



DATE: July 27, 2009

TO: Chairperson and Members of the Planning Commission

FROM: Development Services Department/ Planning Division

SUBJECT: **CONSIDERATION OF ZONE AMENDMENT (ZA-3-09)  
AMENDING ARTICLES 41 AND 43 OF THE ZONING  
ORDINANCE – TIME EXTENSIONS – APPLICANT: CITY  
OF OCEANSIDE**

### **RECOMMENDATION**

Staff recommends that the Planning Commission by motion:

1. Adopt Planning Commission Resolution No. 2009-P37 recommending approval of Zoning Amendment (ZA-3-09) with findings of approval attached herein.

### **PROJECT DESCRIPTION AND BACKGROUND**

Time extension procedures currently outlined in the Zoning Ordinance are intended to ensure that development projects and conditionally-permitted land uses remain consistent with applicable policies, regulations and guidelines. Under these procedures, time extensions can be approved for projects that pay their fair share toward needed public services and do not conflict with any changes in City policy nor any substantial physical changes in the surrounding area that have occurred since the original approval.

Articles 41 and 43 of the Oceanside Zoning Ordinance establish that Development Plans, Conditional Use Permits, Variances and Regular Coastal Permits are effective for a period of two years following their original approval. Articles 41 and 43 further establish that such approvals may be extended for an additional period of up to three years through a formal application for renewal, which must be filed with the Planning Division no less than 30 days or more than 90 days prior to expiration.

In the fall of 2007, the economy went into recession, and the housing market suffered unprecedented losses in value. As a result of these economic factors, all facets of the building industry have suffered huge job losses and been unable to secure financing to complete their entitled projects. In response to this industry-wide downturn, in July 2008 the California State Legislature approved Senate Bill 1185, which granted an automatic one-year extension to all subdivision maps that were unexpired on July 15,

2008 and set to expire before January 1, 2011. This amendment to the Subdivision Map Act also extended the maximum life of a tentative map from five to six years. In July 2009, the California legislature enacted another automatic extension of 24 months for unexpired tentative maps via AB 333. However, neither of these state statutes extend the life of any other locally-issued entitlements, e.g., Development Plans, Use Permits, Variances and Regular Coastal Permits.

Accordingly, under the current statutory scheme, tentative maps were extended, but no other entitlements received the same extension. Thus, applicants were required to apply for extensions of all locally-issued entitlements, even if they were approved in conjunction with a subdivision map. Under the City's current fee schedule, fees for time extension applications amount to 50 percent of the processing fees for the original entitlements. For example, the fee for a time extension application for an approved Development Plan on less than 10 acres is  $\$4,527 \times 0.50 = \$2,263.50$ . Average processing times for time extension applications range from 12 to 16 weeks.

On June 17, 2009, in response to requests from the development community, staff recommended to the City Council various changes to the Municipal Code, various City Council policies, and a more streamlined and less expensive time extension application process for non-map entitlements. At this public hearing, the City Council authorized a modification to the Oceanside Municipal Code to provide the Building Official with the discretion to approve extensions to building permits up to 12 months. However, no action was taken on staff's recommendation for expedited review and reduced fees for time extension requests for non-map entitlements (proposed City Council Policy 300-26), and thus the question remains as to how time extension requests for non-map entitlements should be processed in light of the state-mandated automatic time extensions for tentative maps.

## **ANALYSIS**

### **Current Economic Conditions**

According to the National Bureau of Economic Research, the U.S. economy has been in recession since the fall of 2007. Over the past 18 months, the national unemployment rate has nearly doubled. While home sales in California have increased slightly in recent months, the median home price is nearly 50 percent below its peak during the summer of 2007, and home foreclosure rates remain near historic highs. The commercial vacancy rate in San Diego County reached 20 percent in the second quarter of 2009 – the highest level seen since 1993. In Oceanside, the impact of these national, state and regional trends is reflected in both an eight percent decrease in business license applications between January-June 2008 and January-June 2009 and a 20 percent decline in building permit applications between Fiscal Year 2007-08 and Fiscal Year 2008-09.

Faced with diminished real estate values, a restricted credit market and other obstacles associated with the current economic crisis, land development projects across the

country continue to struggle to secure construction financing in a timely manner. For projects unable to commence construction before the end of their initial approval period, the time and expense involved in a standard time extension process may prove to be a greater burden than their proponents can afford to undertake, with the result being the expiration of approved projects that might otherwise have contributed to a community's built environment, quality of life and economic development. A similar fate exists for projects that have already applied for and received all of the time extensions for which they are eligible under current standards. Granting automatic time extensions for non-map entitlements (i.e. Development Plans, Conditional Use Permits, Variances and Regular Coastal Permits), with a provision to sunset these automatic time extensions when economic conditions improve, would provide a respite for imperiled development projects without eliminating the community's ability to apply the standard time extension review process to future entitlements.

### Zone Amendment

In order to achieve consistency with both the letter and spirit of state law, it is staff's position that a one-time 24-month extension should be granted to all Development Plans, Conditional Use Permits and Variances and Coastal Permits that are valid on the date the ordinance goes into effect, and that are set to expire prior to January 1, 2012. Because Articles 41 and 43 of the Zoning Ordinance currently limit time extensions of entitlements to a total of three years, an additional automatic extension beyond three years would require amendment of Articles 41 and 43. To account for such projects, staff recommends adoption of a non-codified Zone Amendment that provides for the automatic extension of Development Plans, Conditional Use Permits, Variances and Regular Coastal Permits in accordance with any automatic time extension for tentative maps enacted by the state. Such an amendment would account for the provisions of SB 1185 and AB 333.

In addition to the benefits of aligning City protocol with state law and providing relief to projects imperiled by current economic conditions, staff support for automatic time extensions for entitlements meeting these time parameters is also based on the fact that no substantive changes in land use policy have been adopted since the initial approval of projects that would be automatically extended by the proposed Zone Amendment. In the intervening period, the City has not comprehensively updated the Land Use Element of the General Plan or the Zoning Ordinance, nor has it adopted any specific plans or other regulatory documents that would render non-conforming any automatically extended project. Although the potential exists for automatically extended projects to be rendered non-conforming by future changes in land use policy, the same potential exists for more recently entitled projects that will not benefit from automatic time extensions. It is staff's position that the temporary nature of the proposed automatic time extension would ensure the long-term integrity of the standard time extension process, which would be reestablished once the automatic time extension period has expired.

### Potentially Eligible Projects

Working from available information, staff has identified the entitled and unexpired projects that would be eligible for automatic time extensions under the proposed Zone Amendment. At present, there are roughly 40 active residential projects comprising approximately 900 housing units, many of which have not as yet been issued permits for grading or construction. Several of these projects have submitted time extension applications within the past year; these requests have been tolling as the City evaluates the appropriateness of automatic extensions. Roughly 20 commercial and mixed-use projects have active entitlements at this time, including the S.D. Malkin hotel and timeshares, the CityMark complex, the Pavilion at Oceanside retail center, the La Pacifica 2 industrial development, several small retail complexes and a variety of medical and professional office buildings. One commercial project, San Luis Rey Crossing at North River Road and College Blvd., currently has a tolling time extension request. It is impossible to know how many of these projects might ultimately benefit from automatic time extensions, but assuming economic conditions improve within the next year, it seems likely that most of these projects can be implemented within their originally-prescribed time parameters.

### The Coast Highway Vision and Strategic Plan (CHVSP)

The Coast Highway Vision and Strategic Plan (CHVSP), adopted by the City Council on April 15, 2009, outlines a variety of strategies for the revitalization of Coast Highway and adjacent areas. The principal goals of the CHVSP are to create pedestrian-friendly, transit-oriented mixed-use nodes along Coast Highway while enhancing the character of established neighborhoods and preserving open space, wildlife habitat and other environmental resources. Although not a regulatory document, the CHVSP provides a basis for subsequent changes to the General Plan, Local Coastal Program and Zoning Ordinance meant to foster the sustainable revitalization of Coast Highway. The CHVSP also includes design guidelines for future development along and adjacent to this commercial corridor. At present, few entitled projects are slated for properties within CHVSP boundaries; comprising mostly small-scale residential development, none of these projects are contrary to the overall vision of the CHVSP. Should proponents of any of these projects be interested in modifying their plans to more fully align with CHVSP principles (e.g., achieving higher residential densities or incorporating commercial elements), the Planning Division stands ready to assist their efforts, and, when deemed appropriate and feasible, to expedite any additional administrative or discretionary review that may be required under the Zoning Ordinance or applicable City protocol.

### Alternatives

While staff recommends that the Zoning Ordinance be amended to allow for a one-time automatic time extension of Development Plans, Conditional Use Permits, Variances and Regular Coastal Permits, the City could instead choose to: a) allow no additional time extensions beyond those now provided for in the Zoning Ordinance; or b) provide for additional time extensions through an administrative or discretionary review process.

The City could require that additional time extension requests be subjected to either the standard review process or an expedited review process involving an abridged application, reduced or waived fees, reduced processing time, fewer notification requirements and/or a lower level of review. As directed, staff can provide a matrix of alternatives to automatic time extensions.

**ENVIRONMENTAL DETERMINATION**

The proposed zone text amendment is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15061(b) (3). The activity under consideration is covered by the general rule that CEQA applies only to projects which have the potential of causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

**SUMMARY**

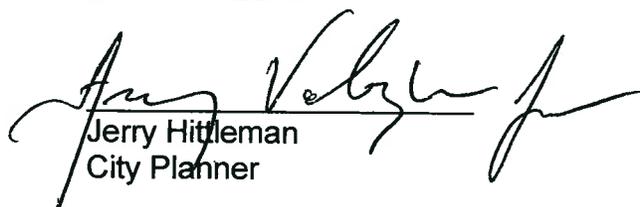
Affording a defined amount of additional time to secure financing and address other exigencies of a slumping real estate market, the proposed modifications to the "Time Extension" provisions of the Zoning Ordinance serve as one-time dispensation to land development interests as yet unable to initiate entitled projects under difficult economic conditions. Staff recommends that the Planning Commission:

- Adopt Planning Commission Resolution No 2009-P37 recommending approval of Zone Amendment (ZA-3-09) with findings of approval attached herein.

PREPARED BY:

  
\_\_\_\_\_  
Russ Cunningham  
Senior Planner

SUBMITTED BY:

  
\_\_\_\_\_  
Jerry Hittleman  
City Planner

REVIEWED BY:

  
\_\_\_\_\_  
Amy Volzke, Principal Planner

RC/fil

Attachments:

1. Planning Commission Resolution No. 2009-P37

1 PLANNING COMMISSION  
2 RESOLUTION NO. 2009-P37

3 A RESOLUTION OF THE PLANNING COMMISSION OF THE  
4 CITY OF OCEANSIDE, CALIFORNIA RECOMMENDING  
APPROVAL OF A ZONE TEXT AMENDMENT AMENDING  
ARTICLES 41 AND 43 OF THE ZONING ORDINANCE

---

5 APPLICATION NO: ZA-3-09  
6 APPLICANT: City of Oceanside  
7 LOCATION: Citywide

---

8 THE PLANNING COMMISSION OF THE CITY OF OCEANSIDE, CALIFORNIA DOES  
9 RESOLVE AS FOLLOWS:

10 WHEREAS, according to the National Bureau of Economic Research, the national  
11 economy has been in recession since the fall of 2007; and,

12 WHEREAS, the concomitant decline in real estate values has significantly constrained  
13 the credit market, making it difficult for business owners and land development interests to  
14 secure financing for entitled projects;

15 WHEREAS, in response to the current economic downturn, the State of California has  
16 taken steps to automatically extend time limits for tentative maps; and

17 WHEREAS, the automatic time extensions for tentative map approvals established by  
18 state statute do not extend to other administrative or discretionary permits issued by the City;  
19 and

20 WHEREAS, on June 17, 2009, the City Council approved an amendment to the  
21 Municipal Code that provides the Building Official with discretion to extend active building  
22 permits for 12 months through July 31, 2010; and

23 WHEREAS, the three-year time limit denoted in Articles 4108(B) and 4308(C) of the  
24 Zoning Ordinance shall not apply to those entitlements extended pursuant to this ordinance; and

WHEREAS, the "Time Extension" procedures contained in Articles 41 and 43 of the  
Oceanside Zoning Ordinance are the exclusive time extension procedures recognized by the City  
of Oceanside and are thus intended to apply citywide in all areas of the City of Oceanside,  
including the Coastal Zone; and

1 WHEREAS, the Planning Commission, after giving the required notice, did on the 27th  
2 day of July, 2009, conduct a duly advertised public hearing as prescribed by law to consider said  
3 application; and

4 WHEREAS, pursuant to the California Environmental Quality Act of 1970, and State  
5 Guidelines thereto, a Notice of Exemption has been prepared for the zone text amendment  
6 project; and

7 WHEREAS, studies and investigations made by this Commission and on its behalf reveal  
8 the following facts:

9 For the Zone Amendment:

- 10 1. The Zone Text Amendments, as proposed, conform to the General Plan of the City.
- 11 2. The granting of the Zone Text Amendments is consistent with the purposes of the  
12 Zoning Ordinance.

13 NOW, THEREFORE, BE IT RESOLVED that the Planning Commission does hereby  
14 recommend approval of Zone Amendment (ZA-3-09) as represented in the attached Exhibit "A".

15 PASSED AND ADOPTED Resolution No. 2009-P37 on July 27, 2009 by the  
16 following vote, to wit:

17 AYES:

18 NAYS:

19 ABSENT:

20 ABSTAIN:

21 \_\_\_\_\_  
22 Claudia Troisi, Chairperson  
23 Oceanside Planning Commission

24 ATTEST:

\_\_\_\_\_  
Jerry Hittleman, Secretary

I, JERRY HITTLEMAN, Secretary of the Oceanside Planning Commission, hereby certify that  
this is a true and correct copy of Resolution No. 2009-P37.

Dated: July 27, 2009