

CALIFORNIA COASTAL COMMISSION

SOUTH COAST DISTRICT OFFICE
301 E. OCEAN BLVD, SUITE 300
LONG BEACH, CA 90802-4325
VOICE (562) 590-5071
FAX (562) 590-5084



Th9c

DATE: May 22, 2020

TO: Commissioners and Interested Persons

FROM: Karl Schwing, Deputy Director
Amber Dobson, District Manager
Zach Rehm, District Supervisor
Marlene Alvarado, Coastal Program Analyst

SUBJECT: Major Amendment Request No. 4-19 (LCP-5-LGB-20-0004-3) to the City of Laguna Beach Certified Local Coastal Program, for Public Hearing and Commission Action at the June 11, 2020 meeting.

SUMMARY OF LCP AMENDMENT REQUEST NO. 4-19

The City of Laguna Beach (City) is requesting that the Coastal Commission certify an amendment to the Implementation Plan (IP) portion of the City's certified Local Coastal Program (LCP) to amend provisions in Chapters 25.05 (Administration) and 25.07 (Coastal Development Permits) of the City's Zoning Code (Title 25). Chapter 25.05 is titled "Administration" and provides standards for most of the City's permitting processes. Chapter 25.05 includes procedures for processing the City's Administrative Use Permits, Variances, Conditional Use Permits, Temporary Use Permits, and Design Review, as well as public notice requirements, appeals, and revocations of those permits. Chapter 25.07 provides the standards for the City's coastal development permitting process.

The proposed LCP amendment would correct or clarify ambiguities within the existing language of Title 25, and would: 1) provide clarifications to the exemptions provisions of the IP, including but not limited to the existing repair and maintenance provisions; 2) create a new section with procedures for waiver for certain de minimis development; 3) provide clarification on the effective date of a coastal development permit when a project is appealed to, and approved by, the Coastal Commission; 4) create a new section with procedures for administrative review and waiver of public hearings for certain minor development; and 5) eliminate the requirement for all coastal development permit applications to also require design review.

LCP Amendment No. 4-19 affects only the City's certified IP, which is the implementing ordinances portion of the certified LCP. Changes proposed were submitted pursuant to City Council Resolution No. 19.093 ([Exhibit 1](#)), and are reflected in City Council Ordinance No. 1642 ([Exhibit 2](#)). No changes are proposed to the Land Use Plan (LUP) portion of the certified LCP.

SUMMARY OF STAFF RECOMMENDATION

The City of Laguna Beach (City) has prepared and submitted draft language with proposed changes to the Implementation Plan (IP) portion of the City's certified Local Coastal Program (LCP) summarized above.

Suggested modifications are being made to more clearly identify what constitutes development requiring a CDP, the different types of CDPs available, what development is exempt from CDP requirements, and the standards and procedures that must be met and implemented, all consistent with Coastal Act and Land Use Plan (LUP) requirements. In addition, the IP, as modified, would maximize public involvement in coastal permitting decisions.

Staff is recommending that the Commission, after public hearing:

Deny the amendment request to the Implementation Plan **as submitted**.

Approve the amendment request to the Implementation Plan **if modified as recommended**.

The proposed amendment, if modified as recommended, will be in conformance with and adequate to carry out the provisions of the certified Land Use Plan. **The motions to accomplish this are found on pages 5-6.**

DEADLINE FOR COMMISSION ACTION

The proposed LCP amendment was deemed complete on December 30, 2019. A request to extend the deadline to act was granted on February 13, 2020. The final date by which the Commission must act on this LCP amendment request is February 28, 2021.

ADDITIONAL INFORMATION:

Commission staff worked closely with the City to reconcile the Laguna Beach certified LCP documents, which was completed earlier this year (April 2020) and made available to members of the public to satisfy a Public Records Act request. Commission staff has verified the certified language, which is reflected in this staff report.

Copies of this staff report are available on the Commission's website at www.coastal.ca.gov. For additional information, contact Marlene Alvarado in the Long Beach office at (562) 590-5071.

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EXHIBITS

[Exhibit 1 – City Council Resolution No. 19.093](#)

[Exhibit 2 – City Ordinance No. 1642 \(Final Language Adopted by City\)](#)

[Exhibit 3 – Strikethrough/Insert Version of Proposed Changes to LCP](#)

I. PROCEDURAL ISSUES

A. STANDARD OF REVIEW

The standard of review for the proposed amendment to the Implementation Plan (Zoning Ordinance) of the City of Laguna Beach certified Local Coastal Program (certified 1993), pursuant to Sections 30513 (regarding ordinances) and 30514 (regarding amendments) of the Coastal Act, is whether the Implementation Plan (IP) would be in conformance with, and adequate to carry out, the provisions of the Land Use Plan (LUP) portion of the City of Laguna Beach's certified Local Coastal Program (a substantive file document).

B. SUMMARY OF PUBLIC PARTICIPATION

Section 30503 of the Coastal Act requires public input in Local Coastal Program development. It states: "During the preparation, approval, certification, and amendment of any local coastal program, the public, as well as all affected governmental agencies, including special districts, shall be provided maximum opportunities to participate. Prior to submission of a local coastal program for approval, local governments shall hold a public hearing or hearings on that portion of the program, which has not been subjected to public hearings within four years of such submission."

Ordinance No. 1642: The proposed changes affecting Chapter 25.05 and 25.07 were the subject of two related City Council public hearings on December 3, 2019, and December 17, 2019; as well as one Planning Commission public hearing on November 20, 2019. Because the ordinance is of citywide effect, a 1/4th page notice was published in the Los Angeles Times newspaper.

C. PROCEDURAL REQUIREMENTS

If the Commission certifies the LCP amendment as submitted, no further City Council action will be necessary. City staff has indicated that the ordinance will only become final after certification by the Commission, but no formal action is required. Should the Commission deny the LCP Amendment, as submitted, without suggested modifications, no further action is required by either the Commission or the City, and the LCP amendment is not effective. Should the Commission deny the LCP Amendment, as submitted, but then approve it with suggested modifications, then the City Council may consider accepting the suggested modifications and submitting them by resolution to the Executive Director for a determination that the City's acceptance is consistent with the Commission's action. In that scenario, pursuant to Section 13544(c) of Title 14 of the California Code of Regulations, the modified LCP Amendment will become final at a subsequent Commission meeting if the Commission concurs with the Executive Director's Determination that the City's action in accepting the suggested modifications approved by the Commission for LCP Amendment 4-19 is legally adequate. If the City does not accept the suggested modifications within six months of the Commission's action, then the LCP amendment remains uncertified and not effective within the coastal zone.

II. MOTIONS AND RESOLUTIONS

A. DENIAL OF THE IP AMENDMENT AS SUBMITTED

MOTION I:

I move that the Commission reject Implementation Plan Amendment No. 4-19 (LCP-5-LGB-20-0004-3) for the City of Laguna Beach as submitted.

Staff recommends a **YES** vote. Passage of this motion will result in rejection of Implementation Plan amendment 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 I:

The Commission hereby denies certification of the Amendment to the Implementation Plan submitted for the City of Laguna Beach certified LCP and adopts the findings set forth below on grounds that the Amendment to the Implementation Plan as submitted does not conform with and is not adequate to carry out the provisions of the certified Land Use Plan. Certification of the Amendment to 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 Amendment to the Implementation Program as submitted.

B. APPROVAL OF THE IP AMENDMENT IF MODIFIED AS SUGGESTED

MOTION II:

I move that the Commission **certify** Implementation Plan Amendment No. 4-19 (LCP-5-LGB-20-0004-3) for the City of Laguna Beach certified LCP if it is modified pursuant to the staff recommendation.

Staff recommends a **YES** vote. Passage of this motion will result in the certification of the IP Amendment with suggested modifications and adoption of the following resolution and findings. The motion to certify with suggested modifications passes only upon an affirmative vote of the majority of the Commissioners present.

RESOLUTION II:

The Commission hereby certifies the Amendment to the Implementation Plan for the City of Laguna Beach certified LCP if modified as suggested and adopts the findings set forth below on grounds that the Amendment to the Implementation Plan with the suggested modifications will be in conformance with and adequate to carry out the provisions of the certified Land Use Plan. Certification of the Amendment to the Implementation Program 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 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.

III. SUGGESTED MODIFICATIONS

Certification of the LCP Amendment is subject to the following modifications. Text added to the City's proposed zoning code by the suggested modification is **bold and double-underlined**, and text suggested to be deleted is ~~struck through twice and in bold~~. Only those subsections of the LCP Amendment for which modifications are being suggested are shown below. The underlying language consists of the City's proposed amending language (shown as text underlined or struckthrough once) and the existing certified language.

SUGGESTED MODIFICATION 1 TO SECTION 25.07.008: Clarify classifications of development that are exempt or not exempt from coastal development permit requirements; and clarify procedures concerning notification of record of exemptions and appealability of exemptions.

25.07.008 Exemptions.

i) Certain types of development, described as follows, are considered to be without risk of adverse environmental effect on coastal resources, including public access, and therefore do not require a coastal development permit unless indicated otherwise.

(A) Improvements to Single-~~Family~~ **Home Dwellings**. Improvements to single-family dwellings and mobilehomes, including structures **located on the same lot as the single-family dwelling that are** normally associated with a single-family ~~residence~~ **dwelling** such as garages, swimming pools, fences, storage sheds and landscaping, are exempt unless classified as one of the following:

- (1) Guest houses and self-contained ~~second residential~~ **accessory dwelling units**;
- (2) Improvements to any structure **where the structure or the improvement is located on a beach, in a wetland or stream, seaward of the mean high tide line, or where the structure or proposed improvement would encroach** within fifty feet of a coastal bluff edge, **in an environmentally sensitive habitat area, and/or in an area designated as highly scenic in the certified Land Use Plan;**
- (3) Improvements to any structure **where the structure or the improvement is located** between the sea and **the** first public roadway paralleling the sea, or within three hundred feet **(300)** of the inland extent of any beach **or of the mean high tide line of the sea where there is no beach**, whichever is the greater distance when such improvements would constitute or result in any of the following:
 - (a) An increase of ten percent or more of the internal floor area of ~~the~~ **an** existing structure ~~(s)~~ on the building site or an additional increase in floor area **(meaning an improvement to the structure had previously occurred**

- pursuant to an exemption) bringing the aggregate increase to ten percent or more cumulatively over time,
- (b) ~~The construction of an additional story or loft or~~ An increase in **building** height of more than ten percent of any structure,
 - (c) The construction, placement or establishment of ~~any significant a~~ detached structure such as a garage, fence, ~~or~~ shoreline protective works, or docks;
- (4) Expansion or construction of a water well or septic system;
 - (5) Improvements in an area which the Coastal Commission has determined to have a critically short water supply that must be maintained for the protection of coastal resources or public recreational use including the construction of any major water-using development not essential to residential use such as, but not limited to, swimming pools or the construction or extension of any landscaping irrigation system;
 - (6) Any improvement where the coastal development permit issued for the original structure indicates that future ~~additions~~ improvements would require a coastal development permit;
 - (7) Any significant alteration of land forms including removal or placement of vegetation on a beach, wetland, or sand dune, or within fifty feet of the edge of a coastal bluff or stream, or in areas of natural vegetation or in other environmentally sensitive areas designated by resolution of the Coastal Commission as a significant natural habitat.
- (B) Improvements to Structures Other Than Single-Family **Dwellings**. Improvements to an existing structure (including attached fixtures and landscaping) other than single-family dwellings or public works facilities are exempt unless classified under one of the following:
- (1) All ~~nonexemption~~ development contained in subsections (A)(1) through ~~(7)~~ of this section or in a stream or lake;
 - (2) Improvements to any structure which would result in a change in the intensity of use of the structure;
 - (3) Improvements pursuant to conversion of an existing multiple-unit residential structure or visitor-serving commercial use to a use involving a fee ownership or long-term leasehold, including but not limited to a condominium or stock cooperative conversion;
 - (4) Any significant alteration of land forms including removal or placement of vegetation on a beach, wetland or sand dune, within one hundred (100) feet of the edge of a coastal bluff or stream or in areas of natural vegetation designated by resolution of the coastal commission as a significant natural habitat.
 - ~~(5) Any improvements to a structure where the development permit issued for the original structure by the coastal commission indicated that any future improvements would require a development permit.~~
- (C) Repair and Maintenance Activities. Repair and maintenance activities of shoreline ~~protective works~~ that do not result in an addition to, or enlargement or expansion of, unless classified under one of the following the object of those such repair or and

maintenance activities, except the following types of development, which are not exempt:

- (1) Repair or maintenance of a sea wall revetment, bluff retaining wall, breakwater, groin, culvert, outfall or similar shoreline work ~~which that~~ involves any of the following:
 - (a) Substantial alteration of the foundation including pilings and other surface and subsurface structures,
 - (b) The placement, whether temporary or permanent, of rip-rap, or artificial berms of sand or other beach material, or any other form of solid material, on a beach or in coastal waters, streams, wetlands, estuaries and lakes, or on shoreline protective works,
 - (c) The replacement of twenty (20) percent or more of the materials of an existing structure with materials of a different kind,
 - (d) The presence, whether temporary or permanent, of mechanized construction equipment or materials on any sand area or bluff or environmentally sensitive habitat area or within twenty (20) feet of coastal waters or streams;
- (2) The replacement of twenty (20) percent or more of a sea wall revetment, bluff retaining wall, breakwater, groin, or similar protective work under one ownership, unless destroyed by natural disaster;
- (3) Any method of routine maintenance dredging that involves:
 - ~~(a) The~~ dredging of one hundred thousand (100,000) cubic yards or more within a twelve (12) month period; or ~~in~~
 - ~~(b) The~~ placement of dredge spoils of any quantity within an environmentally sensitive habitat area, or any sand area, within fifty (50) feet of the edge of a coastal bluff or environmentally sensitive habitat area, or within twenty (20) feet of coastal waters or streams; or
 - ~~(c) The~~ removal, sale, or disposal of dredge spoils of any quantity that would be suitable for beach nourishment in an area the ~~Coastal Commission~~ has declared by resolution to have a critically short sand supply that must be maintained for protection of structures, coastal access or public recreational use;
- (4) Any repair or maintenance to facilities or structures or work located in an environmentally sensitive habitat area, any sand area, within fifty (50) feet of the edge of a coastal bluff or environmentally sensitive habitat area; or within twenty (20) feet of any coastal waters ~~and/or~~ streams that include:
 - (a) The placement or removal, whether temporary or permanent, of rip-rap, rocks, sand or other beach materials or any other forms of solid materials,
 - (b) The presence, whether temporary or permanent, of mechanized equipment (excluding small hand tools such as power saws, hand drills, nail guns) or outdoor storage of construction materials within the areas identified above in this subsection, except that the use of such

~~equipment solely for routine beach cleaning and park maintenance shall not require a coastal development permit;~~

(D) Utility Connections. The installation, testing, and placement in service or the replacement of any necessary utility connection between an existing service facility and any development approved pursuant to this chapter is exempt, provided that the City may require reasonable conditions for mitigation measures for any impacts on coastal resources, including scenic resources.

(E) Destroyed Structures. The replacement of any structure, other than a public works facility, destroyed by natural disaster is exempt, provided such replacement structure is designed and intended for the same use as the destroyed structure and further, such replacement structure does not exceed the floor area, height or bulk of the destroyed structure by more than ten percent and is sited in the same location on the same building site as the destroyed structure.

(F) Temporary Events on Beach Areas.

(1) Temporary events on beach areas are exempt from coastal development permit requirements except those which meet all of the following criteria:

(a) Are held between Memorial Day weekend and Labor Day; and

(b) Occupy all or a portion of a sandy beach area; and

(c) Involve a charge for general public admission or seating where no fee is currently charged for use of the same area (not including booth or entry fees).

(2) The Community Development Director may also exclude from coastal development permit requirements temporary events on beach areas meeting all of the above criteria when:

(a) The fee is preferred seating only and more than 75% of the provided seating capacity is available free of charge for general public use; or

(b) The event is held on sandy beach area in a remote location with minimal demand for public use, and there is no potential for adverse effect on sensitive coastal resources; or

(c) The event is less than one day in duration; or

(d) The event has previously received a coastal development permit and will be held in the same location, at a similar season, and for the same duration, with operating and environmental conditions substantially the same as those associated with the previously-approved event.

(3) The Community Development Director may determine that a temporary event on beach areas meeting all of the above criteria shall be subject to coastal development review, if the Community Development Director determines that unique or changing circumstances exist relative to a particular temporary event that has the potential for significant adverse impacts on coastal resources. Such circumstances may include the following:

(a) The event, either individually or together with other temporary events scheduled before or after the particular event, precludes the general public from use of a public recreational area for a significant period of time; or

- (b) The event and its associated activities or access requirements will either directly or indirectly impact environmentally sensitive habitat areas, rare or endangered species, significant scenic resources, or other coastal resources as defined in this section.
 - (c) The event is scheduled between Memorial Day weekend and Labor Day and would restrict public use of roadways or beach parking areas or otherwise significantly impact public use or access to coastal waters.
 - (d) The event has historically required a coastal development permit to address and monitor associated impacts to coastal resources.
- (4) Definitions. For purposes of this subsection (Section 25.07.008(i)(F)), the following definitions shall apply:
- (a) “Temporary event(s)” means an activity or use that constitutes development as defined in Section 25.07.006(D); and is an activity or function of limited duration; and involves the placement of non-permanent structures; and/or involves exclusive use of a sandy beach, parkland, filled tidelands, water, streets or parking area which is otherwise open and available for general public use.
 - (b) “Limited duration” means a period of time which does not exceed a two week period on a continual basis, or does not exceed a consecutive four month period on an intermittent basis;
 - (c) “Non-permanent structures” include, but are not limited to, bleachers, perimeter fencing, vendor tents/canopies, judging stands, trailers, portable toilets, sound/video equipment, stages, platforms, movie/film sets, etc., which do not involve grading or landform alteration for installation.
 - (d) “Exclusive use” means a use that precludes use in the area of the event for public recreation, beach access or access to coastal waters other than for or through the event itself.
 - (e) “Coastal resources” include, but are not limited to, public access opportunities, visitor and recreational facilities, water-oriented activities, marine resources, biological resources, environmentally sensitive habitat areas, agricultural lands, and archaeological or paleontological resources.
 - (f) “Sandy beach area” includes publicly owned and privately owned sandy areas fronting on coastal waters, regardless of the existence of potential prescriptive rights or a public trust interest.
- ii) Record of Exemptions. Consistent with Section 25.07.014(A) of this chapter, the Community Development Director shall maintain a record of all development within the coastal zone that were exempted from the requirements of the coastal development permit process. This record shall be available on the City’s website. The record of exemption shall include the name of the applicant, the location of the project, and a complete description of the project. For exemptions issued for development that is appealable to the Coastal Commission, the Community Development Director shall also provide notification to the

Executive Director of the Coastal Commission of any record of exemptions within seven (7) calendar days of the exemption determination or issuance.

iii) Appeal of Exemption Determination to Coastal Commission. Appealable development, as defined in Section 25.07.006, that is exempted from the requirements of the coastal development permit process shall not commence until the applicable appeal period expires without the lodging of an appeal, or, if appealed, until all appeals to the Coastal Commission have been exhausted. Exemption determinations appealable to the Coastal Commission may be appealed by a qualified appellant, as defined in Section 25.07.006(L), within ten (10) working days from the date of Coastal Commission receipt and filing of a complete record of exemption. The grounds for appeal to the Commission shall be limited to an allegation that the development is not exempt as set forth in Section 25.07.008(i) above. (Ord. 1253 § 1, 1992)

SUGGESTED MODIFICATION 2 TO NEW SECTION 25.07.009: Clarify notification requirements for de minimis waivers, and clarify the criteria and applicability of de minimis waivers.

25.07.009 Waiver for De Minimis Development.

(A) Authority. The director of Community Development may issue a written waiver from the coastal development permit requirements of this chapter for any development that is de minimis, as defined in the next paragraph.

(B) Determination of Applicability. A proposed development is de minimis only if the director determines, based on a review of an application for a coastal development permit, that the development satisfies all of the following requirements:

(1) The proposed development is within the coastal zone and **not appealable development (as defined in Section 25.07.006)**, not located within an appeal area, not within an area where the Coastal Commission retains permit jurisdiction, and no local public hearing is required.

(2) The proposed development will be consistent with the certified Local Coastal Program and involves no potential for any adverse effect, either individually or cumulatively, on coastal resources. The determination shall be made in writing and based upon factual evidence.

(C) Applicability. The director may consider the following types of development for possible permit waivers, provided they meet the criteria in subdivision (B) above:

(1) Projects **that do not require any conditions of approval for LCP consistency (conditions for approval may be assigned for design review or other discretionary approvals as need)** ~~fully consistent with the certified LCP~~ and for which all applicable policies of the LCP are objective in nature, ~~such that staff does not have to exercise its judgment as to satisfaction of subject criteria~~; and

(2) Projects located in areas where similar projects have been approved as a routine matter without conditions or opposition.

(D) **Projects ineligible for a Waiver.** The following projects will not be considered for possible waivers:

(1) Projects that involve questions as to conformity with the certified LCP, or that may result in potential impacts on coastal resources and public access;

- (2) Projects with known opposition or probable public controversy or on sites with outstanding violations of the LCP; and
 - (3) Projects that involve divisions of land, including creation of condominiums; and
 - ~~(3)~~ Projects for which the Executive Director of the Coastal Commission is in the process of making a determination regarding appealability or if the project requires a coastal development permit, pursuant to Section 25.07.012(B).
- (E) Public Notice. If, upon review of the coastal development permit application, the Director determines that the development is de minimis, the City shall give notice of its review of the coastal development permit waiver for de minimis development, as follows:
- ~~(1)~~ Mailing of Notices. If, upon review of the coastal development permit application, the Director determines that the development is de minimis, Notice of intent to issue a de minimis waiver shall also be provided to the Coastal Commission and to persons known to be interested in the proposed development within ten (10) calendar days of accepting an application for a de minimis waiver or at least ~~seven (7)~~ 10 calendar days prior to the decision on the application. The director shall provide notice, by first class mail, of pending waiver of permit requirements. This notice shall be provided to all persons who have requested to be on the mailing list for that development project or site or for coastal decisions within the local jurisdiction, to all property owners within three hundred (300) feet and residents within one hundred (100) feet of the perimeters of the parcel on which the development is proposed, and to the Coastal Commission.
 - (2) Posting of Notices. A notice shall be provided on the City's website, and the applicant shall post public notice of the de minimis waiver on the property at a conspicuous place, easily read by the public and as close as possible to the site of the proposed development, for at least ~~seven~~ 10 calendar days prior to the director's final decision granting the waiver.
 - ~~(3)~~ (4) Content of Public Notice. The notice shall contain the following information:
 - (a) A general description of the proposed project and location;
 - (b) A statement that the development is within the coastal zone;
 - (c) The date of filing of the application and the name of the applicant;
 - (d) The number assigned to the application;
 - (e) The date on which the waiver may become effective;
 - (f) The general procedure concerning the submission of public comments either in writing or orally prior to the decision; and
 - (g) A statement that a public comment period of sufficient time to allow for the submission of comments by mail will be held prior to the decision.
- (F) Report to the City Council. The director shall report to the City Council at its next available public hearing those projects for which waivers are proposed, with sufficient description to give notice of the proposed development to the City Council. A list of waivers issued by the director shall be available for public inspection at the public counter of the Community Development Department and at the City Council meeting during which any waivers are reported. A waiver shall not take effect until after the director makes his/her report to the City Council. If a majority of the members of the City Council so request, such

issuance shall not be effective and, instead, the application for a coastal development permit shall be processed in accordance with the coastal development permit provisions of this chapter.

(G) Notice of Final Action. Within seven (7) calendar days of the issuance of a de minimis waiver, the City shall notify the Coastal Commission and any person requesting such notification in writing of the final local action.

SUGGESTED MODIFICATION 3 TO SECTION 25.07.012, SUBSECTION (G) and (I): Clarify that the standard of review for City-issued coastal development permits is only the certified Local Coastal Program; and clarify procedures for time extensions of City-issued coastal development permits.

25.07.012 Procedures.

Each coastal development permit application shall be processed in accordance with the following requirements. ...

(G) Findings. A coastal development permit application may be approved or conditionally approved only after the approving authority has reviewed the development project and made all of the following findings:

- (1) The project is in conformity with all the applicable provisions of ~~the general plan, including~~ the certified local coastal program ~~and any applicable specific plans;~~
- (2) Any development located between the sea and the first public road paralleling the sea is in conformity with the certified local coastal program and with the public access and public recreation policies of Chapter 3 of the Coastal Act;
- (3) The proposed development will not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

(H) Conditions. In approving an application for a coastal development permit, the approving body may impose conditions necessary to enable the required findings to be made. When conditions pertaining to public access and/or open space or conservation easements are imposed, notification of such action shall be submitted to the executive director of the coastal commission in accordance with Section 25.07.018.

(I) Effective Date of Coastal **Development** Permits.

- (1) Appealable Projects. The coastal **development** permit is not effective until adequate notice of final local action has been received in the appropriate district office of the Coastal Commission and the ten (10) working day commission appeal period has expired and no valid appeal has been filed. ~~For projects appealed to the Coastal Commission, the coastal development permit is not effective date of the approval is the final until the Coastal Commission has approved at the permit or determined that the appeal does not raise a substantial issue date of the coastal permit. The City Manager shall have the ability to extend the effective date of the approval for good cause for a period not to exceed six months, which decision may be appealed to the City Council. In the event of such an appeal, the effective date of the approval shall be further extended by the period of time from the date of the appeal to the date of the City Council's determination of the appeal.~~

(2) Nonappealable Projects. The coastal permit is not effective until adequate notice of final local action has been received in the appropriate district office of the Coastal Commission.

(3) Coastal development permit approval shall lapse and become void two (2) years following the effective date if the privileges authorized by the permit are not executed or utilized, or, if construction work is involved, such work is not commenced within such two-year period and diligently prosecuted to completion.

(4) **For City-issued coastal development permits that are not appealed to the Coastal Commission, the approving authority may grant an reasonable extension of time the permit is valid not to exceed an additional six month period** for due cause. Such time extension shall be requested in writing by the applicant or authorized agent prior to expiration of the two-year period. ~~(Ord. 1253 § 1(part), 1992)~~

SUGGESTED MODIFICATION 4 TO NEW SECTION 25.07.013: clarify noticing requirements for administrative coastal development permits.

25.07.013 Public Hearing Waiver for Minor Development (Administrative Coastal Development Permit)

Waiver of Public Hearing for Minor Development. In accordance with Public Resources Code Section 30624.9, the following is the process by which the public hearing requirement may be waived for certain minor developments that require coastal development permits.

(A) Minor Development Defined. For purposes of this section, “minor development” means a development that the Director **of Community Development** determines satisfies all of the following requirements:

(1) Is consistent with the certified Local Coastal Program;

(2) Requires no discretionary approvals other than a coastal development permit;

and

(3) Has no adverse effect either individually or cumulatively on coastal resources or public access to the shoreline or along the coast.

(B) Procedure.

(1) The Director **of Community Development** may waive the requirement for a public hearing on a coastal development permit application for a minor development, if all of the following occur:

(a) ~~(1)~~ Notice is mailed or delivered to all persons and agencies required to be notified under Section 25.07.14. The notice shall contain all of the information required in Section 25.07.14. In addition, the notice of waiver of public hearing for the pending application shall contain all the following:

1. ~~(a)~~ A statement that a public hearing will be held upon the written request of any person provided that such request is received by the Department within fifteen (15) working days from the date of sending the notice; and

2. **The date of the notice; and**

3. A statement regarding if the project is appealable or not to the Coastal Commission; and
 4. The final date to submit a request for a hearing;
 5. The date the coastal development permit will be granted if there is no hearing; and
 6. A project description and a statement of why the project qualifies for a waived public hearing.
 7. A statement that failure by a person to request a public hearing may result in the loss of that person's ability to appeal to the Coastal Commission any action taken by the City on a coastal development permit application.
- (b) Publication of Notice. The City shall publish a notice to issue administrative coastal development not requiring a public hearing one time at least ten days before the end of the public comment period. Such notices shall contain all the information required in Subsections (a)1 through (a)6 of this section above and Section 25.07.014. Such notices shall be published online on the City's website or in a newspaper with general circulation in the City. If a public hearing is continued to a date and time that is not specified at the public hearing, notice of the continued public hearing shall be published and distributed in the same manner and the same time limits as for the initial notice.
- (c) ~~(2)~~ If no ~~written~~ request for public hearing is received by the ~~e~~Community ~~d~~Development ~~d~~Department within fifteen (15) working days from the date of sending the notice pursuant to subsection (C)(1) of this section, the permit is deemed approved.
- (2) ~~(3)~~ Upon receipt of a request for a hearing, the ~~e~~Community ~~d~~Development ~~d~~Department shall schedule the matter for a public hearing and issue notice of such hearing consistent with the provisions of this chapter.
- (3) **Notice of Final Action. For projects that are appealable to the Coastal Commission, a ~~On or before the seventh (7) calendar day following the date of action by the director of Community Development,~~ notice of the action (including findings for approval and conditions, if any, and the procedures for applicable appeal of the administrative coastal development permit action) shall be mailed first class to the applicant, the owner or duly authorized agent, all persons who have requested such notification in writing, and the Coastal Commission on or before the seventh (7) calendar day following the ~~date of action~~ end of the local appeal period ~~by the director of Community Development.~~ This notice shall also be deemed the notice of final action if an appeal is not filed in accordance with this chapter.**
- (4) Appeals. Approvals are subject to the appeal provisions of Section 25.05.070, and Section 25.07.016 when a coastal development permit is required.

SUGGESTED MODIFICATION 5 TO SECTION 25.05.040(B): Renumber as appropriate and correct errors to underlying language as needed to revert back to certified LCP language.¹

IV. FINDINGS

The following findings support the Commission's denial as submitted and approval of the proposed LCP Implementation Plan amendment if modified. The Commission hereby finds and declares as follows:

A. AMENDMENT DESCRIPTION

The City of Laguna Beach has requested an amendment to the Implementation Plan (IP) portion of the City's certified Local Coastal Program (LCP). The proposed amendment would modify the certified Implementation Plan by incorporating the changes contained in City Council Resolution No. 19.093 ([Exhibit 1](#)). City Council Resolution No. 19.093 incorporates Ordinance No. 1642. The ordinance is attached as exhibit to this staff report ([Exhibit 2](#)) [Note: the legislative draft version has been attached as [Exhibit 3](#) in order to highlight the changes proposed by the City].

This ordinance is proposed to modify Chapters 25.05 and 25.07 of Title 25 (Zoning Code) of the City's certified Implementation plan. Chapter 25.05 includes the standards and requirements for administrative use permits, variances, conditional use permits, temporary use permits, and design review. Chapter 25.05 also addresses procedures for appeals of the entitlements processed under Chapter 25.05. Chapter 25.07 of the certified IP is titled "Coastal Development Permits" and includes the standards and requirements for coastal development permit procedures, including procedures for appeals of coastal development permits.

The proposed LCP amendment would more specifically amend multiple sections of Chapter 25.07 and Chapter 25.05, Section 25.05.040(B) to correct or clarify ambiguities, and would: 1) provide clarifications to the exemptions provisions of the IP, including but not limited to the existing repair and maintenance provisions; 2) create a new section with procedures for waiver for certain de minimis development; 3) provide clarification on the effective date of a coastal development permit's when a project is appealed to, and approved by, the Coastal Commission and on permit time extensions; 4) create a new section with procedures for administrative review and waiver of public hearings for certain minor development; and 5) eliminate the blanket need for all coastal development permit applications to also require design review. The LCP amendment request affects only the IP portion of the certified LCP.

B. DENIAL OF THE LCP AMENDMENT AS SUBMITTED

The standard of review for changes to the Implementation Plan (IP) of the certified Local Coastal Program (LCP) is whether the IP, as amended by the proposed amendment, will

¹ The City appears to have included some language that is uncertified as its base document and those errors need to be corrected. For example, for Section 25.05.040(B)(1)(u) (renumbered as Section 25.05.040(B)(t) in the City's ordinance) contains additional language than is not in the certified LCP.

be in conformance with and adequate to carry out, the policies of the certified Land Use Plan.

The City's certified Land Use Plan (LUP) contains policies regarding shoreline access, open space, environmentally sensitive habitat areas, hillside protection, and visual resources, among other coastal resources. These policies are necessary to protect coastal resources and public coastal access. The IP of the LCP is intended for the implementation of the policies of the certified Land Use Plan. The IP consists of regulations and established permit procedures to carry out and execute the objectives of the LCP, as well as operating procedures to perform the local permit function in compliance with the Coastal Act. In particular, many of the sections of the City Zoning Code that the City is proposing to alter provide for exemptions from the permitting requirement of the Coastal Act and the LCP. Because the permitting system is the mechanism established by the Coastal Act and the LCP for the review of proposed development, it is also the mechanism for ensuring that development is consistent with the LUP policies. Thus, any overly broad exemption provisions would fail to subject proposed development to the necessary review and would render the IP inadequate to carry out the policies of the certified Land Use Plan.

The proposed IP amendment is partially a "clean-up" amendment making revisions to correct and/or clarify ambiguities in the language of the document, including clarifications on exempt activities pursuant to the Coastal Act regulations, and clarifications on permit time extension procedures and on the effective date of a coastal development permit that has been appeal to, and approved by, the Coastal Commission. The proposed amendment would also add two new IP Sections in Chapter 25.07 (Coastal Development Permit), which would add procedures allowing the Community Development Director to issue waivers for de minimis development in nonappealable areas and administrative coastal development permits for non-exempt minor development in the appealable areas, and waive the public hearing requirement for these approvals pursuant to Coastal Act Section 30624.9.

The proposed IP amendments do not pertain to specific land use policies of the certified LUP, they mostly pertain to the actual implementation of the land use policies of the certified LUP. The proposed amendments do not change the uses or the priority of uses allowed in the various coastal zoning districts, or affect any regulation that directly addresses coastal resources or public access. However, some suggested modifications are necessary to avoid overly broad exemption provisions, as discussed above. Others are necessary to ensure internal consistency within the IP document, which as written and as proposed to be amended, contains ambiguities and omissions of procedure that make it difficult to apply consistently and fairly. Additionally, suggested modifications are necessary to add or clarify terms or requirements that are explicitly stated in the Coastal Act and/or its implementing regulations, but not currently contained in the LCP or the proposed amendment. As proposed to be amended by the City, the LCP will remain ambiguous and confusing, and may not be applied consistently and fairly to all proposed development in the City's coastal zone. Therefore, the proposed IP amendment as submitted is not consistent with, and/or does not adequately carry out, the provisions of the LUP, and must be denied pursuant to Section 30513 of the Coastal Act.

C. CERTIFY THE LCP AMENDMENT WITH SUGGESTED MODIFICATIONS

The Coastal Act defines the activities that constitute development, requires a coastal development permit (CDP) that is consistent with the Coastal Act or the local government's Commission-certified Local Coastal Program (LCP) for the activities that meet the definition of development, and then lists the different types of coastal development permits. The Coastal Act's implementing regulations then offer detailed provisions that specify permitting procedures, including required noticing, hearing dates, and appeals procedures. The approved Land Use Plan (LUP) does not contain detailed policies regarding coastal development permit processing or procedures. The implementation and processing of CDPs for all development (with the exception of development that is exempt or excluded from the CDP requirement) is one of the most critical means of implementing the coastal resource protection policies of the LUP.

Chapter 25.07 (Coastal Development Permits) of the certified IP provides coastal development permitting procedures, specifying which activities in the coastal zone constitute development and therefore require a CDP, the different types of CDPs and the types of projects that can be processed according to those CDP types, the applicable noticing and hearing requirements, and the findings required for each permit. In general, the proposed changes to existing sections and addition of new sections to Chapter 25.07 are consistent with the Coastal Act and its implementing regulations, and suggested modifications to sections in Chapter 25.07 are solely to add or clarify terms or requirements that are explicitly stated in the Act and/or its implementing regulations. These modifications are contained in Suggested Modifications 1-4. Some modifications are more substantive, as described below.

Chapter 25.05 (Administration) addresses the procedures for local government permits and entitlements. Suggested modification 5 relates to Section 25.05.040 of Chapter 25.05 and not Chapter 25.07.

Suggestion Modification 1 (Exemptions)

Section 25.07.008 of the certified IP establishes when a proposed development may be determined to be exempt from the requirement for a coastal development permit. The certified IP's CDP exemption provisions are intended to track the Coastal Act (and Section 30610 in particular), and the LCP amendment proposes changes to provide clarifications to the exemption provisions, including the existing repair and maintenance provisions. As currently certified, the Laguna Beach LCP repair and maintenance provisions only apply to minor repairs of existing shoreline protective devices. The proposed LCP amendment would extend repair and maintenance provisions to routine maintenance of residential and nonresidential development that would not require the presence of mechanized equipment (excluding hand tools) or outdoor storage of construction materials.

Additionally, the LCP amendment, as proposed, would indicate that the construction, placement or establishment of a fence for sites between the sea and the first public roadway paralleling the sea, or within three hundred feet of the inland extent of any beach, is exempt development. However, such a provision would be inconsistent with the exemptions identified in Sections 13250 through 13253 of the Commission's regulations.

Suggested modifications to Section 25.07.008 provide further clarity of intent and include changes to terminology to more closely align with the Coastal Act and the Commission's regulations. The suggested modifications also remove proposed amended language that would have exceeded the scope of what can be authorized as exempt development pursuant to the Coastal Act, the Commission's regulations, and recent interpretations of the City of Laguna Beach LCP. Categories of development which require a permit include the placement or establishment of a fence that has the potential to impact coastal access and coastal resources, on sites located between the sea and the first public roadway, or within three hundred feet of the inland extent of any beach, as well as ongoing routine repair and maintenance activities (periodic public beach maintenance utilizing mechanized equipment, construction of temporary sand berms for shoreline protection, maintenance and replacement of storm drains, and repair and maintenance of public recreational piers and private piers). Suggested modifications also clarify the type of temporary events that are exempt from coastal development permit requirements.

As for noticing requirements for exemptions, a suggested modification is necessary to clarify the minimum noticing requirement for coastal development permits and cross-references Section 25.07.014(A) of the certified IP, which provides noticing requirements for exemptions. Section 25.07.014(A) states:

(A) Notice of Exempt Development. A permit issued by the city for a development which is exempt from the coastal development permit requirements as defined in Section 25.07.008, shall be exempt from the notice and hearing requirements of this chapter. The city shall maintain a record for all permits issued for exempt developments which shall be made available to the coastal commission or any interested person upon request. The record shall include the applicant's name, the location of the project, and a brief description of the project.

The suggested modification related to the noticing of record of exemptions would generally track the noticing requirements provided in Section 25.07.014(A) but would also clarify that the City is required to provide notification to the Executive Director of the Coastal Commission of the record of exemption for development that is appealable to the Coastal Commission within seven calendar days.

Regarding the appealability of exemption decisions, Section 25.07.008 does not currently provide procedures for the appeal or call for review of determinations and decisions by the local government. In addition, it does not establish provisions for appeals to the Commission. A suggested modification is necessary to clearly indicate that a decision by the City on a CDP application within the appeal areas identified in Public Resources Code Section 30603(a) as generally depicted on the Post-LCP Certification Permit and Appeal Jurisdiction Map or on any development approved or denied by the City on a CDP application, including a determination that a certain type of development is exempt from a coastal development permit, may be appealed to the Coastal Commission.

The City's proposed changes to Section 25.07.008 are reflected in City Council Ordinance No. 1642 ([Exhibit 2](#)). There is a typographical error in Ordinance No. 1642 concerning the cross-reference to subsection (A)(1) through (6) of 25.07.008.

The City's ordinance lists "subsection (A)(1) through (7)" as certified language. However, as certified, Section 25.07.008(B)(1) currently reads:

- (1) All nonexemption contained in subsections (A)(1) through (6) of this section;

A suggested modification is being made to correct this typographical error and revert the language to the certified language. This modification is necessary because Subsection (A)(7) of Section 25.08.007 of the certified IP does not apply to Subsection B of Section 25.08.007. Subsection (A)(7), which states that improvements to single-family residences that would result in any significant alteration of land forms within **50 feet** of the edge of a coastal bluff or stream, is not exempt.

Unlike Subsection (A)(7), Subsection (B)(4) includes a more restrictive provision which does not exempt any significant alteration of land forms within **100 feet** of the edge of a bluff or stream for improvements to structures other than single-family residences.

There are specific policies in the LUP that relate to bluff top and stream setbacks, such as the following:

Action 7.3.10 of the LUE of the certified LUP states: Allow oceanfront and oceanfront bluff homes, commercial structures, or other principal structures, that are legally nonconforming as to the oceanfront and/or oceanfront bluff edge setback, to be maintained and repaired; however, improvements that increase the size or degree of nonconformity, including but not limited to development that is classified as a major remodel pursuant to the definition in the Land Use Element Glossary, shall constitute new development and cause the pre-existing nonconforming oceanfront or oceanfront bluff structure to be brought into conformity with the LCP.

Action 10.2.6 of the LUE of the certified LUP states: Require all new development located on an oceanfront bluff top to be setback from the oceanfront bluff edge a sufficient distance to ensure stability, ensure that it will not be endangered by erosion, and to avoid the need for protective devices during the economic life of the structure (75 years). Such setbacks must take into consideration expected long-term bluff retreat over the next 75 years, as well as slope stability. The predicted bluff retreat shall be evaluated considering not only historical bluff retreat data, but also acceleration of bluff retreat made possible by continued and accelerated sea level rise, future increase in storm or El Nino events, and any known site-specific conditions. To assure stability, the development must maintain a minimum factor of safety against landsliding of 1.5 (static) or 1.2 (pseudostatic, $k=0.15$, or determined through analysis by the geotechnical engineer) for the economic life of the structure.

Action 10.2.7 of the LUE of the certified LUP states: Require all new development located on oceanfront bluffs to be sited in accordance with the stringline but not less than 25 feet from the bluff edge. This requirement shall apply to the principal structure and major accessory structures such as guesthouses and pools that require a structural foundation. The setback shall be increased where necessary to ensure geologic safety and stability of the development.

Policy 10.4 of the LUE of the certified LUP states:

Implement and define "lot area" as the total area of the lot minus the area/property located westerly of the building setback lines as described in Section 25.50.004(B)(1)(2)(3) or the oceanfront ("oceanfront bluff edge" as defined in LCP Glossary), whichever is more restrictive.

Policy 1-I of the Open Space and Conservation Element (OSCE) of the certified LUP states:

The City shall impose a 25-foot minimum setback or a distance ascertained by stringline measurements for all blufftop development, notwithstanding the fact that ecological and environmental constraints may require an additional setback.

Policy 9-C of the OSCE of the certified LUP states:

- a. Streams on the Major Watershed and Drainage Courses Map which are also streams as identified on the USGS 7.5 Minute Quadrangle Series, shall be identified and mapped on the Coastal Environmentally Sensitive Areas Map of the Land Use Plan. For a [sic] these streams, a minimum setback of 25 feet from the top of the stream banks shall be required in all new developments. A greater setback may be necessary in order to protect all riparian habitat based on a site-specific assessment. No disturbance of major vegetation, or development, shall be allowed within the setback area. This provision shall not apply to channelized sections of streams without significant habitat value. Where development is proposed on an existing subdivided lot which is otherwise developable consistent with all City Ordinances and other policies on this Plan except that application of this setback would result in no available building site on the lot, the setback may be reduced provided it is maintained at a width sufficient to protect all existing riparian habitat on the site and provided all other feasible alternative measures, such as modifications to the size, siting and design of any proposed structures, have been exhausted.
- b. Require a setback of a minimum of 25 feet measured from the centerflow lines of natural drainage courses other than stream referenced in 9-C(a) above. Such setback shall be increased upon the recommendation of the city engineer and environmental planner through the environmental review process. However, a variance may be given in special circumstances where it can be proven that design of a proposed structure on an affected lot will preserve, enhance or restore the significance of the natural watercourse. At no time shall grubbing of vegetation, elimination of trees, or disturbance of habitat be allowed within the setback area before or after construction.

Policy 9-D of the OSCE of the certified LUP states:

Permit extensions of decks and other portions of a structure within the required setback for significant setback for significant natural drainage areas only if:

- a. There are no supports to the ground within the setback areas;
- b. The extensions do not encroach closer than fifteen feet from the centerline of flow.

The modification to Section 25.07.008(B)(1) is necessary to continue to protect those resources as required by LUP policies (e.g. OSCE Policy 1-I, 9-C and 9-D; Policy 10.4 and Actions 7.3.10, 10.2.6, and 10.2.7 of the LUE).

Suggestion Modification 2 (De Minimis Waivers)

The proposed amendment includes addition of a new IP section, Section 25.07.009, that would authorize the City of Laguna Beach’s Director of Community Development to waive the requirements for a CDP for de minimis development when certain criteria and procedural requirements are met. The City’s ability to issue de minimis waivers would be limited to the nonappellable areas of the City’s coastal zone.

The ability of the City to issue a de minimis waiver stems from Coastal Act Section 30624.7, which allows the Executive Director of the Commission to waive the requirement for a coastal development permit on a project that otherwise would require one if it: involves no potential for any adverse effect, either individually or cumulatively, on coastal resources, and that it is consistent with the policies of Chapter 3 of the Coastal Act. The de minimis waiver process is, thus, one tool to help local governments streamline certain types of development with no coastal resource impacts that are not otherwise covered by the City’s categorical exclusion order nor the statutory exemptions listed in the Coastal Act and its regulations. The proposed LCP amendment would require findings similar to those specified in Coastal Act Section 30624.7 in order to waive CDP requirements, including that it involves no potential for adverse effects, either individually or cumulatively, on coastal resources; is consistent with the certified LCP; and is not of a type or in a location where the project would be subject to a Coastal Permit issued by the Coastal Commission. The City is also to notify the Executive Director of the Coastal Commission of the proposed waiver, and if it determines that a waiver should not be issued, the applicant is required to obtain a regular CDP. The proposed IP amendment would also clarify that a de minimis waiver would not be effective until it has been reported to the City Council, which would mirror the procedural requirement contained in Section 30624.7 of the Coastal Act stating that a waiver approved by Executive Director of the Coastal Commission is not effective until it is reported to the Coastal Commission.

However, suggested modifications are required that clearly identify the types of development that may be considered for possible permit waiver, and clearly identify public notice requirements and the content of said public notice.

The Community Development Director may waive the requirement for a public hearing on a de minimis waiver for nonappealable development, if notice is mailed or delivered to all persons and agencies required to be notified under IP Section 25.07.14, which states, in relevant part:

The following shall constitute the minimum noticing requirement for coastal development permits issued by the city.

...

- (C) Noticing for Nonappealable Developments. For nonappealable developments, notice of such development shall be given at least ten calendar days before a hearing by first class mail to any person who has filed a written

request thereto, to all property owners within three hundred feet of the proposed project, to all residents within one hundred feet of the proposed project and to the coastal commission. The notice shall contain the information required for appealable development in subsection (B) of this section. If the matter is to be heard by the planning commission, notice shall be published in a newspaper of general circulation.

A suggested modification is being made to require the publication of the notice to issue a de minimis waiver. In addition to the required mailed public notice within the project vicinity and to known interested parties, the City should maintain an online case log on its public website listing all planning activities including all CDP applications on file. The online case log provides a project description, type of approval sought (coastal development permit, variance, etc.). Or, the City could publish a case log in a newspaper of general circulation.

Other suggested modifications are being made to clarify the criteria and applicability of de minimis waivers. One such modification would clarify that development on a site with outstanding violations of the LCP would not qualify for a de minimis waiver. Applications, where applicable, should be required to identify and address any onsite violations of the LCP. Such applications require a more thorough CDP review.

The certified LUP has numerous strong policies that prevent impacts to coastal resources, such as policies that protect biological resources (e.g. LUE Policies 5.2, 7.3, 7.4; and OSCE Policies 4-F, 4-I, 7-K, 8-C, 8-F, 8-G, 8-H, 8-I, 8-J, 8-K, 8-L, 8-N, 14-J), policies that protect visual resources (e.g. LUE Policy 7.3), policies that protect and maximize public coastal access (e.g. LUE Policy 4.3 and 6.8; LUE Action 7.3.9; and OSCE Policies 3-A and 1.5-F), policies that protect water quality (e.g. LUE Policy 7.7, and OSCE Policies 4-A, 4-C, 4-D, 4-G, 4-H), etc., to name a few. This modification to the proposed new IP section (Section 25.07.009) for a de minimis waiver process would ensure that such a waiver is not issued for any project that would exacerbate or ignore violations of the LCP and would require those projects to obtain a CDP in order to protect the coastal resources by addressing the violation. The coastal resource protection policies of the LUP, such as, but not limited to, LUE Policy 6.8, LUE Action 7.3.9, OSCE Policies 1.5-F, 8-K, and 14-J, require that projects are conditioned to protect resources, which can only be done through a CDP process and not a waiver process. The recommended suggested modifications clarify that point and ensure consistency with the certified LCP. While the LUP did not contemplate or envision that there would be a waiver of permit process in the IP, the new language of the IP proposing the waiver process, must nevertheless, be found consistent with the LUP policies.

Therefore, as modified, the IP includes a process by which the City may streamline the processing of certain types of development by waiving the otherwise required need for a CDP, so long as the development is located in the nonappealable areas of the City's coastal zone and is not located in an area of geographic concern, and it meets other specific criteria, findings, and noticing requirements, all consistent with Coastal Act Section 30624.7.

Suggestion Modification 3 (Procedures)

Section 25.07.012 of the certified IP relates to CDP procedures and requirements for the implementation or “exercising” of CDPs. The City is proposing changes to Section 25.07.012.

As certified, Section 25.07.12(D) currently includes a blanket requirement that **all** coastal development permit applications must go through the design review process even if the development for which is being applied would not otherwise be subject so design review. The City is proposing to eliminate this blanket need for a public hearing for administrative design review approval for all coastal development permit applications.

There are some policies of the LUP that specifically require Design Review for CDPs, such as the following:

Policy 9-E of the OSCE of the certified LUP states:

Require Design Review for development projects which include portions of a natural drainage course.

Policy 13-F of the OSCE of the certified LUP states:

Require all ridgeline development to be reviewed and approved by the Design review Board.

Policy 14-E of the OSCE of the certified LUP states:

Require all development on slopes of 30% or greater to be reviewed and approved by the Design Review Board.

Policy 1-H of the OSCE of the certified LUP states:

Require design review for all blufftop development.

Policy 3-E of the OSCE of the certified LUP states:

Require new lateral access at the Central Bluffs. Approval of all new development between Laguna Avenue and Sleepy Hollow Lane shall be conditioned upon the recordation of an irrevocable option to dedicate a lateral access easement a minimum of 25 feet in width measured landward from the edge of the blufftop in order to provide a continuous blufftop accessway above the Central Bluffs for the public. Subject to design review approval, tables, chairs and similar nonpermanent amenities for public use can be allowed in this 25-foot easement, provided that the accessway is kept open and allows unrestricted pedestrian movement at all times.

Policy 7-G of the OSCE of the certified LUP states:

The Design Review process for an individual project shall include criteria for treatment of the urban edge between existing development and open space in areas designated "Residential/Hillside Protection" on the Land Use Plan Map. The criteria shall be developed to reflect topographic constraints and shall include at a minimum:

- a. Treatments to screen development, including the use of vegetation, variable setbacks and modified ridgelines or berms;
- b. Fuel modification techniques for new development which provide the following: result in graduated fuel modification zones in which on the minimum amount of

native vegetation is selectively thinned; prohibit grading or discing for fuel modification; confine fuel modification to the development side of the urban/ open space edge to the maximum extent; avoid fuel modification encroachment into environmentally sensitive areas; locate structures with respect to topographic conditions to incorporate setbacks, minimize fuel modification requirements and maximize hazards; and provide requirements for ongoing maintenance.

c. Treatments for fuel modification and maintenance techniques for existing development consistent with standards in (b) above to the maximum extent feasible.

Policy 7-H of the OSCE of the certified LUP states:

For new development proposed on property adjacent to the Aliso Greenbelt, a site-specific view analysis shall be required. Said analysis shall identify appropriate measures to ultimately screen the development and shall be approved by the Design Review Board. Such measures may include but shall not necessarily be limited to: a) Setback of structures, b) landscape screening, c) berms or "false ridges," d) use of earthtone or color and materials which will serve to blend the structures with the natural landscape. If the analysis indicates that development cannot feasibly be screened by the measures above, such that the trails or the canyon bottoms of Wood and Aliso Canyons, then the City shall impose other conditions of development so as to protect the viewshed and integrity of the greenbelt. Such measures may include limitation on building height, bulk or footprint, lot line adjustment or other similar measures. In any case, development should not be visible from the floor of Aliso Canyon.

Policy 2.6 of the LUE of the certified LUP states:

Require the preservation of significant trees in conjunction with development proposals. The Design Review Board may grant exceptions to this provision when its strict enforcement would deny a property owner reasonable use of his/her property.

The proposed modification to Section 25.07.12(D) of the IP would clarify that not all CDP applications require design review, however, those projects or areas that specifically require design review as spelled out in the LUP, will still be required to obtain design review approval in conjunction with the CDP. This section and these modifications do not conflict with those aforementioned LUP policies.

This proposed change to Chapter 25.07.012(D) would affect the local appeal hearing procedures of permits that require design review decisions. However, the proposed change would **not** alter the required notice and hearing procedures for coastal development permits also set forth in Chapter 25.07 and would be consistent with the Coastal Act. The proposed change to Section 25.07.012 is minor in nature and would not preclude the City from requiring that a coastal development application go through the design review process when it deems that it is appropriate to do so. Such a change does not raise any Coastal Act/LUP issues. The hearing procedures in Chapter 25.05 provide the local government an additional review process beyond what is required by the Coastal Act; where a CDP is required for a project, the local government would still be required to comply with Chapter 25.07 (for CDPs).

The City is also requesting to amend Section 25.07.012 to provide clarifications of a CDP's effective date when a project is appealed to and approved by the Coastal Commission. The effective date of a CDP is the date that the two-year expiration date of the permit is

based upon. The proposed LCP amendment also included new language to clarify when a permit may be extended, which relies on the amended procedure for determining the effective date of the permit.

Section 25.07.012(I) provides the effective date of a CDP, a two-year time limit (expiration of permit) in which to exercise the permit, provision allowing the City to issue a permit extension for due cause.

As proposed, the LCP amendment would clarify that a CDP is not effective until the Coastal Commission has approved the CDP for a project appealed to the Coastal Commission. In addition, the City added language that would give the City Manager discretionary authority to grant an extension of time not to exceed an additional six-month period of the effective date of CDPs. However, as proposed, this language related to a permit time extension would give discretionary authority to the City Manager to grant permit time extensions for Commission-approved permits for a project that was appealed to the Coastal Commission. Only the Commission can grant time extensions for permits it approves and issues. Therefore, a suggested modification is necessary to clarify that the City has the ability to extend the effective date of a permit only for City-issued coastal development permits.

Another suggested modification is being made to Section 25.07.012(G) to clarify that the standard of review for City-issued coastal development permits is only the certified Local Coastal Program.

Suggestion Modification 4 (Administrative Coastal Development Permits)

The proposed amendment includes addition of a new IP section, Section 25.07.013, that provides a process, in accordance with Section 30624.9 of the Coastal Act, allowing for the administrative review and waiver of public hearing requirement for certain “minor developments” that require CDPs. The new section defines “minor development” verbatim with the definition provided in Coastal Act Section 30624.9. For purposes of this section, “minor development” means a development that the Director determines satisfies all of the following requirements:

1. Is consistent with the certified Local Coastal Program;
2. Requires no discretionary approvals other than a coastal development permit; and
3. Has no adverse effect either individually or cumulatively on coastal resources or public access to the shoreline or along the coast.

The Community Development Director may waive the requirement for a public hearing on a CDP application for a minor development, if notice is mailed or delivered to all persons and agencies required to be notified under IP Section 25.07.14, which states, in relevant part:

The following shall constitute the minimum noticing requirement for coastal development permits issued by the city.

...

- (B) Noticing for Appealable Developments. Within ten calendar days of accepting an application for an appealable coastal development permit or at least ten

calendar days prior to the first public hearing on a development proposal, the city shall provide notice by first class mail of pending application for appealable development. This notice shall be provided to each applicant, to all persons who have requested such notice, to all property owners within one hundred feet of the proposed project, to all residents within one hundred feet of the proposed project and to the coastal commission. The notice shall contain the following information:

- (1) A statement that the development is within the coastal zone;
- (2) The date of filing of the application and the name of the applicant;
- (3) The number assigned to the application;
- (4) A description of the proposed development and its proposed location;
- (5) The date, time and place at which the application will be heard;
- (6) The general procedure concerning hearings and action on applications;
- (7) The system for local and coastal commission appeals, including fees required.

As proposed by the City, the new IP section language would also require the City notice of pending action on a CDP for “Minor Development” contain a statement that a public hearing will be held upon the **written** request of any person provided that such **written** request is received by the Department within fifteen (15) working days from the date of sending the notice. Coastal Act Section 30624.9, on which this new regulation is based, does not specifically state that the notice has to be in writing. It states only that the local government may waive the requirement for a public hearing on a CDP application for minor development only if “No request for public hearing is received by the local government within 15 working days from the date of sending the notice pursuant to paragraph (1).” As proposed, there is an argument that the City’s language is stricter than the statute and would limit public participation. To avoid this possibility, a suggested modification is made to strike out the word “written” from the proposed new regulation language. In addition, a suggested modification is being recommended, which would list what additional information should be contained in a notice of waiver of public hearing for the pending application consistent with Section 25.07.014 (cited above).

A suggested modification is being made to clarify that CDPs for “Minor Development” issued without a public hearing will be identified as “Administrative CDPs”. In addition, another suggested modification is being made to require the publication of the notice to issue an administrative CDP. In addition to the required mailed public notice within the project vicinity and to known interested parties, the City should maintain an online case log on its public website listing all planning activities including all CDP applications on file. The online case log provides a project description, type of approval sought (coastal development permit, variance, etc.). Or, the City could publish a case log in a newspaper of general circulation.

Examples of minor development that could qualify for Administrative CDPs include development that would otherwise be exempt if the development were not located in areas of geographic concern as identified in the exemption provisions of Section 25.07.008 such as the replacement or addition of existing windows to an existing structure, and repair and maintenance of existing legally permitted decks or roofs where small scale mechanized

equipment is needed (repair and maintenance where no mechanized equipment is needed will be exempt pursuant to this LCP Amendment). These administrative CDP approvals are subject to the LCP's appeal provisions of Section 25.05.070 and Section 25.07.016, and are appealable to the City and the Coastal Commission.

Suggestion Modification 5 (Design Review)

Like Section 25.07.012, Section 25.05.040(B) of the certified IP currently includes a requirement that **any** coastal development permit application must go through the design review process even if the development for which is being applied would not otherwise be subject to design review. The City is proposing to eliminate this blanket need for a public hearing for administrative design review approval for any and all coastal development permit applications. The proposed changes to Chapter 25.05 will affect the local appeal hearing procedures of permits that require design review decisions. However, this proposed change would **not** alter the required notice and hearing procedures for coastal development permits set forth in Chapter 25.07 and would be consistent with the Coastal Act. This change would not preclude the City from requiring that a coastal development permit application go through the design review process when it deems that it is appropriate to do so. Such a change does not raise any Coastal Act or LUP issues.

A suggested modification is being made to renumber Section 25.05.040(B) as appropriate and in accordance with the City's proposed change to delete language from this section.

In addition, the City appears to have included some language that is uncertified as its base document and those errors need to be corrected. For example, for Section 25.05.040(B)(1)(u) (renumbered as Section 25.05.040(B)(t) in the City's ordinance) contains additional language than is not in the certified LCP. A suggested modification is being made requiring that such errors to the underlying language be corrected.

Conclusion

As modified, the IP's Chapters 25.05 and 25.07 identify what constitutes development requiring a CDP, identify the different types of CDPs available to authorize development, identify development which is exempt from CDP requirements, and identifies the standards and procedures that must be met and implemented, all consistent with Coastal Act and LUP requirements. In addition, the IP, as modified, maximizes public involvement in coastal permitting decisions.

For the reasons described above, only if modified as suggested can the proposed IP amendment be found to be consistent with the City's certified LUP. Therefore, the Commission finds that only as modified is the proposed Implementation Plan amendment consistent with and adequate to carry out the provisions of the certified Land Use Plan (LUP).

D. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

On December 17, 2019, after holding multiple noticed public hearings, the Laguna Beach City Council adopted Resolution No. 19-049 approving the LCP Implementation Plan for submittal to the California Coastal Commission contained in Resolution No. 19-093. As part of their local action, the City found that pursuant to Sections 15060(c)(2) and 15061(3) of the California Code of Regulations ("California Environmental Quality Act Guidelines,")

that the proposed amendment to the LCP Implementation Plan is exempt from further review under the California Environmental Quality Act (CEQA).

As set forth in Section 21080.9 of the California Public Resources Code, the California Environmental Quality Act (CEQA) exempts local governments 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). The Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. (14 CCR § 15251(f).) Nevertheless, the Commission is required, in approving an LCP submittal, to find that the LCP does conform with the provisions of CEQA, 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 alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment.

As discussed herein, the LCP Implementation Plan as originally submitted does not conform with, and is not adequate to carry out, the policies of the certified LUP. The Commission has, therefore, modified the proposed Implementation Plan to bring the proposed amendment into conformity with the certified LUP and represent the most environmentally protective alternative. As modified, the IP contains specific requirements that apply to development projects and detailed procedures for applicants to follow in order to obtain a coastal development permit. Thus, future individual projects would require coastal development permits, issued by the City of Laguna Beach, and in the case of areas of original jurisdiction, by the Coastal Commission. Throughout the coastal zone, specific impacts to coastal resources resulting from individual development projects are assessed through the coastal development review process; thus, any individual project will be required to undergo environmental review under CEQA. 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.