

**CALIFORNIA COASTAL COMMISSION**

SOUTH CENTRAL COAST DISTRICT OFFICE  
89 SOUTH CALIFORNIA STREET, SUITE 200  
VENTURA, CA 93001-2801  
VOICE (805) 585-1800  
FAX (805) 641-1732



# W19a

## ADDENDUM

August 11, 2020

TO: Coastal Commissioners and Interested Parties

FROM: South Central Coast District Staff

SUBJECT: **ADDENDUM TO ITEM W19A, CITY OF OXNARD LOCAL COASTAL PROGRAM AMENDMENT NO. LCP-4-oxn-20-0007-1 (REQUEST BY THE VENTURA COUNTY HARBOR DEPARTMENT TO AMEND THE CITY OF OXNARD LOCAL COASTAL PROGRAM) FOR THE COMMISSION MEETING OF WEDNESDAY, AUGUST 12, 2020**

---

The purpose of this addendum is to address letters received from members of the public, to respond to a letter received from the Ventura County Harbor Department (Harbor Department) and to respond to a letter received from the City of Oxnard (City). All letters received since publication of the staff report are included as a second "Correspondence" attachment to the staff report.

### **I. CORRESPONDENCE RECEIVED FROM THE PUBLIC; STAFF'S RESPONSE TO CORRESPONDENCE**

In total Commission staff have received approximately 100 comments from members of the public.

Approximately 50 of the commenters support Commission staff's recommendation, oppose the proposed LCP amendment, and raise concerns that are addressed in the findings of the staff report; however, several commenters raise concerns specifically related to traffic and parking, which they assert could affect public access. The staff report does address more general access issues such as visitor-serving uses and recreation, but the proposed amendment to give residential uses equality priority within the Fisherman's Wharf site without also including specific details and development standards certainly has the potential to impact traffic and parking in the area. At this broad LCP stage there isn't enough detail or information to know exactly what the traffic and parking impacts might be or how that would affect access, but the LCP amendment

would permit a high-density residential development to be located on harbor-front land that currently contains many free, public parking spaces. The potential to impact parking and traffic, plus the inability to thoroughly analyze those access impacts with any certainty, supports the staff report's current finding that the LCP amendment would not adequately protect access.

Approximately 50 of the commenters do not support Commission staff's recommendation, support the proposed LCP amendment, and raise concerns that are addressed in the findings of the staff report; however, several commenters raise concerns related to the availability of housing within the City of Oxnard and this issue is addressed further in Section III below.

Some of the commenters have referenced signatures both for and against the project and those petitions can be found in the correspondence to the staff report as well as the project file.

## **II. CORRESPONDENCE RECEIVED FROM THE HARBOR DEPARTMENT; STAFF'S RESPONSE TO CORRESPONDENCE**

The Harbor Department letter expresses a number of concerns with the staff recommendation related to: development standards, the purpose of the LCP Amendment Override (override) to break an impasse between the Harbor Department and the City, and the report findings regarding whether the proposed override qualifies for processing and whether the override satisfies the findings required by 14 CCR Section 13666.4. The Harbor Department's concerns and staff's responses will be summarized below in three categories: development standards, purpose of the override, and report findings.

### **A. Development Standards**

The Harbor Department states that in their submittal dated January 27, 2020 they provided Commission staff with Fisherman's Wharf project development standards and that the staff report omits any reference to the development standards. Additionally, the Harbor Department states that the development standards are not only tailored to the potential future mixed-use project at Fisherman's Wharf, but that the development standards also ensure the project's consistency with the coastal resource protection policies of the Coastal Act and the City's certified LCP.

Commission staff can confirm that the LCP amendment override application from the Harbor Department did include the referenced development standards; however, Commission staff would note that staff based its review of the proposed override on the actual, proposed changes to the LCP text that were previously submitted to the City and later to the Commission. The development standards may reflect the County's current thinking or policy direction as to the type of project it would like to approve at Fisherman's Wharf, but they are not included in or required by actual LCP policies.

They therefore cannot be considered when determining whether the LCP amendment itself is consistent with the Coastal Act. Nor would it be appropriate for the Commission to impose them now by revising the LCP amendment, because the City did not previously consider or rely on them when acting on the LCP amendment that is the subject of this override request. However, Commission staff have updated Exhibit 4 of the staff report to include the development standards for Commissioners and members of the public to review.

The LCP Amendment application initially submitted by the Harbor Department to the City included a submittal cover letter dated January 25, 2018 specifying that the application materials were accompanied by draft text and map amendments for both the Land Use Plan (LUP) portion and Local Implementation Portion (LIP) portions of the City's certified LCP, as well as significant project details. Later in the letter the project details are specified to include: a project description, site plan, development standards, an analysis of alternatives, and information regarding traffic circulation. The proposed amendment changes to the City's LCP as submitted by the Harbor Department only included the amendments to the LUP and LIP text and map, with the certified LCP language shown with strike-out and underline indicating text to be deleted or added by the subject amendment. The development standards were not included as part of the proposed text amendments to the LCP and were included only as supplemental project details. This is evidenced by the fact that the proposed development standards are not included in, or even referenced by, the Harbor Department's proposed amendments to the LCP text and map. Discussions between Commission staff and City staff confirmed that the development standards were never included in the proposed LCP amendment changes before the City.

Later, in a letter to City staff dated July 20, 2018, then Harbor Department Special Projects manager Lyn Krieger requested that the City and County agree to process only an amendment to the LUP portions of the City's LCP, with no amendment of the City's LIP. On August 22, 2019, the City Planning Commission held a public hearing on the project consisting of an amendment to the LUP portion of the City's certified LCP to incorporate the "Urban Village" land use designation and modify LUP policies 23 and 35. Those changes are reflected in the "Proposed LUP Amendment Text" included as Exhibit 4 to the Commission staff report. The Planning Commission adopted a resolution recommending the City Council deny the proposed amendment to the City's LUP and on November 7, 2019 the City Council formally adopted a resolution denying the proposed amendment to the City's LUP. The City Council did not consider the County's development standards to be a part of the LCP amendment before it and did not reference those development standards in its staff report or findings for denial.

Based on that record it is understood by Commission staff, and confirmed by City staff, that the Harbor Department's initially proposed amendment to the City's LCP only included the text and map changes to the LUP and LIP, and the development standards were included as supplemental project details. Also, after the July 2018 letter from Lyn Krieger requested only an amendment to the LUP, the City took action on and denied the proposed amendment to the LUP.

Although the City's final action only included the proposed amendments to the LUP, the Harbor Department submitted to the Commission as part of its override request the same information that it had originally submitted to the City—i.e., the proposed changes to the LUP and IP, as well as the background documentation and information, including the draft development standards. Based on this request, and to ensure thoroughness of its review, Commission staff analyzed all of the initially proposed amendments to the City's certified LCP, including the amendments to the LIP, as part of the subject override request. And while the development standards are not part of the proposed amendment to the City's LCP, Commission staff was aware of the development standards as a result of previous coordination work with Harbor Department and City staff in 2017, and Commission staff did review the development standards as part of the override application. However, the development standards were not addressed in the staff report findings because they were not a part of the LCP amendment acted on by the City, nor are they a part of the actual, proposed LCP amendment text or maps. Because the development standards are not included in or required by actual LCP policies, they may be considered as part of the background for the Harbor Department's plans, but cannot be considered when determining whether the LCP amendment itself is consistent with the Coastal Act.

Regardless of that history, the Harbor Department now requests that the Commission consider and adopt the development standards as part of the LCP amendment. However, considering or adopting the development standards as part of the amendment would require a much more thorough analysis of the extent to which those standards would address any of the LCP amendment's inconsistencies with the Coastal Act. Such an analysis is beyond the scope of this addendum, although a brief review of the standards demonstrates that they would not address all of the issues raised by the City and Commission staff in their respective reviews of the amendment. For example, the development standards do not justify why there should be equal prioritization of non-priority residential uses with Coastal Act priority uses on a waterfront publicly owned parcel, do not provide for any affordable housing, do not appear to limit a developer's discretion to propose alternative development standards that would allow for taller or more dense development, and do not fix the internal inconsistency between the LUP and LIP provisions. Additionally, it would not have been appropriate for Commission staff to review and/or modify the development standards as part of the override process when the City did not previously review and analyze the development standards as part of the proposed amendment to the City's certified LCP. If the development standards were meant to be an integral part of the LCP amendment, the Harbor Department should have asked the City to consider them first, as the override process is designed to ensure that the affected local government will get to consider the entire LCP proposal before a requesting party may come to the Commission for an override.

In summary, Commission staff was aware of and reviewed the development standards, but because the development standards were never part of the LCP amendment reviewed by the City or submitted to the Commission, and because including the development standards would not ultimately resolve the various coastal resource issues with the amendment, Commission staff did not analyze the development standards in

the findings of the staff report. Reviewing and possibly modifying the development standards to be incorporated into the LCP would require significant analysis from Commission staff as well as coordination with City staff and Harbor Department staff. Due to the amount of analysis required and complexity involved in reviewing and possibly incorporating the development standards, Commission staff believe it would be more appropriate for the Commission to deny the override and direct staff, the Harbor Department and the City to work collaboratively to develop an amendment that is consistent with the Coastal Act and Oxnard LUP.

## **B. Purpose of the Override**

The Harbor Department states that the override process is necessary to break the long-standing impasse between the Harbor Department and the City and that the staff report ignores the history between the two jurisdictions. The Harbor Department asserts that the City had multiple opportunities to suggest modifications to the project and instead denied the project. The Harbor Department suggests that should the LCP amendment override be denied the Harbor Department would be forced to proceed again with a process that has demonstrably failed.

The initial LCP amendment application submittal from the Harbor Department to the City only included the text and map changes to the LUP and LIP. Additional project details were submitted, including the development standards, but those were included as supplements to the proposed amendment application. In July 2018, when the application was still incomplete, the Harbor Department staff requested that the City and County agree to process only an amendment to the LUP portions of the City's LCP, with no amendment of the City's LIP. By limiting the amendment only to the LUP, the City's ability to analyze and suggest modifications to the project to make it wholly consistent with the Coastal Act and also internally consistent with the LIP was extremely limited. Considering those limitations, a better process would have been to work with the City to file a complete LCP amendment application including the necessary proposed changes to the LUP and LIP, and including specific development standards, and work collaboratively with City staff and Commission staff on an amendment that can be found consistent with the Coastal Act and the City's certified LCP.

The override procedure is an extraordinary procedure that allows the state to intervene in local planning decisions and ensure that a local government cannot obstruct development(s) necessary to meet the public needs of an area greater than that included in the LCP area, when meeting such needs is consistent with the coastal resource protection policies of the Coastal Act. In this case considering the impacts to public access and recreation, commercial fishing, and visual resources, allowing for residential housing within a harbor does not justify an override of the City's certified LCP. Additionally, considering that the Harbor Department apparently did not explore with the City more detailed alternatives, such as including development standards in an IP amendment, it appears that the Harbor Department had, and continues to have, other options for trying to obtain City approval of an LCP amendment that would permit a mixed-use development of some kind on this site.

### **C. Report Findings**

Lastly, the Harbor Department's letter disagrees with the findings of the staff report. The Harbor Department believes that the project was analyzed incorrectly by Commission staff and also presents additional information that it believes demonstrates that the override is approvable.

One of the primary points raised by the Harbor Department with respect to the findings of the staff report is the absence of any discussion of the development standards. The Harbor Department repeatedly asserts that the development standards were included as part of the proposed amendment override to the City's certified LCP and the override application to the Commission and that if Commission staff had reviewed and analyzed the project with respect to the development standards it could have been found consistent with the required findings for override.

As discussed above, Commission staff did recognize the development standards were included with the override application; however, because the development standards were not reviewed by the City as part of the LCP amendment and were not included in or referenced by the actual, proposed LCP policies, Commission staff did not consider them to be a part of the baseline LCP amendment denied by the City and appealed to the Commission as part of LCP amendment override process. Additionally, incorporation of the development standards as part of Commission staff's review of the override would not have been appropriate because the City never had the opportunity to analyze and/or modify the standards as part of its review. Lastly, incorporation of the development standards would not have resolved a number of the issues identified by both City staff and Commission staff in their review of the amendment, as described above.

The Harbor Department also asserts that Commission staff did not coordinate with or request additional information from the Harbor Department regarding its determination of whether the project was appropriate for override and the necessary findings could be made as part of the application filing process. Specifically, the second finding of Section 30515 and third finding of Section 13666.4 require that the purpose of the project must be to meet the public needs of an area greater than included within the area of the LCP. In the staff report Commission staff determined that the Harbor Department did not provide sufficient discussion or data demonstrating a clear nexus of how the amendment override will benefit a larger geographic area. Here, the Harbor Department asserts that Commission staff should have asked for additional information regarding this finding during the application completeness review period.

In response, Commission staff would note that the Harbor Department staff provided the information that it felt demonstrated its position that the project would meet the public needs of an area greater than the LCP area. If specific evidence supporting this argument exists, the Harbor Department should have provided it as part of the override application. Commission staff could have contacted the Harbor Department for more information or data, but ultimately the override criteria would still not be met by allowing for residential uses on a waterfront site in a harbor. Residential uses are not a priority

use under the Coastal Act. That is not to say that providing housing is not important, but rather this type of housing within this harbor does not justify an override of a jurisdiction's certified LCP, especially considering the impacts to public access and recreation, commercial fishing, and visual resources as a result of the amendment.

The Harbor Department also presents additional information that it believes demonstrates that the override amendment request qualifies for processing per Section 30515 and that it satisfies the findings required by 14 CCR Section 13666.4. The majority of the information presented is similar to the information included in the Harbor Department's application to the Commission, which was analyzed by staff in its review of the application, such as: the location of Fisherman's Wharf being seen as a gateway to the Harbor, the enterprise structure of the Harbor's finances, and the necessity of including residential in the redevelopment. Additionally, the Harbor Department provided a narrative containing anecdotal information about changing dynamics of recreational boating towards larger slip sizes, changes in retail and online shopping, and home ownership in the vicinity of the Harbor being comprised primarily of secondary or vacation homes which results in a less steady customer base for retail in the area. Finally, the Harbor Department addresses the Commission's Environmental Justice policy and affordable housing, and also addresses the override requirement regarding environmental impacts and analysis of alternatives. The majority of the issues identified by the Harbor Department's additional information were either already reviewed and addressed by Commission staff, or do not include substantive new information or data; however, the last two issues will be discussed further below.

The staff report noted that, prior to its publication, several commenters had expressed concerns that the proposed amendment conflicts with the Commission's Environmental Justice (EJ) Policy because the conversion of lower-cost visitor serving facilities located on publicly owned land to market-rate residential units is a barrier to persons with limited income with regards to public access and views. The staff report findings go on to conclude that although the Coastal Act does not authorize the Commission to require affordable housing, the Commission's EJ Policy recognizes that affordable housing is an EJ issue and a priority, although provision of affordable housing cannot be permitted in a manner inconsistent with other coastal resource protection policies.

In their letter, the Harbor Department states that it recognizes that affordable housing serves the Commission's EJ principles related to maximizing public access for all and is therefore a priority land use to be encouraged in the coastal zone. The Harbor Department goes on to state that the County is amenable to the Commission imposing development standards as part of the subject override to require an affordable housing component.

First, as discussed in the staff report and identified above, the Commission's EJ policy does recognize that affordable housing is an EJ issue and a priority, but that provision of affordable housing cannot be permitted at the expense of coastal resource protection. Additionally, identifying affordable housing as an EJ priority does not inherently mean that the Commission considers affordable housing a priority use along the shoreline. Section 30255 of the Coastal Act states that coastal-dependent developments shall

have priority over other developments on the shoreline, and per Section 30101 coastal-dependent developments are defined as any development or use which requires a site on, or adjacent to, the sea to be able to function at all. The Commission has consistently found that residential uses do not constitute coastal-dependent developments and that they are not priority developments on the shoreline. Affordable housing is a priority, but because it is a form of residential development is it not considered a priority use over other developments on the shoreline.

Additionally, the Commission EJ policy states that affordable housing cannot be permitted at the expense of coastal resources, and due to the lack of specificity and strong standards, a future mixed-use project at the site could be built in any number of sizes, scales and layouts with the potential to affect visitor-serving uses, commercial fishing and recreational boating within Fisherman's Wharf. The Harbor Department alludes to the development standards they included as part of the application to the Commission and suggests that the Commission could modify the amendment and those development standards to include an affordable housing requirement. The development standards were not part of the baseline LCP amendment acted on by the City and reviewed by Commission, and reviewing those standards for consistency with the Coastal Act and the City's LCP will require a significant amount of analysis and coordination with the Harbor Department and the City. Should the Commission want to consider the development standards and the inclusion of an affordable housing standard, Commission staff believe it would be more appropriate for the Commission to deny the override and to direct Commission staff to work on a targeted LCP amendment with City staff and the Harbor Department, rather than modify the amendment through the override process.

Regarding the third finding requirement of Section 13666.4 whether there is a feasible, less environmentally damaging alternative, the Harbor Department disagrees with the staff report's suggestion that alternatives to the proposed LCP amendment exist, including the development of a new zone or overlay as part of a tailored LCP amendment with specific development standards to ensure consistency with the Coastal Act and the City's LCP. The Harbor Department states that the development standards submitted with the override amendment application were intended to do precisely that. However, as discussed previously those development standards were never a part of the proposed amendment to the City's LCP and therefore were not considered part of the baseline LCP amendment reviewed and analyzed by staff in this override. As such this alternative was never truly explored by the Harbor Department. In addition, the Harbor Department requests that the Commission revise the proposed LCP amendment to apply only to the Fisherman's Wharf site if it is concerned about proposed changes that would apply to other areas of the Harbor. However, the purpose of the override process is to allow the Commission to approve LCP changes that were specifically presented to, and rejected by, the local government whose LCP is at issue. Such revisions were not apparently presented to or considered by the City of Oxnard previously, and having the Commission impose them now, without the benefit of the City's prior review and analysis, is inconsistent with the manner in which the override



process is meant to work. This alternative could be further explored by the City and Harbor Department, but is not appropriate to impose at this time.

Commission staff would note that the alternatives suggested in Section C.3 of the staff report were never intended to be considered a definitive list. Rather, the analysis and examples provided in that section were intended to demonstrate that there are a variety of feasible alternatives that are more protective of coastal resources, and that these had not yet been sufficiently explored.

### **III. CORRESPONDENCE RECEIVED FROM THE CITY; STAFF'S RESPONSE TO CORRESPONDENCE**

The letter from the City identifies issues that are primarily outside the scope of the subject LCP amendment override; however, the City letter does address the issue of whether there is a regional need for housing, and particularly market-rate rental housing. The City's letter points to a statement in the County's letter that the subject override and potential future mixed-use project will respond to a critical rental housing shortage in the region by providing waterfront rental housing affordable to persons of middle income in the Ventura County coastal region. Commission staff would note that the Harbor Department's application submittal to the City and the Commission included an analysis of housing availability and economics, as part of a larger 2016 report entitled "Consideration of Environmental Factors", and found that the vacancy rate for rental housing in Ventura County is three percent or less which is below what is considered an industry standard of five percent rental vacancy. The report concluded that rental housing in Ventura County is currently under supplied, and considering projected population growth the issue will only become exaggerated.

The City, in contrast, points to the fact that it has approved a substantial amount of new housing within its jurisdiction over the past four years. In a letter dated March 5, 2020, included as Exhibit 6 to the staff report, the City documents that pursuant to a Regional Housing Needs Assessment (RHNA) 5<sup>th</sup> Cycle (2013-2021) 5,244 new housing units have been created within the City since 2013, including 171 very low-income, 902 low-income, and 1,225 moderate-income units. Additionally, the City points out that as of January 9, 2020 (a few weeks before the override application was submitted to the Commission) 1,179 additional units were being processed by City staff, 674 additional units had been approved, and 1,711 additional units were going through plan check and/or were under construction. The City concludes that considering this substantial amount of new housing being constructed within its jurisdiction the proposed housing at Fisherman's Wharf is not needed to meet the greater regional need for housing.

These letters and this information do not change the recommended findings, which acknowledge that housing availability is an issue of regional and statewide importance, but that allowing market-rate housing on publicly owned, harbor front land, without adequate standards to ensure continuation of priority Coastal Act uses, would not serve public needs for an area larger than the LCP area.