

Proposed Amendment to the City of San Clemente Local Coastal Program (LCP) Land Use Plan (LUP)

Introduction and Overview

On February 8, 2018, the California Coastal Commission approved a comprehensive update to the City of San Clemente's Local Coastal Land Use Plan with suggested modifications (Major LCP Amendment No. 1-16 (LCP-5-SCL-16-0012-1)). At public hearing on June 12, 2018, the City Council adopted Resolution No. 18-19 approving the comprehensive LUP update. On August 10, 2018, the Commission certified the comprehensive LUP update.

At the June 12, 2018 public hearing, the City Council also directed City Staff to prepare a focused Land Use Plan Amendment (LUPA) to modify certain key provisions in the LUP relating to:

1. The start date for calculating cumulative changes to an existing structure relative to the "Major Remodel" definition contained in Chapter 7 of the LUP.
2. The zoning designation of (four) southernmost parcels on Coronado Lane from MU4 (Mixed Use-4) to RH (Residential High) and the boundary of the Visitor Serving Commercial District Overlay to exclude these same parcels as contained in Chapter 2 of the LUP.
3. Other topics as may be needed to address clean up, non-substantive edits, factual errors or other changes as directed by the City Council.

This draft LUPA has been developed by the City in coordination with interested stakeholders and Commission staff and will be issued for a six-week public review and comment period beginning on September 19, 2018 and ending on November 2, 2018. No comments were received by the City during the public comment period.

The City Council approved Resolution 2018-57 following a public hearing on December 18, 2018 and narrowed the scope of the LUPA to changing the cumulative change start date contained in the Major Remodel definition.

Content of the LUPA

The following revised text constitutes the LUPA with the changes shown in redline/strikeout in the following text box.

San Clemente Draft LCP LUP Amendment

LUP Chapter 7 – Proposed Revisions

Certified LUP, Chapter 7, Page 7-12:

“MAJOR REMODEL” Alterations that involve (1) additions to an existing structure, (2) exterior and/or interior renovations, and/or (3) demolition of an existing bluff top or beachfront or coastal canyon single-family residence or other principal structure, or portions thereof, which results in:

- a. Alteration of 50% or more of major structural components including exterior walls, floor and roof structure, and foundation, or a 50% increase in floor area. Alterations are not additive between individual major structural components; however, changes to individual major structural components are cumulative over time from ~~January 1, 1977~~ the LUP effective Certification date (August 10, 2018).
or
- b. Demolition, renovation or replacement of less than 50% of a major structural component where the proposed alteration would result in cumulative alterations exceeding 50% or more of a major structural component, taking into consideration previous alterations approved on or after the ~~date of certification of the LUP~~ LUP certification date (August 10, 2018); or an alteration that constitutes less than 50% increase in floor area where the proposed alteration would result in a cumulative addition of greater than 50% of the floor area taking into consideration previous additions approved on or after ~~January 1, 1977~~ the LUP effective Certification date (August 10, 2018).

If development constitutes a Major Remodel as defined herein, a Coastal Development Permit shall be required. As used in this LUP, the term “redevelopment” shall be interchangeable with the term “major remodel.”

Basis of LUP Amendment regarding the Calculation of Cumulative Changes for Major Remodels

The City submits this LUPA to calculate the cumulative alterations and increases dating back to August 10, 2010, which is the effective certification date of the comprehensive LUP update (date that the CCC Executive Director signed off on the LUP and concluded the LUP Update process), for major remodels for the following reasons:

- No other City or County in California currently uses 1977 in their LCP as the starting date for purposes of determining when a remodel is treated as “new development” and is unwarranted that San Clemente be singled out and subjected to an inequitable burden;
- The “major remodel” definition is a new defined term in the LUP and it is unreasonable to make this new standard retroactive forty-years and is punitive to local property owners;
- The major remodel threshold is the point at which an existing structure would be treated as new development subjecting it to a stricter standard, including potential restrictions if the structure were to become threatened with coastal erosion in the future;
- The major threshold would also, once exceeded, become the starting point that an existing legal non-confirming structures would have to be brought into compliance with the LCP;
- The 1977 provision is likely unenforceable for various reasons including the fact that the “major remodel” definition is new for 2018 and due to incomplete record-keeping as many past remodels would not have required discretionary permits from the City or CCC and therefore cannot be readily tracked for purposes of determining if/when a structure has exceeded the major remodel threshold;
- The 1977 date could act to limit access to shoreline protection, a right protected by the Coastal Act (Pub. Res. Code, § 30235), for structures built after January 1, 1977, but that have incurred incremental change over the 40 years.
- Consistent public objection to the CCC inclusion of policy triggers tied to 1977 (e.g., Coastal Act effective date) was a key consideration ultimately leading to a compromise whereby the City committed to initiating a process to remove the reference to 1977 in the LUP exchange in an effort to gain support for the balance of CCC Suggested Modifications;
- The 2018 date is consistent with the dates used in other LCPs certified by the Commission recently which use a date of the LUP or IP certification to calculate cumulative changes towards a remodel.
- The certification of the comprehensive LUP update is the appropriate date for to begin counting cumulative changes, because it provides sufficient notice to current property owners of the new restrictions associated with major remodels and incremental changes towards major remodels.

- Use of the 2018 date will ensure that current property owners have adequate notice that an alteration or increase that is not a major remodel today, could be a step towards a cumulative remodel in the future and therefore the land use restrictions required for new development would be triggered.

The LUP contains a new definition for “major remodel” and treats a “major remodel” as “new development” instead of an “existing structure”. This means that, like new development, a major remodel requires a coastal development permit and is subject to certain restrictions on future development, including potential future limits on shoreline protection. (LUP, HAZ-19 (p. 5-12).)

The recently certified LUP defines a “major remodel” as:

1. An alteration of 50% or more of a major structural component (i.e., exterior walls, floor structure, roof structure, and foundation); or
2. An increase of 50% or more of floor area. (LUP, ch. 7, definition of “Major Remodel” (p. 7-12).)

An alteration or increase of less than 50% of a single structural component is not considered a “major remodel”, unless that alteration or increase plus previous alterations or increases dating back to January 1, 1977, the effective date of the Coastal Act, total to a cumulative alteration or increase of 50% or more.

The start date for purposes of calculating/tracking cumulative alterations or increases is therefore an essential threshold and the subject of this LUPA:

- **Newly Certified LUP: 1977 Date.** The LUP calculates cumulative alteration or increase by dating back to January 1, 1977, the effective date of the Coastal Act.
- **LUPA: 2018 Date.** This LUPA would calculate cumulative alteration or increase by dating back to August 10, 2018, the certification date of the comprehensive LUP update.

Objections were raised to the CCC Modification to cite January 1, 1977 as the cumulative threshold evaluation start date in the City’s LUP. Concerns focused on using the Coastal Act effective date since this date was what CCC advocated for in the “Existing Structures” definition which was ultimately excluded from the City’s LUP.

The CCC desire to define “existing” as what was on-the-ground in 1977 whether for purposes of limiting shoreline protection or for purposes of starting the clock on changes to structures elicited the same objections from the stakeholder community.

Though the policies are different (the existing structures definition intended to use 1977 to define “existing” with respect to limits to shoreline protection while the other definition for major remodel uses 1977 to define “existing” with respect to establishing a point in time whereby a structure is no longer “existing” but rather modified and on its way to becoming a major remodel, treated as “new development” and thus is no longer existing development entitled to various rights.

Although a somewhat different issue than the CCC proposed 1977 date for the “existing structures” definition aimed at limiting rights to shoreline protection specifically allowed under Coastal Act § 30235, public comment received by the City during the LUP approval process indicates continued objection to citing the Coastal Act effective date for purposes to codifying current land use policy and development standards.

In discussions with CCC staff, they have indicated that using 1977 codifies their current practice and therefore the definition of Major Remodel with a 1977 threshold maintains (but formalizes) the CCC status quo, whether the City’s LUP was certified or not. However, City staff disagree citing inconsistent application in other jurisdictions and CCC staff have, to date, not provided specific examples of any other LCP’s containing the 1977 provision.

Although the previous CCC suggested modification to include a definition of “existing structures” was intended to limit shoreline protection to only those structures in existence as of 1977, any reference back to 1977 unmistakably ties the definition of “Major Remodel” (i.e., redevelopment or new development) to the point in time of what was “existing” thus differentiating structures based whether they pre-date the Coastal Act or not.

Thus, retaining a reference to 1977 in the “Major Remodel” definition reinforces 1977 as the explicit starting point for distinguishing when “existing” development is on its way to becoming “new development” and the City has been directed to correct this and establish a more appropriate starting point for abating existing legal non-conforming structures in the City of San Clemente.