

**CALIFORNIA COASTAL COMMISSION**

SAN DIEGO AREA  
7575 METROPOLITAN DRIVE, SUITE 103  
SAN DIEGO, CA 92108-4421  
(619) 767-2370



August 27, 2019

**W18f****TO: COMMISSIONERS AND INTERESTED PERSONS****FROM: KARL SCHWING, DEPUTY DIRECTOR, SAN DIEGO COAST DISTRICT  
DEBORAH LEE, DISTRICT MANAGER, SAN DIEGO COAST DISTRICT  
ALEX LLERANDI, COASTAL PLANNER, SAN DIEGO COAST DISTRICT****SUBJECT: STAFF RECOMMENDATION ON CITY OF SAN DIEGO LOCAL COASTAL  
PROGRAM AMENDMENT NO. LCP-6-SAN-18-0049-1 (Vernal Pool Habitat  
Conservation Plan) for Commission Meeting of September 11-13, 2019**

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**SYNOPSIS**

On June 13, 2018, the City of San Diego Local Coastal Program (LCP) Amendment No. LCP-6-SAN-18-0049-1 was filed in the San Diego District office. The amendment involves modifying regulations in the certified Implementation Plan (IP) to incorporate references to the locally adopted Vernal Pool Habitat Conservation Plan (VPHCP) and related Vernal Pool Management and Monitoring Plan (VPMMP), though those two documents themselves are not currently proposed for certification by the Coastal Commission with this amendment, and the plans would not be effective in the coastal zone. The proposed amendment will only affect the certified IP in order for the City of San Diego to apply the plans outside the coastal zone. A one-year time extension was granted by the Commission on August 8, 2018. As such, the last date for Commission action on this item is the September 2019 hearing.

Currently, there are two other pending items from the City of San Diego: LCP-6-SAN-19-0063-1 (TPA Parking Standards), which received a one-year time extension at the August 2019 hearing, and LCP-6-NOC-19-0061-1 (Tierra Alta), which is currently non-filed.

**SUMMARY OF AMENDMENT REQUEST**

In the mid-1990's, the City of San Diego adopted the Multiple Species Conservation Plan (MSCP) to provide regional habitat management measures, focusing on coastal sage scrub communities but addressing a broad range of sensitive plants and wildlife. Although encouraged to submit the plan for Coastal Commission review and incorporation into the certified LCP, the City of San Diego declined. Subsequently, in response to a lawsuit filed by environmental organizations, the Ninth Circuit Court of Appeals issued an injunction in 2006 prohibiting the City of San Diego from permitting projects that would impact vernal pools (more specifically, seven protected species found in such pools). Following several years of mediation, the City of San Diego in 2010

relinquished its incidental take authorization for those vernal pool species in order to develop a more comprehensive strategy for protecting those species. Over the subsequent years, the City of San Diego, in coordination with United States Fish and Wildlife Service (USFW) and California Department of Fish and Wildlife (CDFW), drafted the Vernal Pool HCP and VPMMP in order to obtain a federal Incidental Take Permit for the covered species, reauthorizing the City of San Diego to issue permits for public and private development projects that impact the vernal pool species consistent with the VPHCP. In early 2018, the City of San Diego certified the Final Program Environmental Impact Report (PEIR) and adopted the VPHCP, VPMMP, and related discretionary action that would amend the IP to incorporate the VPHCP and VPMMP by reference into the Environmentally Sensitive Lands (ESL) regulations and Land Development Manual Biology Guidelines. The City of San Diego subsequently submitted those documents and regulatory changes to the Coastal Commission as an LCP amendment.

As originally submitted to the Coastal Commission, the City of San Diego first sought certification of the VPHCP, VPMMP, and related discretionary actions amending the IP to incorporate those documents by reference. However, previously, review of the VPHCP and VPMMP by Coastal Commission staff identified several issue areas in those plans and the City of San Diego ultimately amended its submittal and withdrew the VPHCP and VPMMP from the amendment request. Thus, at this time, the City of San Diego is seeking only certification of the changes to the IP to incorporate references to the VPHCP and VPMMP so that the City of San Diego may apply them to the portions of the City outside the coastal zone, where the majority of the vernal pool habitat is located. Within the coastal zone, the currently certified ESL regulations and related provisions would continue to govern development that could impact vernal pools.

### **SUMMARY OF STAFF RECOMMENDATION**

The vast majority of the City of San Diego's identified vernal pool habitat is located outside of the coastal zone. To date, only seven vernal pool complexes have been identified within the coastal zone, and of those, six of them – Salk Institute, Fieldstone, Shaw Lorenz, Del Mar Mesa, Lopez Ridge, and Crescent Heights – are already under established conservation easements and management plans; thus future development therein is highly unlikely. The seventh complex – Tierra Alta – is located on vacant private property in the Mira Mesa community and will be addressed when the related LCP amendment LCP-6-NOC-19-0061-1 for the property is filed and brought before the Commission. That standard of review would be the currently certified Mira Mesa Community Plan (LUP), the ESL regulations, and related provisions.

While the Commission supports the City of San Diego's efforts to more thoroughly manage its vernal pool resources, there are issues with certain aspects of the VPHCP and VPMMP regarding the identification and categorization of vernal pool habitat, the definition and management of vernal pools that would be labelled as "degraded," and provisions allowing for the infilling or destruction of certain "degraded" vernal pools rather than restoring them. After discussing these issues with the City of San Diego, they decided that rather than have the plans approved with modifications that would have to be taken back to the City Council for review and adoption, the City would instead focus on

the majority of its vernal pool habitat located outside of the coastal zone by revising the application to remove the VPHCP and VPMMP plans from the LCP amendment request and instead just seek certification of the regulatory revisions inserting references to the plans in the IP, so that they may be applied outside of the coastal zone.

While it is rare for the Coastal Commission to review an LCP amendment that makes reference to a document that itself is not part of the certified LCP, it is not unprecedented, and is usually necessitated by the legal requirement that a local government obtain Coastal Commission certification for all amendments to a certified planning document, regardless of the ultimate purpose of the proposed amendment language. While recent examples of this in the City of San Diego have been changes to IP provisions referencing land use plans for community segments located outside of the coastal zone, the most notable – and closely related – example is the Multiple Species Conservation Program (MSCP), a city-wide program developed to preserve a network of habitat and open space and the identified sensitive species located therein (it was the MSCP from which the City of San Diego originally removed its vernal pool provisions back in 2010). The MSCP was adopted by the City of San Diego in the mid 1990's; however, to date, the MSCP has not been submitted to the Coastal Commission for certification. Rather, the certified LCP has references to the MSCP so as to allow its implementation outside the coastal zone, whereas within the coastal zone, the certified ESL regulations serve as the standard of review for coastal development containing sensitive habitat resources. The VPHCP and VPMMP are designed to be supplementary to the MSCP and will cover the same geographic area, closing the gap in vernal pool habitat oversight that the MSCP has had since the City of San Diego relinquished its incidental take authorization almost a decade ago.

Thus, because the standard of review of development on or near environmentally sensitive lands will not change with this revised amendment proposal, nor will the designation of any habitat be affected, the proposed amendment can be approved as submitted.

The appropriate resolutions and motions begin on Page 4. The findings for approval of the Implementation Plan Amendment as submitted begin on Page 5.

## **BACKGROUND**

The City's first IP was certified in 1988, and the City then assumed permit authority. The IP consisted of portions of the City's Municipal Code, along with some Planned District Ordinances (PDOs) and Council Policies. In 1999, the Commission certified the City's LDC that primarily includes Chapters 11 through 15 of the Municipal Code. It replaced the first IP and took effect in the coastal zone on January 1, 2000. The Commission has certified many IP amendments since 2000.

## **ADDITIONAL INFORMATION**

Further information on the City of San Diego LCP Amendment No. LCP-6-SAN-18-0049-1 may be obtained from Alexander Llerandi, Coastal Planner, at (619) 767-2370.

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## **PART I. OVERVIEW**

### **A. LCP HISTORY**

The City of San Diego has a long history of involvement with the community planning process, and in 1977, requested that the Coastal Commission permit segmentation of its Land Use Plan (LUP) into twelve parts in order to conform, to the maximum extent feasible, with the City's various community plan boundaries. In the intervening years, the City has intermittently submitted all of its LUP segments, which are all presently certified, in whole or in part.

When the Commission approved segmentation of the LUP, it found that the implementation phase of the City's LCP would represent a single unifying element. This was achieved in January 1988, and the City of San Diego assumed permit authority on October 17, 1988, for the majority of its coastal zone. Several isolated areas of deferred certification remained at that time, but some have since been certified as LCP amendments. Other areas of deferred certification still remain today and will be acted on by the Coastal Commission in the future.

Since effective certification of the City's LCP, there have been numerous major and minor amendments processed by the Commission. These have included everything from land use revisions in several segments, to the rezoning of single properties, to modifications of citywide ordinances. In November 1999, the Commission certified the City's Land Development Code (LDC), and associated documents, as the City's IP, replacing the original IP adopted in 1988. The LDC became effective in January 2000.

### **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**

Section 30503 of the Coastal Act requires local governments to provide the public with the maximum 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 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 move that the Commission reject the Implementation Program Amendment No. LCP-6-SAN-18-0049-1 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 San Diego 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(s), 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 CITY OF SAN DIEGO IMPLEMENTATION PLAN AMENDMENT, AS SUBMITTED**

**A. AMENDMENT DESCRIPTION**

The City of San Diego is herein proposing an amendment to the certified IP, consisting of changes to the Environmentally Sensitive Lands regulations and the Land Development Manual Biology Guidelines (a supplementary document to the ESL regulations) so as to insert references to the VPHCP and the VPMMP, though those two documents themselves are not being submitted to the Commission for certification and thus would not be enforceable within the coastal zone. The proposed amendment would also contain minor modifications to the ESL regulations addressing such lands located outside the coastal zone, but there would be no changes to the resource protection measures currently being applied to habitat areas located within the coastal zone.

**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.**

Vernal pools are seasonal, depression-type pools of water that provide habitat for distinctive plants and animals. Considered to be a form of seasonal wetland, vernal pools are usually devoid of fish, which allows the safe development of amphibian and insect species that are unable to withstand predation by fish. Given their value to the ecosystem and their dwindling numbers, seven threatened and endangered species (Otay Mesa mint, San Diego Mesa mint, Spreading navarretia, San Diego button celery, California Orcutt grass, Riverside fairy shrimp, and San Diego fairy shrimp) typically found in vernal pools are protected under state and federal regulations.

In response to a lawsuit regarding the City of San Diego's original MSCP work, the Ninth Circuit Court of Appeals issued an injunction in 2006,<sup>1</sup> prohibiting the City of San Diego from permitting projects that would impact vernal pools (more specifically, seven protected species found in such pools). Following several years of mediation, the City of San Diego in 2010 relinquished its incidental take authorization for those vernal pool species in order to develop a more comprehensive strategy for protecting those species. Over the subsequent years, the City of San Diego, in coordination with United States Fish and Wildlife Service (USFW) and California Department of Fish and Wildlife (CDFW), drafted the VPHCP and VPMMP in order to obtain a federal Incidental Take Permit for the covered species, reauthorizing the City to issue permits for public and private development projects that impact the vernal pool species consistent with the Vernal Pool HCP. In early 2018, the City of San Diego certified the Final Program Environmental Impact Report and adopted the VPHCP, VPMMP, and related discretionary actions to amend the IP to add the VPHCP to the Environmentally Sensitive Lands regulations and Land Development Manual Biology Guidelines to require development located outside of the coastal zone to be consistent with them.

**b) Major Provisions of the Ordinance.**

Because the City of San Diego amended its LCP amendment submittal to remove the VPHCP and VPMMP from Coastal Commission review, the major provisions remaining consist of changes to the ESL regulations and the Land Development Manual Biology Guidelines. The changes consist of:

- Adding VPHCP to the list of definitions in Chapter 11 of the Land Development Code;
- Adding reference to the VPHCP in the required findings for a Site Development Permit (a discretionary permit distinct from a coastal development permit) in Chapter 12 of the Land Development Code;

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<sup>1</sup> *Southwest Ctr. For Biol. Diversity v. Bartel* (No. 06-56851) Available at <https://www.leagle.com/decision/infco20110118179>

- Adding references to the VPHCP in the ESL regulations in Chapter 14 of the Land Development Code, as well as minor modifications to regulations addressing wetlands located outside of the coastal zone; and
- Amending the Land Development Manual Biology Guidelines to include references to the VPHCP and minor updating of information regarding covered species and mitigation and monitoring actions for them.

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

The standard of review for LCP implementation submittals or amendments is their consistency with and ability to carry out the provisions of the certified Land Use Plan(s). Vernal Pools are rare, seasonal wetland habitats that serve multiple listed or sensitive species not found in more common wetland habitat. Due to development, the vast majority of such habitat in the City of San Diego has been destroyed over the decades, and what remains is concentrated in undeveloped or partially developed lands located mostly in the outskirts of the City of San Diego, mostly outside the coastal zone. Nevertheless, vernal pool habitat is also located within the coastal zone, and due to the delicate nature of this habitat type, with its reliance on a combination of certain soil types and hydrology, they are especially sensitive to disturbances from development activity or human encroachment. Critical coastal resources are mandated for protection first in the Coastal Act's Chapter 3 policies and then applied, as appropriate, to each coastal community through the establishment of resource protection standards in their certified land use plans.

In the case of the City of San Diego, it has developed community planning areas based on its established neighborhoods and future urbanizing area. Predicated on those community planning areas, the City utilized the geographic segmentation provisions of the LCP regulations and developed its land use plan component covering twelve different communities (i.e., North City, La Jolla, Pacific Beach, Mission Beach, Ocean Beach, Peninsula, Otay-Mesa Nestor, and others). Each community plan or LCP Land Use Plan contains policies that protect public views, scenic resources, public access, recreational opportunities and sensitive coastal resources including, but not limited to, beaches, bluffs, slopes, hillsides and environmentally sensitive lands in that community. The Commission's review of the proposed changes to the Land Development Code must assure that development is approved only when consistent with the certified LUPs.

Listed below are representative policy excerpts contained in the certified Land Use Plan segments in the Coastal Overlay Zone for the City of San Diego.

**Torrey Pines Community Plan**

- Land uses adjacent to environmentally sensitive habitats shall not negatively impact those areas.

- Protect, preserve and enhance the variety of natural features within the San Dieguito River Valley including the floodplain, the open waters of the lagoon and river, wetlands, marshlands and uplands.

### **Mira Mesa Community Plan**

- No encroachment shall be permitted into wetlands, including vernal pools. [...]

### **La Jolla LCP Land Use Plan**

- The City should preserve and protect the coastal bluffs, beaches and shoreline areas of La Jolla assuring that development occurs in a manner that protects these resources, encourages sensitive development, retains biodiversity and interconnected habitats and maximizes physical and visual public access to and along the shoreline.

The VPHCP and VPMMP represent the culmination of years of work on the City of San Diego's part to regain incidental take authorization regarding the seven listed vernal pool species. The subsequent years following the 2010 relinquishment has hampered the ability of the City of San Diego to review, guide, and approve development within its boundaries, as well as establish a formal plan for the long-term management of its vernal pool resources.

However, while recognizing the effort the City of San Diego put into drafting the VPHCP and VPMMP, including coordination with USFW and CAFW, review of the plans by Coastal Commission staff identified several issues areas, including but not limited to the identification and categorization of vernal pool habitat, the definition and management of vernal pools that would be labelled as "degraded," and provisions allowing for the infilling or destruction of certain "degraded" vernal pools rather than restoring them.

After discussing these issues with the City of San Diego, given additional time delays to resolve issues and the likelihood that the plans would be approved with modifications that would have to be taken back to the City Council for review and adoption, the City of San Diego opted to instead focus on the majority of its vernal pool habitat located outside of the coastal zone. The City of San Diego then amended its LCP submittal to remove the VPHCP and VPMMP from the amendment request and instead just seek certification of the regulatory revisions inserting references to the plans in the Land Development Code, which serves as the certified IP, so that the plans may be applied outside of the coastal zone.

As it currently stands, under the certified LCP, vernal pools are viewed as a type of wetland habitat and are regulated as such under the ESL regulations. While it is believed that all known vernal pool complexes located within the City of San Diego's coastal zone have been mapped, due to the changing nature of topography over time, it is possible that new vernal pool complexes may arise in the coastal zone. Should that occur, then those resources would also be regulated under the certified ESL regulations, not the VPHCP



and VPMMP. As noted earlier, none of the resource protection measures established in the ESL regulations for coastal zone properties are being modified with this LCPA.

While it is unusual to review regulatory changes referencing documents that themselves will not be part of the certified LCP, the VPHCP and VPMMP are designed to serve as supplementary documents to the City of San Diego's Multiple Species Conservation Plan (MSCP), which is an expansive framework plan designed to provide direction on protecting all of the habitat types located within the City, of which a portion includes vernal pools. The MSCP, despite being adopted by the City of San Diego in the mid-1990's, has never been submitted to the Coastal Commission for certification; and thus to this day, it does not serve as a standard of review when reviewing development that may impact sensitive resources. The standard of review for coastal resources within the City's coastal zone is instead provided by the ESL regulations. Despite the ESL regulations containing reference to the MSCP, the regulations are clear that different standards of review are applied within and outside of the coastal zone, in large part due to the aforementioned uncertified state of the MSCP. This distinction will not change with the certification of the references to the VPHCP and VPMMP, as most of the regulatory changes are minor modifications to the language to insert references to those documents next to the existing references to the MSCP.

Thus, to ensure the continued, consistent review of property and development containing environmentally sensitive lands in the coastal zone in line with past certified Coastal Commission action, the revised LCP amendment as proposed by the City of San Diego will not change the current manner of review required within the coastal zone, and it will help the City of San Diego regain its incidental take authorization regarding its vernal pool habitat outside of the coastal zone. For the reasons explained above, the LCP amendment can be found consistent with the habitat protection policies of the certified land use plans and approved as proposed.

#### **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 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.

An environmental impact report (EIR No. 96-0333) was completed for the original adoption of the Land Development Code, and a Program EIR (No. 104495) was prepared and certified for the General Plan Update. For this local action related to the VPHCP, the City of San Diego commissioned and certified an October 2017 Environmental Impact Report (EIR No. 441044/SCH No. 2011111075).

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 this particular case, the LCP amendment will not have any significant adverse effect on coastal resources, and there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact on the environment. The insertion of references to the Vernal Pool HCP and VPMMP will not change or lessen the existing certified protections for habitat within the coastal zone. In summary, no adverse impacts to coastal resources are anticipated and approval of the proposed amendment is consistent with CEQA.