



Council Agenda Report

To: Mayor Pierson and the Honorable Members of the City Council

Prepared by: Richard Mollica, Assistant Planning Director

Reviewed by: Bonnie Blue, Planning Director

Approved by: Reva Feldman, City Manager

Date prepared: October 7, 2020 Meeting date: October 26, 2020

Subject: Two-Year Update on the Coastal Development Permit Extension Policy

RECOMMENDED ACTION: Receive and file the update on staff's implementation of the Coastal Development Permit (CDP) extension policy.

FISCAL IMPACT: There is no fiscal impact associated with the recommended action.

WORK PLAN: This item was not included in the Adopted Work Plan for Fiscal Year 2020-2021.

DISCUSSION: On April 8, 2019, the Council received and filed staff's update regarding the implementation of the CDP expiration policy. After discussion, the Council requested that staff return within a year to provide additional data regarding the number of CDP extensions requested and number of CDP projects completed.

Analysis

Staff has amended Table 1 which was included in the April 8, 2019 agenda report (attached) to include updated information from 2019 and 2020. Table 1 provides a summary of the annual number of CDP extensions approved and denied between the years 2009 to current with the yellow highlighted data indicating the reporting years affected by the CDP extension policy.

| Table 1 – Annual Number of CDP Extensions | | | | | | | | | | | | |
|---|------|------|------|------|------|------|------|------|------|------|------|------|
| Approved | 32 | 43 | 47 | 40 | 41 | 41 | 40 | 29 | 21 | 14 | 8 | 10 |
| Denied | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 2 | 4 | 0 |
| Year | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 |

As demonstrated by the additional data, the number of applications for extensions reviewed by the Planning Commission and Planning Director has steadily decreased. This is demonstrated by the decrease in both the number of approvals and denials for years 2019 (12 extension requests) and 2020 (10 extension requests). It should also be noted, the during the current year, the Planning Commission has not denied any extensions. Based on staff’s experience, property owners and applicants are complying with the five-year limit and not asking for additional time extensions.

However, it should be noted that during the past few months, staff has received extension requests citing the COVID-19 pandemic as a reason for not starting construction or entering the plan check process. Applicants have stated that it has been difficult to secure structural engineers as well as contractors. Given the ongoing nature of the existing COVID-19 pandemic, it is reasonable to assume that additional extensions citing COVID-19 as a factor for not commencing work will be submitted to the City. The Planning Commission has raised the concern that this may not qualify as due cause given the number of construction projects taking place in the City.

At the April 8, 2019 Council meeting, the Council asked staff to track the number of CDPs completed. Table 2 demonstrates the number of CDPs that have been completed by year since 2018. Since the 2019 Council meeting, the number of CDP projects that have been completed has decreased slightly; however, it appears to be relatively consistent over the last two years.

| Table 2 – Projects Completed by Year | |
|--------------------------------------|------------------------|
| Year | CDP Projects Completed |
| 2018 | 29 |
| 2019 | 25 |
| 2020 | 24 ¹ |

ATTACHMENT: April 8, 2019 City Council Agenda Report Item 5.A.

¹ To date only 18 projects have been completed at an average of 2 CDP projects per month. The value of 24 is an estimate of how many projects will be completed by the end of December.



Council Agenda Report

To: Mayor Wagner and the Honorable Members of the City Council

Prepared by: Raneika Brooks, Associate Planner

Reviewed by: Bonnie Blue, Planning Director

Approved by: Reva Feldman, City Manager

Date prepared: March 20, 2019 Meeting date: April 8, 2019

Subject: One-Year Update on the Coastal Development Permit Extension Policy

RECOMMENDED ACTION: 1) Receive the update on staff's implementation of the Coastal Development Permit (CDP) extension policy; 2) Direct staff to report back in approximately one year on extension and project completion statistics; and 3) Make recommendations on further policy changes and/or amendments to the Local Coastal Program (LCP).

FISCAL IMPACT: There is no fiscal impact associated with the recommended action.

DISCUSSION: In November 2017, staff began implementing a CDP extension policy (see attachment). The policy was created in order to provide staff, applicants, and the Planning Commission about the criteria staff would apply in determining whether to recommend granting or denying CDP extension requests. This report provides a summary of the effectiveness of the CDP Policy which is determined by the length of time for a project to begin the plan check process, obtain building permits, and complete construction. It also compares the number of extension requests submitted, granted, and denied, before and after the policy was created.

Background

In recent years, staff and the Planning Commission have processed a high volume of CDP extensions of approval. In some cases, the extensions were routine in order to grant the applicant/property owner additional time to get through what can be a complicated plan check and grading/building permit process before starting construction. In other cases, the extensions allowed applications to live long past their approval dates, with little to no activity moving the project forward to construction, and ultimately final inspection and

occupancy. Often times, the extensions facilitated the sale of entitlements by an original owner who had no intention of building. Many applicants also chose to obtain extensions, even after their project was under construction, because of the vagueness of the current LCP language. LCP Local Implementation Plan (LIP) Section 13.21 states:

Unless the permit states otherwise, a Coastal Development Permit shall expire two years from its date of approval if the development has not commenced during that time. The approving authority may grant a reasonable extension of time for due cause. Extensions shall be requested in writing by the applicant or authorized agent prior to expiration of the two-year period.

In June 2016, the Council initiated amendments to the LCP regarding the criteria for expiration and extension of coastal development permits (CDPs) and directed the City Council's Zoning Ordinance Revisions and Code Enforcement Subcommittee (ZORACES) and the Planning Commission to consider the LCP amendments and make a recommendation to the City Council.¹

Staff presented proposed amendments to ZORACES on February 28, 2017, and to the Planning Commission on March 20, 2017. The proposed ordinance originally represented a significant change to the way the City addressed extensions because it established a specific limit on the number of and criteria for granting extensions. While this option could have provided certainty to the City, community and applicants, it would also tie the City's hands in situations in which it might wish to exercise greater discretion in granting extensions.

Additionally, adoption of an LCP amendment placed great power in the hands of the California Coastal Commission (CCC) due to the certification process. Once an LCP amendment is certified, the City would not be able to change it in the future without approval of the CCC.

On November 13, 2017, the City Council considered the comments from ZORACES and the Planning Commission, their stated priorities, concerns with strict limitations on the number of extensions and terminology, practical constraints and lack of local discretion created by an LCP amendment. The City Council concurred with staff's recommendation to implement a CDP extension policy instead of moving forward with the LCP amendment.

The policy formalizes the criteria staff will use in determining whether to recommend granting or denying CDP extensions, informing both applicants and the Planning Commission. Specifically, the policy spells out examples of "due cause" for approval of a

¹ City Council Resolution No. 16-31. This resolution also initiated amendments to the LCP and Malibu Municipal Code to the criteria for grading permit issuance. ZORACES recommended not pursuing the amendments related to grading permit issuance, finding there were no concerns of note with the current language.

CDP extension and established a requirement that the applicant exercise “due diligence” in the effort to commence the project. At the recommendation of the Council, staff clarified what a “reasonable” extension of time would be by adding language stating that, absent extraordinary circumstances, the aggregate of the life CDP should not exceed five years.

Since the policy is not a change in the code itself, it does not bind the Planning Commission (or whoever the decision-making body is). Rather, the policy provides guidance, greater certainty and predictability to prevent project approvals from becoming stale, while maintaining flexibility through the use of a policy rather than an LCP amendment. Once the policy was finalized, staff notified all applicants with approved projects eligible for time extensions of the new criteria that would be applied for time extension requests.

Council also directed staff to evaluate the policy’s effectiveness after one year of implementation, at which time the Council could consider if there is a need for additional regulations through an LCP amendment or policy changes. This report was delayed by the Woolsey Fire.

Analysis

LIP 13.21 states that the expiration date for a CDP is two years, unless the permit states otherwise. In 2014, staff and the Planning Commission began including a condition of approval that states the CDP would expire three years after its issuance. This was an effort to accommodate larger scopes of work such as new development on vacant property and the demolition and reconstruction of development. The extended time for active CDPs also allowed applicants to obtain construction financing, complete the complex plan check process, and obtain grading/, building permits. All CDPs issued in 2014 were set to expire in 2017, unless an extension was approved. The policy went into effect in November 2017.

Table 1 provides a summary of the annual number of CDP extensions approved and denied between the years 2009 to current with the yellow highlighted data indicating the reporting years affected by the CDP extension policy:

| Table 1 – Annual Number of CDP Extensions | | | | | | | | | | | |
|--|------|------|------|------|------|------|------|------|------|------|------|
| Approved | 32 | 43 | 47 | 40 | 41 | 41 | 40 | 29 | 21 | 14 | 3 |
| Denied | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 2 | 1 |
| Year | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 |

As indicated in Table 1, prior to the policy, no extension request had been denied and an average of 39 CDP extensions were approved annually. In 2017, the number of approved CDP extensions dropped to 21, and after a full year of implementing the policy, in 2018,

dropped to 14 CDP extension approvals. City records also indicate that two CDP extension requests were denied in 2017 and again in 2018, possibly in response to clarification about due cause and the five year time period for CDPs.

Since the CDP Policy was implemented at the end of 2017, the policy began to affect CDPs issued in 2015 and earlier. CDPs issued during and after 2016 are not yet affected by the CDP extension policy because they would not expire until three years after issuance. Table 2 below includes data for CDPs issued in 2013, 2014, and 2015, comparing the lengths of time to enter the plan check process and obtain building permits:

| Table 2 - Post-Approval CDP Activity | | | | | | |
|---|------------------------------|-------------------------------|------------------------------|-------------------------------|------------------------------|-------------------------------|
| | CDPs w/ time extension | CDPs w/o time extension | CDPs w/ time extension | CDPs w/o time extension | CDPs w/ time extension | CDPs w/o time extension |
| No. of CDPs approved | 8 | 48 | 12 | 54 | 8 | 45 |
| No. of days to begin plan check | 413 | 139 | 712 | 177 | 436 | 112 |
| No. of days to building permit issuance | 454 | 421 | 1,089 | 369 | 614 | 332 |
| No. of projects completed | 1 | 36 | 0 | 33 | 0 | 20 |
| CDP Issuance Year | 2013 | | 2014 | | 2015 | |

As noted in the above table, of the total number of CDPs approved in 2015, staff extended the life of less CDPs compared to the total number of CDPs approved in 2014. Staff also notes that the CDPs issued in 2015 began the plan check process and obtained building permits faster than the CDPs approved 2014. City records also indicate that, prior to the implementation of the CDP extension policy in 2017, every CDP extension request was approved, averaging 39 CDP extensions per year between 2009 and 2016. In 2017, the number of approved CDP extensions dropped to 21, and after a full year of implementing the policy, dropped to 14 CDP extension approvals in 2018. City records also indicate that two CDP extension requests were denied in 2017 and again in 2018, possibly due to new criteria to demonstrate “due cause” for each CDP extension request.

Observations

- Extensions requested have declined, and extensions denied have increased, perhaps because of closer scrutiny by staff and the Commission.
- Reduction in CDP extension requests, coupled with shortened time frames to begin the plan check process and obtain building permits, appear to indicate the Policy is encouraging applicants to make progress to complete projects.
- It appears that not granting extensions once permits have been issued and the project starts will encourage more expeditious completion of the project, with fewer elective project changes through substantial conformance review.² It may also reduce the number of projects that get sold after entitlement, which tends to generate more extension requests as new owners want to “tweak” the approved design.

RECOMMENDATION AND ALTERNATIVES:

Over time, a decrease in the average time between permit issuance and completion of project would be a better indication of the effectiveness of the policy. If City Council is interested in this information, it could direct staff to return no sooner than one year from now with an updated evaluation of the policy’s effectiveness.

Alternatively, the Council could make recommendations on further policy changes or an LCP amendment.

ATTACHMENT: LCP Policy No. 5: CDP Extensions

² Substantial conformance review refers to the Planning Director’s review of minor changes to an approved project that substantially conform to the approved project plans and conditions of approval (LIP Sections 13.7(B) and 13.8).



City of Malibu

Planning Department

November 13, 2017

LCP Policy 5: Coastal Development Permit Extensions

LIP Section 13.21 provides:

Unless the permit states otherwise, a coastal development permit shall expire two years from its date of approval if the development has not commenced during that time. The approving authority may grant a reasonable extension of time for due cause. Extensions shall be requested in writing by the applicant or authorized agent prior to the expiration of the two-year period.

Due cause shall generally not exist unless the applicant has demonstrated the following:

- There are extraordinary circumstances beyond the applicant's control that have prevented the applicant from commencing the development, such as financial hardship due to extreme economic conditions or job loss, inability to obtain a construction loan, personal reason, such as illness, divorce or death, restricted access to the property because of an existing lease or a necessary agency approval has not been obtained despite diligent efforts. Change of project ownership or architect and elective project redesigns do not by themselves constitute due cause; and
- The applicant has exercised due diligence in its efforts to commence the project, such as contracting for and completing necessary studies, reports, drawings and plans to pursue and complete the plan check process.

Absent extraordinary circumstances, the aggregate life of the permit shall not exceed five years.