



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: Planning and Development
Department No.: 053
For Agenda Of: February 2, 2021
Placement: Administrative
Estimated Time:
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors

FROM: Department Lisa Plowman, Director, Planning and Development
Director (805) 568-2086
Contact Info: Daniel T. Klemann, Deputy Director, Long Range Planning
(805) 568-2072

SUBJECT: California Coastal Commission Certification of an Amendment to the Local Coastal Program regarding the 2019 General Package Ordinance Amendment; First, Second, and Third Supervisorial Districts

County Counsel Concurrence

As to form: Yes

Other Concurrence: N/A

Auditor-Controller Concurrence

As to form: N/A

Recommended Actions:

That the Board of Supervisors (Board):

- a) Receive notice of the California Coastal Commission's certification of an amendment to the County's Local Coastal Program (Coastal Commission Case No. LCP-4-STB-19-0157-1 2019 General Package Ordinance Amendment) with two suggested modifications (Attachment 1);
- b) Adopt a resolution acknowledging receipt of the California Coastal Commission's certification with suggested modifications, accepting and agreeing to the modifications, agreeing to issue Coastal Development Permits (CDP) for the total area included in the certified Local Coastal Program, and adopting the Local Coastal Program Amendment with the suggested modifications (Attachment 2);
- c) Determine that the Board's action is not subject to the California Environmental Quality Act (CEQA) pursuant to Public Resources Code Section 21080.9. The County relied upon CEQA Guidelines Sections 15061(b)(3), 15162 (Addendum to 97-ND-02, dated March 4, 2011), and 15265 for environmental review of Case No. 19ORD-00000-00005, 2019 General Package Ordinance Amendment; and
- d) Direct the Planning and Development Department to transmit the adopted resolution to the Executive Director of the California Coastal Commission.

Summary Text:

On December 10, 2019, the Board adopted Resolution No. 19-319 submitting Ordinance No. 5095 (2019 General Package Ordinance Amendment also adopted on December 10, 2019) to the California Coastal Commission as an amendment to the County's Local Coastal Program (LCP). On December 10, 2020, the Coastal Commission certified the amendment to the LCP with two suggested modifications. The suggested modifications are presented in Attachment 1 (Coastal Commission letter dated December 17, 2020).

The Coastal Commission's certification will expire on June 10, 2021, six months following the date of the Coastal Commission's action on December 10, 2020, unless prior to that date the Board accepts the modifications. The Board may choose to accept or reject the suggested modifications.

If the Board accepts the modifications by adopting the attached resolution (Attachment 2), then following receipt of the resolution, the Coastal Commission's Executive Director will determine in writing that the County's action is legally adequate to satisfy any specific requirements set forth in the Coastal Commission's certification order, and report this determination to the Coastal Commission at its next regularly scheduled public meeting. If the Coastal Commission does not object to the Executive Director's determination, then notice of the certification will be filed with the Secretary of the Resources Agency and the certification will be deemed final and effective. If, for some reason, a majority of the Coastal Commission members do not agree with the Executive Director's determination and find that the County's action does not conform to the provisions of the Coastal Commission's action to certify the amendment to the County's Local Coastal Program, then the Coastal Commission will review the County's action in a subsequent public hearing as if it were a re-submittal. Once the LCP amendment receives final certification, the amendment, as modified, becomes effective, and P&D staff will incorporate the amendment into the County's LCP.

The Board of Supervisors has the following options if it does not accept the suggested modifications:

- Adopt amendments to the suggested modifications and submit the amended 2019 General Package Ordinance Amendment for certification.
- Reject the modifications without adopting any amendments to the language as modified by the Coastal Commission and request that the Coastal Commission not certify the LCP amendment.
- Allow the Coastal Commission's certification with the suggested modifications to expire by taking no action prior to June 10, 2021.

The Planning and Development Department reviewed the Coastal Commission's suggested modifications and recommends that the Board approve the attached resolution (Attachment 2) acknowledging receipt of the Coastal Commission's certification with suggested modifications and adopting the LCP amendment with the suggested modifications. This recommendation is based on the analysis of the suggested modifications contained in the following section.

Background:

A. Project Summary

On December 10, 2019, the Board adopted Ordinance No. 5095 (Case No. 19ORD-00000-00005), approving the 2019 General Package Ordinance Amendment. Ordinance No. 5095 made the following amendments to the Coastal Zoning Ordinance (Article II):

- Revised Section 35-144F Commercial Telecommunications Facilities to provide essential permit procedures for (1) eligible facilities requests that comply with the federal Spectrum Act, and

(2) small wireless facilities that comply with the new Federal Communications Committee (FCC) Order, pursuant to 47 C.F.R. Section 1.6100 *et seq.*

- Added a new Section 35-179D, which authorizes the recordation of Notices to Property Owners and other documents (such as notices and agreements) when required pursuant to permit conditions of approval.
- Deleted Section 35-179B.D.8, a time extension process that extended the expiration of a planning permit or entitlement due to an economic hardship resulting from a previous national economic downturn. Section 35-179B.D.8 expired on January 12, 2015.
- Revised Figures 13-1, 13-2, and 13-3, which illustrate the calculation of the floor below grade adjustment in the Summerland Community Plan. The revision corrects an error and provides a more illustrative example without changing the methodology.

The Coastal Commission certified the County’s amendments as submitted with the exception of certain amendments to Section 35-144F Commercial Telecommunications Facilities, discussed further below.

B. Coastal Commission Suggested Modifications to Section 35-144F

A key component of the federal regulations is that applications for personal wireless commercial telecommunication facilities must be approved within a “reasonable period of time.” In 2009, the FCC found that a “reasonable period of time” or “shot clock” is presumptively 90 days for collocated facilities applications and 150 days for all other applications. Both the 2012 Spectrum Act and the 2018 FCC Order reduced the shot clocks to 60 days and 90 days, respectively, for certain types of projects identified in these federal regulations. The Board Letter for the December 10, 2019, hearing provides more information regarding these federal regulations (Attachment 3). Two of the Board’s revisions to Section 35-144F (to streamline permit application processing for the projects defined by the Spectrum Act and the 2018 FCC Order) were modified by the Coastal Commission.

1. Applications Subject to the Spectrum Act

Ordinance No. 5095 would create a new Tier 1(b) permit process to streamline application review and approval of projects that meet Spectrum Act requirements and meet the reduced federal shot clocks. Under the County’s approved amendments, these projects would have been approved with a Zoning Clearance, a ministerial permit that is not noticed, not appealable locally, and not appealable to the Coastal Commission.

The Coastal Commission modified the use table under Section 35-144F.B.2 to require a CDP for Tier 1(b) projects instead of a Zoning Clearance. As discussed in the Coastal Commission staff report (Attachment 4):

[A] Zoning Clearance is not a type of CDP action under the County’s IP/CZO [Implementation Plan/Coastal Zoning Ordinance] and not all facility modifications that qualify as Tier 1(b) projects may be exempt from the requirement to obtain a CDP pursuant to the County’s certified IP/CZO, the Coastal Act, and the Commission’s Regulations.

The Coastal Commission is also concerned that projects “in certain locations can have the potential to result in impacts to coastal resources.”

Projects that involve a risk of such impacts require approval of a CDP because it is through the review and approval of a CDP that the policies of the certified LCP are invoked, impacts are assessed, project alternatives are considered, and mitigation measures are incorporated. Without this process, adequate coastal resource protection cannot be assured.

Therefore, the Coastal Commission modified the permit requirement from a Zoning Clearance to a CDP. In addition, with a CDP requirement, if a Tier 1(b) project is located within a geographic Appeal Jurisdiction, the project would automatically require a hearing before the Zoning Administrator (unless waived) and would be appealable to the Coastal Commission. Although this process would likely result in longer application processing timeframes, most Spectrum Act projects would not be located within an Appeal Jurisdiction and would proceed without a hearing.

2. *Applications Subject to the 2018 FCC Order*

Ordinance No. 5095 would delete a notice requirement that would allow the notice recipient to request a hearing for Tier 2 projects. Tier 2 projects are permitted with a Development Plan approved by the Director and a concurrent CDP. By removing the potential requirement for a hearing (and the delay caused by waiting for the prescribed time to pass during which a person could request a hearing) the amendment would reduce the timeframe to process these applications and thereby improve the ability of Planning and Development to complete application processing within the federal shot clock.

The Coastal Commission modification revises the use table under Section 35-144F.B.2 and the notice requirements under Section 35-181.8.2.e to restore the noticing requirement that would allow the notice recipient to request a hearing but only for those projects located within a geographic Appeal Jurisdiction. The practical effect of this modification is that projects located outside the Appeal Jurisdiction would be processed without the notice requirement, as intended by Ordinance No. 5095. Most Tier 2 projects would be proposed outside the Appeal Jurisdiction and the County's objectives with this amendment would be met. Only projects located within an Appeal Jurisdiction would be subject to this modification and require a hearing notification.

3. *Staff Recommendation*

Since discussing the modifications with Coastal Commission staff, Planning and Development is considering possible permit options that can further streamline the permit process for some of these telecommunications facilities and will return to the Board in the future with additional ordinance amendments. Although the modifications restore some of the permit processing constraints the County was trying to eliminate, the majority of the amendments under Ordinance No. 5095 were certified by the Coastal Commission as submitted. Therefore, the County would, on balance, benefit from accepting the Coastal Commission's modifications, and Planning and Development recommends the Board acknowledge receipt and accept the Coastal Commission's modifications.

Fiscal and Facilities Impacts:

Budgeted: Yes

Funding for the project is included in the Planning and Development Department's Long Range Planning Division Budget Program on page D-294 of the County of Santa Barbara Fiscal Year (FY) 2020-21 adopted budget. There are no facilities impacts.

Special Instructions:

The Clerk of the Board shall transmit a copy of the minute order and an executed copy of the resolution (Attachment 2) to the Planning and Development Department, attention Julie Harris.

Planning and Development Department staff will transmit the resolution to the Coastal Commission and other interested parties.

Attachments:

1. Coastal Commission Letter dated December 17, 2020, Santa Barbara County Local Coastal Program Amendment No. LCP-4-STB-19-0157-1 (2019 General Package Ordinance Amendment)
2. Board of Supervisors Resolution Accepting the Coastal Commission's Certification of the Local Coastal Program Amendment with Modifications
3. Board Letter dated December 19, 2019
4. Coastal Commission Staff Report (dated November 19, 2020) and Addendum (dated December 8, 2020)

Authored by:

Julie Harris, Senior Planner, Long Range Planning Division (805) 568-3543