



CITY OF

NEWPORT BEACH

City Council Staff Report

May 8, 2018
Agenda Item No. 6

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

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TITLE: A Request to Modify the Categorical Exclusion Order to Exclude Some Residential Dwellings from Coastal Development Permit Requirements

ABSTRACT:

Staff is requesting the City Council consider submitting to the California Coastal Commission a modification to Categorical Exclusion Order CE-5-NPB-16-1 that will exclude single-unit and two-unit dwellings with floor area ratios of 2.0 from the permit requirements of the California Coastal Act.

RECOMMENDATION:

- a) Find the action exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 (Class 1 – Existing Facilities), Section 15302 (Class 2 – Replacement or Reconstruction), Section 15303 (Class 3 – New Construction or Conversion of Small Structures) and Section 15332 (Class 32 Infill Development Projects) of the CEQA Guidelines, because it has no potential to have a significant effect on the environment; and
- b) Direct staff to submit to the California Coastal Commission a modification to Categorical Exclusion Order CE-5-NPB-16-1 that will exclude single-unit and two-unit dwelling units with floor area limits of 2.0 times the buildable area from the permit requirements of the California Coastal Act.

FUNDING REQUIREMENTS:

There is no fiscal impact related to this item.

DISCUSSION:

The California Coastal Act (Coastal Act) allows the California Coastal Commission (Coastal Commission) to create categorical exclusion orders, which exempts specific categories of development that do not have the potential to create a significant adverse effect on coastal resources or on public access from coastal development permit (CDP) requirements.

In 1977, the Coastal Commission granted the City Categorical Exclusion Order E-77-5, which excludes single-unit and two-unit projects from CDP requirements. Specifically, the order applied to the R-1, R-1.5 (now R-BI) and R-2 Zoning Districts with the exception of the first row of lots adjacent to the beach, bay, or wetlands, major undeveloped residential sites, Planned Community Districts and gated communities.

On November 4, 2016, the Coastal Commission approved Categorical Exclusion Order CE-5-NPB-16-1 (Cat Ex) with conditions, which are substantially consistent with the City's 1977 order. The Cat Ex applies the R-1, R-BI and R-2 Zoning Districts within the coastal zone (see Attachment A), except in the following areas:

- The first row of lots adjacent to the beach, bay, or wetlands
- Major undeveloped residential sites
- Gated Communities
- Lands subject to the public trust

The Cat Ex allows floor areas to 1.5 times the buildable area¹ before a CDP is required. However, R-1 and R-2 Coastal Zoning Districts have floor area limits of 2.0 times the buildable area in areas other than Corona del Mar. Therefore, a CDP is required in order to achieve the floor areas allowed under the Zoning Code and the certified Local Coastal Plan (LCP). The historic trend is to maximize residential floor areas.

Prior to the City receiving a certified LCP, a single-unit or two-unit project in the coastal zone would need to apply to the Coastal Commission for a CDP if the project 1) had a floor area greater than 1.5 times buildable area of the lot; 2) was located on the first row of lots adjacent to a shoreline; and/or 3) was located in a gated community (e.g., Bay Shores). However, the Coastal Commission commonly waived the CDP requirement for such projects because they presented no potential significant impacts to public access or coastal resources. Therefore, many projects did not need a CDP. In 2014, for example, the Coastal Commission granted waivers for over one-third of the projects that would have otherwise required a CDP.

After the City received a certified LCP, the City began processing CDPs instead of the Coastal Commission. One major difference is there is no longer an opportunity for a CDP waiver as when the Coastal Commission had CDP authority. This is because the certified LCP does not allow the City to grant CDP waivers within areas that are appealable to the Coastal Commission. Over 68 percent of the R-1, R-1.5 and R-BI coastal zone properties are located within appealable areas.

Staff is requesting to modify the Cat Ex to include projects with floor areas 2.0 times the buildable area. All other conditions of the Cat Ex would remain unchanged. This modification would potentially result in 60 less CDP applications processed annually; a reduction of up to 50 percent. As a result, many single-unit and two-unit property owners would be relieved of the time and expense of a CDP application. On average, it takes six to eight weeks for an applicant to obtain a CDP at an average cost of \$2,000.

¹ Buildable area is defined as the area of a development site, excluding the minimum front, side, and rear setback areas. The Cat Ex 1.5 floor area limit only applies to on non-conforming lots (4,000 square feet or less) and in areas where a majority of the lots are nonconforming.

Additionally, modifying the Cat Ex would relieve staff of the time to process a CDP application. Most CDP applications are considered by the Zoning Administrator at a public hearing. Each application requires on average 12 hours of additional staff time to complete and issue or deny a CDP.

It must be stressed that a modified Cat Ex would not increase the floor area limits in the certified LCP; rather, it would allow the maximum floor area limits of the certified LCP to be achieved without a CDP if the project conforms to all of the conditions of the Cat Ex, including consistency with the certified LCP.

Coastal Commission approval of the modified Cat Ex will require a two-thirds vote at a public hearing. The Coastal Commission will be required to make the following findings:

- There is no potential for any significant adverse effect, either individually or cumulatively, on coastal resources;
- There is no potential for any significant adverse effect, either individually or cumulatively, on public access to, or along, the coast;
- The exclusion will be subject to terms and conditions to assure that no significant change in density, height, or nature of uses will occur without further proceedings pursuant to the Coastal Act and that the exclusion may be revoked at any time by the Coastal Commission, if the conditions of exclusion are violated; and
- Tide and submerged land, beaches, and lots immediately adjacent to the inland extent of any beach, or of the mean high tide line of the sea where there is no beach, and all lands and waters subject to the public trust shall not be excluded.

The analysis provided in Attachment C supports that all of these findings can be made.

ENVIRONMENTAL REVIEW:

Pursuant to the authority and criteria contained in the CEQA, the proposal is exempt from California Environmental Quality Act (CEQA) pursuant to Section 15301 (Class 1 – Existing Facilities), Section 15302 (Class 2 – Replacement or Reconstruction), Section 15303 (Class 3 – New Construction or Conversion of Small Structures) and Section 15332 (Class 32 – Infill Development Projects) of the CEQA Guidelines.

Although the recommended action does not authorize any development, the type development within the specified geographic area that would be excluded from coastal development permit requirements (i.e., the demolition and/or construction of single-unit and two-unit dwellings) is except from CEQA. The Class 1 exemption includes the demolition of single-unit and two-unit dwellings in urbanized areas; the Class 2 exemption includes “replacement or reconstruction of existing structures and facilities where the new structure will be located on the same site as the structure replaced and will have substantially the same purpose and capacity as the structure replaced;” the Class 3 exemption includes the construction of limited numbers of new, small structures, including single-unit and two-

unit dwellings; and the Class 32 exemption covers an in-fill development projects consistent with General Plan and applicable development standards where the site is no more than five (5) acres, has no value as habitat for endangered, rare, or threatened species, is adequately served by all utilities and public services, and does not result in significant effects relating to traffic, air quality, water quality, or any other significant effect on the environment due to an unusual circumstance.

NOTICING:

The agenda item has been noticed according to the Brown Act (72 hours in advance of the meeting at which the City Council considers the item).

ATTACHMENTS:

Attachment A – Categorical Exclusion Area Map

Attachment B – Categorical Exclusion Order CE-5-NPB-16-1

Attachment C – Coastal Act Section 30610(e) Analysis