

CALIFORNIA COASTAL COMMISSION

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F 9b

Addendum

November 2, 2011

To: Commissioners and Interested Persons

From: California Coastal Commission
San Diego Staff

Subject: Addendum to **F 9b, City of San Diego LCP Amendment #3-11 (Voluntary Accessibility Program)** for the Commission Meeting of November 4, 2011

Since distribution of the original staff report, dated October 19, 2011, staff has continued to work with City staff to explain the staff recommendation and understand the City's proposed ordinance. While not reaching concurrence to date, staff recommends the following changes be made to the above-referenced staff report. Additions are reflected by underlining and deletions are shown in strike-out—

1. On Page 7 of the staff report, revise sub-section (f) of the suggested modification to read as follows:

(f) Within the *Coastal Overlay Zone*, a bonus or incentive shall not be granted where it would allow *development* that is inconsistent with the policies in the certified Land Use Plan or the allowed uses and development regulations of the Environmentally Sensitive Lands regulations.

2. On Page 15 of the staff report, under Part V. Findings for Approval, please add the following additional findings as the second full paragraph on the page:

The Commission fully supports the City's interest in providing more accessible housing but also finds that such incentives should not result in impacts to critical coastal resources. The Environmentally Sensitive Lands regulations specify the permitted uses and development standards for the City's critical resources, including wetlands, coastal bluffs, beaches, sensitive habitats, floodplains and steep hillsides. The proposed incentive program does not propose any amendment specifically to the ESL regulations or provide any relief to its provisions. The City asserts that no deviation solely to accommodate accessible design elements could be sustained under their discretionary review process and the Commission concurs that the process is rigorous. Nonetheless, since it is the City's stated intent not to create a conflict with the ESL provisions or the certified land use plans, there should be no problem with recognizing that intent in the ordinance. The

Commission has adopted similar clarifications in its past actions on the Reasonable Accommodations Ordinance and, most recently, in the Affordable/In-Fill Housing and Sustainable Programs LCP Amendment (LCPA #3-07B) in April 2009. In that action, the Commission adopted a suggested modification which recognized that deviations to the ESL regulations, the Coastal Height Limit and the Parking Impact Overlay Zone would not be considered for the Affordable/In-Fill Housing program. The recommended modification herein is no different and would simply clarify that bonuses or incentives not be granted that would result in an unpermitted use or conflict with the development regulations specified for environmentally sensitive lands. As noted above, the proposed ordinance, as submitted, already contains such a clarification with regard to the Coastal Height Limit; the proposed modification would further serve to recognize the certified land use plans and ESL regulations.

CALIFORNIA COASTAL COMMISSION

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October 19, 2011

F9b

TO: COMMISSIONERS AND INTERESTED PERSONS

**FROM: SHERILYN SARB, DEPUTY DIRECTOR, SAN DIEGO COAST DISTRICT
DEBORAH LEE, DISTRICT MANAGER, SAN DIEGO COAST DISTRICT**

**SUBJECT: STAFF RECOMMENDATION ON CITY OF SAN DIEGO LCP
AMENDMENT NO. 3-11 (Voluntary Accessibility Program) for Commission
Meeting of November 2-4, 2011**

SYNOPSIS

The subject LCP implementation plan amendment was submitted and filed as complete on September 12, 2011. The date by which the Commission must take action, absent an extension of the time limits by the Commission, is November 11, 2011. The amendment request consists of ordinance revisions to establish the Voluntary Accessibility Program and the submittal only involves changes to the City's certified implementation plan. On July 26, 2011, the City withdrew an identical amendment to afford Commission staff additional time to consult with City representatives and it was agreed that the City would then resubmit the same amendment request. This item represents the City's resubmitted request.

SUMMARY OF AMENDMENT REQUEST

The City of San Diego proposes to establish the Voluntary Accessibility Program which is an incentive program to encourage the incorporation of accessible design elements and features in new residential development in order to address the City's shortage of housing for persons with disabilities and the aging population. This is a City initiative, independent of any State or federally mandated program and it would be a citywide code amendment. Specifically, the proposed amendment would add a new division, entitled Voluntary Accessibility Program, to the City's Building Regulations under Chapter 14 of the Land Development Code ("LDC"). The LDC constitutes the bulk of the City's certified Implementation Plan and Chapter 14 also includes the City's code provisions for grading, landscaping, parking, environmentally sensitive lands, historic resources and land divisions. The voluntary program includes development incentives, such as floor area ratio and density bonuses, setback reductions and lot coverage increases, to encourage the provision of more accessibility components in residential construction.

SUMMARY OF STAFF RECOMMENDATION

Staff is first recommending denial of the subject amendment request and then approval with suggested modifications. While the Commission supports the City's efforts to encourage broader and more accessible housing opportunities for the disabled, physically challenged and senior populations, and the City has explained to Commission staff that the proposed amendment would not allow deviations from the standards in the certified Land Use Plan or Environmentally Sensitive Lands ("ESL") ordinance, as submitted it is not entirely clear that the proposed incentives and deviations must still be consistent with the LUP and ESL for them to be approved. Thus, as proposed, an applicant could argue that he or she is entitled to an incentive or deviation even if it resulted in a project that adversely affected critical coastal resources, including environmentally sensitive lands or encroached into public access or view corridors. These coastal resources are adequately protected under the City's land use regulations and development review procedures, as the City's process for approving development in the coastal zone, particularly in areas subject to the ESL regulations is rigorous. For example, when development is proposed and environmentally sensitive lands are present, the LDC requires that in addition to a CDP, a Neighborhood or Site Development Permit be obtained. Environmentally sensitive lands ("ESL") include sensitive biological resources, wetlands, steep hillsides, coastal beaches, sensitive coastal bluffs and special flood hazard areas. As will be discussed in more detail later in the report, however, although the discretionary reviews and required findings for such projects are adequate, there remains a possibility that some proponent in the future would argue that the protections and findings required for CDPs or Neighborhood or Site Development Permits did not apply, as the proposed amendment would allow for deviations from the development standards contained in the LUP and the ESL.

This is not the City's intent with the proposed amendment, nor would such an amendment be consistent with the certified LUP; therefore, staff is recommending the adoption of a suggested modification that would specifically clarify that a developer is not eligible for a bonus or incentive where it would allow development that would be inconsistent with the City's certified Land Use Plans or the ESL regulations. This suggested modification clarifies the City's intent that even with adoption of this ordinance, all of the applicable findings in any required Neighborhood Development Permit, Site Development Permit or Coastal Development Permit discretionary review must still be made in order to approve such projects; thus ensuring that if a proposed deviation is inconsistent with any of the policies of the certified LUP, it will not be approved. This recommendation would allow the City's proposed bonuses and deviations to encourage accessible housing as long as they are consistent with the ESL regulations and the certified land use plans. The ESL regulations were specifically drafted and certified to preserve and protect the City's most critical coastal resources. While any deviation represents relief from otherwise uniform development standards, as long as there are no permissible deviations from the ESL regulations, the coastal height limit or the parking standards in nearshore areas, the flexibility of allowing specific incentives is an appropriate tradeoff to encourage accessible design elements and features in residential construction.

The appropriate resolutions and motions begin on Page 5. The suggested modification begins on Page 6. The findings for denial of the Implementation Plan Amendment as submitted begin on Page 7. The findings for approval of the plan, if modified, begin on Page 15.

BACKGROUND

The City's first Implementation Plan (IP) was certified in 1988, and the City assumed permit authority shortly thereafter. The IP consisted of portions of the City's Municipal Code, along with a number of Planned District Ordinances (PDOs) and Council Policies. Late in 1999, the Commission effectively certified the City's Land Development Code (LDC) that includes Chapters 11 through 14 of the municipal code. It replaced the first IP in its entirety and went into effect in the coastal zone on January 1, 2000. The Commission has certified many IP amendments since 2000.

ADDITIONAL INFORMATION

Further information on the City of San Diego LCP Amendment #3-11 may be obtained from Deborah Lee, District Manager, at (619) 767-2370.

PART I. OVERVIEW

A. LCP HISTORY

The City of San Diego has a long history of involvement with the community planning process; as a result, in 1977, the City requested that the Coastal Commission permit segmentation of its Land Use Plan (LUP) into twelve parts in order to have the LCP process conform, to the maximum extent feasible, with the City's various community plan boundaries. In the intervening years, the City has intermittently submitted all of its LUP segments, which are all presently certified, in whole or in part.

When the Commission approved segmentation of the LUP, it found that the implementation phase of the City's LCP would represent a single unifying element. This was achieved in January 1988, and the City of San Diego assumed permit authority on October 17, 1988 for the majority of its coastal zone. Several isolated areas of deferred certification remained at that time; some of these have been certified since through the LCP amendment process. Other areas of deferred certification remain today and are completing planning at a local level; they will be acted on by the Coastal Commission in the future.

Since effective certification of the City's LCP, there have been numerous major and minor amendments processed. These have included everything from land use revisions in several segments, to the rezoning of single properties, and to modifications of citywide ordinances. In November 1999, the Commission certified the City's Land Development Code (LDC), and associated documents, as the City's IP, replacing the original IP adopted in 1988. The LDC became effective in January, 2000.

B. STANDARD OF REVIEW

Pursuant to Section 30513 of the Coastal Act, the Commission may only reject zoning ordinances or other implementing actions, as well as their amendments, on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. The Commission shall take action by a majority vote of the Commissioners present.

C. PUBLIC PARTICIPATION

The City has held Planning Commission and City Council meetings with regard to the subject amendment request. All of those local hearings were duly noticed to the public. Notice of the subject amendment has been distributed to all known interested parties.

PART II. LOCAL COASTAL PROGRAM SUBMITTAL - RESOLUTIONS

Following a public hearing, staff recommends the Commission adopt the following resolutions and findings. The appropriate motion to introduce the resolution and a staff recommendation are provided just prior to each resolution.

- I. MOTION I:** *I move that the Commission reject the Implementation Program Amendment for the City of San Diego as submitted.*

STAFF RECOMMENDATION OF REJECTION:

Staff recommends a **YES** vote. Passage of this motion will result in rejection of Implementation Program and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DENY CERTIFICATION OF THE IMPLEMENTATION PROGRAM AS SUBMITTED:

The Commission hereby denies certification of the Implementation Program Amendment submitted for the City of San Diego and adopts the findings set forth below on grounds that the Implementation Program as submitted does not conform with, and is inadequate to carry out, the provisions of the certified Land Use Plans. Certification of the Implementation Program would not meet the requirements of the California Environmental Quality Act as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Implementation Program as submitted.

- II. MOTION II:** *I move that the Commission certify the Implementation Program Amendment for the City of San Diego if it is modified as suggested in this staff report.*

STAFF RECOMMENDATION:

Staff recommends a **YES** vote. Passage of this motion will result in certification of the Implementation Program Amendment with suggested modifications and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO CERTIFY THE IMPLEMENTATION PROGRAM AMENDMENT WITH SUGGESTED MODIFICATIONS:

The Commission hereby certifies the Implementation Program Amendment for the City of San Diego if modified as suggested and adopts the findings set forth below on grounds

that the Implementation Program Amendment, with the suggested modifications, conforms with and is adequate to carry out the certified Land Use Plans. Certification of the Implementation Program Amendment if modified as suggested complies with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Program Amendment on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.

PART III. SUGGESTED MODIFICATION

Staff recommends the following suggested revision to the proposed Implementation Plan be adopted. The underlined sections represent language that the Commission suggests be added, and the ~~struck-out~~ sections represent language which the Commission suggests be deleted from the language as originally submitted.

1. **Section 145.4003, Voluntary Accessibility Program Regulations and Development Incentives** of the City's Land Development Code shall be revised as follows:

[...]

- (c) The incentives available to a *development* shall be determined by the number and type of *dwelling units* that would be voluntarily designed for accessibility.

- (1) Each *dwelling unit* voluntarily designed in accordance with Section 145.4004 (Tier I-Accessible Dwelling Unit) shall be eligible for the following incentives:

- (A) A *floor area ratio* bonus up to a maximum of 5 percent,

and

- (B) A choice of one development incentive listed in Section 145.4003(d).

- (2) Each *dwelling unit* voluntarily designed in accordance with Section 145.4005 (Tier II-Visitable Unit) shall be eligible for either one of the following incentives:

- (A) A *floor area ratio* bonus up to a maximum of 5 percent, or

- (B) A choice of one development incentive listed in Section 145.4003(d).

[...]

(4) *Development* with 100 percent of the eligible dwelling units voluntarily designed in accordance with Section 145.4004 (Tier I-Accessible Dwelling Unit) shall be eligible for:

- (A) Incentive for each Tier I-Accessible Dwelling Unit in accordance with Section 145.4003(c)(1),
- (B) Expedite processing consistent with Council Policy, and
- (C) A *density* bonus up to 5 percent based on the pre-bonus number of *dwelling units* in the project voluntarily designed in accordance with Section 145.4004 (Tier I-Accessible Dwelling Unit). [...]

(d) Incentives

An *applicant* for *development* eligible for one or more incentives pursuant to Section 145.4003 may select from the following incentives:

[...]

- (2) The applicable *setback* regulations may be reduced up to 10 percent for proposed structures where necessary to fulfill the accessible design requirements.
- (3) The applicable *lot coverage* regulations may be exceeded up to 10 percent where necessary to fulfill the accessible design requirements.

[...]

(f) Within the *Coastal Overlay Zone*, a bonus or incentive shall not be granted where it would allow *development* that is inconsistent with the policies in the certified Land Use Plan or the Environmentally Sensitive Lands regulations.

PART IV. FINDINGS FOR REJECTION OF THE CITY OF SAN DIEGO IMPLEMENTATION PLAN AMENDMENT FOR THE VOLUNTARY ACCESSIBILITY PROGRAM, AS SUBMITTED

A. AMENDMENT DESCRIPTION

The City of San Diego proposes to establish the Voluntary Accessibility Program which is an incentive program to encourage the incorporation of accessible design elements and features in new residential development in order to address the City's shortage of housing for persons with disabilities and the aging population. This is a City initiative, independent of any State or federally mandated program and it would be a citywide code amendment. Specifically, through the adoption of Ordinance Number O-19955, on May 18, 2010, the proposed amendment would add a new division, entitled Voluntary Accessibility Program, to the City's Building Regulations under Chapter 14 of the Land

Development Code (“LDC”). The LDC constitutes the bulk of the City’s certified Implementation Plan and Chapter 14 also includes the City’s code provisions for grading, landscaping, parking, environmentally sensitive lands, historic resources and land divisions.

The voluntary program includes development incentives, such as floor area ratio and density bonuses, setback reductions and lot coverage increases, to encourage the provision of more accessibility components in residential construction. As presented in the City’s staff reports, the goal of the Voluntary Accessibility Program is to increase the number of accessible housing units in the local housing supply by offering a variety of development incentives to facilitate types of accessible design. In addition to accommodating individuals with permanent disabilities, accessible design also accommodates small children, individuals recovering from surgery or an accident, aging individuals and those with family members or friends with a disability. The proposed incentive program is intended to generate a variety of accessible dwelling unit types: Tier I Accessible Living Units would be adaptable to meet the accessibility needs of individual occupants to remain living in their homes during periods of temporary, developing or permanent disability; the intent is to allow occupants to “age in place”. Tier II Visitable Units would be required to comply with a modified set of accessible design standards to facilitate access to, and access within, the primary entry level of a dwelling unit; the intent is to provide opportunities for persons with temporary, developing or permanent disabilities to visit these units.

The City already has an ordinance addressing deviations from its development regulations to make reasonable accommodations for disabled persons under the Federal Fair Housing and California Fair Employment and Housing Acts; developments that utilize those deviations are not eligible to also participate in the Voluntary Accessibility Program. The “reasonable accommodations” LCP amendment was submitted to the Commission in June 2005 as part of the Fourth Quarterly Update to the LDC; the Commission approved the amendment with a suggested modification requiring for any deviation to be approved through a coastal development permit, that a finding be made there was no feasible alternative that provides greater consistency with the certified Local Coastal Program. The standard for the reasonable accommodations is less restrictive because it is, in part, a federal mandate; and, alternatively, the current request for accessible housing opportunities is an entirely voluntary program.

B. SPECIFIC FINDINGS FOR REJECTION

The standard of review for LCP implementation submittals or amendments is their consistency with and ability to carry out the provisions of the certified LUP.

1) Purpose and Intent of the Ordinance.

As stated in the adopted ordinance (Ordinance No. 19955), the purpose of the Voluntary Accessibility Program is to encourage residential development that incorporates accessible design features including accessible routes of travel, accessible entrances, and

accessible common use rooms to meet the needs of as many users as possible. The stated intent is to increase opportunities for persons with temporary, developing, or permanent disabilities to “age in place” and thereby reduce the potential for occupants to be displaced from their homes due to a disability, to allow those persons to visit neighbors and to increase the number of accessible dwelling units in the local housing supply.

2) Major Provisions of the Ordinance.

The major provisions address when the program would be applicable and again specify that developments receiving a deviation for reasonable accommodations are not eligible for the Voluntary Accessibility Program. Specific provisions include the following:

- Tier I units are eligible for a floor area ratio bonus up to a maximum of 5 percent and a choice of one development incentive;
- Tier II units are eligible for a floor area ratio bonus up to a maximum of 5 percent or a choice of one development incentive;
- Developments with at least 50 percent of their unit count designed as Tier I or Tier II units are eligible for the same bonuses and incentives as if they were developed individually, as well as expedited permit processing;
- Developments with 100 percent of their unit count designed as Tier I units are eligible for the same bonus and incentives as individual Tier I units, a density bonus up to 5 percent and for those projects with a minimum of 10 Tier I units, a choice of one additional incentive;
- The incentives include modifications to applicable parking regulations, reductions in applicable setback regulations, increased lot coverage provisions, and modification of applicable landscape requirements to accommodate an accessible route of travel;
- One other incentive provides that the maximum structure height regulations may be exceeded by up to 10 percent to accommodate an elevator or other special access needs but the provision specifically precludes any height exception in the Coastal Height Limit Overlay Zone or where there would be possible conflicts with Federal Aviation Regulations; and
- Establishes the Design Standards for both Tier I and Tier II units.

3) Adequacy of the Ordinance to Implement the Certified LUP Segments.

The standard of review for LCP implementation submittals or amendments is their consistency with and ability to carry out the provisions of the certified Land Use Plan(s). In the case of the City of San Diego, it has developed community planning areas based on its established neighborhoods and future urbanizing area. Predicated on those community planning areas, the City utilized the geographic segmentation provisions of the LCP regulations and developed its land use plan component covering twelve different communities (i.e., North City, La Jolla, Pacific Beach, Mission Beach, Ocean Beach, Peninsula, Otay-Mesa Nestor). Each community plan or LCP Land Use Plan contains policies that protect public views, scenic resources, public access, recreational opportunities and sensitive coastal resources including, but not limited to, beaches,

bluffs, slopes, hillsides and environmentally sensitive lands in that community. The Commission's review of the proposed changes to the Land Development Code must assure that development is approved only when consistent with the certified LCP.

Listed below are typical policies contained in the certified Land Use Plan segments in the Coastal Overlay Zone for the City of San Diego.

Torrey Pines Community Plan

- Construction or improvements of roadways adjacent to biologically sensitive areas or open space shall be designed to avoid impacts, especially in wetlands and wetland buffer areas. Protection of sensitive habitats through buffers, realignments and reduced development areas shall also be considered.
- Protect, preserve and enhance the variety of natural features within the San Dieguito River Valley including the floodplain, the open waters of the lagoon and river, wetlands, marshlands and uplands.

Mira Mesa Community Plan

- No encroachment shall be permitted into wetlands, including vernal pools. [...]

La Jolla LCP Land Use Plan

- The City should preserve and protect the coastal bluffs, beaches and shoreline areas of La Jolla assuring that development occurs in a manner that protects these resources, encourages sensitive development, retains biodiversity and interconnected habitats and maximizes physical and visual public access to and along the shoreline. (pg. 50)
- Development on coastal bluffs should be set back sufficiently from the bluff edge to avoid the need for shoreline or bluff erosion control devices so as not to impact the geology and visual quality of the bluff and/or public access along the shoreline. (pg. 51)
- Protect public views to and along the shoreline as well as to all designated open space areas and scenic resources from public vantage points as identified in Figure 9 and Appendix G (Coastal Access Subarea maps). Public views to the ocean along public streets are identified in Appendix G. Design and site proposed development that may affect an existing or potential public view to be protected, as identified in Figure 9 or in Appendix G, in such a manner as to preserve, enhance or restore the designated view opportunities. (pg. 56)
- Where existing streets serve as public vantage points, as identified in Figure 9 and Appendix G including, but not limited to, view corridors and scenic overlooks

and their associated viewsheds, set back and terrace development on corner lots and/or away from the street in order to preserve and enhance the public view provided from the public vantage point to and along the ocean. In review of variances or other requests for reduced setbacks within the viewshed public vantage points, adjacent to identified view corridors or on property between the ocean and first coastal roadway, do not allow any reduction in the public view provided to and along the ocean. Figure 9 and Appendix G list streets that provide identified public views to and along the ocean to be protected from visual obstruction. (pg. 56)

- Where new development is proposed on property that lies between the shoreline and the first public roadway, preserve, enhance or restore existing or potential view corridors within the yards and setbacks by adhering to setback regulations that cumulatively, with the adjacent property, form functional view corridors and prevent an appearance of the public right-of-way being walled off from the ocean. (pg. 57)

Pacific Beach Community Plan

- Development Along View Corridors – Mandate setbacks of new development along all east-west streets west of Cass Street, and all north-south streets south of Grand Avenue which have a public view to the water (as identified in Figure 16). Street landscaping along these streets shall not obstruct, but shall enhance public views, in conformance with the streetscape recommendations of this plan (Appendix D). (p. 56)
- Coastal Bluff and Ocean/Bayfront Development – Set back new development along coastal bluffs in accordance with the Sensitive Coastal Resource Zone and Appendix H of this plan to reduce the potential for erosion and slippage. (p. 56)

Mission Beach Precise Plan and Local Coastal Program Addendum

- Under the Local Coastal Program, the following specific concept for future implementation technique development is set out in regard to community landscaping:

Views to and along the shoreline from public areas shall be protected from blockage by development and or vegetation.

Peninsula Community Plan and Local Coastal Program Addendum

- Preserve and enhance significant views of the bay and ocean. (pg. 108)

Ocean Beach Precise Plan

- That public access to beaches and the shoreline be protected, first by clearly establishing public access and use rights, and second by requiring new developments to provide visual and physical access. (pg. 42)
- That bluff-top construction having a potential harmful effect upon cliff erosion be prohibited and that consideration be given to acquiring the property if necessary. (pg. 42)
- That views available from elevated areas and those adjacent to the beaches and ocean be preserved and enhanced wherever possible. (pg. 83)

For any new development which proposes accessible housing under the Voluntary Accessibility Program, the discretionary review process will be the same process as that which would have been required if the accessible housing element were not proposed. Unless otherwise exempt, all development within the coastal zone in the City of San Diego requires a coastal development permit. In the case of a proposed development within the coastal zone also occurring on a site where environmentally sensitive lands are present, a Site Development Permit would also be required. The proposed development must meet the findings of each of the respective permit processes or the development cannot be approved.

The Coastal Development Permit process includes a separate set of findings that must be made in order to assure conformance with the certified land use plan policies, the certified LCP implementation plan and the public access and recreation policies of the Coastal Act. Section 126.0708 specifies the findings that are necessary for Coastal Development Permit Approval and states the following:

An application for a Coastal Development Permit may be approved or conditionally approved only if the decision maker makes all of the findings in Section 126.0708(a) and the supplemental findings in Section 126.0708(b) that are applicable to the proposed development.

Specifically, Section 126.0708 (a) states:

Findings for all Coastal Development Permits:

- (1) The proposed coastal development will not encroach upon any existing physical accessway that is legally used by the public or any proposed public accessway identified in a Local Coastal Program land use plan; and the proposed coastal development will enhance and protect public views to and along the ocean and other scenic coastal areas as specified in the Local Coastal Program land use plan;
- (2) The proposed coastal development will not adversely affect environmentally sensitive lands; and
- (3) The proposed coastal development is in conformity with the certified Local Coastal Program land use plan and complies with all regulations of the certified Implementation Program;

(4) For every Coastal Development Permit issued for any coastal development between the nearest public road and the sea or the shoreline of any body of water located within the Coastal Overlay Zone, the coastal development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act.

For developments occurring on property where environmentally sensitive lands are present, as mentioned above, a Site Development Permit would also be required. The ESL regulations again apply to sensitive biological resources; steep hillsides; coastal beaches; sensitive coastal bluffs; and special flood hazard areas. All Site Development Permits must have certain findings made pursuant to Section 126.0504(a).

Section 126.0504 – Findings for all Site Development Permits

A Site Development Permit may be approved or conditionally approved only if the decision maker makes all of the findings in Section 126.0504(a) and the supplemental findings in Section 126.0504(b) through (o) that are applicable to the proposed development as specified in this section.

(a) Findings for all Site Development Permits

- (1) The proposed development will not adversely affect the applicable land use plan;
- (2) The proposed development will not be detrimental to the public health, safety, and welfare;
- (3) The proposed development will comply with the applicable regulations of the Land Development Code.

In addition, subsection (b) for Supplemental Findings--Environmentally Sensitive Lands states that if a Site Development Permit is required in accordance with Section 143.0110 because of potential impacts to environmentally sensitive lands, it may be approved or conditionally approved only if the decision maker makes the following supplemental findings. Some of these include that development is only permitted in (ESL) if it results in the minimum disturbance of such lands, if it minimizes alteration of natural land forms, if it does not contribute to the erosion of public beaches or adversely impact local shoreline sand supply, etc.

There is also a process for deviations from the ESL regulations established in the SDP regulations. Findings in Section 126.0504 (c) must be made to assure there are no feasible measures that can further minimize the potential adverse effect on environmentally sensitive lands, and that the proposed deviation is the minimum necessary to afford relief from the special circumstances or conditions of the land, not of the applicant's making. However, for development in the coastal zone requiring a coastal development permit, in addition to the findings in Section 126.0504(c), a deviation from

the ESL regulations can only be approved if the decision maker makes the findings in Section 126.0708(b). These findings require an economically viable use determination and allow deviations from the ESL only when all economically viable use of the applicant's property would be denied through application of the ESL regulations.

Based on the certified policies of the City's land use plans, the ESL regulations establish the various resource protection measures and development standards in the LDC. As an example, for development on coastal bluffs, no development is permitted on the face of a sensitive coastal bluff; all drainage must be directed away from the bluff; and all development must generally observe a minimum of a 40 ft. setback from the bluff edge. The regulations allow for a reduction in this setback, however, if a geology report indicates that the site is stable enough to support the development at the proposed distance from the coastal bluff edge, although no development is allowed within 25 feet from the bluff edge. As can be seen, these regulations are intended to protect the geologic integrity of the coastal bluffs based on LUP policies adopted in conformance with Section 30253 of the Coastal Act. The ESL regulations also mandate the provision of wetland buffers, preservation of public views and protection of sensitive hillsides and habitat areas.

These regulations are very rigorous and define specifically what the requirements are for development on a site that contains any of these resources. The City asserts that even after adoption of the proposed amendment, inconsistent development that might include encroachments into protected coastal resources, such as identified view corridors, wetland buffers or the coastal blufftop setback would not be approved. The City notes that the incentive program does not explicitly relieve a project of any ESL requirements, permit process or otherwise. While the Commission agrees that there is no explicit reference to LUP or ESL policies in the proposed amendment, and that the intent of the amendment is not to allow incentives or deviations that would be inconsistent with LUP or ESL policies, it notes that as submitted, there is the potential for a proponent to claim that in the absence of a reference to the LUP or ESL, the amendment was intended to allow exceptions to those policies. The project proponent could argue that because the amendment creates exceptions to existing standards and that it did not state that deviations and incentives would still need to be consistent with the LUP and ESL policies, that exceptions to these policies are allowed under this amendment. They could also argue that because this was the most recent LCP Amendment approved by the Commission, then, to the extent that there is any conflict between this amendment and the existing LCP, that this later-approved amendment should control. Under that view, the incentives and deviations allowed in this amendment could be approved even if the resulting development encroached into coastal resources, such as an ESHA or wetland buffer or into a designated view corridor.

Absent additional language that specifically states deviations/incentives cannot include a deviation to the requirements of the environmentally sensitive lands regulations and LUP policies, the Commission cannot be assured that potential impacts to coastal resources involving public access, public views, environmentally-sensitive habitat areas, shoreline

access/beaches, sensitive hillsides or coastal bluff setbacks, etc. would be precluded under the proposed amendment. Staff understands that the City's intent is not to allow deviations from the ESL and LUP policies, but it also recognizes that there is the possibility that a project proponent could interpret the proposed language to allow exceptions to LUP and ESL policies, and if this interpretation were accepted, then the amendment would not implement and would be inadequate to carry out the certified land use plans. It must therefore be denied, as submitted.

**PART V. FINDINGS FOR APPROVAL OF THE CITY OF SAN DIEGO
IMPLEMENTATION PLAN AMENDMENT, IF MODIFIED**

The proposed amendment will allow for incentives for accessible housing development pursuant to coastal development permits and, as applicable, a site development permit if environmentally sensitive lands are present. In accordance with these discretionary reviews, several findings must be made. The findings that must be made are numerous and include a wide range of requirements to assure that critical coastal resources and public access are protected. However, in order to assure it is clear that, through implementation of the proposed LCP amendment, projects for accessible housing do not conflict with critical resource protection measures, the Commission finds that additional language should be added that specifically states that deviations shall not be considered that would be inconsistent with LUP policies. The additional language also makes it clear that deviations to ESL are not permitted for such proposals. Staff understands that it is the City's intent that the proposed amendment not allow deviations or incentives that are inconsistent with the LUP or ESL, so the suggested modification simply, but explicitly, states this understanding.

Although no specific requirements were included to site accessible housing projects near transit centers, the City has indicated that, as a separate program, the City will be considering using density bonuses to encourage appropriate smart growth in transit corridors. However, as the City has indicated previously, there has been resistance to proposing density bonus regulations as required by state law and it was decided that an amendment to provide density bonuses along transit routes would be taken forward as a separate project. City staff is coordinating a parking study with SANDAG and another study with affordable housing advocates. Depending on the results of the studies, a number of amendments could result including incentives for transit and affordable housing. The efforts are ongoing and there are no density bonus regulations or affordable housing LCP amendments pending from the City.

In summary, the Commission supports the idea of concentrating development in existing urban areas able to accommodate it and does not intend to discourage accessible housing but, instead, is intending to allow it in a manner where critical and sensitive coastal resources are protected to the same degree that they are protected under the currently certified LCP. As noted above, deviations will not be permitted where coastal resource concerns are paramount; however, deviations which result in reduced parking, other than in the nearshore, and reduced buildings setbacks in areas other than environmentally

sensitive lands can be found acceptable because they will result in encouraging accessible housing development and broader housing opportunities which are important land use and environmentally-worthy planning goals. Specifically, protection of coastal resources and identified public views are already included in the ESL regulations and the suggested modification assures that these regulations will continue to apply. Therefore, the Commission finds that the proposed amendment to the Land Development Code, as proposed to be modified and described above, is fully consistent with, and adequate to carry out, the certified City of San Diego LCP land use plans.

PART VI. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 21080.5 of the California Environmental Quality Act (CEQA) exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its local coastal program. The Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under CEQA Section 21080.5, the Commission is relieved of the responsibility to prepare an EIR for each LCP.

Nevertheless, the Commission is required in an LCP submittal or, as in this case, an LCP amendment submittal, to find that the LCP, or LCP, as amended, does conform with CEQA provisions. An environmental impact report was completed for the original adoption of the Land Development Code and the City has utilized it for CEQA compliance in association with other code amendments. However, in this case, because there was a potential for some impacts to resources, the City has prepared a supplement to that EIR for this amendment. Although it was identified that the amendment may have the potential to have an impact on resources (i.e., visual quality, parking, sensitive resources, etc.), the respective development incentives and/or deviations to development regulations can be denied through the respective discretionary reviews if they are found to have an adverse impact on the environment. In addition, as modified, no deviations from the ESL regulations (which incorporate the City's resource protection measures in the LDC) involving designated public views, wetland buffers or the coastal blufftop setback or the Coastal Height Limit will be permitted. In addition, the City did not propose any reductions to otherwise required parking standards that could have been a potential public access issue in the nearshore areas. For specific development projects that ultimately receive some relief, any environmental impacts will be required to be mitigated. In summary, no adverse impacts to any coastal resources are anticipated.

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ORDINANCE NUMBER O- 19955 (NEW SERIES)

DATE OF FINAL PASSAGE MAY 18 2010

AN ORDINANCE AMENDING CHAPTER 14, ARTICLE 5 OF THE SAN DIEGO MUNICIPAL CODE BY ADDING DIVISION 40, SECTIONS 145.4001, 145.4002, 145.4003, 145.4004 AND 145.4005, ALL RELATING TO ENCOURAGING RESIDENTIAL DEVELOPMENT THAT INCORPORATES ACCESSIBLE DESIGN FEATURES.

WHEREAS, according to the 2000 United States Census the majority of persons with disabilities are within the 21-64 year old age group, but the existing accessible housing supply is predominately restricted for seniors; and

WHEREAS, the San Diego Regional Association of Governments 2050 planning forecast for the San Diego region projects a large increase in the local senior population, which will further increase the demand for accessible design; and

WHEREAS, in accordance with the Federal Fair Housing Act and California Fair Employment and Housing Act, the City considers and makes reasonable accommodations as requested to afford persons with disabilities the equal opportunity to use and enjoy a dwelling, but these accommodations are still falling short of the demand for accessible housing; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 14, Article 5 of the San Diego Municipal Code is amended by adding, Division 40, by adding Sections 145.4001, 145.4002, 145.4003, 145.4004 and 145.4005 to read as follows:

City of San Diego
LCPA # 3-11
Voluntary Accessibility
Program - new
division

Article 5: Building Regulations

Division 40: Voluntary Accessibility Program

§145.4001 Purpose

The purpose of the Voluntary Accessibility Program is to encourage residential *development* that incorporates accessible design features including accessible routes of travel, accessible entrances, and accessible common use rooms to meet the needs of as many users as possible. The intent is to increase opportunities for persons with temporary, developing, or permanent disabilities to “age in place” and thereby reduce the potential for occupants to be displaced from their homes due to a disability, to allow those persons to visit neighboring *dwelling units*, and to increase the number of accessible *dwelling units* in the local housing supply that meet long term housing needs by offering incentives that facilitate this type of accessible design.

§145.4002 When Voluntary Accessibility Program Applies

- (a) The following proposed residential *development* is eligible for the Voluntary Accessibility Program:
- (1) *Development* that is exempt from the accessibility requirements of the California Building Code (Chapter 11A),
 - (2) *Development* where only a portion of the residential *development* is subject to the accessibility requirements of the California Building Code (Chapter 11A), or
 - (3) *Development* where the required accessibility is in accordance with the California Building Code (Chapter 11A) and would be less

accessible than would be achieved through the Voluntary
Accessibility Program.

- (b) *Development with dwelling units* that are voluntarily designed to be accessible may be granted incentives in accordance with Section 145.4003.
- (c) *Development* receiving deviations for reasonable accommodations in accordance with Section 131.0466 are not eligible for the Voluntary Accessibility Program.

§145.4003 Voluntary Accessibility Program Regulations and Development Incentives

- (a) Incentives granted solely under the Voluntary Accessibility Program in accordance with Section 145.4003(c) and (d) shall not require a deviation from the underlying base zone.
- (b) The decision process for a *development* requesting an incentive shall be the same decision process that would be required if the incentive were not a part of the *development* proposal.
- (c) The incentives available to a *development* shall be determined by the number and type of *dwelling units* that would be voluntarily designed for accessibility.
 - (1) Each *dwelling unit* voluntarily designed in accordance with Section 145.4004 (Tier I-Accessible Dwelling Unit) shall be eligible for the following incentives:
 - (A) A *floor area ratio* bonus up to a maximum of 5 percent,
and

- (B) A choice of one development incentive listed in Section 145.4003(d).
- (2) Each *dwelling unit* voluntarily designed in accordance with Section 145.4005 (Tier II-Visitable Unit) shall be eligible for one of the following incentives:
- (A) A *floor area ratio* bonus up to a maximum of 5 percent, or
 - (B) A choice of one development incentive listed in Section 145.4003(d).
- (3) *Development* with at least 50 percent of the eligible *dwelling units* voluntarily designed in accordance with either Section 145.4004 (Tier I-Accessible Dwelling Unit) or Section 145.4005 (Tier II-Visitable Unit) shall be eligible for the following incentives:
- (A) Incentives for each Tier I-Accessible Dwelling Unit in accordance with Section 145.4003(c)(1),
 - (B) An incentive for each Tier II-Visitable Unit in accordance with Section 145.4003(c)(2), and
 - (C) Expedite processing consistent with Council Policy.
- (4) *Development* with 100 percent of the eligible *dwelling units* voluntarily designed in accordance with Section 145.4004 (Tier I-Accessible Dwelling Unit) shall be eligible for:
- (A) Incentives for each Tier I-Accessible Dwelling Unit in accordance with Section 145.4003(c)(1),
 - (B) Expedite processing consistent with Council Policy, and

(C) A *density* bonus up to 5 percent based on the pre-bonus number of *dwelling units* in the project voluntarily designed in accordance with Section 145.4004 (Tier I-Accessible Dwelling Unit).

(D) *Development* providing a minimum of 10 Tier I-Accessible Dwelling Units shall be eligible for a choice of 1 additional incentive listed in Section 145.4003(d).

(d) Incentives

An *applicant* for *development* eligible for one or more incentives pursuant to Section 145.4003, may select from the following incentives:

(1) An *applicant* may request one of the following modifications of the applicable parking regulations in Section 142.0560 for Tier I-Accessible Dwelling Units.

(A) A reduction of the drive aisle width to a minimum of 22 feet if using standard parking space dimensions,

(B) A reduction of the required motorcycle facilities up to 50 percent,

(C) A reduction of the driveway width consistent with the minimum dimensions specified in Table 142-05M,

(D) Encroachment of required *off-street parking spaces* into the required *setback* area of a private driveway (where parking spaces would not conflict with a required visibility area), or

- (E) Calculation of tandem parking spaces (designed in accordance with Section 142.0560) as two spaces to meet the applicable parking requirement.
- (2) The applicable *setback* regulations may be reduced up to 10 percent for proposed structures where necessary to fulfill the accessible design requirements.
- (3) The applicable *lot coverage* regulations may be exceeded up to 10 percent where necessary to fulfill the accessible design requirements.
- (4) The applicable maximum *structure height* regulations may be exceeded by up to 10 percent to accommodate an elevator or special access (wheelchair) lift system. The maximum *structure height* may not exceed height limits required within the Coastal Height Limit Overlay Zone or conflict with Federal Aviation Regulations Part 77 airspace protection surfaces within designated airport influence areas.
- (5) The applicable landscape requirements may be modified or reduced to the minimum extent necessary to accommodate an accessible route of travel.
- (e) The *floor area ratio* bonus and incentives applicable to a *development* in accordance with Section 145.4003(c) are limited to *dwelling units* that are voluntarily designed in accordance with the Voluntary Accessibility Program and may not be redistributed across the *development* as a whole.

§145.4004 Tier I-Accessible Dwelling Unit Design Standards

- (a) In order to meet the Tier I-Accessible Dwelling Unit Design Standards, *dwelling units* shall comply with the California Building Code requirements for accessibility (Chapter 11A), except as otherwise indicated in Section 145.4004(b), (c), and (d).
- (b) For the purpose of this section, *dwelling units* developed with multiple *stories* shall provide a *kitchen* on the primary entry level in accordance with the California Building Code requirements for accessibility (Chapter 11A) in addition to other accessible design requirements required in accordance with Section 145.4004(a).
- (c) Accessible entrances designed for Tier I-Accessible Dwelling Units shall be permitted up to a maximum of three quarters of an inch in height differential between the exterior and interior landings.
 - (1) The change in elevation shall be beveled with a slope no greater than 50 percent (1 unit vertical in 2 units horizontal).
 - (2) The threshold shall be no higher than 0.5 inches (12.7 mm).
- (d) Required accessible *off-street parking spaces*
 - (1) *Single dwelling units* and duplexes
 - (A) *Single dwelling units* shall provide *off-street parking spaces* per *dwelling unit* in accordance with Sections 142.0520 and 142.0560.

- (B) Duplexes shall provide *off-street parking spaces* per *dwelling unit* in accordance with Sections 142.0525 and 142.0560.
- (C) In addition to the required parking in Section 145.4004(d)(1)(A) or (B), an accessible off-street loading and unloading area shall be provided.
 - (i) The minimum dimensions shall be 14 feet in width by 18 feet in depth with a maximum slope of one quarter inch per foot in any direction.
 - (ii) The off-street loading area may be located within the private driveway and may encroach into the required *setback* area, and
 - (iii) The loading area shall be connected to the *dwelling unit* via an accessible route of travel to an accessible entrance.

- (2) *Multiple dwelling unit development* with three or more *dwelling units* shall provide *off-street parking spaces* in accordance with Sections 142.0525 and 142.0560 including required accessible *off-street parking spaces* in accordance with California Building Code Section 1109A as may be amended.

§145.4005 Tier II-Visitable Unit Design Standards

- (a) The Tier II-Visitable Unit Design Standards are intended to create *dwelling units* that facilitate access to, and access within, the primary entry

level of a *dwelling unit* for persons with temporary, developing, or permanent disabilities. The primary entry level of a Tier II-Visitable Unit shall include accessible routes of travel, an accessible entrance, and accessible common use spaces including a *kitchen*, a bathroom or half bathroom, and at least one common use room.

- (b) At least one exterior accessible route of travel shall connect an accessible entrance to either the sidewalk or driveway.
 - (1) A minimum width shall be provided in compliance with California Building Code Section 1113A.1.1 as may be amended.
 - (2) A maximum slope less than 1 unit vertical and 12 units horizontal shall be provided with a maximum 2 percent cross slope.
 - (3) A level landing area of 5 feet in length shall be provided for every 30 inches of rise in circumstances where the accessible route of travel would have a slope exceeding 5 percent.
 - (4) Handrails are not required.
- (c) At least one accessible entrance to the primary entry level shall be provided that does not exceed three quarters of an inch in height differential between the exterior and interior landings.
 - (1) The change in elevation shall be beveled with a slope no greater than 50 percent (1 unit vertical in 2 units horizontal).
 - (2) The threshold shall be no higher than 0.5 inches (12.7 mm).

- (d) In lieu of the requirements of Section 145.4005(c), the entrance for up to 50 percent of the eligible *dwelling units* may be designed to be adaptable for accessibility.
- (1) A maximum of 4 inches in step height shall be provided between the exterior and interior landings.
 - (2) A minimum clear space of 12 inches in length for every 1 inch in step height shall be provided on the exterior side of the door to accommodate a future ramp.
 - (3) The ramp clear space shall not overlap the exterior landing.
 - (4) Interior and exterior landings shall provide a minimum length of 48 inches to the accessible route of travel.
 - (5) The entry door shall provide a minimum net clear opening width of 32 inches.
- (e) At least one interior accessible route of travel shall be provided in compliance with California Building Code Section 1120.A.1 as may be amended. The interior route of travel shall connect an accessible entrance to the following rooms located on the primary entry level:
- (1) At least one bathroom or half bathroom,
 - (2) The *kitchen*, and
 - (3) Any common use rooms such as a living room or family room.
- (f) A *kitchen* shall be provided on the primary entry level.
- (1) The *kitchen* shall be accessible from the interior accessible route of travel.

- (2) A clear floor space at least 30 inches by 48 inches shall be provided to allow a parallel approach by a person in a wheelchair at a range or cook top, the *kitchen* sink, oven, dishwasher, and refrigerator/freezer.
 - (3) In lieu of the requirements of Section 145.4005, a *kitchen* with a pass through design may provide a 39 inch wide or greater accessible route of travel to a range or cook top, *kitchen* sink, oven, dishwasher and refrigerator/freezer.
 - (4) *Kitchen* sink faucet controls shall use lever hardware or other similar hardware.
 - (5) A minimum linear length of 30 inches of countertop space shall be provided adjacent to the *kitchen* sink.
- (g) At least one accessible bathroom or half bathroom, located along the interior accessible route of travel on the primary entry level, shall be provided.
- (1) The bathroom entrance shall provide sufficient maneuvering space in accordance with California Building Code Sections 1132A.5 and 1134A.4 as may be amended.
 - (2) Structural reinforcements for future grab bar installation shall be provided in the walls adjacent to showers and bathtubs, and in the walls or floor adjacent to toilets, in accordance with California Building Code Chapter 11A.

- (3) A minimum clear space of 30 inches by 48 inches shall be provided for parallel approach at the lavatory. Maneuvering spaces may include any knee-space or toe-space available below bathroom fixtures.
 - (4) A minimum clear space of 30 inches by 48 inches shall be provided for forward approach at the toilet.
 - (5) When provided, a minimum clear space of 30 inches by 48 inches shall be provided for parallel approach at the shower or bathtub.
 - (6) Faucet controls shall use lever hardware.
 - (7) Clear spaces at the sink, toilet and shower or bathtub may overlap or coincide to meet the minimum requirements.
- (h) The accessible primary entry level shall include at least one common use room such as a living room or family room.
- (i) Accessible rooms located along the interior accessible route of travel and the accessible entrance to the primary entry level shall comply with the following requirements:
- (1) Doors
 - (A) Doors shall have a minimum net clear opening width of 32 inches.
 - (B) Lever hardware, or other similar hardware, centered between 30 inches and 44 inches above the floor is required for all doors, except for pocket doors or sliding doors.

- (C) Maximum effort to operate doors shall not exceed 8.5 pounds (38 N) for exterior doors and 5 pounds (22 N) for interior doors where applied at right angles to hinged doors, and at the center plane of sliding or folding doors. Compensating devices or automatic door operators may be utilized to meet these standards.
 - (D) Pocket doors and sliding doors providing access to rooms required along the interior accessible route of travel shall be easily operated by persons with limited dexterity.
- (2) Electrical Outlets and Fixtures
- (A) Electrical switches and outlets shall be located no more than 48 inches measured from the top of the outlet box nor less than 15 inches measured from the bottom of the outlet box to the level of the finished floor.
 - (B) Electrical outlets providing power to appliances such as ovens, refrigerators, microwave ovens, dishwashers, washing machines, dryers and other similar fixed appliances are exempt.

Section 2. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been made available to the City Council and the public prior to the day of its passage.

Section 3. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage, except that the provisions of this ordinance applicable inside the Coastal Overlay Zone, which are subject to California Coastal Commission jurisdiction as a City of San Diego Local Coastal Program amendment, shall not take effect until the date the California Coastal Commission unconditionally certifies those provisions as a local coastal program amendment.

APPROVED: JAN I. GOLDSMITH, City Attorney

By Signature on file
Andrea Contreras Dixon
Deputy City Attorney

ACD:cw
04/01/10
04/27/10 REV.
04/27/10 COR.COPY
Or.Dept:DSD
O-2010-91
MMS#10958

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of MAY 11 2010.

ELIZABETH S. MALAND
City Clerk

Signature on file
By Deputy City Clerk 77

Approved: 5/18/10
(date)

Signature on file
JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor