

CALIFORNIA COASTAL COMMISSION

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Date: May 18, 2023

To: COMMISSIONERS AND INTERESTED PERSONS

From: DR. KATE HUCKELBRIDGE, EXECUTIVE DIRECTOR

Subject: CITY OF ENCINITAS DE MINIMIS LOCAL COASTAL PROGRAM AMENDMENT
LCP-6-ENC-22-0051-2 (APPEAL PERIOD TIMELINES) FOR COMMISSION REVIEW
AT ITS MEETING OF JUNE 8, 2023

The Coastal Act was amended January 1, 1995 to provide for a more streamlined method to review amendments to local coastal programs. Section 30514(d) allows the Executive Director to make a determination that a proposed LCP amendment is de minimis in nature. The Executive Director must determine that the proposed amendment: 1) has no impact, either individually or cumulatively, on coastal resources; 2) is consistent with the policies of Chapter 3; and 3) does not propose any change in land use or water use or any change in the allowable use of property. Section 30514(d) requires the local government to notice the proposed de minimis LCP amendment 21 days prior to submitting it to the Executive Director either through: 1) publication in a newspaper of general circulation; 2) posting onsite and offsite the area affected by the amendment; or 3) direct mailing to owners of contiguous property. If the Executive Director makes the determination that the proposed amendment qualifies as a "de minimis" amendment and finds the public notice measures have been satisfied, such determination is then reported to the Commission.

If three or more commissioners object to the de minimis LCP amendment determination, then the amendment shall be set for a future public hearing; if three or more commissioners do not object to the de minimis determination, then the amendment is deemed approved, and it becomes a certified part of the LCP ten days after the date of the Commission meeting (June 8, 2023).

PROPOSED AMENDMENT

The City of Encinitas's LCP Amendment request was filed on 04/17/2023. As such, the last date for Commission action on this item is the July 2023 meeting, absent a time extension.

The City proposes to amend its certified LCP Implementation Plan to amend three sections of the City's Municipal Code – Title 23.08 (Design Review), Title 24 (Subdivisions), and Title 30 (Zoning), portions of which are components of the city's certified IP, to clarify and consolidate references to the City's internal appeal procedure time limits for decisions on various city actions on subdivisions, lot line adjustments, and other approvals. The LCP

Amendment would not change the City's existing internal Coastal Development Permit appeal (CDP) process, or the process for appealing CDPs to the Commission.

Currently, various code sections each describe the City's approval appeal time frame, typically 15 days after a final determination is made. The proposed amendment would remove the specific description of the 15-day time limit, adding instead a reference to Chapter 1.12 (Appeals) of the Municipal Code, which consists of a detailed description of the City's internal process for filing appeals of local decisions. Chapter 1.12 is located under Title 1 (General Provisions) of the Municipal Code, which is not part of the certified LCP. Chapter 1.12 is not a new chapter and is currently referenced in various places throughout the certified IP.

DISCUSSION

The subject amendment involves minor revisions to the format of the LCP to consolidate the location where the local appeal processes for various City actions are articulated, to a specific chapter. Most of the proposed changes are to sections of the LCP for local approvals not related to or directly relevant to the City's CDP process or the Coastal Act. Nothing in the subject amendment alters the ability or the process for the public to appeal local government decisions regarding coastal development permits, including the process that allows any concerned party with standing to file an appeal directly to the Coastal Commission when the City charge an appeal fee for the filing or processing of appeals to the Coastal Commission.

Chapter 1.12 is not part of the certified LCP. When reviewing an LCP that references documents outside of the LCPA, the Commission typically considers or requires those documents or sections to be incorporated by reference, since, if they reflect substantive policies related to the LCP, they should not be able to be revised without amending the LCP. However, in this case, the City's internal appeal procedures do not substantively affect coastal resources or the coastal permit process. In fact, the certified Chapter 30.80 (Coastal Development Permit) already references Chapter 1.12 in Section 30.80.150 (Internal Appeal of Authorized City Agency Decision). All of the appeal procedures for coastal development permits remain as certified by the Commission. Therefore, the proposed amendment is consistent with Chapter 3 of the Coastal Act.

DETERMINATION

The Executive Director determines that the City of Encinitas's LCP amendment is de minimis. Based on the information submitted by the City, the proposed LCP amendment will have no impact, either individually or cumulatively, on coastal resources. It is consistent with the policies of Chapter 3 of the Coastal Act. The amendment does not propose any change in land use or any change in the allowable use of property. The City has properly noticed the proposed amendment. As such, the amendment is de minimis pursuant to Section 30514(d).

CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 21080.5 of the California Environmental Quality Act (CEQA) exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its local coastal program. Instead, the CEQA responsibilities are assigned to the Coastal Commission and the Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under CEQA Section 21080.5, the Commission is relieved of the responsibility to prepare an EIR for each LCP.

Nevertheless, the Commission is required in an LCP submittal or, as in this case, an LCP amendment submittal, to find that the LCP, or LCP, as amended, does conform with CEQA provisions. In the case of the subject LCP amendment request, the Commission finds that approval of the de minimis LCP amendment, as submitted, would not result in any significant adverse environmental impacts under the meaning of the California Environmental Quality Act.