

**CALIFORNIA COASTAL COMMISSION**

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# Th9a

Date: May 21, 2020

To: COMMISSIONERS AND INTERESTED PERSONS

From: KARL SCHWING, DEPUTY DIRECTOR, SOUTH COAST DISTRICT  
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Subject: STAFF RECOMMENDATION ON CITY OF SAN CLEMENTE MAJOR  
AMENDMENT NO. LCP-5-SCL-18-0099-1 (1-18, MAJOR REMODEL  
DEFINITION) for Commission Meeting of June 11, 2020

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## SYNOPSIS

The City of San Clemente submitted Land Use Plan (LUP) Amendment No. LCP-5-SCL-18-0099-1 (1-18) on December 21, 2018. The City of San Clemente does not currently have a certified Implementation Plan and therefore, does not have a complete certified LCP. LUP Amendment No. 1-18 was filed as complete on March 18, 2019. Pursuant to Section 30517 of the Coastal Act, a one-year time extension was granted at the June 14, 2019 Commission hearing. As such, the last date for Commission action on this item is June 14, 2020. This report addresses the entire submittal.

### SUMMARY OF AMENDMENT REQUEST

The current LUP amendment request submitted for Commission certification by City Council Revised Resolution No. 2018-57 is the City's only LUP amendment request for 2018. The City of San Clemente is requesting that the Commission certify an amendment to the LUP for a single change to the definition of "Major Remodel." The only action before the Commission is the change to the language of the definition in the LUP.

### SUMMARY OF STAFF RECOMMENDATION

Commission staff recommends that the Commission, after public hearing, **deny** the City's proposed LUP Amendment No. 1-18 as submitted, and **certify** the proposed amendment only if modified pursuant to one suggested modification. The suggested modification is necessary to ensure that the LUP meets the requirements and is in conformity with the Chapter 3 policies of the Coastal Act. The City of San Clemente is in support of the recommendation.

The subject of this LUP amendment is the definition of “Major Remodel” in LUP Chapter 7 – Definitions. This definition was added to the LUP as part of a recent 2018 LUP comprehensive update. Soon after the LUP update was certified by the Commission, the City submitted this LUP amendment.

As currently certified, the LUP definition of “Major Remodel” clearly indicates how to calculate the 50% replacement threshold for purposes of determining when such structures must be considered “redevelopment” or “new” development and additionally, it indicates that changes to individual major structural components are cumulative over time from January 1, 1977, when the Coastal Act became effective. The City’s proposed LUP amendment is to change this baseline date for calculating cumulative alterations toward determining whether overall development should be considered “new” from January 1, 1977, to August 10, 2018, the date of certification of the most recent LUP update.

The resource protection policies in Chapter 3, including the need to site and design development to be safe from hazards, began when the Coastal Act became effective on January 1, 1977. Moreover, this is the date that Commission staff has used and currently uses when evaluating this question for proposed projects requiring a CDP in San Clemente.

It is also important to note that the definition of “Major Remodel” does not apply to the entire coastal zone in the City of San Clemente. It is limited to the hazardous areas within the coastal zone. It only applies to alterations to an existing bluff top, beachfront, or coastal canyon single-family residence or other principal structure, or portions thereof. Structures on coastal bluff lots and on beachfront lots are subject to coastal and geologic hazards; structures on coastal canyon lots are subject to geologic and fire hazards. The majority of the City’s coastal areas are already developed with residential structures, some of which were developed prior to passage of the Coastal Act and others that have been authorized by Commission-issued CDPs, as the City does not have a certified LCP. Thus, there may be development projects in these hazardous areas where alterations to an existing structure are so extensive that they go beyond the threshold of repair and maintenance, such that the structure should be considered “redevelopment” or a “new structure” that must then conform to all applicable Coastal Act and LUP policies. This determination stems from Coastal Act Section 30610(d) (which relates to repair and maintenance) and implementing regulation Section 13252(b), which states that replacement of 50% or more of an existing structure does not constitute repair and maintenance, but rather constitutes a replacement structure. Such a replacement structure must be consistent with current LUP policies and Chapter 3 policies of the Coastal Act. For example, residential development in a hazardous area is only allowed provided it meets the standards of Coastal Act Section 30253 to minimize risks to life and property in areas of high geologic, flood, and fire hazard, assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area.

The City has suggested using the most recent LUP update certification date for two reasons. First, the City argues that using that date will provide notice of the redevelopment standard to homeowners going forward. Second, the City states that using the 1977 date

would be too time consuming and difficult for City staff to find all associated records needed to calculate if a particular residence has been redeveloped over time, per the newly certified LUP "Major Remodel" definition. Commission staff has been issuing CDPs in San Clemente since 1977, has records of such coastal development, and will work collaboratively with the City to research historical records as needed.

Per the findings in this report, Staff recommends that the Commission find that as proposed, the City's LUP amendment request does not conform with Chapter 3 of the Coastal Act. The suggested modification language accordingly removes mention of a baseline date in the calculation of cumulative alterations toward determining whether overall development should be considered "new." Utilizing the January 1, 1977 date would not be unreasonable or unduly burdensome, as stated by the City. The Commission should continue its routine practice of applying the effective date of the Coastal Act, which has been applied in San Clemente for many years and such practice should continue, consistent with the Chapter 3 policies.

The motions and resolutions begin on page 6. The suggested modification is on page 7. The findings for denial of the LUP Amendment as submitted and approval of the Amendment, if modified, begin on page 8.

#### **ADDITIONAL INFORMATION**

Further information on the City of San Clemente's LCP Amendment 1-18 may be obtained from Liliana Roman, Coastal Program Analyst, at (562) 590-5071. If you wish to comment on the proposed amendment, please do so via regular mail (directed to the South Coast District Office) or email (by emailing [southcoast@coastal.ca.gov](mailto:southcoast@coastal.ca.gov)) by 5pm on Friday, June 5, 2020.

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**EXHIBITS**

Exhibit 1 – City of San Clemente Revised Resolution No. 18-57

## **I. OVERVIEW**

### **A. LCP HISTORY**

The City of San Clemente's Land Use Plan (LUP) was originally certified by the Commission on May 11, 1988. After a comprehensive update to the City's General Plan in 1993, the creation of new coastal land uses mandated that the certified LUP be updated to make it consistent with the Land Use Element of the General Plan. On March 14, 1996, the Commission approved, and certified, an updated LUP.

In 2016, following a newly approved General Plan, the City submitted an LUP amendment for a comprehensive LUP update to make the LUP consistent with the Land Use Element of the General Plan. On August 10, 2018, the Commission certified the comprehensive LUP update. However, at the City's request, the 2018 LUP comprehensive update (with new policies to address sea level rise impacts) would not apply to the oceanfront Capistrano Shores Mobile Home Park. Thus, the 1996 LUP continues to be the applicable certified LUP for Capistrano Shores Mobile Home Park.

The City currently has two certified LUPs, but lacks an Implementation Plan (IP). As such, the Commission retains permit issuance authority. The City is currently working on a Draft IP, with the aid of multiple LCP grant funds.

### **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 Chapter 3 of the Coastal Act. Specifically, Section 30512(c) states:

(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), a decision to certify shall require a majority vote of the appointed membership of the Commission.

Pursuant to Section 30512, the Commission shall take action by a majority vote of the Commissioners present.

### **C. PUBLIC PARTICIPATION**

The City 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.

## 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 certify Land Use Plan Amendment No. 1-18 for the City of San Clemente certified Land Use Plan as submitted by the City of San Clemente.

### **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 to certify as submitted passes only upon 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 Land Use Plan Amendment No. 1-18 for the City of San Clemente certified Land Use Plan as submitted and adopts the findings set forth below on grounds that the land use plan as submitted does not meet the requirements of and is not in conformity with the policies of Chapter 3 of the 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.

### 2. MOTION:

I move that the Commission certify Land Use Plan Amendment No. 1-18 for the City of San Clemente certified Land Use Plan as submitted if modified as suggested in the staff recommendation.

### **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 WITH SUGGESTED MODIFICATIONS:

The Commission hereby certifies the Land Use Plan Amendment submitted by the City of San Clemente, if modified as suggested, and adopts the findings set forth below on grounds that the land use plan amendment with the suggested modifications will meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the land use plan 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 plan 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 that will result from certification of the land use plan amendment if modified as suggested.

### III. SUGGESTED MODIFICATIONS

Staff recommends the following suggested revisions to the proposed LUP Amendment. Existing certified language is shown in regular text. The City's proposed LUP amendment language changes are shown in single underline and ~~single strikethrough~~. The Commission's proposed new text added by suggested modification is shown **bold and double underlined**, and text suggested to be deleted is shown in ~~double strikethrough~~.

**"Major Remodel."** Alterations that involve (1) additions to an existing structure, (2) exterior and/or interior renovations, and/or (3) demolition of an existing bluff top or beachfront or coastal canyon single-family residence or other principal structure, or portions thereof, which results in:

1. Alteration (**including demolition, renovation, or replacement**) of 50% or more of major structural components including exterior walls, floor and roof structure, and foundation, or a 50% increase in floor area. Alterations are not additive between individual major structural components; ~~or however, changes to individual major structural components are cumulative over time from January 1, 1977 the LUP effective certification date (August 10, 2018).~~

of

2. Demolition, renovation or replacement of less than 50% of a major structural component where the proposed alteration would result in cumulative alterations exceeding 50% or more of a major structural component, taking into consideration previous alterations ~~approved on or after the date of certification of the LUP LUP effective certification date (August 10, 2018);~~ or an alteration that constitutes less than 50% increase in floor area where the proposed alteration

would result in a cumulative addition of greater than 50% of the floor area taking into consideration previous additions ~~approved on or after January 1, 1977~~ the LUP effective certification date (August 10, 2018).

#### **IV. FINDINGS FOR DENIAL AS SUBMITTED, AND APPROVAL OF THE AMENDMENT IF MODIFIED AS SUGGESTED**

The following findings support the Commission’s denial of the proposed LUP Amendment as submitted and approval if modified as suggested in Section III (Suggested Modifications) above.

The Commission hereby finds and declares as follows:

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

The proposed LUP amendment would change the language of a single definition, the definition for “Major Remodel” contained in Chapter 7 – Definitions of the certified LUP. The City’s proposed changes to this definition would delete reference to January 1, 1977, as the baseline date for which remodels are to be cumulatively tracked over time and replace that date with August 10, 2018, the date of the most recent comprehensive LUP update. The City’s LUP was originally certified in 1988, comprehensively updated in 1995, and comprehensively updated for a second time on August 10, 2018. The subject definition of “Major Remodel” was added to the LUP in the 2018 LUP comprehensive update. Soon after the LUP update was certified by the Commission, the City submitted this subject LUP amendment. The City’s proposed deleted language is shown as ~~strike through~~ and proposed new language is shown in underline, as follows:

**“Major Remodel”** Alterations that involve (1) additions to an existing structure, (2) exterior and/or interior renovations, and/or (3) demolition of an existing bluff top or beachfront or coastal canyon single-family residence or other principal structure, or portions thereof, which results in:

a. Alteration of 50% or more of major structural components including exterior walls, floor and roof structure, and foundation, or a 50% increase in floor area. Alterations are not additive between individual major structural components; however, changes to individual major structural components are cumulative over time from ~~January 1, 1977~~ the LUP effective certification date (August 10, 2018).

or

b. Demolition, renovation or replacement of less than 50% of a major structural component where the proposed alteration would result in cumulative alterations

exceeding 50% or more of a major structural component, taking into consideration previous alterations approved on or after the ~~date of certification of the LUP~~ LUP effective certification date (August 10, 2018); or an alteration that constitutes less than 50% increase in floor area where the proposed alteration would result in a cumulative addition of greater than 50% of the floor area taking into consideration previous additions approved on or after January 1, 1977 the LUP effective certification date (August 10, 2018).

## **B. CONSISTENCY ANALYSIS**

The Commission finds, pursuant to Section 30512.2(b) of the Coastal Act, that the LUP amendment as set forth in the preceding section, is 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. It also finds that if modified as proposed by staff, it would be in conformance with Chapter 3. Section 30001.5 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 of 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.

Residential development in a hazardous area is only allowed if it meets the standards set in Coastal Act Section 30253, which requires, in part, for new development to: (a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard; and (b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

As currently certified, the LUP definition of “Major Remodel” clearly indicates how to calculate the 50% replacement threshold for purposes of determining when such structures must be considered “redevelopment” or “new” development. The current definition indicates that changes to individual major structural components are cumulative over time from January 1, 1977, when regulations requiring CDPs were implemented. Furthermore, the definition is clearly limited in its application. It only applies to alterations to an existing bluff top, beachfront, or coastal canyon single-family residence or other principal structure, or portions thereof, and does not apply to all residential structures in the coastal zone in the City of San Clemente. Structures on coastal bluff lots and on beachfront lots are subject to coastal and geologic hazards; structures on coastal canyon lots are subject to geologic and fire hazards. Thus, it is important for the non-conforming features of those sites to be eliminated pursuant to current development standards to minimize risk to life and property when new development is proposed. The majority of the City’s hazardous areas within the coastal zone are already developed with residential structures, some of which were developed prior to passage of the Coastal Act and others that have been authorized by Commission-issued CDPs, as the City does not have a certified LCP. Development in these hazardous areas, if it exceeds the threshold of “repair and maintenance” such that the structure should be considered “redevelopment” or a “new structure,” must conform to all applicable Coastal Act and LUP policies in order to eliminate or mitigate any risks to life and property.

The City argues that this language is necessary to allow for “minor” remodeling projects. Even minor projects, however, cumulatively extend the life of structures that may no longer be sited and designed in a manner consistent with the Coastal Act and LUP. Thus, as proposed, the LUP does not ensure that development that is effectively remodeled to the point that it is new development is appropriately evaluated for consistency with Chapter 3 and the LUP.

With respect to the baseline date for calculating cumulative alterations toward determining whether overall development should be considered “new”, the City suggests that the appropriate date would be the date of the most recent LUP update, August 10, 2018, when the “Major Remodel” definition was added to the LUP Definitions Chapter. However, the resource protection policies of Chapter 3, including requirements to site and design development to be safe from hazards, were effective on January 1, 1977. Moreover, this is the date that Commission staff has used for the past 40+ years and currently uses when evaluating this very question for proposed remodel projects in the City’s coastal zone.

The Commission approved the recent comprehensive LUP update with suggested modifications as recommended at its February 8, 2018 hearing. Many additional modifications were made at the hearing by the Commission at the request of the City, including the removal of any mention of the January 1, 1977 date from policies throughout the document pertaining to existing development as it pertains to protections that may be granted under Section 30235 of the Coastal Act. The 2018 LUP update was certified without a definition of “existing development” with the intention of returning to the issue at a future date as part of the Commission’s review of the City’s Implementation Plan. However, the use of the January 1, 1977 date in the definition of “Major Remodel” in the 2018 LUP does not pertain to protections that may be granted to existing development per

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(1-18, Major Remodel Definition)

Section 30235. It pertains to the baseline date for calculating cumulative alterations in determining whether overall development in areas of known hazards should be considered “new,” and as such, conforms with Coastal Act and LUP policies.

The City has suggested using the most recent LUP update certification date for two reasons. First, the City argues that using that date will provide notice of the redevelopment standard to homeowners going forward. Second, the City states that using the 1977 date would be too time consuming and difficult for City staff to find all associated records needed to calculate if a particular residence has been redeveloped over time, per the newly certified LUP “Major Remodel” definition.

In response to the question of notice, passage of the Coastal Act itself provided notice to homeowners in the Coastal Zone that additional land use rules and regulations would be applicable to their properties. In the years following the enactment of the Coastal Act, the Commission identified bluff top, oceanfront, and coastal canyon lots as hazardous, and early permit actions reflected the understanding that residential development must be adequately set back from geological and coastal hazards, which would also protect coastal resources such as public access, biological, habitat, and visual resources. The LUP policies of the original 1988 LUP codified the development standards that the Commission had already applied by that time with respect to individual permits over the years in order to ensure compliance with Coastal Act requirements. Moreover, the 1977 date is already used by Commission staff when analyzing current permit applications to determine if a structure meets the replacement structure parameters per Section 30610(d) and CCR Section 13252 and thus is required to conform to Coastal Act and LUP policies. Thus, when the definition of “Major Remodel” was added to the LUP in 2018, the definition simply specified the standard that has been applicable to homeowners for years. Thus, homeowners have had adequate notice regarding the 1977 date. As this is the standard that the Commission has applied and continues to implement, using 1977 as the baseline is both reasonable and fair.

With regard to locating records, understanding and researching the permit and development history of a parcel where development is proposed is a routine practice and standard planning principle that is not unique to the City of San Clemente, or the proposed redevelopment standard. The permit history of all applications for development is typically researched as a matter of course for local government planning departments in order to understand whether there are any existing land use conditions or restrictions applicable to the property, to determine whether any violations exist on the property, and to understand whether past Commission or City findings, terms, or conditions may reveal unique circumstances specific to a particular parcel. Moreover, as noted above, the Commission has been the coastal permitting authority in the City of San Clemente since at least 1977<sup>1</sup>, and the Commission retains permit files for all authorized development. Commission staff is always available to assist the City in permit history research and may provide information necessary to assist in determining what constitutes “new development.”

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<sup>1</sup> Commission staff has coastal permit records from San Clemente projects beginning in 1972, approved by the interim South Coast Regional Commission between 1972-1976.

The Commission therefore finds, that as proposed, the City's LUP amendment request to replace the baseline date of January 1, 1977 with August 10, 2018 for the purposes of calculating cumulative alterations in determining whether overall development should be considered "new" does not conform with Chapter 3 of the Coastal Act or the goals of the state for the coastal zone with regard to Section 30001.5(e). The suggested modification language therefore removes mention of a baseline date for the purpose of tallying cumulative alterations. Utilizing the 1977 date would not be unreasonable or unduly burdensome, as stated by the City. The Commission should continue its routine practice that has been applied in San Clemente for many years.

### **C. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT**

Section 21080.9 of the California Public Resources Code – within the California Environmental Quality Act (CEQA) – exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its activities and approvals necessary for the preparation and adoption of a local coastal program (LCP). Instead, the CEQA responsibilities are assigned to 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.

Nevertheless, the Commission is required, in approving an LCP submittal, to find that the approval of the proposed LCP, as amended, does conform with some CEQA provisions, including the requirement in CEQA section 21080.5(d)(2)(A) that the amended LCP will not be approved or adopted as proposed if there are feasible alternative or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. 14 C.C.R. §§ 13540(f) and 13555(b). The City is proposing an LUP amendment. As discussed above, the LUP amendment as originally submitted does not meet the requirements and is not in conformity with the policies of Chapter 3 of the Coastal Act. The Commission has, therefore, modified the proposed LUP amendment to meet the requirements of Chapter 3 policies, as required by the Coastal Act. As discussed in the preceding sections, the Commission's suggested modification represents the most environmentally protective alternative to bring the proposed LUP amendment into conformity with Chapter 3 policies. Therefore, the Commission finds that there are no other feasible alternatives or mitigation measures under the meaning of CEQA which would further reduce the potential for significant adverse environmental impacts.