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NEWPORT BEACH

City Council Staff Report

November 10, 2015
Agenda Item No. 15

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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TITLE: Local Coastal Program Implementation Plan

ABSTRACT:

The draft Local Coastal Program (LCP) Implementation Plan is a regulatory document intended to implement the policies of the California Coastal Act and the City's certified Coastal Land Use Plan (CLUP).

RECOMMENDATION:

- a) Conduct a public hearing;
- b) Find that approval of the LCP Implementation Plan is statutorily exempt from California Environmental Quality Act (CEQA) pursuant to Section 15265(a) (1) of the California Code of Regulations, Title 14, and Chapter 3 of the Coastal Act; and
- c) Adopt Resolution No. 2015-99, *A Resolution of the City Council of the City of Newport Beach, California, Approving the Local Coastal Program Implementation Plan (PA2013-001)*, and authorizing the submittal of applications to the California Coastal Commission for review and approval.

FUNDING REQUIREMENTS:

Budget Includes Sufficient Funding

The current adopted budget includes sufficient funding for this program. The City Council has allocated \$75,000 in FY 2014-15 for LCP certification (7014-C8002031), of which \$64,425 remains. In addition, the City received a \$67,000 grant from the California Coastal Commission for LCP certification.

Post-certification LCP administration costs will be expensed to the 01050501-521015 account in the Community Development Department. Future administrative costs

associated with LCP administration will be addressed in the Discussion section of this report.

DISCUSSION:

Introduction

Pursuant to the California Coastal Act of 1976 (Coastal Act), each local government lying, in whole or in part, within the coastal zone is required to prepare an LCP for that portion of the coastal zone within its jurisdiction. In addition, Senate Bill 516 (Chapter 11, Statutes of 2001) requires the City to submit an LCP to the Coastal Commission for approval and certification. Senate Bill 516 allowed the County of Orange to continue to exercise coastal development permit review authority in Newport Coast through its certified LCP after this area was annexed to the City.

An LCP consists of a land use plan and an implementation plan. A land use plan indicates the types, location, and intensity of land uses, and the applicable resource protection and development policies. The implementation plan consists of the zoning regulations, maps, and other legal instruments necessary to implement the land use plan. The first part of the LCP, the CLUP, was certified in 2005 and a major update was certified in 2009.

After an LCP is adopted locally, the LCP must be certified by the California Coastal Commission (Coastal Commission).

LCP Implementation Plan

The Planning Division prepared the draft LCP Implementation Plan (Draft IP) under the direction of the City's General Plan/Local Coastal Program Implementation Committee (Attachment B).

The Draft IP uses the organization and terminology of the Zoning Code. In addition to land use and property development regulations, the Draft IP incorporates other existing Municipal Code regulations (i.e., water quality, landscaping, subdivisions, and harbor operations) needed to implement Coastal Act and CLUP policies. The Draft IP also contains new regulations and procedures on public access, resource protection, and administration.

Land Use and Property Development

The Draft IP incorporates the existing Zoning Code land use and property development regulations. Therefore, no changes are proposed to allowed uses, setbacks, height limits, off-street parking, etc. However, additional regulations are proposed that are necessary to implement CLUP policies. The key changes involve:

- Coastal Act Priority Uses. The Coastal Act establishes priority for coastal-dependent, coastal-related, visitor-serving, and recreational development over other development on the coast. The Draft IP addresses priority uses primarily through the existing Commercial Recreational and Marine (CM) and Commercial Visitor-Serving (CV) Coastal Zoning Districts. The mixed-use coastal zoning districts (MU-W2, MU-V, and MU-CV/15th St) on Balboa Island and Balboa Peninsula also give priority to visitor-serving and recreational land uses (Draft IP Chapters 21.20, 21.22 and 21.26).
- Visitor Accommodations. Projects involving the development of new visitor accommodations or the demolition, conversion, closure, or cessation of existing visitor accommodations will be reviewed to determine potential impacts to low cost visitor-serving accommodations; any identified impacts will have to be mitigated (Draft IP Section 21.48.025).
- Public Beaches. Public beaches will be protected for free and lower cost recreational uses; the Dory Fishing Fleet will be accommodated; and current beach closure regulations are recognized as grandfathered and not subject to Coastal Commission review (Draft IP Section 21.48.055).
- Public Trust Lands. Lands subject to the Common Law Public Trust will be limited to navigation, fishing, commerce, public access, water-oriented recreation, open space, and environmental protection, with legislative exceptions for Beacon Bay, Balboa Bay Resort, and Harbor Island (Draft IP Section 21.48.085).
- Special Events. A coastal development permit will be required for special events involving exclusive use of a beach if it occurs during summer months, has the potential to impact coastal resources, charges a fee, or involves permanent structures or grading (Draft IP Section 21.48.095).
- Property Development Standards. Non-residential waterfront projects and projects in hazardous areas will be subject to additional development standards and procedures (Draft IP Section 21.30.015).

- Bicycle Parking. Non-residential projects with floor areas of 10,000 square feet or more will be required to provide bicycle parking spaces equal to 5 percent of the number of off-street parking spaces required (Draft IP Section 21.40.045).
- Non-conforming Structures. Structures that are non-conforming due to a coastal resource protection development regulation will have to be brought into conformity if more than 50 percent of the exterior walls are demolished or replaced (Draft IP Section 21.38.040.H).

Public Access and Recreation

One Coastal Act goal is to maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone. In recognition of this goal the Draft IP establishes new standards and procedures for the protection and provision of public access to and along the shoreline and recreational opportunities. The provision of public access is required to bear a reasonable relationship to and be proportional with the project's impact. Coastal Act exemptions from public access requirements are incorporated as well as procedures for modification or waiver of public access requirements (Draft IP Chapter 21.30A).

Resource Protection

Another Coastal Act goal is to protect, maintain and, where feasible, enhance and restore the overall quality of the coastal zone environment and its natural resources.

Habitats. The Draft IP contains standards and procedures for the protection of natural habitats and other coastal resources. Some of them are based on existing regulations, such as the Bluff Overlay. Others are new, including those protecting environmentally sensitive habitat areas (ESHAs) and open coastal waters, wetlands, and estuaries (Draft IP Chapter 20.30B).

Visual Resources. The Draft IP includes a procedure to insure that new development is designed to protect the scenic and visual qualities of the coastal zone. If an initial evaluation determines that a proposed development has the potential to significantly impact a public viewshed or the scenic and visual qualities of the coastal zone, a view impact analysis may be required (Draft IP Section 21.30.100).

The Draft IP includes a new Canyon (C) Overlay District for Buck Gully and Morning Canyon areas. The C Overlay implements a stringline setback for development that has been in effect since 2007. The stringline setback limits development on canyon faces by establishing a development stringline where a line is drawn between the nearest

adjacent corners of existing principal and accessory structures on either side of the subject property (Draft IP Section 21.28.050)

Cultural Resources. To protect coastal zone historical and cultural resources, the Draft IP requires an initial evaluation for projects that are located within or near known paleontological, archaeological, and historical sites. If the initial evaluation determines that there is the potential for a significant impact, additional site specific studies may be required (Draft IP Section 21.30.105).

Administration

Coastal Development Permits. The Coastal Act requires a Coastal Development Permit (CDP) for most development within the coastal zone. However, there are exceptions for common types of development, such as improvements to existing structures, and repair and maintenance projects (Draft IP Section 21.52.035).

The Zoning Administrator would have review authority for all CDPs, unless the project also requires another discretionary approval (e.g., conditional use permit, variance, etc.), in which case, the Planning Commission would have review authority. Zoning Administrator decisions on CDPs can also be appealed to the Planning Commission. The administrative provisions contained in Chapter 21.50 are summarized in Table 1 below.

TABLE 1 Coastal Development Permit Review Authority by Permit Type				
CDD Director Authority	Zoning Administrator Authority	Planning Commission Authority	City Council Authority	Coastal Commission Authority
Waivers for existing single unit dwellings and other existing structures	Waivers for de minimis development	Appeals	Appeals	CDPs within original permit jurisdiction areas
	CDPs	CDPs with CUPs, variances, major site development review, etc.	CDPs with LCP amendments	Appeals of CDPs within appeal areas
Emergency CDPs	CDPs with modification permits, minor use permits, minor site development review, etc.			CDPs within deferred certification areas

The number of CDPs required will likely vary from year to year. Using 2014 as a guide, staff estimates that 145 projects would be subject to CDPs. Of these, approximately 57 would be excluded from permit requirements by the Categorical Exclusions (Cat Ex) (discussed below). Based on past Coastal Commission actions, as many as 30 projects could qualify for CDP waivers if the project's impacts were found to be insignificant. Therefore, approximately 58 projects would require a CDP. An unknown percentage of these projects may require some other discretionary permit (e.g., conditional use permit, modification permit, parcel map, etc.), which would be processed concurrently with the CDP application.

TABLE 2	
Projects subject to CDPs	145
Covered by Cat Ex	-57
Potential Waiver	<u>-30</u>
TOTAL	58

Please note that these estimates are for landside projects. The Coastal Commission retains permit jurisdiction for projects below the mean high tide; therefore, projects such as piers and docks will continue to require CDPs from the Coastal Commission.

Categorical Exclusions. The Coastal Act also allows the Coastal Commission to create categorical exclusion orders, which exempts categories of development that do not have the potential to create a significant adverse effect on coastal resources or on public access. The City was granted a Cat Ex in 1977 that excludes single-unit and two-unit projects from CDP requirements, with the exception of the first row of lots on the shoreline. Pursuant to the Coastal Act, the Cat Ex will automatically terminate after the LCP is certified; therefore, the terms and conditions of the Cat Ex have been incorporated into Section 21.52.045 of the Draft IP to ensure that the provisions are maintained after certification.

Permit and Appeal Jurisdiction. After certification of an LCP, the Coastal Commission retains original permit jurisdiction over submerged lands, tidelands, and public trust lands and has appellate authority over development approved by local government in specified geographic areas. The Coastal Commission is responsible for the preparation of maps depicting where the Coastal Commission retains permit and appeal jurisdiction. These maps will be adopted by the Coastal Commission following the certification of the LCP.

Staff has created maps depicting the approximate boundaries of original permit jurisdiction and appeal areas (Attachment C).

LCP Administration Costs

The LCP administration costs will be recovered through permit fees. A cost of service/fee study has yet to be conducted. However, it is believed the current site development review application is comparable to a future CDP application. Under the current fee schedule, a minor site development review application fee is \$2,386. A major site development review application requires a \$5,000 deposit and is billed at the current hourly rate of \$170 per hour.

City application fees are estimated to be significantly lower than those charged by the Coastal Commission. The City CDP application fee for a hypothetical 20,000-square-foot commercial project would be approximately \$2,400. The Coastal Commission CDP application fee would be based on either the gross square footage (\$16,620) or the development cost (\$3,324 to \$277,000), whichever is greater.

Coastal Zone Boundary Adjustments

The Coastal Act established the coastal zone boundary; therefore, to add or remove an area from the coastal zone requires a Coastal Act amendment either by the Legislature or ballot initiative. However, the Coastal Act does allow the Coastal Commission to make limited adjustments to the boundary to avoid bisecting any single lot or parcel or to conform it to readily identifiable natural or manmade features. Such adjustments are limited to a maximum distance of two hundred (200) yards.

The City intends to submit a request for boundary adjustments to the Coastal Commission. Maps depicting the proposed adjustments are provided in Exhibit B of Attachment A.

Public Outreach

The Coastal Act calls for maximizing opportunities for the public and all affected governmental agencies to participate in the preparation and certification of LCPs. In January 2015, the City distributed various forms of notice announcing the availability of draft IP and inviting all interested persons to attend community meetings.

The City conducted four community meetings in February and March, 2015. The Harbor Commission conducted a study session on May 13, 2015, and the Planning Commission held study sessions on April 23, September 3, and September 17, 2015.

The General Plan/Local Coastal Implementation Committee meetings were also open to the public and they met nineteen (19) times over a 28-month period.

Coastal Commission Staff Collaboration

The City worked cooperatively with Coastal Commission staff on the Draft IP. Beginning in 2012, City and Coastal Commission staff identified key issues and exchanged ideas on methods to address them. After the public review draft was released in February 2015, a series of meetings were conducted to review Coastal Commission staff comments to specific Draft IP sections and issue topics. While the meetings have been productive, Coastal Commission staff has admitted that additional review of the Draft IP is needed.

Key Issues

Staff has identified eight remaining key issues that present potential areas of disagreement with Coastal Commission staff:

Coastal Bluffs	Beach Curfews
Coastal Canyons	Permit and Appeal Jurisdiction Maps
Priority Land Uses	Continuation of the Cat Ex
Preferential Parking Districts	Sea Level Rise

The Coastal Commission staff position and the City's response to these issues are summarized in "LCP Implementation Plan Key Issues" (Attachment D). City staff will continue to work with the Coastal Commission staff to resolve these issues after the LCP application is submitted. City staff will seek further direction from the General Plan/Local Coastal Implementation Committee, as needed, to resolve these issues.

Schedule

If the Draft IP is approved by the City Council, staff will submit the applications to the Coastal Commission by December 2015. Coastal Commission staff will have 10 working days to deem the application as "submitted." A public hearing on the LCP must be held by the Coastal Commission no later than sixty (60) days following the day on which the LCP was properly submitted. However, it is likely that Coastal Commission staff will request and will be granted an extension for up to one year. Coastal Commission staff has agreed to a schedule that includes a certification hearing in 2016. Our targeted hearing dates are either March or June 2016.

If the Coastal Commission certifies the Draft IP, the City Council will have the opportunity to accept and agree to any terms or modifications by adopting the Draft IP by ordinance at a public hearing, possibly in April or July 2016. Coastal Commission

acceptance of the City's action could occur at the Coastal Commission's August 2016 hearing.

ENVIRONMENTAL REVIEW:

Pursuant to the authority and criteria contained in the California Environmental Quality Act (CEQA), the proposal is statutorily exempt from CEQA pursuant to Section 15265(a) (1) of the California Code of Regulations, Title 14, and Chapter 3 of the Coastal Act.

NOTICING:

Notice of this amendment was published in the Daily Pilot as an eighth page advertisement, consistent with the provisions of the Municipal Code. Additionally, the item appeared on the agenda for this meeting, which was posted at City Hall and on the City website; notice of public hearings were mailed to local governments and state and federal agencies, and all property owners in the coastal zone.

ATTACHMENTS:

Attachment A – Draft Resolution

Attachment B – Draft LCP Implementation Plan (under separate cover)

Copies of the draft LCP Implementation Plan can be viewed at the Newport Beach Civic Center, Community Development Department Planning Division, and at all branches of the Newport Beach Public Library. The draft LCP Implementation Plan is also available in PDF format on the City of Newport Beach Internet site at <http://newportbeachca.gov/LCPCert>.

Attachment C – Approximate Boundaries of Original Permit Jurisdiction and Appeal Areas

Attachment D – LCP Implementation Plan Key Issues