

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877
WEB: WWW.COASTAL.CA.GOV



Th16b

Prepared July 23, 2021 for August 12, 2021 Hearing

To: Commissioners and Interested Persons

From: Susan Craig, Central Coast District Manager
Alexandra McCoy, Coastal Planner

**Subject: City of Pacific Grove LCP Amendment Number LCP-3-PGR-21-0038-1
(American Tin Cannery Site Standards)**

SUMMARY OF STAFF RECOMMENDATION

The City of Pacific Grove proposes to amend its Local Coastal Program (LCP) Implementation Plan (IP) to modify site standards related to the American Tin Cannery (ATC) site. Currently, the IP includes standards that apply to the seaward portion of the ATC site (i.e., the parcels seaward of Sloat Avenue) and the City proposes to modify the IP so that those standards apply to the entire ATC site (i.e., the parcels seaward and landward of Sloat Avenue and the portion of Sloat Avenue that extends through the ATC site). The proposed changes would mean that the inland portion of the site would be subject to the same IP standards that currently apply to the seaward portion of the site, namely standards that: 1) allow mechanical appurtenances (e.g., ancillary roof appurtenances such as solar panels and heating, ventilation, and air conditioning equipment, etc.) that extend up to 8 feet above the height limit as long as public views are not significantly impacted; and 2) only allow 90 percent site coverage if substantial public access amenities above and beyond what the LCP would ordinarily require are provided. The ATC site is the location of a proposed resort hotel complex and these proposed changes are intended to apply to consideration of the CDP application for that project.

With respect to the mechanical appurtenance change, some have argued that this allowance should not be extended to the inland portion of the site because it would increase development intensity and height and adversely impact coastal resources, particularly public views from areas landward of Sloat Avenue due to the sloped topography of the site. Two things are noted. First, these types of allowances for such appurtenances are fairly typical in LCPs. And second, and more importantly, the provision itself builds in public view protection. In other words, the additional height for appurtenances is not an entitlement (and it does not allow for entire new floors or other substantial development as some have argued), rather it is allowed for intermittent appurtenances and only if "no public views are significantly impacted and the equipment is appropriately screened." Thus, per the terms of the allowance itself, development

cannot be approved if it results in significant public view impacts. As a result, the proposed change can be approved because public view resources are explicitly protected by design.

And in terms of the proposed coverage provision, it is actually *more* restrictive than the standard that currently applies to the inland portion of the ATC site. Currently the inland area of the site is allowed up to 90 percent site coverage; the proposed change would only allow such coverage if significant public access amenities over and above LCP requirements are provided. In other words, the proposed change actually adds additional requirements and increased public benefits to any development here. It also helps to better ensure implementation clarity as the entire ATC site is required to meet these additional public benefit requirements, making it clearer for project evaluation, all of which better protects coastal resources compared to the current IP.

Thus, the proposed IP modification appropriately implements the LUP as it applies to the ATC site, and should not result in significant coastal resource impacts from development there (and actually should result in increased public benefits in terms of coverage requirements).

Staff thus recommends that the Commission find the proposed amendment consistent with and adequate to carry out the policies of the LUP, and that the Commission approve the amendment as submitted. The motion and resolution are found on page 4 below.

Staff Note: LCP Amendment Action Deadline

This proposed LCP amendment was filed as complete on July 7, 2021. The proposed amendment affects the LCP's IP, and the 60-working-day action deadline is September 30, 2021. Thus, unless the Commission extends the action deadline (it may be extended by up to one year), the Commission has until September 30, 2021 to take a final action on this LCP amendment.

TABLE OF CONTENTS

1. MOTION AND RESOLUTION	4
2. FINDINGS AND DECLARATIONS.....	4
A. Proposed LCP Amendment Description	4
B. Proposed LCP Amendment Consistency Evaluation.....	5
C. California Environmental Quality Act (CEQA).....	8

EXHIBITS

Exhibit 1: Proposed IP Amendment (shown in strikethrough and underline)

Exhibit 2: Vicinity Map

Exhibit 3: American Tin Cannery Site Map

1. MOTION AND RESOLUTION

Staff recommends that the Commission, after public hearing, **certify the proposed LCP amendment as submitted**. The Commission needs to make one motion in order to act on this recommendation, and staff recommends a **NO** vote on the motion below. Failure of this motion will result in certification of the Implementation Plan amendment as submitted and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

Motion to Certify: *I move that the Commission reject Implementation Plan Amendment LCP-3-PGR-21-0038-1 as submitted by the City of Pacific Grove, and I recommend a **no** vote.*

Resolution to Certify: *The Commission hereby certifies Implementation Plan Amendment LCP-3-PGR-21-0038-1 for the City of Pacific Grove and adopts the findings set forth below on the grounds that the amended Implementation Plan conforms with, and is adequate to carry out, the provisions of the certified Land Use Plan. Certification of the amended Implementation Plan complies with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amended Implementation Plan on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.*

2. FINDINGS AND DECLARATIONS

A. Proposed LCP Amendment Description

The Commission approved the City of Pacific Grove's Local Coastal Program (LCP) on November 15, 2019, and the LCP was fully certified on March 11, 2020. The LCP consists of both a Land Use Plan (LUP) and an Implementation Plan (IP) that include provisions to carry out the requirements of the Coastal Act. The IP, among other things, lists allowable land uses for each land use designation, implements appropriate height, mass, and setback requirements for development, and specifies the coastal resource protection standards that allowable development must meet, all of which derive from and implement LUP policies.

The 5.59-acre American Tin Cannery (ATC) site fronts Ocean View Boulevard directly across from Stanford University's Hopkins Marine Station and is located directly across from the Monterey Bay Aquarium and is just downcoast of historic Cannery Row (see vicinity map in **Exhibit 2**). The site is made up of several parcels framed by Central Avenue to the south, Dewey Avenue to the west, Ocean View Boulevard to the north, Eardley Avenue to the east, and with Sloat Avenue bisecting the inland versus seaward portions of the ATC site (see site map in **Exhibit 3**). The site was also the subject of a local initiative in 2016 to specifically allow for a future hotel use at the site, including anchoring the important gateway area that transitions from Monterey's popular and historic Cannery Row into the City of Pacific Grove.

The certified LCP envisions a hotel that matches the character and aesthetic of the adjacent community and that also provides some low-cost accommodations and other public benefits. Currently, IP Section 23.90.180(c)(4)(G) includes standards that apply to the seaward portion of the ATC site (i.e., the parcels seaward of Sloat Avenue) and the City proposes to modify the IP so that those standards apply to the entire ATC site (i.e., to the parcels seaward and inland of Sloat Avenue and the portion of Sloat Avenue).

The proposed changes would mean that the inland portion of the site would be subject to the same standards that currently apply to the seaward portion of the site. Namely, mechanical appurtenances (e.g., ancillary roof appurtenances such as solar panels and heating, ventilation, and air conditioning equipment, etc.) that extend up to 8 feet above the height limit would be allowed on the inland portion of the site as long as public views are not significantly impacted; and 90 percent site coverage would only be allowed on the inland portion of the site if substantial public access amenities above and beyond what the LCP would ordinarily require are provided (see proposed amendment text in **Exhibit 1**).¹ The ATC site is the location of a proposed resort hotel complex, and these proposed changes are intended to apply to consideration of the CDP application for that project. See Exhibit 3 for a map of the American Tin Cannery Site, indicating the relevant parcels and the surrounding streets.

B. Proposed LCP Amendment Consistency Evaluation

Standard of Review

The proposed amendment affects the LCP's IP, and the standard of review for IP amendments is that they must conform with and be adequate to carry out the policies of the certified LUP.

Applicable Land Use Plan Policies

The Pacific Grove LUP includes an extensive land use framework for the City that includes nine land use designations. The ATC site is designated V-C (Visitor-Serving Commercial). Hotel uses are allowed under the V-C land use designation per LUP Policy LUD-8:

LUP Policy LUD-8: Permitted Visitor Uses. Allowed uses for Coastal Zone areas designated V-C: a. overnight lodging facilities and appurtenant uses; b. eating and drinking establishments; c. visitor-serving retail, service commercial

¹ The City has also argued that the subject IP standards were always intended to apply to the entirety of the ATC site; that the fact that there appear to be different standards for inland versus seaward portions of the site was an inadvertent drafting error; and that the proposed amendment simply corrects that error. There is nothing in the LCP certification record to suggest that it was a purposeful decision to identify different standards for the ATC site in this way, and it appears likely that the current IP construct is the result of an inadvertent drafting error. At the same time, the Commission here presents and evaluates the changes in relation to the IP as written, which arguably has different standards for the different parts of the ATC site, and conclusions herein are based on LUP coastal resource protection evaluation, and not because an "error" needs to be fixed. In other words, whether it was an error or not is immaterial to this evaluation.

(e.g., banks, grocery stores and gas stations), and event venues; d. institutional uses oriented to tourism; e. public and private parking facilities; and f. uses accessory to the above listed uses.

In addition, LUP Policy LUD-2 identifies the ATC site, and further indicates that the specific development standards for the site are found in the IP:

LUP Policy LUD-2: ATC Site. *In addition to all applicable Land Use Plan policies, the specific standards for development at the American Tin Cannery building/property located in Assessor Parcels (APN) 006-231-001, 006-234-004, 006-234-005, and the portion of Sloat Avenue between Eardley Avenue and Dewey Avenue (C-V-ATC zoning district) can be found in the Implementation Plan.*

The LUP also includes provisions intended to ensure coastal resource protection when new development is contemplated, including:

LUP Policy LUD-1: Development Priorities. *Protection of sensitive habitats, natural landforms, scenic resources, and other coastal resources is a priority in all City actions and decisions, and all development standards (including with respect to height, setback, density, lot coverage, etc.) shall be interpreted as maximums (or minimums) that shall be reduced (or increased) so as to protect and enhance such resources to the maximum extent feasible. Development shall only be authorized when the proposed use is allowed per the applicable land use designation, and when it meets all applicable Local Coastal Program policies and standards.*

LUP Policy SCE-2: Public Scenic Views. *Preserving and enhancing the scenic qualities of the Coastal Zone is a priority in all City actions and decisions. Development that could adversely impact public views and scenic coastal areas shall only be allowed where it protects, preserves, and, if feasible, enhances such scenic and visual qualities.*

LUP Policy SCE-5: Scenic Development Standards. *[in relevant part]*
... Development within visually prominent settings, including ... on all parcels that abut Ocean View Boulevard...shall be sited and designed to avoid blocking or having a significant adverse impact on significant public views, including by situating buildings, access roads, and related development in a manner and configuration that maximizes public viewshed protection, and through such measures as height and story limitations, and bulk and scale limitations. Clustering development to maximize open space views may also be considered.

Taken together, these LUP policies provide for hotel use at the ATC site, reference the IP for additional specific development standards for the site, and provide standards related to coastal resource protection.

Consistency Analysis

With respect to the proposed mechanical appurtenances² change, some have argued that this allowance should not be extended to the inland portion of the site because it would increase development intensity and height and adversely impact coastal resources, particularly public views from areas landward of Sloat Avenue due to the sloped topography of the site (again, see vicinity map of the site in **Exhibit 2**). Two things are noted. First, these types of allowances for such appurtenances are fairly typical in LCPs. In fact, the LUP itself provides for the mechanical appurtenances height limit exception³ but it is made explicit with the IP standard. And second, and more importantly, the provision itself builds in public view protection. In other words, the additional height is not an entitlement (and it does not allow for entire new floors or other substantial development as some have argued), rather it is allowed for intermittent appurtenances and only if “no public views are significantly impacted and the equipment is appropriately screened.” Thus, per the terms of the allowance itself, development cannot be approved if it results in significant public view impacts. As a result, the proposed change can be approved as public view resources are protected by design.

And in terms of the proposed coverage provision, the proposed amendment is actually *more* restrictive than the standard that currently applies to the inland portion of the ATC site. Currently the inland area of the site is allowed up to 90 percent site coverage; the proposed amendment would only allow such coverage if significant public access amenities over and above LCP requirements are provided. In other words, the proposed amendment actually adds additional requirements for development on the inland portion of the ATC site that will result in increased public benefits. It also helps to better ensure implementation clarity as any development on the entire ATC site will need to provide these additional public benefit requirements, making it clearer for project evaluation, all of which better protects coastal resources compared to the current IP.

Thus, the proposed changes appropriately implement the LUP as it applies to the ATC site,⁴ and should not result in significant coastal resource impacts from development there (and actually should result in increased public benefits in terms of coverage requirements). The Commission thus finds the proposed amendment consistent with and adequate to carry out the policies of the LUP.

² Mechanical appurtenances may include chimneys, vents, flagpoles, conventional television reception antennas, solar panels, and ventilating or air conditioning equipment, etc. Mechanical appurtenances do not include railings, parapet walls, public rooftop access, public access amenities, or other substantial development.

³ See LUP policy DES-3, “...Minor exceptions to such height limit may be allowed for mechanical appurtenances that do not impact public views...”

⁴ An amendment to bring the IP into further conformance with the LUP, including into conformance with “LUP Policy LUD-2: ATC Site,” is per se appropriate because the standard of review for IP amendments is whether they are consistent with and adequate to carry out the certified LUP pursuant to Section 30513 of the Coastal Act.

C. California Environmental Quality Act (CEQA)

Section 21080.9 of the California Public Resources Code—within the California Environmental Quality Act (CEQA)—exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its activities and approvals necessary for the preparation and adoption of LCPs and LCP amendments. Instead, the CEQA responsibilities are assigned to the Coastal Commission; however, the Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under CEQA Section 21080.5, the Commission is relieved of the responsibility to prepare an EIR for each LCP or LCP amendment action.

Nevertheless, the Commission is required, in approving an LCP or LCP amendment submittal, to find that the approval of the proposed LCP, as amended, does conform with CEQA provisions, including the requirement in CEQA Section 21080.5(d)(2)(A) that the amended LCP will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment (see California Code of Regulations Title 14 Sections 13540(f) and 13555(b)).

The City of Pacific Grove's LCP amendment consists of an IP amendment. The City of Pacific Grove found that, under CEQA Guideline Section 15062, the proposed LCP amendment is not subject to CEQA because it is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. The City determined that no possibility exists that the amendment may have a significant effect on the environment. This report has discussed the relevant coastal resource issues with the proposal, and has addressed all comments received. All above findings are incorporated herein in their entirety by reference.

Therefore, the Commission finds that there are no other feasible alternatives or mitigation measures under the meaning of CEQA which would further reduce the potential for significant adverse environmental impacts, and the proposed IP amendment conforms with CEQA.