

**CALIFORNIA COASTAL COMMISSION**

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# F19a

**Date:** September 24, 2020

**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 PLANNER, SAN DIEGO COAST DISTRICT

**Subject:** STAFF RECOMMENDATION ON CITY OF OCEANSIDE MAJOR LCP  
AMENDMENT NO. LCP-6-OCN-20-0048-1 (Article 41 Revisions) for  
Commission Meeting of October 7-9, 2020

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## SYNOPSIS

The subject LCP implementation plan amendment was submitted and filed as complete on July 21, 2020. A one-year time extension was granted on September 10, 2020. As such, the last date for Commission action on this item is October 14, 2021. This report addresses the entire submittal. There are two additional City of Oceanside LCP Amendment requests; LCP Amendment Nos. LCP-6-OCN-19-0146-3 (Transit Overlay District) and LCP-6-OCN-19-0147-3 (Coast Highway Corridor), both of which were recently filed and are currently being reviewed.

### SUMMARY OF AMENDMENT REQUEST

The City is requesting revisions to Article 41 (Use Permits and Variances) to reflect legal concerns and to add the Community Development Commission, the City's Public Housing Agency, as a body that can review and approve use permits and variances, as applicable. Specific revisions include that use permits and variances 1) run with the land; 2) may be transferred through changes in ownership; and, 3) do not expire automatically if the use is discontinued. Previously, a use permit or variance would lapse automatically if not used for six consecutive months. The City has indicated that court decisions have determined that rights established by use permits and variances may only be removed through a public hearing or if removal of the use was specifically included as a condition of approval. Thus, the City wants to remove the provision regarding automatic lapsing for an abandoned use.

### SUMMARY OF STAFF RECOMMENDATION

Staff is recommending the Commission first reject the amendment request as submitted and then approval of the amendment request with the inclusion of a single suggested modification. The primary concern raised regarding the issuance of a use permit include

that a use permit may authorize a non-priority use, such as general commercial or office, in areas that should be retained for visitor-serving or coastal-related uses. As currently certified, Article 41 specifies that a use permit or variance will automatically expire after six consecutive months of non-use. The City has indicated that court decisions clarify that use permits and variances should be treated the same as any other permit, in that the entitlement runs with the land and cannot be lost without a public hearing. The subject amendment is an attempt by the City to bring Article 41 into conformance with the law regarding conditional use permits and variances. However, as revised, it is unclear when or how a use permit or variance may expire if abandoned or not vested. Commission staff acknowledges that once a use permit or variance is vested, there are few instances where expiration would be appropriate. However, if a permit/variance is not vested or if it's abandoned, it is still possible, and may be appropriate, that the use expire, especially if the use permit or variance is no longer consistent with the requirements of the LUP. Therefore, a suggested modification has been included that clarifies that if a use permit/variance is authorized, but is not vested within two years, the applicant must apply for a time extension; and, through that process, the proposed use permit/variance will again be evaluated for consistency with the LUP. The suggested modification also provides clarification that if the use authorized by a use permit/variance lapses for six consecutive months, that use may be considered abandoned and is subject to revocation through a public hearing. Again, this provides a mechanism to ensure that the use authorized by the use permit or development facilitated by a variance remains consistent with applicable policies of the certified LUP. Through the inclusion of the suggested modification, variances and use permits not vested or subsequently abandoned will be reviewed for consistency with the LUP. The City has indicated that the proposed revisions are acceptable.

The appropriate resolutions and motions begin on Page 4. The suggested modifications begin on Page 6. The findings for denial of the Implementation Plan Amendment as submitted begin on Page 7. The findings for approval of the plan, if modified, begin on Page 9.

## **ADDITIONAL INFORMATION**

Further information on the City of Oceanside LCP Amendment No. LCP-6-OCN-20-0048-1 may be obtained from **Toni Ross**, Coastal Planner, at (619) 767-2370.

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## **EXHIBITS**

[Exhibit 1 – Resolution No. 18-R0395-1](#)

[Exhibit 2 – Ordinance No. 18-ORO424-1](#)

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

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## **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**

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 Coastal Commission for review. The City held a Planning Commission meeting with regard to the subject amendment request on May 21, 2018. The City held a City Council meeting on June 20, 2018. All local hearings were duly noticed to the public. Notice of the subject amendment has been distributed to all known interested parties.

## **II. MOTION AND 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.

**1. MOTION:**

I move that the Commission reject the Implementation Program Amendment No. LCP-6-OCN-20-0048-1 for the City of Oceanside as submitted.

**STAFF RECOMMENDATION OF REJECTION:**

Staff recommends a **YES** vote. Passage of this motion will result in rejection of Implementation Program 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 Oceanside and adopts the findings set forth below on grounds that the Implementation Program as submitted does not conform with, and is inadequate to carry out, the provisions of the certified Land Use Plan. Certification of the Implementation Program 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 as submitted.

**2. MOTION:**

I move that the Commission certify the Implementation Program Amendment No. LCP-6-OCN-20-0048-1 for the City of Oceanside 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 Oceanside 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 carryout 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.

### III. SUGGESTED MODIFICATIONS

Staff recommends the following suggested revisions to the proposed Implementation Plan be adopted. The 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. Sections 4108B. Time Extension and D. Discontinuance shall be revised as follows:

##### **Section 4108 Lapse of Approvals; Time Extension; Transferability; Discontinuance; Revocation**

B. Time Extension. Upon application by the project applicant filed prior to the expiration of an approved or conditionally approved use permit or variance, the time at which the use permit or variance expires may be extended by the City Planner, or the Planning Commission, Community Development Commission, or Harbor Board of Directors, as the case may be, for a period or periods not to exceed a total of three years. For any time extension requested in the Coastal Zone, the decisionmaker shall determine that the request is consistent with all applicable policies of the certified Land Use Plan.

Application for renewal shall be made in writing to the City Planner no less than 30 days or more than 90 days prior to expiration. Decisions on Time Extension may be appealed, as described in Article 46.

[...]

D. Discontinuance. Use permits and variances do not expire automatically if the exercise of rights granted by it is discontinued. A use permit or variance may lapse, if the exercise of rights granted by it is discontinued for six consecutive months and a public hearing is held to revoke the use permit or variance. If a use is determined to be abandoned, the former permittee may apply for a new permit or variance.

A use permit approved in the Coastal Zone shall be consistent with all the applicable policies of the certified Land Use Plan.

## **IV. FINDINGS FOR REJECTION OF THE CITY OF OCEANSIDE IMPLEMENTATION PLAN AMENDMENT, AS SUBMITTED**

### **A. AMENDMENT DESCRIPTION**

The City is requesting revisions to Article 41 to reflect legal concerns and to add the Community Development Commission, the City's Public Housing Agency, as a body that can review and approve use permits and variances, as applicable. Specific revisions include that use permits and variances 1) run with the land; 2) may be transferred through changes in ownership; and, 3) do not expire automatically if the use is discontinued.

### **B. SUMMARY 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. The City of Oceanside's LCP contains a number of provisions that require visitor-serving uses be protected, encouraged and provided throughout the coastal zone. Conditional Use Permits, or Use Permits, are often used to facilitate development that would otherwise not be permitted by the zoning established for the site. Thus, for purposes of consistency with the LCP, concerns regarding the issuance of a use permit include that a use permit may authorize a non-priority use, such as general commercial or office, in areas that should be retained for visitor-serving or coastal-related uses.

### **C. SPECIFIC FINDINGS FOR REJECTIONS**

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 and intent of Article 41 is to provide flexibility in application of land use and development regulations necessary to achieve the purposes of the ordinance by establishing procedures for approval, conditional approval, or disapproval of use-permit and variance applications. Use permits are required for use classifications typically having unusual site development features or operating characteristics requiring special consideration so that they may be designed, located, and operated compatibly with uses on adjoining properties and in the surrounding area. Variances are intended to resolve practical difficulties or unnecessary physical hardships that may result from the size, shape, or dimensions of a site or the location of existing structures thereon.

b) **Major Provisions of the Ordinance.** The major provisions of the ordinance include application requirements, required findings, and conditions of approval for all use permit and/or variance applications. For properties located within the Coastal Zone, the ordinance also requires that use permits or variances must be consistent with all applicable policies of the certified Land Use Plan.

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

Applicable sections of the City's LCP include the following provisions:

LUP Section II. Recreation and Visitor Serving Facilities

A. Coastal Act Policies.

The Coastal Act requires adequate distribution of public facilities, such as parking areas, provision of lower cost visitor facilities, protection of oceanfront areas for coastal recreation, granting of priority to commercial recreation uses, reservation of upland areas to support coastal recreation, and distribution of visitor serving facilities throughout the Coastal zone.

Policy 6 – Lower cost visitor serving and recreational facilities shall be protected, encouraged, and, where possible, provided.

Policy 7 – In granting approvals for new development within the Coastal Zone, the City shall give priority to visitor serving commercial recreational facilities over private residential, general industrial or general commercial uses.

Policy 10 – The City shall continue to promote coastal tourism through the revitalization of the coastal area and upgrading of visitor amenities.

As currently certified, Article 41 includes a provision that any use permit or variance authorized by the City will lapse if the rights are not exercised for six consecutive months. The City has indicated that such a requirement is inconsistent with court decisions. In response, the City of Oceanside is proposing to revise its regulations for use permits and variances to clarify that such uses run with the land, are transferrable through sale of the property, and do not automatically expire if the use is discontinued for six consecutive months. The result being that once a use permit is approved, the use/variance has the potential to be retained; effectively changing the allowable use for the property in perpetuity.

As previously stated, the City's LCP contains a number of provisions that promote visitor-serving and coastal-dependent uses over other uses in the Coastal Zone. Currently, with the exception of a few subareas within the Downtown District and the City's Harbor District, the City's coastal area is predominantly zoned residential and contains very few sites designated as Visitor-Serving Commercial. Therefore, it is important that visitor-serving and coastal-dependent uses are protected within the Downtown and Harbor Districts and promoted as appropriate, throughout the City's shoreline. The Commission acknowledges that previous court decisions have resulted in more specific regulations for use permits and variances; however, in order to be consistent with the City's certified LCP, there needs to be a balance between the rights provided by use permits and the need to protect high priority uses in the coastal zone. As proposed, the City's revisions do not provide a clear mechanism for use permits or variances to be re-assessed for consistency with the LCP over time.



An example where this may raise LCP consistency concerns is authorization of an office use within Subdistrict 12 of the Downtown District. Subdistrict 12 is located immediately inland of the City's Municipal Pier and the purpose of this district certified by the LCP is to "provide a special tourist/visitor-oriented subdistrict that relates to the pier, ocean, beach, marina and freeway." As currently proposed by the City, a use permit may be approved at this location that would allow office use within Subdistrict 12 even if the use is abandoned for six consecutive months.

The Commission acknowledges that once a use permit or variance is vested, revocation of that established use is only appropriate in limited cases. However, there are circumstances in which a use permit may be revoked, including if the use is not vested or if the use is considered to be abandoned. In both of these scenarios, a mechanism should be in place where the use is re-assessed for consistency with the LCP. As proposed, use permits may be continued in perpetuity, and may be in conflict with the purpose of the established zone and inconsistent with the applicable policies of the Land Use Plan. The proposed amendment is therefore not consistent with the broader goals of the certified LUP and must be rejected.

## **V. FINDINGS FOR APPROVAL OF THE CITY OF OCEANSIDE IMPLEMENTATION PLAN AMENDMENT, IF MODIFIED**

As detailed above, there are LUP consistency concerns raised by the City's amendment request. Specifically, the proposed revisions do not make clear if and when a use permit may be revoked. Article 41 contains regulations for approving use permits and variances in the Coastal Zone that require the proposal is found to be consistent with the policies of the certified LUP, including those protecting priority-uses, as a required finding for approval. Through these regulations, consistency of the proposed use permit/variance with the certified LUP is ensured. Additionally, while there isn't a lot of land within the City's Coastal Zone specifically designated for visitor-serving uses, there are opportunities in the Downtown District, along Coast Highway and within the Residential-Tourist Zone to provided additional visitor-serving and coastal-related uses. That said, over time and as land redevelops, tourism shifts, and population grows, there remains the potential that the use authorized by a use permit/variance could fall out of conformity with the Land Use Plan. Thus, in order to provide continued consistency with the City's LCP, use permits should include a mechanism for review over time.

The Commission acknowledges that once a use permit/variance is vested, there are very limited circumstances when such a permit can be revoked. However, if the use/variance is not vested, or if the use lapses for six consecutive months, it may be revoked through a public hearing. This provides an opportunity for the City to reevaluate the use permit/variance and ensure that it is consistent with the certified LUP. As proposed, the amendment does not include evaluation of use permits associated with time extensions or discontinuance of use. As a result, uses that are low-priority may be maintained in portions of the City's coastal zone that would be more appropriately reserved for high-priority uses, inconsistent with requirements of the LUP.

To address these concerns, a suggested modification is recommended that includes several revisions to Section 4108 - Lapse of Approvals; Time Extension; Transferability; Discontinuance; Revocation. The first revision is included in subsection B – Time Extension – and clarifies that for any time extension requested in the coastal zone, the decisionmaker shall determine that the request is consistent with all applicable policies of the certified Land Use Plan. Through the inclusion of this modification, if a use permit or variance is authorized, but is not vested within two years, the applicant must apply for a time extension; and, through that process, the proposed use permit/variance will be again be evaluated for consistency with the LUP.

Suggested Modification No. 1 further clarifies that use permits/variances may lapse if the use is discontinued for six consecutive months and revoked through a public hearing. If, through this process, a use is determined to be abandoned and the permit revoked, the modification further clarifies that the former permittee may apply for a new permit or variance. Through these revisions, there is a mechanism to evaluate the continuation of a non-priority use that has not been vested or has been effectively abandoned. The final revision contained within Suggested Modification No. 1 clarifies that if a use/variance is revoked, and the property owner seeks to reapply for a new use permit, the applicable policies contained within the current LUP would apply.

Collectively, Suggested Modification No. 1 provides a mechanism, where appropriate, for use permits/variances to be reevaluated for consistency with the certified LUP. Therefore, the Commission finds the implementation plan, as modified, meets the requirements of, and conforms with the certified Land Use Plan, and the revised implementation plan may be approved.

## **VI. 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. In this particular case, the LCP amendment, with incorporation of the suggested modification, will not have any significant adverse effects on the environment and no significant coastal resource impacts are anticipated. The suggested modification will ensure that development occurs consistent with LCP provisions, including those related to protection of priority uses. Therefore, the Commission finds that the subject IP, as amended, conforms with CEQA.