

**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

July 23, 2020

TO: California Coastal Commissioners and Interested Public

FROM: Steve Hudson, District Director  
Barbara Carey, District Manager  
Deanna Christensen, District Supervisor  
Wesley Horn, Coastal Program Analyst

SUBJECT: **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 public hearing and Commission action at the August 12, 2020 Commission hearing.**

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## SUMMARY OF STAFF RECOMMENDATION

Commission staff recommends that the Commission, after public hearing, **deny** the proposed City of Oxnard LCP Amendment No. LCP-4-OXN-20-0007-1 as submitted by the Ventura County Harbor Department.

### Background and the Proposed Local Coastal Program Amendment

The Ventura County Harbor Department (Harbor Department) is requesting that the Commission amend the City of Oxnard's certified LCP to allow residential uses on the publicly owned Fisherman's Wharf site within the Channel Islands Harbor. The amendment is intended to accommodate a potential future mixed-use project at the site. This request by the Harbor Department differs from most LCP amendment requests in that an entity other than the local government itself is making the request. The Coastal Act allows for such amendment requests where such an entity is a "person authorized to undertake a public works project . . . if the purpose of the proposed amendment is to meet a public need of an area greater than that included within such certified local coastal program." If such an entity requests that the local government amend its LCP but the local government does not do so, the law allows the Commission to override this disapproval and to approve the amendment in certain situations. This override procedure recognizes that it is the Coastal Commission's role to apply a regional or statewide perspective to land use debates when the use in question is of greater than

local significance. The override procedure is an extraordinary measure, though, and staff is only aware of it having been used twice before in the Commission's history. It is intended to be used in those rare instances when a local government is standing in the way of the development of a public works project or an energy facility that would meet regional public needs. However, for the reasons explained in this staff report, staff recommends denial of this proposed LCP amendment on the basis that it does not qualify for processing pursuant to the Coastal Act's override procedures.

The existing Fisherman's Wharf site comprises approximately 11 acres and is situated at the southwest corner of Victoria Avenue and Channel Islands Harbor Boulevard within the Channel Islands Harbor ([Exhibit 2](#)). The site was originally developed in the 1970s and 1980s as a waterfront-oriented, visitor-serving commercial and recreational "fisherman's village" development consisting of nine stand-alone buildings totaling 48,000 sq. ft. of retail and commercial space, an urchin dock and commercial fishing processing facilities, public restrooms and 300 parking spaces ([Exhibit 3](#)). Although other areas of the Harbor contain residential development, there are no residences at the Fisherman's Wharf site.

Over the years following initial development, the retail and commercial uses on the site experienced increasing vacancies as the site was not maintained and fell into disrepair. Currently the site is only approximately 40% occupied and the Harbor Department has been seeking development proposals for the site over the last 15 years. According to the Harbor Department, allowing residential uses at the site is the only way to provide sufficient financial return to interest a potential developer in investing in, and redeveloping, the site. The Harbor Department concludes that redevelopment of the site, including by adding residential uses, will benefit the harbor and larger geographic area.

The County and City share jurisdiction within the Channel Islands Harbor. Though the County exercises planning and regulatory authority within the Harbor based on a previous agreement between the two governmental authorities and the Commission's 1986 certification of the Channel Islands Harbor Public Works Plan (PWP), Oxnard's City limits extend to all Harbor land areas, and the land areas of the Harbor are included within the City's certified LCP. The PWP details the kind, size, intensity and location of development that is intended to be undertaken within that planning area, and under the PWP—which was certified just prior to certification of the Harbor portion of the City's LCP—the County is responsible for seeking approval for all development within the Harbor that is permitted by the PWP. To obtain such approval, it must submit a Notice of Impending Development (NOID) for review and approval by the Commission. In this way, specific projects or activities described in the PWP undergo an expedited review and may be approved relatively quickly through the NOID process. However, if the County proposes activities, projects, or facilities not specifically permitted by the PWP, it must submit an amendment to the certified PWP that must be considered by the Coastal Commission. The standard of review for a PWP amendment is the City's certified LCP.

The land use designation of the Fisherman's Wharf site under the certified Channel Islands Harbor PWP is "Visitor Serving Harbor Oriented (V.S.H.O.)," which allows for a wide range of visitor serving and harbor-related uses. Similarly, the land use and zoning designation of the Fisherman's Wharf site under the certified City of Oxnard LCP is "Harbor Channel Islands (HCI)," which is a designation that applies to most of the landside properties within the Harbor and allows visitor-serving commercial uses and harbor-related uses supportive of recreational boating and commercial/sport fishing. Neither the certified LCP nor PWP permit residential uses at the Fisherman's Wharf site. Thus, to pursue its desired mixed-use project, the Harbor Department must first have the City's LCP amended, and then amend its PWP, to allow residential uses.

The Harbor Department's proposal to amend the City's LCP consists of changes to both the Coastal Land Use Plan (LUP) and Implementation Plan/Coastal Zoning Ordinance (IP/CZO). Proposed changes to the LUP include adding a new land use category called "Urban Village" and changing the land use and zoning designation for the Fisherman's Wharf site from "HCI" to "Urban Village." The proposed "Urban Village" designation would allow a mix of residential, commercial, and office uses. The proposed LUP amendment would also increase the allowable density for new multi-family residential and planned unit residential development throughout the entire Channel Islands Harbor from 18 to 40 units per acre and increase the maximum allowable building height for the Fisherman's Wharf property from 35 feet to 55 feet, with an additional 10 feet for rooftop appurtenances.

The proposed IP/CZO amendment includes changes to the "HCI" zone to allow residential uses (that conform with the "Urban Village designation discussed above) as a permitted use at the Fisherman's Wharf site. The other changes to the "HCI" zone relate to increasing maximum residential density and building height requirements, changing when permitted visitor-serving uses must be subordinate to the primary commercial/sport fishing and recreational boating-related uses allowed within the zone, and allowing flexible development standards. Though the allowance for residential would apply only at Fisherman's Wharf, the other broad changes would apply to multiple properties within the Channel Islands Harbor area that are zoned HCI, not just the Fisherman's Wharf site.

The Proposed LCP Amendment Does Not Qualify for the Override Procedure or Meet the Criteria for Approval of an LCP Override.

In order for the Commission to approve an override of a certified LCP, it must find that: (1) the proposed LCP amendment qualifies for processing pursuant to the override procedure in Section 30515, and (2) that the proposed LCP amendment satisfies four findings required by Section 13666.4 of the Commission's regulations. In addition, the proposed amendment must have been submitted to the local government, which must have denied the amendment request. Here, the City of Oxnard considered the subject LCP amendment request in 2019 and denied the amendment on the grounds that the amendment would not maintain or enhance coastal resources, public access and recreation, or recreational boating facilities and services, and would not ensure adequate public parking. Commission staff now recommends that the Commission

deny the amendment request on the grounds that it does not qualify for the override procedure or meet all the criteria for approval through an override process.

Section 30515 allows any person authorized to undertake a public works project or proposing an energy facility to request that a local government amend its certified LCP if the purpose of the proposed amendment is to meet the public needs of an area greater than that included within the certified LCP and if the need was not anticipated by the person making the request at the time the LCP was certified. Here, the Harbor Department qualifies as a “person” authorized to undertake a public works project, and the need to redevelop a dilapidated Fisherman’s Wharf by modifying allowable uses and standards could not have been anticipated by the Harbor Department or the City of Oxnard in 1986, when the LCP was certified. However, the evidence does not demonstrate that the amendment will meet the public needs of an area greater than included within the certified LCP. The Harbor Department provided no information, data, or analysis demonstrating that the current status of Fisherman’s Wharf may be negatively affecting the Harbor, and that allowing market rate, residential uses at the site will benefit the Harbor as well as a larger geographic area. Providing new housing is an important statewide issue, and the vitality of the Harbor is important to people beyond Oxnard’s borders. However, regional public needs would not be met by providing market-rate housing on harborfront land where coastal-related and visitor-serving uses must be prioritized, especially given that the proposed LCP Amendment does not contain standards to ensure protection of such priority uses. Because the amendment does not sufficiently demonstrate how the changes to the certified Oxnard LCP will meet the needs of a larger geographic area, the amendment fails the first part of the test.

The proposed amendment also fails the second part of the test, which consists of the four findings in Section 13666.4 of the Commission’s regulations, all of which must be met in order to approve an LCP amendment override. The first finding, which is a repeat of the required finding under Section 30515, is whether the development meets the public need of a geographic area greater than within the certified LCP. As discussed previously, the proposed amendment does not satisfy this finding.

The second finding pertains to the LCP amendment’s consistency with the Chapter 3 policies of the Coastal Act. Here, the proposal to allow residential uses within the Fisherman’s Wharf site does not include any requirement that the residential use be ancillary and/or subordinate to the priority fishing and boating uses within the HCI zone. This reprioritization of uses is inconsistent with the LCP and Coastal Act requirements that prioritize fishing, recreational, coastal-dependent, and visitor-serving uses in waterfront locations. Additionally, because the amendment lacks sufficient specificity and standards, it is possible that a future residential development could be of a size, scale, layout or design that has the potential to impact or limit existing and future public access and recreation, commercial fishing, and visual resources within the site. As such, the amendment does not satisfy this findings requirement of Section 13666.4.

The third finding requires that, if a proposed amendment has the potential to cause a significant adverse impact to the environment, that it be approved only if it is the least

damaging feasible alternative. As described immediately above, the proposed LCP amendment does have the potential to cause adverse coastal resource impacts. However, the evidence does not demonstrate that the proposed amendment is the least damaging alternative. In its LCP amendment submittal, the Harbor Department submitted a “Consideration of Environmental Factors” that analyzed environmental impacts and policy consistency of a future potential mixed-use development. The submittal also analyzed 11 alternatives to the potential future mixed-use development. However, the proposal before the Commission is an amendment to the certified Oxnard LCP, not the potential future mixed-use development, and the Harbor Department has not provided any analysis of alternatives to the proposed amendment to lessen potential impacts. For example, the proposed amendment would make changes in areas other than just Fisherman’s Wharf, even though this broad change is not necessary to carry out the specific, mixed-use project contemplated by the Harbor District. These changes include increasing allowable maximum building heights, reducing setbacks, and allowing more flexibility in determining whether uses other than principally permitted uses are allowed. This could cause significant impacts to public access, visitor-serving uses, and public views, all of which could have been lessened if the LCP amendment were more tailored to a specific project rather than changing zoning standards in such a broad manner. In addition, the amendment could have included more and tighter standards to ensure that any residential development would not negatively impact coastal resources in the Harbor. Therefore, the override request fails to satisfy this requirement of Section 13666.4.

Lastly, the fourth finding relates to whether disapproval of the proposed LCP override would adversely affect the public welfare, as identified in the Coastal Act’s general findings and Legislative declarations (e.g., Section 30001, 30001.5, 30004). Here, disapproval would not harm the public welfare. On the contrary, approval of the override would be contrary to the Coastal Act’s goals to assure priority for coastal-dependent and coastal-related development on the coast and to maximize public recreational opportunities along the coast. Because the amendment lacks sufficient specificity and standards, the amendment also has the potential to permit development that may significantly impact existing and future public access and recreation, commercial fishing, and visual resources. Providing adequate housing and maintaining the harbor are important goals; however, there appear to be alternative methods to achieve these goals that would have fewer impacts, would be more tailored, and might avoid the need for a Commission override. Denial therefore would not harm the public welfare, but would simply ensure that any needed redevelopment of the Harbor adequately protects coastal resources, including visitor-serving and coastal-dependent uses. Therefore, the request for the override fails to satisfy this finding requirement of Section 13666.4.

For these reasons staff recommends that the Commission deny the amendment. The motions to carry out this recommendation begin on page 12.

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**EXHIBITS**

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[Exhibit 2 – Harbor Overview](#)

[Exhibit 3 – Area Overview](#)

[Exhibit 4 – Proposed LUP and LIP Amendment](#)

[Exhibit 5 – LCP Amendment Override Request from Ventura County Harbor Department](#)

[Exhibit 6 – LCP Amendment Override Response Letter from City of Oxnard](#)

## I. PROCEDURAL OVERVIEW

### A. STANDARD OF REVIEW/QUALIFICATION FOR OVERRIDE.

California Public Resources Code (“PRC”) Section 30515 and California Code of Regulation, Title 14 (“14 CCR”) Section 13666 *et seq.* govern the submittal of LCP amendments by persons authorized to undertake public works projects that require an LCP amendment. PRC Section 30114 defines “public works.” This section of the Coastal Act allows a very limited group of people to request that a local jurisdiction amend its LCP in order to carry out a public works or energy project of greater than local significance and, if the local jurisdiction does not do so, request that the Commission override that decision and amend the local jurisdiction’s LCP (including its LUP, implementing ordinances etc.).

The Commission may only approve an LCP amendment override if it makes certain findings required by PRC Section 30515 and 14 CCR Section 13666.4. There are also certain procedures that must be followed by the requesting party. These findings and procedures are briefly described here and are described in more detail in later sections of this report.

PRC Section 30515 states:

#### ***Amendment for public works project or energy facility development***

*Any person authorized to undertake a public works project or proposing an energy facility development may request any local government to amend its certified local coastal program, if the purpose of the proposed amendment is to meet public needs of an area greater than that included within such certified local coastal program that had not been anticipated by the person making the request at the time the local coastal program was before the commission for certification. If, after review, the local government determines that the amendment requested would be in conformity with the policies of this division, it may amend its certified local coastal program as provided in Section 30514.*

*If the local government does not amend its local coastal program, such person may file with the commission a request for amendment which shall set forth the reasons why the proposed amendment is necessary and how such amendment is in conformity with the policies of this division. The local government shall be provided an opportunity to set forth the reasons for its action. The commission may, after public hearing, approve and certify the proposed amendment if it finds, after a careful balancing of social, economic, and environmental effects, that to do otherwise would adversely affect the public welfare, that a public need of an area greater than that included within the certified local coastal program would be met, that there is no feasible, less environmentally damaging alternative way to meet such need, and that the proposed amendment is in conformity with the policies of this division.*



This provision sets forth certain, preliminary criteria that must be met for a person to be eligible to use the override procedure. Specifically, the following are required pursuant to PRC Section 30515 and 14 CCR Section 13666:

- 1) The requesting party must be authorized to undertake a public works project or proposing an energy facility development. Pursuant to case law interpreting this provision, the party must be *actually proposing* a public works project, and not merely be authorized to undertake a public works project.<sup>1</sup>
- 2) The proposed amendment meets the public needs of an area greater than that included in the certified LCP.
- 3) These public needs were unanticipated by the person proposing the development at the time the LCP was before the Commission for certification.

If those criteria are met, the Commission may consider an override request, and the Commission may approve it if it makes the following findings:

*13666.4. Required Findings.*

*a. If the recommendation is for Commission approval as proposed or modified (i.e., conditioned), the recommendation shall be accompanied by specific factual findings and reasoning which, after a careful balancing of social, economic and environmental effects, supports the following conclusions:*

*1. Development meets a public need of a geographic area greater than that included within the certified LCP.*

*2. Development conforms with and is adequate to carry out the policies of Public Resources Code Section 30200 et seq.*

*3. If significant adverse environmental impacts have been identified, reasonable alternatives have been examined, and mitigation measures have been included that substantially lessen any significant adverse environmental impact so that there is no feasible less environmentally damaging way to meet the public need. If the development will have no significant adverse environmental impact, findings shall be included which support that conclusion.*

*4. Disapproval would adversely affect the public welfare as identified in the findings, declarations, and general provisions of the Coastal Act (Public*

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<sup>1</sup> *City of Malibu v. California Coastal Commission* (2012) 205 Cal.App.4th 1259, 1272 (Section 30515 “permits a person authorized to undertake a public works project or proposing an energy facility development to seek a Coastal Commission override to allow the person to do exactly that: to undertake a public works project or an energy facility development that would otherwise be prohibited by the [LCP].”

*Resources Code Section 30000 et seq.) and the California Coastal Management Program, if applicable.*

*b. If the recommendation is for Commission denial, the recommendation shall state specifically the grounds for denial, based upon the findings and relevant facts which after a careful balancing of social economic and environmental effects support the conclusions listed in Section 13666.4.*

The subject LCP amendment includes proposals for new policies and/or modifications to existing policies and provisions of both the LUP and LIP portions of the City of Oxnard's certified LCP. Pursuant to 14 CCR Section 13511(c), the standard of review that the Commission uses in reviewing the proposed LUP changes is whether the LUP, as amended, would be consistent with, and meet the requirements of, the policies of Chapter 3 of the Coastal Act. The standard of review for the proposed amendments to the LIP of the certified Local Coastal Program is whether the proposed amended IP would be in conformance with, and adequate to carry out, the provisions of the LUP portion of the certified City of Oxnard Local Coastal Program. In addition, all Chapter 3 policies of the Coastal Act have been incorporated in their entirety in the certified City of Oxnard LUP as guiding policies.

## **B. PROCEDURAL REQUIREMENTS AND PUBLIC PARTICIPATION.**

Procedurally, 14 CCR Section 13666.1 allows a person who is interested in using the override procedure to first submit an LCP amendment application to the Commission's Executive Director requesting a determination of whether the proposed LCP amendment and development are subject to the override procedure. 14 CCR § 13666.1. Regardless of whether the person uses that procedure, it must submit the proposed LCP amendment to the local government whose LCP is being proposed for amendment. 14 CCR § 13666.2. If the local government does not amend its LCP, the person proposing the amendment may "appeal" that decision to the Commission by submitting the proposed amendment directly to the Commission, which may approve the amendment if it makes certain findings, despite the local government's denial of the amendment. 14 CCR §§ 13666.2, 13666.4.

In this case, the Harbor Department did not submit an application to the Executive Director for a preliminary determination of whether the proposed LCP amendment meets the override provisions. Rather, the Harbor Department submitted a proposed LCP amendment to Oxnard, and the City Council denied the LCP amendment. Therefore, the Harbor Department may request Commission consideration of the LCP amendment through an appeal.

Proposed LCP amendments submitted pursuant to PRC Section 30515 and 14 CCR Section 13666 are processed by the Commission according to the normal LCP procedures contained in PRC Sections 30512 and 30513, as well as 14 CCR Chapter 8, Subchapter 1, Articles 1-18 (14 CCR Sections 13550 – 13577, and in particular 13551 - 13555). However, some parts of those provisions do not apply for overrides. For example, an LCP amendment generally must be submitted pursuant to a resolution by

the local government whose LCP is being proposed for amendment. 14 CCR § 13551. But under an override, the local government would not, of course, submit any such resolution, as the proposal is submitted by the entity that is requesting the amendment. Likewise, that requesting entity, rather than the local government, is responsible for submitting a complete amendment submittal, including a summary of public participation and information that is detailed enough so that the Commission can review its conformity with the Coastal Act. 14 CCR § 13552.

The override process also requires that the Commission consult with the affected local government regarding the application. 14 CCR Section § 13666.3. Here, prior to receiving an LCP amendment override request application from the Harbor Department, Commission staff sent a letter to the City of Oxnard staff on January 7, 2020 summarizing the LCP amendment override procedures and inviting the City to consult regarding the application. Upon receiving the LCP amendment override request application from the Harbor Department, Commission staff forwarded a copy of the application to City staff for its review. After reviewing the LCP amendment override application, City staff provided a response letter which Commission staff reviewed and have included as an exhibit to the staff report. Lastly, on July 21, 2020, Commission staff and City staff met to consult on the LCP amendment override application.

The procedure for the Commission to modify a proposed LCP amendment is also different in the override context. The Commission's regulations contemplate that the Commission may approve an amendment request submitted pursuant to Section 30515, deny it, or modify it and approve it as modified. 14 CCR Section 13666.4. The procedure of modifying an LCP amendment request and approving it as modified pursuant to Section 30515 differs from the usual procedure used for LCP amendments whereby the Commission may approve an amendment subject to suggested modifications for subsequent local government adoption. This difference stems from the nature of the action that the Commission is undertaking when it reviews LCP amendments submitted pursuant to Section 30515. Because the requestor is not the local government or local authority for the LCP, the requestor does not have the authority to adopt suggested modifications. In this limited circumstance, the Commission may adopt and certify an amendment to an LCP without the concurrence of the local government, and without the local government or requesting party having the opportunity to approve any modifications that the Commission makes to the submitted amendment, but only after a careful balancing of the competing needs pursuant to the standards articulated in Section 30515.

Section 30503 of the Coastal Act requires the provision of maximum opportunities for public input in preparation, approval, certification and amendment of any LCP, including LCP amendments submitted through an override. Notice of the Commission's consideration of the subject LCP amendment override request has been distributed to all known interested parties. A summary of public hearings held by both the City and Harbor Department are summarized in the LCP Amendment Proposal Section below. Additionally, since the Commission's South Central Coast District Office officially received the LCP amendment override request Commission staff has received comments from several members of the public which have been included as a

correspondence appendix to the staff report. Comments from members of the public either express that the application is inconsistent with the processing and findings requirements for override of the local government's LCP and the Commission's Environmental Justice Policy or generally express support for the LCP amendment override. Commission staff reviewed and considered the comments from the public and the findings of the staff report respond to the issues raised in the public comments received thus far.

## **II. STAFF RECOMMENDATION, MOTION, AND RESOLUTION FOR THE LAND USE PLAN AMENDMENT**

Following public hearing, staff recommends the Commission adopt the following resolution and findings. The appropriate motion to introduce the resolution and staff recommendation is provided.

### **A. DENIAL OF THE LAND USE PLAN AS SUBMITTED**

#### **Motion:**

*I move that the Commission **certify** Land Use Plan Amendment No. LCP-4-OXN-20-0007-1 as submitted by the Ventura County Harbor Department.*

#### **Staff Recommendation to Deny:**

Staff recommends a **NO** vote. Failure of this motion will result in denial of the Land Use Plan Amendment as submitted and adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the appointed Commissioners.

#### **Resolution to Deny:**

The Commission hereby **denies** certification of the City of Oxnard Land Use Plan Amendment No. LCP-4-OXN-20-0007-1, as submitted by the Ventura County Harbor Department and adopts the findings set forth below on the grounds that the Land Use Plan Amendment will not meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act and does not satisfy the criteria for Commission approval of an LCP amendment override as specified in PRC Section 30515 and 14 CCR Sections 13666 and 13666.4. Certification of the Land Use Plan Amendment also does not comply with the California Environmental Quality Act because: (1) feasible mitigation measures and/or alternatives have not been incorporated to substantially lessen any significant adverse effects of the plan on the environment, and, (2) there are other feasible alternatives or mitigation measures that could substantially lessen any significant adverse impact that the Land Use Plan Amendment may have on the environment.

### **III. STAFF RECOMMENDATION, MOTION, AND RESOLUTION FOR THE IMPLEMENTATION PLAN AMENDMENT**

Following public hearing, staff recommends the Commission adopt the following resolution and findings. The appropriate motion to introduce the resolution and staff recommendation is provided.

#### **A. DENIAL OF THE IMPLEMENTATION PLAN AS SUBMITTED**

**Motion:**

*I move that the Commission **reject** Implementation Plan Amendment No. LCP-4-OXN-20-0007-1 as submitted by the Ventura County Harbor Department.*

**Staff Recommendation to Deny:**

Staff recommends a **YES** vote. Passage of this motion will result in denial of the Implementation Plan Amendment as submitted and adoption of the following resolution and findings. The motion passes only by an affirmative vote of the majority of the Commissioners present.

**Resolution to Deny:**

The Commission hereby **denies** certification of the City of Oxnard Implementation Plan Amendment No. LCP-4-OXN-20-0007-1, as submitted by the Ventura County Harbor Department and adopts the findings set forth below on the grounds that the Implementation Program as amended by the proposed amendment does not conform with, and is inadequate to carry out, the provisions of the certified Land Use Plan and does not satisfy the criteria for Commission approval of an LCP amendment override as specified in PRC Section 30515 and 14 CCR Sections 13666 and 13666.4. Certification of the Implementation Plan Amendment also does not comply with the California Environmental Quality Act because: (1) feasible mitigation measures and/or alternatives have not been incorporated to substantially lessen any significant adverse effects of the plan on the environment, and (2) there are other feasible alternatives or mitigation measures that could substantially lessen any remaining significant adverse impact that the Implementation Plan Amendment may have on the environment.

### **IV. FINDINGS FOR DENIAL OF THE LOCAL COASTAL PROGRAM AMENDMENT**

#### **A. AMENDMENT DESCRIPTION AND BACKGROUND**

The Harbor Department is requesting an LCP amendment override of the certified City of Oxnard LCP that is intended to allow a residential/mixed use development on a specific publicly owned property known as the Fisherman's Wharf site within the Harbor.

## **Background**

The Fisherman's Wharf site comprises approximately 11 acres and is situated at the southwest corner of Victoria Avenue and Channel Islands Harbor Boulevard ([Exhibit 2](#)). It was originally developed in the 1970s and 1980s as a waterfront oriented recreational and entertainment "fisherman's village" themed development consisting of nine buildings with a maximum height of 43 feet that include a total 48,000 sq. ft. of retail and commercial development ([Exhibit 3](#)). The development also included an urchin dock and commercial fishing processing facilities, public restrooms and 300 parking spaces. Over the years following initial development, the retail and commercial uses on the site experienced increasing vacancies and the site was not maintained and fell into disrepair. The Harbor Department states that currently the commercial spaces at the site are only approximately 40% occupied and that it has been seeking new development proposals for the site over the last 15 years.

The City of Oxnard LCP was effectively certified by the Commission in April 1985; however, certification of an LCP for the Channel Islands Harbor area was deferred at that time, creating an Area of Deferred Certification (ADC). On September 19, 1986, the Channel Islands Harbor Public Works Plan (PWP) was certified by the Commission, prior to certification of an LCP for the harbor area. Subsequently, the Commission certified an LCP for the City's Harbor ADC in December 1986. The purpose of the PWP, as certified, is to provide a "detailed and specific planning document to guide future Harbor development." Jurisdiction within the Channel Islands Harbor is shared by the County of Ventura (County) and the City of Oxnard. Though the County assumes planning and regulatory authority within the Harbor based on a previous agreement between the two governmental authorities and the Commission's certification of the Channel Islands Harbor PWP, Oxnard's City limits extend to all Harbor land areas, and the land areas of the Harbor are included within the City's certified LCP.

Under the certified PWP, the County is responsible for seeking approval of all development within the Harbor permitted by the PWP and must submit a Notice of Impending Development (NOID) for review and approval by the Commission. For a project contained in the certified PWP, the Commission's review of a NOID is limited to determining that the development as proposed is consistent with the PWP, or imposing reasonable terms and conditions to ensure that the development conforms to the PWP. The PWP details the kind, size, intensity and location of development that is intended to be undertaken within that planning area. The PWP functions more as a master development permit in order for specific projects or activities described in the PWP to be approved quickly through the NOID process at later dates with minimal review. Activities, projects, or facilities not specifically proposed in the PWP require an amendment to the certified PWP that must be approved by the Coastal Commission prior to approval and issuance of a NOID for said activity, project, or facility. Coastal Act Section 30605 and Sections 13357 and 13371(4) of the Commission's Regulations state that where a PWP amendment is submitted after the certification of the LCP for the area under the purview of the PWP, the standard of review for the amendment shall be the certified LCP. The Commission has previously certified a number of PWP amendments that acknowledged that the LCP is the standard of review.

The land use and zoning designation of the Fisherman's Wharf site under the certified City of Oxnard LCP is "Harbor Channel Islands (HCI)", which is a designation that applies to most of the landside properties within the harbor and allows visitor-serving commercial uses and harbor-related uses supportive of recreational boating and commercial/sport fishing ([Exhibit 2](#)). The primary purpose of the HCI zone is to provide and protect commercial and sport fishing, recreational boating and related uses within the harbor. The City's Implementation Plan/Coastal Zoning Ordinance (IP/CZO) identifies these uses as "principally permitted." The IP/CZO also allows visitor-serving uses within the HCI zone when subordinate and incidental to those principally permitted uses, and visitor-serving uses are identified as "secondary permitted uses". Residential uses are not allowed.

Similarly, the land use designation of the Fisherman's Wharf site under the certified Channel Islands Harbor PWP is "Visitor Serving Harbor Oriented (V.S.H.O.)" which allows for a wide range of visitor serving and harbor-related uses including picnicking and other passive recreation, lodging, dining, supply stores, gift shops and boutiques, motels, restaurants, convenience stores, gas stations, fire stations, community centers/meeting places, yacht clubs, park areas, marine museums, and marine research oriented research facilities. Residential uses are not allowed.

Other land use/zoning designations within the Harbor included as part of the certified LCP consist of: Coastal Visitor-Serving Commercial (CVC) including coastal dependent visitor-serving commercial/recreational opportunities such as amusement centers, rentals, restaurants, and motels; Coastal Dependent Industrial (CDI) which is intended to provide industrial uses such as boat repair and service yards, seafood processing facilities, and aquaculture; Coastal Recreation (RC) which is intended to provide open space for active and passive outdoor recreation; and Coastal Medium Density Multiple-Family (R-3-C) for the existing multiple-family residential neighborhoods that were constructed prior to the certification of the Oxnard LCP and the Harbor PWP.

### **LCP Amendment Proposal**

The subject project-driven amendment request proposes changes in allowable land uses, density, height and other development standards intended to permit a potential future mixed use development at the subject Fisherman's Wharf site consisting of a maximum of 400 residential apartment units, 36,000 sq. ft of visitor-serving commercial space, 16 boat slips, public promenade, and a 1.0 acre public park. In order to accommodate a public promenade and public dock in the area of the mixed use development, the existing commercial fishing urchin dock is proposed to be relocated to the south at a nearby boat yard.

Proposed changes to the City's Land Use Plan (LUP) include an increase in the allowable density for new multi-family residential and planned unit residential development (Harbor) from 18 to 40 units per acre ([Exhibit 4](#)). It is not clear whether the proposed amendment applies this increase to only to the Fisherman's Wharf site or

to the whole Channel Islands Harbor area.<sup>2</sup> The changes would also allow an increase in the maximum allowable building height for the Fisherman’s Wharf site from 35 feet in height to 55 feet, with an additional 10 feet for rooftop appurtenances. In addition, the proposed changes to the LUP include adding a new land use category called “Urban Village” and changing the land use and zoning designation of the Fisherman’s Wharf site from “Harbor Channel Islands (HCI)” (which allows visitor-serving commercial and harbor-related uses) to “Urban Village” (which would allow a mix of residential, commercial, and office uses).

The proposed amendment also includes changes to the “Harbor Channel Islands (HCI)” zone within the City’s IP/CZO to allow residential uses (that conform with the Urban Village LUP designation discussed above) as a permitted use at the Fisherman’s Wharf site ([Exhibit 4](#)). The other changes to the “Harbor Channel Islands (HCI)” zone in the IP/CZO include: (1) requiring permitted visitor-serving uses to be subordinate to the primary commercial/sport fishing and recreational boating-related uses when all properties within the zone are judged as a whole rather than on a project site basis; (2) increasing the maximum allowable building height permitted within the zone from 25 feet for all buildings to 55 feet for residential buildings and 43 feet for stand-alone commercial buildings; (3) adding a maximum allowable residential density of 36 units per acre based on gross square footage; (4) modifying minimum required yard setbacks for structures; and (5) adding a new standard that would allow project proponents to propose alternative development standards for a project and permit those to be approved if the project proponent demonstrates that the project will better serve the public interest, produce greater public benefits, or increase public access through the alternative development standards. These broad changes would apply to multiple properties within the Channel Islands Harbor area that are zoned HCI, not just the Fisherman’s Wharf site.<sup>3</sup>

#### 1. **History of Ventura County Harbor Department’s Related PWP Amendment**

On June 14, 2016, the Ventura County Board of Supervisors (BOS) approved a Public Works Plan (PWP) amendment proposing to create a new land use designation sub-category of “Urban Village” with associated development standards and to change the land use designation of Harbor parcels V-1, V-2, V-3, V-4 and a portion of Parcel N-2 from Visitor Serving Harbor Oriented (V.S.H.O.) to the new land use sub-category of “Urban Village.” This proposal was intended to accommodate a potential future residential and visitor-serving mixed use development at the Fisherman’s Wharf site,

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<sup>2</sup> The policy, with proposed changes in underline, reads: “New multi-family residential and planned unit residential development shall be limited to a density of no more than 18 units per acre. For the purpose of Local Coastal Plan administration in Channel Islands Harbor area, and in furtherance of the Urban Village concept, density calculated on the basis of gross acreage shall not exceed 40 units per acre.” Though this change states that the density increase is “in furtherance of the Urban Village concept,” it does not expressly limit the density increase to areas designed as Urban Village.

<sup>3</sup> However, the allowance for increased density uses similar language as the LUP change, and is unclear regarding whether it applies only to Urban Village zones or to all HCI zones.



consisting of a maximum of 400 apartment units, 36,000 sq. ft of commercial space, 16 boat slips, public promenade, and a 1.0 acre public park.

On July 5, 2016, after receiving notice of the BOS action, but prior to the Harbor Department formally submitting the PWP amendment to the Commission, Commission staff sent a letter to the Harbor Department to convey that the County action raised issues regarding consistency with the Oxnard LCP (which is the standard of review for a proposed PWP amendment) and that Commission staff could not recommend the proposed changes for approval by the Commission unless an amendment to Oxnard's LCP was approved by the City and certified by the Commission. This was because the City's certified LCP designates the subject parcels as "Harbor Channel Islands (HCI)," which, as described above, prioritizes fishing and boating uses, as well as related visitor serving uses, but does not permit residential dwellings. Therefore, the Urban Village sub-category proposed by the BOS and Harbor Department as part of the PWP amendment would have allowed uses that are inconsistent with the uses allowed by the City's certified LCP.

Commission staff met with the Harbor Department on July 21, 2016 to discuss the pending PWP amendment submittal and how to resolve the inconsistency issue for processing the application. Staff outlined the necessary procedural requirements for processing an LCP amendment first, followed by processing of the subject PWP amendment, and also provided suggestions regarding an analysis of siting and design alternatives that would provide more visitor and commercial serving uses and the need for such an analysis as part of the PWP amendment submittal.

On August 17, 2016, the Harbor Department submitted its formal application for the subject PWP amendment to the Commission, knowing that it could not be processed without a certified amendment to the Oxnard LCP, and without incorporating Commission staff's suggestions from the meeting on July 21, 2016. Commission staff reviewed the PWP amendment application, determined the submittal was incomplete, and sent an incomplete letter to the Harbor Department, dated August 24, 2016. The letter requested: (1) evidence that the required amendment to the Oxnard LCP has been approved by Oxnard and effectively certified by the Commission, (2) an additional traffic analysis using traffic counts collected during peak visitor times in summer, (3) an alternatives analysis that discusses how the proposed development intensities were chosen and also analyzes the feasibility of any alternative intensities of residential and commercial space that could provide more public and visitor serving amenities and commercial uses, (4) clarification on the proposed amended language to Visual Access Policy 1.d.1, the *Inventory of Existing Uses* under *Appendix A*, and the traffic study included in the *Technical Appendix*, (5) a signed copy of the resolution from the BOS approving the subject PWP amendment, and (6) a map showing the existing and proposed parcel configurations and totaling the existing and proposed parcel acreages.

Commission staff continued to work with the Harbor Department on seven subsequent reviews of additional information provided by the Harbor Department in response to the incomplete letter, and Commission staff sent subsequent incomplete letters dated September 29, 2016, December 15, 2016, March 28, 2017, April 18, 2017, May 4, 2017,

September 5, 2017, and September 15, 2017. Commission legal staff also sent a letter to the Harbor Department dated February 21, 2017 reiterating the outstanding incomplete items and affirming Commission staff's position that the application would remain incomplete until the requested items—consisting at that time mainly of evidence of Oxnard's preliminary approval of LCP modifications to facilitate the PWP amendment—were submitted.

On March 28, 2017, the Harbor Department submitted a request for dispute resolution in which it requested that the Commission review the Executive Director's determination that the PWP amendment application remained incomplete. The dispute centered primarily around the question of whether the Executive Director may decline to file the Harbor Department's PWP amendment application as complete until the City of Oxnard has approved the required zoning and any other necessary changes as part of an LCP amendment in order that the requested PWP amendment would conform with the LCP. The Harbor Department asserted that the Coastal Act gives the Commission itself exclusive authority to determine whether a PWP amendment is consistent with a relevant LCP, and it claimed that Commission staff was usurping that authority by refusing to deem the PWP amendment complete until the City's LCP has been amended to allow residential uses. In contrast, the Executive Director's position was that the Coastal Act and its implementing regulations authorize him to determine that the PWP amendment application is incomplete until the City of Oxnard at least preliminarily approves the zoning and other changes in its LCP that correspond to the proposed zoning and mix of uses in the proposed PWP amendment.

At its October 12, 2017 meeting, the Commission concurred with the Executive Director's determination and found that the PWP amendment application was incomplete. Following the Commission's action on the dispute resolution, Commission staff, Harbor Department Staff and City of Oxnard staff met at the Commission's South Central Coast District office to discuss the process of the Harbor Department applying to the City to amend the Oxnard LCP.

## **2. City of Oxnard Consideration and Action Regarding the Subject LCP Amendment**

On January 25, 2018, the Harbor Department submitted an application to the City of Oxnard for a specific LCP amendment consisting of changes to the Land Use Plan (LUP) and the Local Implementation Plan/Coastal Zoning Ordinance (IP/CZO) to allow a mixed-use residential development at the Fisherman's Wharf site. The substance of that amendment request was the same as the LCP amendment that is the subject of this staff report.

On February 13, 2018, the City of Oxnard sent a letter to the Harbor Department indicating that the application for the LCP amendment was incomplete. On February 25, 2019, the Harbor Department submitted additional information to the City, and on April 22, 2019, the City held a Community Workshop at the Oxnard Performing Arts Center to obtain community input regarding the project and hear testimony from interested parties on the LCP amendment.

On August 22, 2019, the Oxnard Planning Commission held a public hearing regarding the proposed LCP amendment and recommended that the City Council deny the amendment on the grounds that the amendment: 1) does not maintain or enhance coastal resources as identified and protected in the originally certified LUP; 2) has not demonstrated that it would have adequate parking, improvement and/or enhancement of existing infrastructure which includes waterfront walkways and public parks, and expansion or enhancement of recreational boating facilities and services; 3) has failed to demonstrate that it would not be detrimental to the public interest, health, safety, convenience or welfare; and 4) has failed to demonstrate that it would maintain or enhance the provisions for public access within the coastal zone.

On November 7, 2019, the Oxnard City Council held a public hearing, received public testimony regarding the LCP amendment, and denied the amendment on the same four grounds identified above.

### 3. **Submittal of the Subject LCP Amendment Override Request**

On January 27, 2020 the Harbor Department submitted the subject application for a LCP amendment override of the City of Oxnard's certified LCP pursuant to the LCP Amendment Override procedures of Section 30515 of the Coastal Act and Section 13666 through 13666.4 of the California Code of Regulations ([Exhibit 5](#)). On February 10, 2020, the Executive Director determined that the Harbor Department's amendment submittal was in proper order and legally adequate to comply with the submittal requirements of Coastal Act Section 30510(b). The 90 working day statutory time limit for Commission action on the amendment would have ended on June 18, 2020; however, California Executive Order No. N-52-20 (dated April 16, 2020) suspended the time limits found in Coastal Act Sections 30512 and 30513 for a period of 60 days. As such, the time limit for Commission action on the subject LCP amendment was extended to August 17, 2020. On May 14, 2020, the Commission approved a one year time extension for Commission action on the amendment request, and the new deadline for Commission action is August 17, 2021.

## **B. WHETHER THE PROPOSED LCP AMENDMENT QUALIFIES FOR PROCESSING PURSUANT TO THE "OVERRIDE" PROCEDURE**

California Public Resources Code ("PRC") Section 30515 and California Code of Regulations, Title 14 ("14 CCR") Section 13666 et seq. govern the submittal of LCP amendments by persons authorized to undertake public works projects that require an LCP amendment. This section of the Coastal Act allows a very limited group of people to request the Commission to amend any portion of a local jurisdiction's LCP, including its LUP, implementing ordinances, etc.

**PRC Section 30515 states the following:**

***Amendment for public works project or energy facility development***

*Any person authorized to undertake a public works project or proposing an energy facility development may request any local government to amend its certified local coastal program, if the purpose of the proposed amendment is to meet public needs of an area greater than that included within such certified local coastal program that had not been anticipated by the person making the request at the time the local coastal program was before the commission for certification.*

*If, after review, the local government determines that the amendment requested would be in conformity with the policies of this division, it may amend its certified local coastal program as provided in Section 30514.*

*If the local government does not amend its local coastal program, such person may file with the commission a request for amendment which shall set forth the reasons why the proposed amendment is necessary and how such amendment is in conformity with the policies of this division. The local government shall be provided an opportunity to set forth the reasons for its action. The commission may, after public hearing, approve and certify the proposed amendment if it finds, after a careful balancing of social, economic, and environmental effects, that to do otherwise would adversely affect the public welfare, that a public need of an area greater than that included within the certified local coastal program would be met, that there is no feasible, less environmentally damaging alternative way to meet such need, and that the proposed amendment is in conformity with the policies of this division.*

**14 CCR Section 13666 states, in relevant part:**

*13666. Applicability.*

*These procedures are applicable to persons authorized to undertake a public works project or proposing energy facility development that requires LCP amendments provided that the development meets the following two requirements:*

- 1. Unanticipated by the person proposing the development at the time the LCP was before the Commission for certification.*
- 2. Meets the public needs of an area greater than that included in the certified LCP.*

Those provisions establish the following three criteria that must be satisfied for a proposed LCP amendment to qualify for review on the merits pursuant to this “override” procedure:

1. The party requesting the amendment must be “authorized to undertake a public works project or proposing [an] energy facility development” (PRC § 30515 and 14 CCR § 13666). Courts have interpreted this to mean that the requesting party must be requesting the LCP amendment in order to carry out a specific public works or energy project, rather than requesting general LCP amendments untethered to an actual development project. *City of Malibu v. California Coastal Commission* (2012) 205 Cal.App.4th 1259, 1273.

2. The purpose of the proposed amendment must be “to meet public needs of an area greater than that included within such certified local coastal program” (PRC § 30515) and the development must in fact meet those needs (14 CCR § 13666(2)) and
3. The need must not have “been anticipated by the person making the request at the time the local coastal program was before the commission for certification” (PRC § 30515; see also 14 CCR § 13666(1))

These three criteria are addressed in this Section. The second eligibility criterion (whether the amendment is designed to and does meet public needs of an area greater than the City of Oxnard) is also included in 14 CCR Section 13666.4(a) as the first of the four factual findings that the Commission must make with regard to its action on an LCP amendment pursuant to this override process. The issue of whether the proposed amendment meets the public needs of an area greater than the LCP area is addressed more thoroughly in Section C below, and those findings are incorporated into this section as if repeated in full here.

1. **Whether the Ventura County Harbor Department is Authorized to Undertake a Public Works Project**

There are two groups of persons who may request an LCP amendment under PRC Section 30515 and 14 CCR 13666: those authorized to undertake public works projects and those proposing the development of energy facilities. The Harbor Department fits the former criteria.

The Coastal Act, in Section 30114, defines “public works” in relevant part, as:

(b) All public transportation facilities, including streets, roads, highways, public parking lots and structures, ports, **harbors** . . . and other related facilities

(c) All **publicly financed recreational facilities**, all projects of the State Coastal Conservancy, and any development by a special district.

(emphasis added).

The Harbor Department is a “person” (as defined in PRC Section 30111) and can undertake a public works project (as defined in PRC Section 30114). Specifically, it is authorized to undertake development related to its Harbor, as well as to develop publicly financed recreational facilities within the Harbor.

In addition, the proposed LCP amendment request is tethered to a specific development proposal, rather than being a request to simply amend LCP policies in a manner that is general or unrelated to a specific development proposal. Here, the Harbor Department is proposing and pursuing a redevelopment of Fisherman’s Wharf that would include up to 400 units of multi-family residential housing, a public park and play area, relocation of the existing commercial fishing dock hoist, and more ([Exhibit 5](#)). Although the development proposal is not as detailed as it may need to be to obtain any final land

use authorizations or Coastal Act approvals through the NOID process, it is an actual development proposal that the Harbor Department has been pursuing, in conjunction with a developer, for a number of years. As such, the proposed PWP amendment does not merely request general LCP amendments that are untethered to an actual public works development proposal, as was the case in the *City of Malibu* case.

The City has previously asserted that the residential portion of the proposed development does not qualify as a “public works project” because “public works” is not defined to include housing. However, “public works” is defined to include “harbors . . . and other related facilities.” Here, the Harbor District is proposing to develop housing on land that the Harbor District would lease to a developer, and the land is within the Channel Islands Harbor. As such, any housing would be on Harbor-owned land and would be integrated into the overall Harbor facilities. In addition, since its original certification, the Harbor’s PWP has recognized that there is already residential housing in other areas of the Harbor. It states that “[f]acilities within the Harbor currently consist of: 2,363 boat slips, 727 residential units, 274 hotel rooms, approximately 90,000 sq.ft. of restaurant space, marine oriented commercial facilities, a variety of visitor oriented commercial and recreation facilities, and administrative facilities.” The PWP’s map identifies seven land use designations, including (R) Residential, and the PWP describes how “[t]he purpose of this designation is to provide for residential uses within the scenic Harbor environment.” Furthermore, the City’s 1986 LCP certification for the Harbor area designated some areas for medium density residential.

Residential housing has been a part of the Harbor for more than three decades, and the Commission certified the original PWP with the knowledge that the Harbor area included housing. In this unique situation, it is appropriate to consider residential housing, which will be located on publicly owned harbor land and which will be integrated into a harbor’s overall facilities, to be a part of a “public works project” for purposes of an LCP override request. As such, the proposed amendment satisfies this criteria to qualify for review on the merits pursuant to the LCP amendment “override” procedure.

**2. Whether the Need Alleged to be Addressed by the Proposed LCP Amendment Meets the Public Needs of an Area Greater Than Included Within the LCP**

The Harbor Department asserts that the Channel Islands Harbor serves the entire County of Ventura as well as Central and Southern regions of California and provides many regionally significant amenities such as recreational boating opportunities and facilities for visitors and residents, as well as commercial fishing facilities. The Harbor Department also contends that the Fisherman’s Wharf site at the corner of Victoria Avenue and Channel Islands Boulevard is a prominent location that serves as a “gateway” to the Harbor, and redevelopment of the dilapidated site would be a key catalyst for rejuvenation of the entire Harbor area. The Harbor Department asserts that a future mixed-use residential development at the site is necessary to serve as an economic driver for the rest of the Harbor and that this economic growth will allow the Harbor to provide amenities into the near-term and long-term future.

However, the Harbor Department provided no discussion on the current financial or operational status of the Harbor and its amenities and did not provide a clear nexus of how the proposed LCP amendment will benefit the Harbor as a whole or the larger geographic area. Additionally, the Harbor Department did not provide any data or information on visitors or Harbor patronship to verify the regional significance of the Harbor.

The LCP Amendment Override procedure is an extraordinary measure that allows the state to intervene in local planning decisions and ensure that a local government cannot obstruct development(s) necessary to meet public needs of an area greater than that included within the LCP area, when meeting such needs is consistent with the coastal resource protection policies of the Coastal Act. In this case, allowing for residential uses in a harbor does not meet this criteria. Residential uses are not a priority use under the Coastal Act. That is not to say that providing housing is not important, but rather housing within a 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. These issues are discussed in more detail as part of the required findings of Section 13666.4 in Section C of this report, which are incorporated here in full by reference.

Therefore, the amendment does not satisfy this criteria to qualify for review on the merits pursuant to the LCP amendment "override" procedure.

**3. Whether the Need That is Alleged to be Addressed by the Proposed LCP Amendment Was Anticipated by the Person Proposing the Development at the Time the LCP was Certified**

In this case, the need at issue identified by the Harbor Department is the need to allow for residential uses as part of a mixed use development on one parcel in the harbor. The "person" who must not have anticipated that need in 1986, when the Oxnard LCP was certified, is the Harbor Department.

The land use and zoning designations of the Oxnard LCP primarily recognize the harbor-oriented uses existing at the time of certification, namely commercial fishing, recreational boating, boating related industrial, visitor-serving commercial recreation, and public access. The LCP also designates several sites as multi-family residential in recognition of residential developments existing before certification. The Harbor Department states that it did not anticipate at time of LCP certification that it would need to provide for mixed-use development including residential uses to function as an economic driver in the harbor.

It is clear from the LCP policies and provisions of the LCP (and the similar PWP provisions) that the Harbor Department did not anticipate at the time of LCP certification the need to develop residential, mixed use, or other uses that are not harbor oriented in Channel Islands Harbor. Though some residential uses were present at the time of PWP certification, no new residences were planned as part of the PWP or have since

been developed in the Harbor. As such, the amendment satisfies this criteria to qualify for review on the merits pursuant to the LCP amendment “override” procedure.

4. **Conclusion**

As discussed, the request for the override fails to satisfy one of the three preliminary, procedural requirements necessary to qualify for the override procedure in PRC Section 30515. Specifically, the evidence does not demonstrate that the purpose of the proposed LCP amendment meets the public needs of an area greater than that included within the certified City of Oxnard local coastal program.

**C. WHETHER THE PROPOSED LCP AMENDMENT SATISFIES THE FINDINGS REQUIRED BY 14 CCR SECTION 13666.4**

14 CCR 13666.4 requires that specific, factual findings be made if the Commission approves or denies an LCP amendment submitted pursuant to PRC Section 30515.

**14 CCR 13666.4 (Required Findings) states the following:**

*a. If the recommendation is for Commission approval as proposed or modified (i.e., conditioned), the recommendation shall be accompanied by specific factual findings and reasoning which, after a careful balancing of social, economic and environmental effects, supports the following conclusions:*

- 1. Development meets a public need of a geographic area greater than that included within the certified LCP.*
- 2. Development conforms with and is adequate to carry out the policies of Public Resources Code Section 30200 et seq.*
- 3. If significant adverse environmental impacts have been identified, reasonable alternatives have been examined, and mitigation measures have been included that substantially lessen any significant adverse environmental impact so that there is no feasible less environmentally damaging way to meet the public need. If the development will have no significant adverse environmental impact, findings shall be included which support that conclusion.*
- 4. Disapproval would adversely affect the public welfare as identified in the findings, declarations, and general provisions of the Coastal Act (Public Resources Code Section 30000 et seq.) and the California Coastal Management Program, if applicable.*

*b. If the recommendation is for Commission denial, the recommendation shall state specifically the grounds for denial, based upon the findings and relevant facts which after a careful balancing of social economic and environmental effects support the conclusions listed in Section 13666.4.*



**1. Whether the Development Meets a Public Need of a Geographic Area Greater Than That Included Within the Certified LCP.**

The Harbor Department claims that the LCP amendment and underlying redevelopment project will serve two regional, public needs. Primarily, it claims that the Harbor itself serves regional public needs, and that allowing residential development will make redevelopment of the Harbor's commercial and visitor-serving areas financially feasible. Second, it also claims that the market rate residential development will serve a regional need for rental housing. Although the Harbor is an important regional asset, and the state and region face a shortage of housing—particularly affordable housing—the evidence does not demonstrate that this particular LCP amendment and proposed development will actually serve a regional need. Stated another way, the evidence does not demonstrate that there is a need for this particular proposal in order to serve regional, public demand for housing or harbor-related activities.

The Harbor Department asserts that the Channel Islands Harbor serves the entire County of Ventura as well as Central and Southern regions of California, and that it provides many regionally significant amenities, including: 200 acres of open water available for boating; recreational vessel and equipment rental; over 2,000 boat slips for boaters located from Ventura County, Los Angeles, Bakersfield, Fresno and areas in between; and recreational excursions for Californians and visitors from a wide geographic area. The Harbor Department also contends that the Fisherman's Wharf site at the corner of Victoria Avenue and Channel Islands Boulevard is a prominent location that serves as a "gateway" to the Harbor. It claims that the Harbor's regional significance would be enhanced by a future mixed-use redevelopment of the Fisherman's Wharf property, which would serve as an economic driver for the rest of the Harbor, thus allowing the Harbor to provide amenities into the near-term and long-term future.

As discussed previously, the Fisherman's Wharf site was originally developed in the 1970s and 1980s as a waterfront-oriented, visitor-serving commercial and recreational "fisherman's village" development consisting of nine stand-alone buildings totaling 48,000 sq. ft. of retail and commercial space. The development also includes an urchin dock and commercial fishing processing facilities, public restrooms and 300 parking spaces ([Exhibit 3](#)). Over the years following initial development, the retail and commercial uses on the site experienced increasing vacancies as the site was not maintained and fell into disrepair. The Harbor Department has stated that the site is currently only approximately 40% occupied and that it is unable to financially support Fisherman's Wharf and has been seeking proposals from developers for new development on the site over the last 15 years. A potential future mixed-use development at the subject Fisherman's Wharf site has been proposed consisting of a maximum of 400 residential apartment units, 36,000 sq. ft of visitor-serving commercial space, 16 boat slips, public promenade, and a 1.0 acre public park. In order to accommodate a public promenade and public dock in the area of the mixed-use development, the existing commercial fishing urchin dock is proposed to be relocated to the south at a nearby boat yard.

The Harbor is an important regional asset that serves not only the residents of Oxnard, but also residents of Ventura County and surrounding cities and counties. However, although the Harbor Department's redevelopment plan includes improvements to various parks, boat slips, and other public Harbor amenities, the proposed LCP amendment is only required due to the residential aspect of the proposed project. The other proposed improvements could occur without an LCP amendment and the requested override procedure. It is therefore primarily the market rate housing that is the focus of the override procedure, and this housing must be shown to address a public need of an area beyond Oxnard's borders. To the extent that such housing is indispensable to the improvement of the overall Harbor, the Commission may also consider whether the Harbor—with the addition of the proposed housing—serves regional needs.

The Harbor Department has not demonstrated that there is a regional need for market-rate, waterfront rental housing. Nor has it demonstrated that permitting such housing is necessary in order to revitalize the Harbor and provide the various public amenities, such as boat slips, parks, public paths, and commercial fishing facilities. The Harbor Department contends that there is not sufficient public demand for the types of uses already permitted at the site under the existing land use and zoning designations (commercial fishing, recreational boating, and visitor-serving uses) to sustain the existing development or to entice investment from potential developers. According to the Harbor Department, residential development at the site is the only type of development that will provide sufficient financial return to encourage a potential developer to invest in and redevelop the site. It states that, over the past fifteen years, it has issued two rounds of requests for qualifications from developers for Harbor redevelopment, and has received only three responses, all of which include a residential component. The Harbor Department thus concludes that redevelopment of the site with a significant residential component is necessary to the overall redevelopment effort and that it will benefit the harbor, and larger geographic area, as a whole.

The submittal for the subject LCP override amendment does not provide substantial evidence to back up the Harbor Department's conclusions for this finding. The Harbor Department provided no information or data on the current financial status of the Harbor or the financial status of the amenities provided throughout the Harbor. Similarly, it provided no information or data on how the current status of Fisherman's Wharf may be affecting the Harbor and its public amenities.

The application for the subject override amendment request also provided no economic studies or analysis to verify the Harbor Department's position that there is a lack of public demand for, or economic viability of, the types of uses already permitted at the site, including visitor-serving, recreational, and commercial fishing uses. The only information provided to Commission staff from the Harbor Department regarding these uses within the Harbor includes a reference to a study incorporated as part of Commission staff's findings from a 2013 staff report for City of Port Hueneme, LCP Amendment No. LCP-4-PTH-13-0208-1. That study by HR & A Advisors, Inc., dated September 9, 2013 and revised October 2, 2013, analyzed the viability of visitor-serving uses within the City of Port Hueneme for a mixed-use development on Victoria Avenue.

Although the location of the mixed-use project on Victoria Avenue within the City of Port Hueneme is located in the nearby area of the Harbor and near the Fisherman's Wharf site, and though the report includes some information about the economics of the Harbor, the analyses and conclusions within that report are specific to Port Hueneme and do not demonstrate that uses within the Harbor or Fisherman's Wharf are non-viable. As such, the Harbor Department has not demonstrated that the existing permitted uses at the site are not viable, or that the Harbor cannot be used, incrementally improved, or even redeveloped, without the significant, market-rate housing component.

The LCP amendment override procedure is an extraordinary measure that allows the State to intervene in local planning decisions to ensure that a local government does not obstruct development(s) necessary to meet needs that are of regional, state, or national concern, when meeting such needs is consistent with the coastal resource protection policies of the Coastal Act. Both the V.S.H.O designation in the certified PWP and the HCI designation in the certified LCP currently allow for commercial fishing, recreational boating and visitor serving uses, which are considered priority uses under the Coastal Act. Residential uses, such as those proposed by the Harbor Department, are not a priority use under the Coastal Act.

In general, the Coastal Act places a higher priority on uses that are coastal-dependent and uses that can be enjoyed by the general public over those that are not coastal-dependent and those that are limited in scope as to who would benefit, particularly in waterfront or beachfront locations. The Commission has consistently placed a higher priority on commercial fishing, recreational boating, public access, recreational and visitor-serving uses over private residential uses. This priority is reflected in the City's certified LCP. The Coastal Act and the City's certified LCP afford these public uses a higher priority because they are dependent on the coast to function and provide a greater benefit to a greater number of people, and because the Coastal Act specifically requires it. *See, e.g.,* PRC § 30221, 30222, 30255. Private residential use is not dependent on the coast and only benefits those who actually live at the site, and their guests – an extremely limited fraction of the general population. Commercial fishing and public uses, such as access, recreation, and visitor-serving commercial, benefit a much larger segment of the population. The scope of the benefit to the general public over the limited number that could benefit from a lower priority use is compounded by the limited amount of publicly accessible and visitor-serving waterfront area in this portion of the Harbor in general.

This is not to say that providing housing is not important. The Commission has previously found that providing new housing in appropriate locations is an important statewide issue, and the vitality of the Harbor is also important to people beyond Oxnard's borders. However, it is inappropriate for the Commission to use the extraordinary override procedure to allow private, residential, market-rate housing in an area of a harbor that is meant to be devoted to visitor-serving and water-dependent uses. Regional public needs would not be met by providing market-rate housing on harborfront land where coastal-related and visitor-serving uses must be prioritized,

especially given that the proposed LCP Amendment does not contain standards to ensure protection of such priority uses.

Lastly, per the certified PWP and LCP, the site currently allows for commercial fishing, recreational boating and visitor serving uses. Denial of the LCP amendment application would not prevent the Harbor Department from working to maintain the existing development on site or continuing to seek a financially viable development proposal that would upgrade recreational boating, commercial fishing, and visitor serving uses, all of which are considered priority uses. The County could also continue to work with the City to craft a mutually acceptable LCP amendment that would allow some level of residential development here but that would address various concerns the City has, such as the loss of park space, inadequate parking standards, the amount of land that would be taken up by private housing, and the lack of specific standards for future development in the current LCP amendment proposal. Any such amendment would still need Commission certification, but would not have to proceed through the override process, with its additional required findings.

As such, the Commission finds that the proposed LCP amendment provides for development that does not meet a public need of a geographic area greater than that included within the certified Oxnard LCP.

**2. Whether the Development Conforms With and is Adequate to Carry Out the Policies in Chapter 3 of the Coastal Act (Public Resources Code Section 30200 et seq.)**

The Chapter 3 policies of the Coastal Act provide for the protection and enhancement of coastal resources. Following is a discussion regarding the conformance of the subject LUP amendment with the relevant Chapter 3 policies of the Coastal Act, and conformance of the subject IP/CZO amendment with the relevant policies of the City's LUP—namely those concerning public access and recreation and visitor-serving lands, commercial fishing and recreational boating, and visual resources. Because all Chapter 3 policies are incorporated into the LUP as guiding policies, Chapter 3 conformity is also relevant for the proposed IP/CZO changes.

**Public Access and Recreation and Visitor-Serving Lands**

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30211 of the Coastal Act states:

Development shall not interfere with the public's right of access to the sea where acquired through legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212(a) of the Coastal Act states (in relevant part):

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects...

Section 30213 of the Coastal Act states (in relevant part):

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Section 30220 of the Coastal Act states:

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

Section 30221 of the Coastal Act states:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30222 of the Coastal Act states:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

Section 30224 of the Coastal Act states (in relevant part):

Increased recreational boating use of coastal waters shall be encouraged, in accordance with this division...

Section 30250(a) of the Coastal Act states (in relevant part):

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, or in close proximity to, existing developed areas able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.

Section 30252 of the Coastal Act states (in relevant part):

The location and amount of new development should maintain and enhance public access to the coast by...(2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads...(6) assuring that the recreational needs of the new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

Section 30255 of the Coastal Act states (in relevant part):

Coastal-dependent developments shall have priority over other developments on or near the shoreline... When appropriate, coastal-related developments should be accommodated within reasonable proximity to the coastal-dependent uses they support.

Policy 16 of the certified Oxnard LUP states:

As existing commercially developed harbor parcels recycle in terms of structures or uses, priority shall be given to commercial fishing support and recreational boating support facilities and services. As existing commercially developed Commercial Visitor-serving parcels recycle or are redeveloped priority shall be given to Commercial Visitor-serving uses. Development in the harbor shall be limited so that no more than 30 percent of the harbor's land area is visitor-serving commercial uses not directly related to boating.

Policy 18 of the certified Oxnard LUP states:

Existing facilities serving commercial fishing, sport fishing and recreational boating shall be maintained and expanded where appropriate.

Policy 21 of the certified Oxnard LUP states (in relevant part):

Maximum access, which shall be conspicuously supported and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Policy 22 of the certified Oxnard LUP states (in relevant part):

Development shall not interfere with the public's right of access to harbor waters where acquired through use or legislative authorization...

Policy 24 of the certified Oxnard LUP states:

Harbor areas suited for water-oriented recreational activities that cannot be provided at inland water areas shall be protected for such uses.

Policy 25 of the certified Oxnard LUP states:

Harborfront land suitable for recreational use shall be protected for recreational use and related development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided in the harbor area.

The primary purpose of the HCI zone under the City's existing IP/CZO is to provide and protect commercial and sport fishing, recreational boating and related uses within the harbor, and these uses are identified as "principally permitted." The IP/CZO also allows visitor-serving uses within the HCI zone when subordinate and incidental to those principally permitted uses, and visitor-serving uses are identified as "secondary permitted uses." Residential uses are not currently allowed in the HCI zone.

The existing Fisherman's Wharf site is consistent with this framework because the existing development consists of a "Fisherman's Village" that includes an urchin dock and commercial fish processing facilities, but also includes ancillary visitor serving facilities, including restaurants, retail, and other visitor-serving recreational opportunities such as recreational boating facilities. Public access and recreation uses within the larger Harbor area include various visitor-serving commercial establishments, recreational boating marinas, and public access parks and walkways along the western shorefront. The Harbor also contains restaurants and an existing hotel; moreover, a new hotel, restaurant, and public promenade at the end of Peninsula Road were also approved pursuant to Notice of Impending Development (NOID) CIH-NOID-0002-18. The eastern shorefront of the Harbor contains the existing Fisherman's Wharf complex, a boat launch located immediately adjacent to the south, a small park and two pocket beaches located over a half mile further to the south, and is otherwise built out with industrial boat service yards including maintenance, repair and storage of various types of boats. Thus, the Fisherman's Wharf site includes some of the only area available for visitor-serving public access and recreational opportunities in this eastern portion of the Harbor.

In the LCP amendment submittal, the Harbor Department states that the Fisherman's Wharf property has experienced increasing vacancies over the years as the site fell into disrepair. The Harbor Department has been unable to support the existing development on site and asserts that the only way to redevelop the property is to allow for residential uses. However, allowing residential/mixed use development on the site, as proposed, raises conflicts with Coastal Act and LUP policies that require maximum public access be provided and prioritize visitor-serving, public access and recreational land uses over private residential land uses.

The proposed IP/CZO amendment includes some changes to the HCI zone that would apply only to the Fisherman's Wharf site, but others that would apply to all HCI properties in the Harbor ([Exhibit 4](#)). There are approximately 61 acres of other Harbor property that are zoned HCI, which currently contain restaurants and shops as well as commercial fishing and recreational fishing support facilities and the Harbor's parking lots. Specific to Fisherman's Wharf, the proposed amendment would allow residential uses as a secondary permitted use at the site, without any requirement that the residential use must be ancillary and/or subordinate to the priority fishing and boating

uses within the zone. This is a significant departure from the current requirement that any secondary uses be related, or clearly subordinate, to the principal uses, and would effectively allow private, market-rate housing to be given equal priority and consideration in this area of the Harbor. This reprioritization of uses is not consistent with LUP and Coastal Act policies that prioritize fishing, recreational, coastal-dependent, and visitor-serving uses in waterfront locations. It may be possible that some housing at Fisherman’s Wharf could be found consistent with the LCP and Coastal Act; however, as described more below, the proposed LCP Amendment simply does not contain enough detail or standards to ensure that future housing will remain subordinate to the priority coastal uses. Nor does the LCP Amendment application contain sufficient evidence that the land where housing is proposed is not needed for priority, visitor-serving uses because the demand for recreational activities that could be accommodated on the property is already adequately provided elsewhere in the harbor area.

The amendment also contains virtually no development standards that would apply to the residential structures; rather, the amendment states that development standards should be adopted later as part of a Specific Plan that shall, at a minimum, include certain maximum height, residential density, and setback requirements ([Exhibit 4](#)). However, no Specific Plan with detailed development standards was proposed as part of the amendment request. Further, the proposed amendment would allow a project proponent to propose alternative development standards for a project in the HCI zone if they can demonstrate that to do so would better serve the public interest, produce greater public benefits or increase public access through the alternative development standards. This would allow significant discretion to modify the few development standards that are proposed—i.e., for height, residential density, and setback requirements—without providing firm criteria to ensure that future development will account for, and be consistent with, other land use planning constraints and resource protection policies.

It is not possible to find that this open-ended, flexible IP/CZO policy, which could allow for much more dense or tall residential structures than currently contemplated, conforms with the LUP. Although future deviations from the proposed height, density, and setback standards could only be allowed if they “better serve the public interest, produce greater public benefits or increase public access,” this does not ensure that modified height, density, and setback standards will ensure protection of public access or fishing facilities, or conform with numerous other LUP policies and priorities. As just one example, taller or more dense residential development could conflict with Coastal Act Section 30252, which requires that new development should ensure that the recreational needs of new residents will not overload nearby coastal recreation areas.

The proposed amendment also lacks any specificity regarding the mix and configuration of residential, visitor-serving commercial, and public access and recreation uses that could be allowed at the Fisherman’s Wharf site. Aside from specifying a maximum residential density and building height (though then allowing for vaguely defined deviations from these maximums), the proposed amendment does not detail what quantity, type, or layout of the various uses is appropriate at the site. Furthermore, the



amendment does not include any details or standards to ensure adequate public access and recreational opportunities are provided, including public accessways to and along the waterfront. Such specificity is important to ensure there is sufficient provision for visitor-serving and public access and recreational uses on the site, particularly in waterfront areas, consistent with Coastal Act and LCP policies. As discussed previously, the subject LCP amendment is proposed in order to accommodate a potential future mixed-use development; however, without specific details and development standards included as part of the proposed amendment, it is possible that a future residential development could be of a scale, design or layout that has the potential to significantly limit public access and visitor-serving and recreational opportunities within the area of Fisherman's Wharf and along the waterfront.

The proposed IP/CZO amendment would also change the required findings for visitor-serving uses proposed anywhere within the HCI zone to broaden how a proposed visitor-serving use is determined to be subordinate to the principal permitted uses of boating and fishing ([Exhibit 4](#)). As proposed, visitor-serving uses would be allowed on a site if subordinate to principal permitted uses when the HCI zone is "judged as a whole." With this change, visitor-serving uses would no longer be tied to the primary recreational boating and commercial/sport fishing uses that may be allowed on any given site within the HCI zone, and a site-specific analysis of visitor-serving uses relative to boating-related uses would no longer be required. The intent of the change is to accommodate a mixed use development at the Fisherman's Wharf site by relaxing the requirement that visitor-serving uses must be subordinate to nearby boating-related uses; however, the proposed change would also apply to all other HCI zoned properties within the harbor ([Exhibit 2](#)), and no analysis was provided regarding how the broad change would impact priority uses within the rest of the harbor. There is therefore not enough information to find that this change is consistent with LUP policies that protect fishing and boating uses throughout the Harbor.

The proposed IP/CZO changes are also inconsistent with the proposed LUP changes ([Exhibit 4](#)). The proposed LUP changes would require that residential densities be no greater than 40 units/acre and that development in Fisherman's Wharf be no taller than 55 feet, plus 10 feet for rooftop appurtenances. The IP purports to set a maximum density of 36 units per acre and a maximum height of 55 feet for residential buildings, but also permits "alternative development standards." Though it does not define what such alternative standards could include, the intent appears to be to allow taller or more dense development. However, given the limitations on height and density in the LUP, the IP/CZO may not permit increases in height or density (at least beyond 40 units per acre) through any alternative standards. The IP/CZO's provision for such alternative standards therefore does not conform with and is inadequate to carry out the LUP, as it is proposed to be changed.

The Coastal Act and the Oxnard LCP place a high priority on providing for visitor-serving and recreational land uses in the coastal zone, and particularly on waterfront land. The Coastal Act and LCP encourage the provision of lower cost visitor and recreational facilities and prioritize visitor-serving commercial development over residential development. This hierarchy is reflected in Sections 30213, 30220, 30221,

30222 and 30255 of the Coastal Act and Oxnard LUP Policies 16, 18, 24 and 25. The LUP specifically protects these priority uses by requiring that, if redevelopment is being proposed, such uses are given priority over other, non-priority, uses.

In this case, the proposed LCP Amendment would permit up to 400 residential units in a harbor-front area where fishing and boating are supposed to be the primary uses. If there was a fully fleshed out proposal for a mixed use development, the Commission might be able to find that the development as a whole retained adequate priority uses, provided for adequate public access, and contained a balanced mix of uses in which residences supported, and were subordinate to, the priority uses. The proposed LCP Amendment, however, contains no such detail or standards to guide future development. Rather, it simply allows for significant residential use in an area where such uses are not, and should not be, a priority, and it does not contain any enforceable standards to ensure that future residential development would not infringe on public access, place undue pressure on local parks, or otherwise crowd out or harm the priority uses in the Harbor.

The Commission has previously supported some limited, mixed-use proposals on parcels designated for visitor-serving uses in urban areas, provided that the lower priority uses, such as residential, support the visitor-serving uses, and that an adequate amount of visitor serving uses, public amenities and public access elements will remain. However, in this case, the proposed LUP changes would permit higher-density housing with insufficient standards to ensure consistency with Chapter 3 policies that protect priority, visitor-serving uses as well as public access. Likewise, the proposed IP/CZO changes either directly conflict with, or lack enough specificity to be found to conform with, LUP policies (including Coastal Act policies incorporated into the LCP) that similarly protect priority uses and public access in the Harbor.

Some commenters have expressed concerns that the proposed amendment conflicts with the Commission's Environmental Justice Policy because the conversion of lower-cost visitor serving facilities located on publicly owned land to higher-cost facilities, in this case market-rate residential units, is a barrier to persons with limited income with regards to public access and views. As discussed above, the Fisherman's Wharf site currently includes an urchin dock and commercial fish processing facilities, but also includes ancillary visitor serving facilities, including restaurants, retail, free parking and other visitor-serving recreational opportunities such as water-front walkways and recreational boating facilities.

The Commission recognizes that equitable coastal access is encompassed in and protected by the public access policies in Chapter 3 of the Coastal Act. The Coastal Act's mandates to provide maximum access and recreational opportunities for all, and to protect, encourage, and provide lower-cost visitor and recreational opportunities embody fundamental principles of environmental justice. The Commission's environmental justice policy (EJ Policy) recognizes that preserving and providing for lower-cost recreational facilities is an environmental justice imperative and commits that the Commission will strive for a no-net-loss of lower-cost facilities in the Coastal Zone. This includes recreational opportunities such as parks, trails, picnic areas, fishing piers,

beachfront and waterfront access, and associated free or low-cost parking areas. The conversion of visitor-serving recreational facilities and opportunities (especially those that are lower-cost) to non-priority uses under the Coastal Act can be a barrier to access for those with limited income, and contributes to increased coastal inequality.

Although the Coastal Act does not authorize the Commission to regulate or require affordable housing, Section 30604(f) directs the Commission to encourage low- and moderate-income housing opportunities. The Commission's EJ Policy recognizes that affordable housing is an environmental justice issue and a priority that is to be encouraged in the coastal zone. However, the Commission's EJ Policy also states that the provision of housing cannot be permitted at the expense of coastal resource protection:

*The Commission recognizes the myriad laws and regulations that regulate housing, including those that dictate the kinds and amounts of housing that local governments must provide in their communities. **Implementation of these housing laws must be undertaken in a manner fully consistent with the Coastal Act.** The Commission will work with local governments to adopt local coastal program policies that allow for a broad range of housing types including affordable housing, ADUs, transitional/supportive housing, homeless shelters, residential density bonuses, farmworker housing, and workforce/employee housing, **in a manner that protects coastal resources consistent with Chapter 3 of the Coastal Act.** (Emphasis added.)*

In this case the proposed amendment to allow residential uses on public land within the Fisherman's Wharf site does not include any requirement that the residential use be ancillary and/or subordinate to the priority fishing and boating uses within the HCI zone and would effectively allow private, market-rate housing to be given equal priority and consideration within this area of the Harbor. Additionally, the lack of standards and specificity means that there is no assurance that there will be sufficient provision for visitor-serving and public access and recreational lands, commercial fishing and recreational boating, and visual resources at the site. Finally, the proposed amendment does not include any provision for affordable housing as part of a residential development. As such, considering the potential for displacement or complete loss of the existing lower-cost, visitor-serving amenities at the site and the lack of an affordable housing component, the project is inconsistent with environmental justice principles related to maximizing public access for all.

For these reasons, the subject LUP amendment is inconsistent with the policies of the Coastal Act, and the subject IP/CZO is inconsistent with the policies of the certified Oxnard LUP, regarding public access and recreation and visitor-serving lands.

### **Commercial Fishing and Recreational Boating**

Section 30234 of the Coastal Act states (in relevant part):

Facilities serving the commercial fishing and recreational boating industries shall be protected, and, where feasible, upgraded. Existing commercial fishing and recreational boating harbor space shall not be reduced unless the demand for those facilities no longer exists or adequate substitute space has been provided...

Section 30234.5 of the Coastal Act states:

The economic, commercial, and recreational importance of fishing activities shall be recognized and protected.

Section 30250(a) of the Coastal Act states (in relevant part):

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources...

Section 30255 of the Coastal Act states (in relevant part):

Coastal-dependent developments shall have priority over other developments on or near the shoreline...

Policy 16 of the certified Oxnard LUP states (in relevant part):

As existing commercially developed harbor parcels recycle in terms of structures or uses, priority shall be given to commercial fishing support and recreational boating support facilities and services....

Policy 18 of the certified Oxnard LUP states:

Existing facilities serving commercial fishing, sport fishing and recreational boating shall be maintained and expanded where appropriate.

As discussed in the previous section, the primary purpose of the HCI zone pursuant to the City's existing LCP is to provide and protect commercial and sport fishing, recreational boating and related uses within the harbor, and these uses are identified as "principally permitted." The City's IP/CZO also allows visitor-serving uses within the HCI zone when subordinate and incidental to those principally permitted uses, and visitor-serving uses are identified as "secondary permitted uses." Residential uses are not allowed in this zone.

The proposed amendment includes changes to the HCI zone that would not only apply specifically to the Fisherman's Wharf site, but also apply in a broad manner to all HCI properties in the Harbor ([Exhibit 4](#)). Specific to the Fisherman's Wharf site, the proposed amendment would allow residential uses at the site as a secondary permitted use but without any requirement that the residential use must be ancillary and/or

subordinate to the priority uses within the zone (such as visitor-serving, boating, access and recreational type uses). The proposed amendment also lacks virtually any development standards—the amendment states that development standards should be adopted as part of a Specific Plan that shall, at a minimum, include certain maximum height, residential density, and setback requirements (which may be relaxed upon the request of an applicant, if certain findings are made). No Specific Plan with detailed development standards has been proposed as part of the amendment request.

The proposed amendment would also change the required findings for visitor-serving uses proposed anywhere within the HCI zone to broaden how a proposed visitor-serving use is determined to be subordinate to the principal permitted uses of boating and fishing. As proposed, visitor-serving uses would be allowed on a site if subordinate to principal permitted uses when the HCI zone is “judged as a whole.” This change would no longer tie visitor-serving uses to the primary recreational boating and commercial/sport fishing uses that may be allowed on any given site within the HCI zone and would no longer require a site-specific analysis of visitor-serving uses relative to boating-related uses. Though the intent of the change is to eliminate the restriction that visitor-serving uses must be subordinate to boating-related uses at the Fisherman’s Wharf site, in order to accommodate a mixed use development there, the proposed change would also apply to all other HCI zoned properties within the harbor, and no analysis was provided regarding how the broad change would impact priority uses within the rest of the harbor. As such, the proposed amendment will create opportunities for secondary uses that are not priority uses under the Coastal Act or LCP—such as residential or non-visitor serving commercial—at the expense of the existing priority uses at the site such as commercial fishing and recreational boating.

This is in conflict with the intent of the HCI sub-zone where the goal is to allow commercial fishing, and to only allow secondary uses when they are incidental to the primary use and also subordinate in size. This hierarchy is reflected in Coastal Act Sections 30234, 30234.5, and 30255 and Oxnard LUP Policies 16 and 18, which describe how higher priority uses that can be enjoyed by the general public, such as commercial fishing and recreational boating, are given priority over uses that are limited in scope as to who would benefit, such as residential. The Coastal Act and certified Oxnard LUP require that commercial fishing uses are prioritized through maintenance and enhancement of commercial fishing facilities, and that if redevelopment is being proposed, such uses are given priority over other non-priority uses. By allowing residential uses as a secondary use in the zone without specifying any criteria for the mix of residential with fishing or boating uses or the type, location, and scale of harbor-related uses that must be provided, the proposed amendment has the potential to impact commercial fishing and recreational boating opportunities within the Harbor, inconsistent with the aforementioned Coastal Act Sections and Oxnard LUP Policies.

For these reasons, the subject LUP amendment is inconsistent with the policies of the Coastal Act, and the subject IP/CZO amendment is inconsistent with the policies of the certified Oxnard LUP, regarding commercial fishing and recreational boating.

## Visual Resources

Section 30251 of the Coastal Act states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas...

Policy 37 of the certified Oxnard LUP states (in relevant part):

All new development in the coastal zone shall be designed to minimize impacts on the visual resources of the area...

The proposed amendment includes changes to Policy 35 of the certified LUP to increase the maximum building height that may be allowed at the corner of Victoria Avenue and Channel Islands Boulevard from 35 feet to 55 feet ([Exhibit 4](#)). An additional 10 feet in height would be allowed for rooftop appurtenances (i.e. parapets, HVAC equipment, telecommunications equipment, etc). The proposed changes to Policy 35 do not modify the existing height limitations for the remainder of the Harbor, which will maintain the maximum allowable height of two-stories or 25 feet, whichever is greater.

Proposed changes to the certified IP/CZO include an increase to the maximum allowable height for all properties within the HCI zone from two stories, or 25 feet in height, to 43 feet for stand-alone commercial buildings and 55 feet for residential buildings. The amended standard states that heights for rooftop appurtenances (i.e. parapets, HVAC equipment, telecommunications equipment, etc) shall not be included in the height limit. Changes to the IP/CZO also include deletion of the standard for rear and side yard setbacks and propose a single 10 foot setback for new structures from the back of sidewalks on street frontages ([Exhibit 4](#)).

It is not clear exactly which specific area at the corner of Victoria Avenue and Channel Islands Harbor Boulevard the proposed LUP building height change is intended for, but assuming it pertains to the entire Fisherman's Wharf site, the subject amendment will allow a maximum height of 55 feet, plus 10 feet for appurtenances, over the entire site ([Exhibit 3](#)). The proposed amendment also includes a standard that would allow a project proponent to propose alternative development standards for a project in the HCI zone if they can demonstrate that to do so would better serve the public interest, produce greater public benefits or increase public access through the alternative development standards. However, such a provision would allow significant discretion to modify the few development standards that are proposed, including for height, without specifying who would make such a determination and how other land use planning constraints and resource protection policies would factor into the determination.

Moreover, the IP/CZO's allowance of these "alternative development standards" purports to allow height and residential densities that exceed the normal height/density standards if the findings, above, can be made. However, the LUP—with which the IP/CZO amendment must conform—contains no similar allowance for variances from maximum height or density standards. As such, the proposed IP/CZO does not conform with, and is not adequate to carry out, the LUP, as it is proposed to be amended. The IP/CZO would also permit stand-alone commercial buildings anywhere in the HCI zone to be up to 43 feet, whereas the LUP would permit commercial buildings to be only two stories or 25 feet, whichever is greater. The IP/CZO therefore conflicts with, and would not carry out, the LUP.

Though the LCP amendment is intended to allow a future potential mixed use residential development project at the Fisherman's Wharf site, a specific development proposal is not before the Commission at this time and the development standards proposed in the subject LCP amendment must be analyzed for their potential to impact visual resources.

Coastal Act Section 30251 requires permitted development to be visually compatible with the character of surrounding areas and to protect views to and along scenic coastal areas. The area to the north of the Fisherman's Wharf site consists of single-family residences situated on waterfront lots within the City's Mandalay Bay development. The area across Victoria Avenue to the east is within the Naval Construction Battalion Center Port Hueneme and development in the vicinity consists of several industrial-type buildings and undeveloped land. To the south is the existing public boat launch and overflow parking area. To the west is the Harbor waterway and boat dock slips. Existing development on the site consists of nine stand-alone buildings situated in the northern portion of the property, along with public parking spaces and a commercial fishing dock ([Exhibit 3](#)).

As discussed in the section above, the subject amendment does not include specific details or standards to govern the scale, size, and layout of mixed use residential development that could be constructed at the site, aside from the proposed maximum height and street setback (both of which can be waived if certain findings are made). Regarding visual resources and compatibility with the character of surrounding areas, as proposed the entire site would have the potential to be developed with any combination of residential structures at a maximum height of 55 feet plus 10 feet for appurtenances, which has the potential to be inconsistent with the surrounding smaller scale development. Furthermore, because the proposed amendment includes a standard that allows project applicants to propose alternative development standards, future residential development at the site could be proposed at an even greater height, thus exaggerating the inconsistencies with the scale of the surrounding area. The amendment language also does not include any standards addressing building aesthetics to reflect the prominence of the site in the harbor, nor does it include design measures, such as for exterior façades and articulation, that may be necessary in order to break up the visual mass of a future development. Considering the limited scale of development in the vicinity of Fisherman's Wharf and the site's prominence in a Harbor, allowing the development of residential structures at a height of 55 feet, or potentially

higher, without standards for aesthetics, facades and articulation, could result in development incompatible with the surrounding Harbor areas and thus inconsistent with Coastal Act Section 30251.

Policy 37 of the Oxnard LUP requires new development in the Coastal Zone to be designed to minimize impacts on the visual resources in the area. Fisherman's Wharf is situated at the corner of Channel Islands Boulevard and Victoria Avenue and there is existing public access at the site that affords visitors unobstructed views of the Harbor looking south down all the way to the Silverstrand Community, to the end of Peninsula Road and the area of the Harbor entrance. As discussed previously, the eastern side of the Harbor where Fisherman's Wharf is located is primarily built-out with industrial boat yards, with the exception of a boat launch, a small public park, and two pocket beaches located over a half mile to the south. As such, the existing Fisherman's Wharf site and the public access and harbor views it affords are important visual resources in this area of the Harbor. Similar to issues raised in other sections of this report, the proposed amendment lacks sufficient specificity and standards to ensure protection of coastal resources, in this case the expansive harbor views afforded to the public within the Fisherman's Wharf site, and a future development could be proposed that limits or restricts these views inconsistent with the mandate of Policy 37 to minimize impacts on visual resources.

For these reasons, the subject LUP Amendment is inconsistent with the visual resource policies of the Coastal Act, and the subject IP/CZO amendment does not conform with and is inadequate to carry out the visual resource policies of the Oxnard LUP.

**3. Whether There is a Feasible, Less Environmentally Damaging Alternative Means of Addressing the Needs At Issue.**

The need that the proposed LCP Amendment is intended to address is to provide residential housing as a way to finance redevelopment of the Fisherman's Wharf area with a large-scale, mixed-use project. As detailed in the sections above, the proposed amendment has the potential to impact public access and recreation, visitor-serving uses, commercial fishing, recreational boating, and visual resources. The Harbor Department submitted a "Consideration of Environmental Factors" as part of the subject amendment request that analyzed impacts and consistency of a future potential mixed-use development at the Fisherman's Wharf site with the policies in the certified Harbor Public Works Plan (PWP) and certified Oxnard LUP. The submittal also included an alternatives analysis that analyzed a total of 11 alternatives to a potential future mixed-use development project.

The item before the Commission at this time is a proposed amendment to the certified Oxnard LCP, not a specific mixed-use development proposal, and the Harbor Department has not provided any alternative LCP amendment language to address the issues raised by the City of Oxnard when it considered the amendment request, and to address the issues raised by Commission staff in previous discussions regarding a mixed use proposal at the site.



There exist alternatives that would serve to address the Coastal Act and LCP policy inconsistencies identified in this report. The Harbor Department could develop a Specific Plan, or create a new zone or overlay, as part of an LCP amendment that is tailored to allow a mixed use development on the site and that includes specific development standards that ensure consistency with the resource protection policies of the Coastal Act and the City's LCP. A more detailed alternative proposal could help ensure that any residential development is subordinate to priority coastal uses and will not take up more scarce, waterfront land than is necessary. The Harbor Department can coordinate with the City of Oxnard in developing detailed mixed-use development standards and related analyses that would address the deficiencies the City identified in its denial of the subject amendment request. The Harbor Department could also work to maintain the existing visitor-serving, recreational boating and commercial fishing development on site and continue to seek opportunities and proposals to redevelop the Fisherman's Wharf properties consistent with the certified PWP and the certified Oxnard LCP. Some commenters, for example, have stated that the Harbor Department only sought development proposals that included apartments, and that at least one, unsolicited bid has come in to redevelop the site in a manner that provides visitor-serving uses and does not include housing. In addition, an alternative LCP Amendment proposal could be more tailored to the Fisherman's Wharf site, as opposed to the current proposal, which changes development standards that apply in other areas of the Harbor, and may cause adverse impacts in those areas.

The Commission finds that there are feasible less environmentally damaging alternatives to the subject LCP amendment that could meet the stated need.

**4. Whether Failure to Approve the Amendment Would Adversely Affect the Public Welfare, as Identified in the Findings, Declarations, and General Provisions of the Coastal Act.**

The State Legislature, through various findings and declarations and general provisions of the Coastal Act (Public Resources Code Sections 30000 et seq.) identified the relationship between the Coastal Act and the public welfare. The relationship of the proposed LCP Amendment to the general, enforceable Coastal Act provisions (i.e., the Chapter 3 policies) is described in earlier sections of this report, which conclude that the proposed Amendment is inconsistent with a number of those policies. Accordingly, denial of the proposed Amendment would not adversely affect the public welfare as reflected in those policies. On the contrary, denial would help prevent lower-priority coastal uses from being developed on land where visitor-serving, fishing, and related coastal uses should be prioritized, and would avoid inconsistencies with other Coastal Act priorities, as described previously in this report.

In addition, the Coastal Act's Legislative findings and declarations provide a slightly different lens on the public welfare purposes of the Coastal Act. The sections dealing with this issue and therefore relevant to the subject amendment are as follows:

**Section 30001 of the Coastal Act states (in relevant part):**

*The Legislature finds and declares:*

*(d) That existing developed uses, and future developments that are carefully planned and developed consistent with the policies of this division, are essential to the economic and social well-being of the people of this state and especially to working persons employed within the coastal zone.*

**Section 30001.5 of the Coastal Act states:**

*The Legislature further finds and declares that the basic goals of the state for the coastal zone are to:*

*(a) Protect, maintain, and where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources.*

*(b) Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state.*

*(c) Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of private property owners.*

*(d) Assure priority for coastal-dependent and coastal-related development over other development on the coast.*

*(e) Encourage state and local initiatives and cooperation in preparing procedures to implement coordinated planning and development for mutually beneficial uses, including educational uses, in the coastal zone.*

**Section 30004 of the Coastal Act states (in relevant part):**

*The Legislature further finds and declares that:*

*(a) To achieve maximum responsiveness to local conditions, accountability, and public accessibility, it is necessary to rely heavily on local government and local land use planning procedures and enforcement.*

Section 30001(d) acknowledges that development in the coastal zone is essential to the well-being of Californians, but emphasizes that such development must be “carefully planned and developed consistent with the policies of the Coastal Act” in order to have those benefits. As discussed previously in this staff report, the proposed amendment does not meet the standard of being carefully planned because the amendment lacks sufficient specificity to understand what size, scale and design of mixed use residential

development may be allowed at the Fisherman's Wharf site. In addition, it has not been planned to be consistent with relevant resource protection and priority use policies of the Coastal Act, including policies regarding public access and recreation, visitor-serving uses, commercial fishing, recreational boating, and visual resources.

Construction of improvements to, or redevelopment of, the dilapidated Fisherman's Wharf area could provide amenities that would benefit the economic and social well-being of people locally and statewide. However, the Harbor Department provided no information or data on the current financial status of the harbor or the financial status of the amenities provided throughout the Harbor. Nor did it provide information demonstrating that allowing this level of residential uses at the site will benefit the Harbor and the greater geographic region. As described above, there are also more tailored, alternative approaches to redeveloping the site that could provide the same type of economic and social benefits while also protecting the existing social and economic benefits that the Harbor provides through its visitor-serving, fishing and recreational facilities. As such, it has not been demonstrated that the proposed amendment constitutes a carefully planned development that is consistent with Coastal Act policies and is essential to the economic and social well-being of the people of the state.

The findings of Section 30001.5(a), (b), (c) and (d) are reflected in the Chapter 3 policies of the Coastal Act, and an analysis of the proposed amendment's inconsistency with various Chapter 3 policies of the Coastal Act is provided in prior sections of this staff report. As described there, the subject LCP amendment proposes to increase the height limits and modify the setbacks throughout the HCl zone areas of the Harbor, as well as modify allowable uses and development standards specifically within the Fisherman's Wharf site. The proposed amendment will allow a non-coastal dependent, non-priority use (residential) within the Fisherman's Wharf site without providing adequate development standards that establish an appropriate mix and location of uses and that protect priority coastal uses of the Harbor. The proposal therefore does not "[a]ssure orderly, balanced utilization and conservation of coastal zone resources." Rather, it would elevate the status of market-rate, residential uses so that they take equal precedence with coastal-dependent and visitor-serving uses. This fails to "[a]ssure priority for coastal-dependent and coastal-related development over other development on the coast," as called for by the Coastal Act.

The Coastal Act encourages well planned development, including adequate affordable housing, within the coastal zone.<sup>4</sup> Maintaining or increasing residential density can provide economic and community benefits to coastal communities if it is carried out in a manner that protects neighborhood character, public access, scenic views, and is safe

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<sup>4</sup> See, e.g., PRC §§ 30007 (the Coastal Act does not exempt local governments from meeting their obligations to provide housing that are imposed by other laws), 30604(f) ("The commission shall encourage housing opportunities for persons of low and moderate income."), 30604(g) ("it is important for the commission to encourage the protection of existing and the provision of new affordable housing opportunities").

from coastal hazards. However, the Coastal Act also emphasizes that the state has limited waterfront, coastal areas, and that those areas should be prioritized for development of coastal-dependent and coastal-related development. It is the Commission's role to carefully protect the coastal areas that can support visitor-serving, fishing, and other uses that can only happen there, and to ensure that other, lower priority uses for those areas do not come to dominate or edge out the priority coastal uses. That is not to say that providing housing on parcels designated for visitor-serving uses – particularly affordable housing and mixed-use proposals designed for visitor-serving uses with adequate public amenities and access elements – is not important. However, the specific instance of the subject LCP amendment to allow market-rate housing within a harbor that has the potential to impact public access and recreation, commercial fishing, and visual resources does not justify an override of a jurisdiction's certified LCP.

As outlined in Sections 30001.5(e) and 30004(a), the Commission generally relies on local governments and local land use planning procedures, as well as close coordination with Commission staff, to achieve maximum responsiveness to local conditions. The LCP Amendment override procedure is an extraordinary measure that allows the state to intervene in local planning decisions only when necessary to ensure that a local government does not obstruct development(s) necessary to meet needs that are of regional concern, when meeting such needs is consistent with the coastal resource protection policies of the Coastal Act. For the reasons discussed throughout these findings, and given the specific circumstances in this case, the proposed waterfront, market-rate housing within the Harbor does not justify an override of the City's certified LCP, especially considering the potential impacts to public access and recreation, commercial fishing, and visual resources posed by the requested amendment. Allowing state intervention to permit a non-coastal dependent, non-coastal priority use at the site over the objection of the local government would not demonstrate maximum responsiveness to local conditions, accountability, and public accessibility.

As such, instead of the requested LCP amendment override, a process consistent with the intent of 30001.5(e) and 30004(a) would be to coordinate with City and Commission staff on an LCP amendment for uses at the Fisherman's Wharf site that can be found consistent with the relevant policies of the certified LCP and Coastal Act. Then, if the Commission approves the Oxnard LCP amendment, the Harbor Department can continue to coordinate with Commission staff on a PWP amendment that can be found consistent with the relevant policies of the certified LCP.

Overall, denial of the proposed amendment would not adversely affect the public welfare because 1) the proposed amendment is inconsistent with various Coastal Act policies that are intended to protect the public welfare, 2) there are alternative ways for the Harbor Department to proceed toward redeveloping the site and gaining the benefits that they desire, including submitting a more detailed, tailored LCP amendment, and 3) it would be contrary to the Coastal Act's purposes to use the extraordinary override procedure to approve market-rate, residential development in an area where such uses would displace higher priority, coastal-related uses. The Commission therefore finds that disapproval of the subject LCP amendment would not adversely affect the public

welfare as identified in the findings, declarations, and general provisions of the Coastal Act.

### Conclusion

Based upon a careful consideration of social, economic and environmental effects, the subject LCP amendment must be denied pursuant to section 13666.4(b). The subject amendment to allow residential uses within the Fisherman's Wharf site does not include any requirement that the residential use be ancillary and/or subordinate to the priority fishing and boating uses within the HCI zone and would effectively allow private, market-rate housing to be given equal priority and consideration within this area of the Harbor. Additionally, the lack of standards and specificity means that there is no assurance that there will be sufficient provision for visitor-serving and public access and recreational lands, commercial fishing and recreational boating, and visual resources at the site. As such, a future residential development has the potential to overload or privatize the coastal recreation areas within this portion of the Harbor. The Commission has historically recognized that housing may sometimes be appropriate on parcels designated for visitor-serving uses – especially affordable and mixed use proposals – but only when designed to support visitor-serving uses and protect coastal resources. The proposed changes to the IP/CZO are also inconsistent with the proposed changes to the LUP.

As discussed in the section above, the LCP amendment has not demonstrated that it meets the public need of a geographic area greater than that included within the LCP; it is inconsistent with the Coastal Act and LCP policies regarding visitor-serving and public access and recreational lands, commercial fishing and recreational boating, and visual resources; there exist alternatives that would serve to address the Coastal Act and LCP policy inconsistencies and lessen environmental effects including to develop a tailored LCP amendment with detailed mixed-use development standards; and denial of the amendment would not adversely affect the public welfare.

## **V. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

California Public Resources Code (PRC) Section 21080.9, within the California Environmental Quality Act (CEQA), exempts local governments from the requirement of preparing an environmental impact report (EIR) in connection with their adoption of a local coastal program (LCP). Instead, the CEQA responsibilities are assigned to the Coastal Commission. However, because the California Natural Resources Agency found the Commission's LCP review and approval process to be functionally equivalent to the EIR process (*See* 14 C.C.R. Section 15251(f)), PRC Section 21080.5 relieves the Commission of the responsibility to prepare an EIR for its approval of LCP amendments. Nevertheless, some elements of CEQA continue to apply to this review process.

Specifically, pursuant to CEQA and the Commission's regulations (*See* 14 C.C.R. Sections 13540(f) and 13542(a)), the Commission's certification of this LCP amendment must be based in part on a finding that it meets the CEQA requirements listed in PRC Section 21080.5(d)(2)(A). That Section requires that the Commission not approve or adopt an LCP "if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment."

As outlined in this staff report, the amendment to the Land Use Plan and Implementation Plan as submitted would allow residential uses within the HCI zone and propose new development standards that would not encourage or maximize public access and recreational opportunities and could impact commercial fishing and visual resources in a manner inconsistent with the Coastal Act and relevant LCP policies. Therefore, the proposed amendment to the Implementation Plan is not in conformity with, or adequate to carry out, the provisions of the Land Use Plan component of the certified LCP, including provisions calling for protection and provision of access and recreational opportunities, commercial fishing, and visual resources. Also, the proposed amendment to the Land Use Plan is not in conformity with, or adequate to carry out, the provisions of the Coastal Act, including provisions calling for provision of access and recreational opportunities, commercial fishing, and visual resources. The Commission finds that approval of the LCP amendment would result in significant adverse environmental impacts within the meaning of the California Environmental Quality Act. A CEQA agency may refuse to approve a project in order to avoid direct or indirect environmental effects of the project, and in this case, there are also feasible alternatives available that would substantially lessen these significant adverse effects. As an additional and independent basis for denial, the Commission denies the proposed LCP Amendment under CEQA in order to avoid the environmental effects that it would have within the coastal zone.

In addition, Section 21080(b)(5) of CEQA, as implemented by Section 15270 of the CEQA Guidelines, provides that CEQA does not apply to projects which a public agency rejects or disapproves. Accordingly, the Commission's denial of the proposed amendment represents an action to which CEQA, and all requirements contained therein that might otherwise apply to regulatory actions by the Commission, do not apply.

## **APPENDIX A – Substantive File Documents**

Ventura County Harbor Department LCP Amendment Override Application Submittal, January 27, 2020

City of Oxnard Planning Commission Staff Report, August 22, 2019

City of Oxnard City Council Staff Report, November 7, 2020

City of Oxnard City Council Resolution No. 15,278, November 7, 2020

City of Oxnard Certified Local Coastal Program.

An Assessment of the Economic viability of Visitor-Serving Uses at the Victoria Mixed-Use Project Site, HR&A advisors, September 9, 2013, revised October 2, 2013