it is not considered habitable floor space. As a result, structures have been approved larger and greater in bulk than intended by the development regulations established by the IP, and are potentially inconsistent with the LCP. To remedy this, the City is revising the regulations to provide more detailed and restrictive provisions for these types of structures.

As proposed, the restriction to height (maximum height of ten feet) and size (10% of the roof area upon which they are located) will be incorporated into the certified LCP. The City is proposing both a ministerial process and full discretionary review for proposals which will be based upon the development being proposed. The types of development that can be approved ministerially include elevator and stairway enclosures and chimneys, antenna and roof vents on single family homes. Development subject to discretionary review includes the above listed development as well as HVAC or similar units, and architectural elements. Limitations to development include that all development must be the minimum size to accommodate the use of the structure or based on minimum building code requirements. These features may not include accessory dwelling or storage areas; and, all development will be limited to a total coverage of any/all structures not to exceed 10% of the roof top footprint.

The ministerial process, while intended to apply to single family homes, will not be applied within the Commission's appeals jurisdiction. Therefore, it will not be employed within the areas most likely to contain significant coastal resources or where heights could impact views and community character. The subject LCP amendment request will, therefore, not result in development that is inconsistent with the certified land use plan and it will provide improved protection to visual resources and community character. The LCP amendment can therefore be approved as submitted.

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

Section 21080.9 of the California Environmental Quality Act (CEQA) exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its local coastal program. The Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under CEQA Section 21080.5, the Commission is relieved of the responsibility to prepare an EIR for each LCP submission. The City of Oceanside found that the LCPA proposal is exempt, pursuant to Section 15061(b)(3) of CEQA [no possible effect on the environment].

Nevertheless, the Commission is required in an LCP submittal or, as in this case, an LCP amendment submittal, to find that the LCP, or LCP, as amended, does conform with CEQA provisions. This report has discussed the relevant coastal resource issues with the proposed amendment and found that the amendment would not result in an adverse intensification of land uses, or have significant impacts on coastal resources. The proposed amendment will not result in any significant environmental effects for which feasible mitigation measures have not been employed consistent with CEQA Section 21080.5(d)(2)(A).