

**CALIFORNIA COASTAL COMMISSION**

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**W 15b**

October 19, 2011

See ex parte communications disclosures appended to the report.

**TO:** Commissioners and Interested Persons

**FROM:** Sherilyn Sarb, South Coast Deputy Director (Orange County)  
Teresa Henry, District Manager  
Karl Schwing, Supervisor, Regulation & Planning, Orange County Area  
Meg Vaughn, Coastal Program Analyst

**SUBJECT:** Major Amendment Request No. 2-10 to the City of Laguna Beach Certified Local Coastal Program (For Public Hearing and Commission Action at the November 2-4, 2011 meeting in Oceanside).

**SUMMARY OF LCP AMENDMENT REQUEST NO. 2-10**

Request by the City of Laguna Beach to make seven unrelated changes to the City's certified Local Coastal Program (LCP) Implementation Plan (IP). The proposed seven changes are reflected in the following ordinances: No. 1525 (Split Zoned Parcels); No. 1526 (Appeals); No. 1527 (Reasonable Accommodation); No. 1528 (Definition of "Family," "Household," and "Single Housekeeping Unit"); No. 1529 (Administrative Use Permits for Short Term Lodging in the R1 Zone); and No. 1530 (Time Limit for the Restoration of Nonconforming Structures). The amendment request was submitted for Coastal Commission action pursuant to City Council Resolution No. 10.090.

Issues raised by the proposed amendment include whether coastal resources (including but not limited to, public access and recreation, public views, and sensitive habitats) are adequately protected by changes proposed via Ordinance Nos. 1525 and 1527. Ordinance No. 1525 will not assure that adequate setbacks will be implemented as necessary to protect coastal resources. Ordinance No. 1527 will not assure that adverse impacts to coastal resources are avoided, or if unavoidable, minimized and mitigated, nor that the least damaging feasible alternative will be required. In addition, Ordinance No. 1526 does not assure that the requirements of Chapter 25.07 *Coastal Development Permits* will be implemented. If the requirements outlined in Chapter 25.07 are not implemented, protection of coastal resources is not assured.

Staff is recommending suggested modifications in order to assure appropriate setbacks as necessary to protect coastal resources; that the coastal development permit procedure outlined in Chapter 25.07 *Coastal Development Permits* is carried out; and that, while allowing land use and zoning regulations and policies to be relaxed as necessary to meet federal requirements to allow reasonable accommodation of persons with disabilities, that alternatives that accomplish the reasonable accommodation goal while protecting coastal resources to the extent feasible will be considered and implemented.

Other changes proposed include the addition and clarification of certain definitions; correction of an internal inconsistency; limiting the time frame in which a non-conforming

structure destroyed by natural disaster may be replaced (five years); and limiting plan modification during appeal.

The Local Coastal Program Amendment affects only the Implementation Plan portion of the certified LCP. No changes are proposed to the Land Use Plan.

### **SUMMARY OF STAFF RECOMMENDATION**

Staff is recommending that the Commission, after public hearing:

**Deny** the amendment request to the Implementation Plan **as submitted**, and;  
**Approve** the amendment request to the Implementation Plan **if modified as recommended**.

The proposed amendment, if modified as recommended, would be in conformance with and adequate to carry out the provisions of the certified Land Use Plan. **The motions to accomplish this recommendation are found on page 3.**

### **STANDARD OF REVIEW**

The standard of review for the proposed amendment to the LCP Implementation Plan is conformance with and adequacy to carry out the provisions of the certified Laguna Beach Land Use Plan.

### **SUMMARY OF PUBLIC PARTICIPATION**

Section 30503 of the Coastal Act requires public input in Local Coastal Program development. It states: During the preparation, approval, certification, and amendment of any local coastal program, the public, as well as all affected governmental agencies, including special districts, shall be provided maximum opportunities to participate. Prior to submission of a local coastal program for approval, local governments shall hold a public hearing or hearings on that portion of the program which has not been subjected to public hearings within four years of such submission.

In total, the City of Laguna Beach Planning Commission conducted one public hearing on the proposed LCP amendment on May 26, 2010. The City Council conducted two public hearings on the proposed LCP amendment on July 20, 2010 and on July 6, 2010. In addition, because the zoning ordinance amendments are of citywide effect, 1/8<sup>th</sup> page notices were published in the local newspaper, the Laguna Beach Coastline Pilot on May 14, 2010. No letters of comment from the public were received on the proposed amendment. One member of the public spoke at the Planning Commission hearing, asking for clarification regarding setbacks for an R-1 lot adjacent to an R-2 or R-3 lot.

## **ADDITIONAL INFORMATION**

Copies of the staff report are available on the Commission's website at [www.coastal.ca.gov](http://www.coastal.ca.gov). For additional information, contact *Meg Vaughn* in the Long Beach office at (562) 590-5071.

### **I. STAFF RECOMMENDATION**

Following a public hearing, staff recommends the Commission adopt the following resolutions and findings.

#### **A. Denial of the IP Amendment as Submitted**

**MOTION:** *I move that the Commission reject the Implementation Plan Amendment No. 2-10 for the City of Laguna Beach as submitted.*

#### **STAFF RECOMMENDATION OF REJECTION:**

Staff recommends a **YES** vote. Passage of this motion will result in rejection of Implementation Plan amendment 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 PLAN AS SUBMITTED:**

The Commission hereby denies certification of the Implementation Plan Amendment No. 2-10 submitted for the City of Laguna Beach and adopts the findings set forth below on grounds that the Implementation Plan amendment as submitted does not conform with, and is inadequate to carry out, the provisions of the certified Land Use Plan. Certification of the Implementation Plan 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 Plan as submitted.

#### **B. Approval of the IP Amendment with Suggested Modifications**

**MOTION:** *I move that the Commission certify the Implementation Plan Amendment No. 2-10 for the City of Laguna Beach if it is modified as suggested by staff.*

#### **STAFF RECOMMENDATION:**

Staff recommends a **YES** vote. Passage of this motion will result in certification of the Implementation Plan 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 PLAN WITH SUGGESTED MODIFICATIONS:**

The Commission hereby certifies the Implementation Plan Amendment 2-10 for the City of Laguna Beach if modified as suggested and adopts the findings set forth below on grounds that the Implementation Plan amendment with the suggested modifications conforms with, and is adequate to carry out, the provisions of the certified Land Use Plan. Certification of the Implementation Plan 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 Plan 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.

**II. SUGGESTED MODIFICATIONS**

Certification of City of Laguna Beach LCP Amendment Request No. 2-10 is subject to the following modifications.

The Commission's suggested additions are shown in **bold, italic, double-underlined text**.

The Commission's suggested deletions are shown in **bold, italic, double-underlined, strike out text**.

The City's proposed additions are shown in underline.

The City's proposed deletions are shown in ~~strike out~~.

**1. Suggested Modification No. 1**

Modify the proposed new Section 25.02.070 as follows:

25.02.070 Split-Zoned Parcels and Applicable Zoning Regulations

A split-zoned parcel is a parcel or subdivided lot with two or more zoning designations or zone areas. All applicable zoning regulations for each particular zone shall be applied separately for each portion of a parcel or subdivided lot which is split-zoned. This includes the front, rear and side yard regulations, regardless of the yard definitions in Municipal Code Chapter 25.08.050, as well as any applicable lot coverage regulations. **Greater setbacks from resources may be imposed as necessary to protect the resources, consistent with the requirements of the certified Local Coastal Program. Resources**

**may include, but are not limited to, environmentally sensitive habitat areas, wetlands, public views, and public trails and accessways.**

## **2. Suggested Modification No. 2**

Modify the proposed language of Section 25.05.070(B) as follows:

25.05.070 Appeals.

(B) Procedures.

- (1) All decisions, determinations and requirements regarding Administrative Use Permits (Section 25.05.020), Administrative Design Review (Section 25.05.040(B)(3)), Coastal Development Permits (Section 25.05.050 and Chapter 25.07), Conditional Use Permits (Section 25.05.030), Design Review (Section 25.05.040), Interpretations (Chapter 25.06), Reasonable Accommodation (Section 25.05.080), Temporary Use Permits (Section 25.05.035) and Variances (Section 25.05.025), of the Planning Commission, Board of Adjustment/Design Review Board and or Director of Community Development may be appealed to the City Council by the applicant, any other property owner within three hundred feet of the subject property, or by a member of the City Council. In those cases where the City is the applicant or an aggrieved property owner, the decision, determination or requirement may be appealed to the City Council by the City Manager. **Appeals of any determinations and requirements regarding coastal development permit processing, including exemptions, determinations relative to appealable development, etc. shall be as described in Chapter 25.07.**

## **3. Suggested Modification No. 3**

Modify the proposed language of Section 25.05.080 as follows:

25.05.080 Reasonable Accommodation

(A) Applicability. No change

(B) Application Requirements.

- (1) Requests for reasonable accommodation shall be submitted in the form of a letter to the Director of Community Development and shall contain the following information:
  - (a) The applicant's name, address and telephone number.
  - (b) Address of the property for which the request is being made.
  - (c) The current actual use of the property.
  - (d) The basis for the claim that the individual is considered disabled under the Acts.

- (e) The zoning, land use or building code provision, regulation, policy or practice from which reasonable accommodation is being requested ***including an explanation of how application of the existing zoning, land use or building code provision, regulation, policy or practice precludes reasonable accommodation.***
- (f) Why the reasonable accommodation is necessary to make the specific property accessible to the individual.
- (g) ***A determination, prepared by a qualified professional, of whether or not the request would result in adverse impacts to wetlands, environmentally sensitive habitat areas, public access and/or public views.***
- (h) ***Supporting documentation such as plans, etc.***

(2) ***Within 30 days of receipt of a request for reasonable accommodation, the reviewing authority shall make a determination as to whether all necessary information has been submitted. If additional information is necessary to adequately analyze the request, the applicant shall be notified in writing, within the 30 day period, of the specific additional information needed.***

(32) Review of Other Land Use Applications. If the project for which the request for reasonable accommodation is being made also requires some other discretionary approval (including, but not limited to: Conditional Use Permit, Coastal Development Permit, Design Review, Variance, General Plan Amendment, Zone change, etc.), then the applicant shall file the information required by Subsection (B) above together for the concurrent review with the application for discretionary approval. ***Review of Coastal Development Permit applications shall be as described in Chapter 25.07***

(C) Review Authority. No Change

(D) Review Procedure

- (1) Director Review. The Director, or designee, shall make a written determination within 45 days ***of the date the application is determined to be complete per (B)(2) above,*** and either grant, grant with ***modifications conditions,*** or deny a request for reasonable accommodation in accordance with Section 25.05.080(E) (Findings and Decision).
- (2) Other Reviewing Authority. The written determination on whether to grant, ***grant with conditions,*** or deny the request for reasonable accommodation shall be made by the authority responsible for reviewing the discretionary land use application in compliance with the applicable review procedure for the discretionary review. ***The 45 day deadline described above shall be superseded by any deadlines for the additional discretionary review, the longer deadline shall apply.*** The written determination to grant or deny the request for reasonable

accommodation shall be made in accordance with Section 25.05.080(E) (Findings and Decision).

(E) Findings and Decision.

(1) Findings. The written decision to grant, **grant with conditions**, or deny a request for reasonable accommodation shall be consistent with the Acts and shall be based on consideration of the following factors:

- (a) Whether the housing, which is the subject of the request, will be used by an individual disabled under the Acts.
- (b) Whether the request for reasonable accommodation is necessary to make the specific housing available to an individual with a disability under the Acts.
- (c) Whether the request for reasonable accommodation would impose an undue financial or administrative burden on the City.
- (d) Whether the request for reasonable accommodation would require fundamental alteration in the nature of a City program or law, including, but not limited to land use and zoning.
- (e) Potential impact on surrounding uses.
- (f) Physical attributes of the property and structures.
- (g) Alternative reasonable accommodations which may provide an equivalent level of benefit.
- (h) ***Whether the request for reasonable accommodation would adversely impact wetlands, environmentally sensitive habitat areas, public access and/or public views, and, if it does have such an impact, whether the request can be accomplished under a feasible alternative approach that eliminates or minimizes those impacts. Mitigation must be included to address significant adverse impacts.***
- (i) ***The feasible alternative to be implemented is the feasible alternative resulting in the least adverse impact on wetlands, environmentally sensitive habitat areas, public access and/or public views.***

(F) Appeal of Determination. A determination by the reviewing authority to grant, **grant with conditions**, or deny a request for reasonable accommodation may be appealed to the City Council in compliance with Appeals Section of the Zoning Code (Section 25.05.070).

### III. FINDINGS

The following findings support the Commission's denial as submitted and approval of the proposed LCP Implementation Plan amendment if modified. The Commission hereby finds and declares as follows:

#### A. Amendment Description

The City of Laguna Beach has requested an amendment to the Implementation Plan (IP) portion of the City's certified Local Coastal Program (LCP). The proposed amendment would modify the certified Implementation Plan by incorporating the changes contained in City Council Resolution No. 10.090. City Council Resolution No. 10.909 incorporates Ordinance Nos. 1525, 1526, 1527, 1528, 1529, 1530 and 1531. These seven ordinances comprise the proposed seven changes to the IP. The ordinances are attached as exhibits to this staff report [Note: the legislative draft versions have been attached in order to highlight the changes proposed]. Following is a description of each of the ordinances and proposed seven IP changes.

Changes proposed via Ordinance No. 1525: This ordinance is proposed to modify Chapter 25.02 of Title 25 (Zoning Code) of the City's certified Implementation plan. Chapter 25.02 is titled *Establishing Districts and Limiting the Uses of Lands Therein*. The change proposed would add new subsection 25.02.070 which would state (in its entirety):

*25.02.070 Split-Zoned Parcels and Applicable Zoning Regulations*

*A split-zoned parcel is a parcel or subdivided lot with two or more zoning designations or zone areas. All applicable zoning regulations for each particular zone shall be applied separately for each portion of a parcel or subdivided lot which is split-zoned. This includes the front, rear and side yard regulations, regardless of the yard definitions in Municipal Code Chapter 25.08.050, as well as any applicable lot coverage regulations.*

Currently, language in the certified IP requires that setbacks be taken from the property line, not from zoning district boundaries. The City's intent in adding the proposed language is to provide clear standards for applicants regarding development setbacks.

Changes proposed via Ordinance No. 1526: This ordinance is proposed to modify Section 25.05.070 *Appeals*. Chapter 25.05 is titled *Administration* and its intent and purpose states: "It is the intent and purpose of this chapter to establish procedures necessary for the efficient processing of planning and development applications and requests." Chapter 25.05 includes the standards and requirements for administrative use permits, variances, conditional use permits, temporary use permits, and design review. Chapter 25.05 also addresses procedures for appeals of the entitlements processed under Chapter 25.05. Chapter 25.07 of the certified IP is titled *Coastal Development*

*Permits* and includes the standards and requirements for coastal development permit procedures, including procedures for appeals of coastal development permits.

The changes to subsection 25.05.070 included in the proposed amendment are (language proposed to be deleted by the City is shown in ~~strike-out~~ text; language proposed to be added by the City is shown in underline text):

*25.05.070 Appeals.*

*(B) Procedures.*

*(2) ~~All decisions, determinations and requirements~~ regarding Administrative Use Permits (Section 25.05.020), Administrative Design Review (Section 25.05.040(B)(3)), Coastal Development Permits (Section 25.05.050 and Chapter 25.07), Conditional Use Permits (Section 25.05.030), Design Review (Section 25.05.040), Interpretations (Chapter 25.06), Reasonable Accommodation (Section 25.05.080), Temporary Use Permits (Section 25.05.035) and Variances (Section 25.05.025), of the Planning Commission, Board of Adjustment/Design Review Board and or Director of Community Development may be appealed to the City Council by the applicant, any other property owner within three hundred feet of the subject property, or by a member of the City Council. In those cases where the City is the applicant or an aggrieved property owner, the decision, determination or requirement may be appealed to the City Council by the City Manager.*

The City's intent in making the proposed change is to make clear the types of entitlement decisions that may be appealed. As an example, the City states, that it is their intent that ministerial Building Permits may not be appealed. The proposed change is intended to make clear the specific entitlement actions that may be appealed.

Changes proposed via Ordinance No. 1527: This ordinance is proposed to modify Chapter 25.05 *Administration* by adding new subsection 25.05.080 *Reasonable Accommodation*. The City's intent in adding this new subsection is to provide reasonable accommodations for flexibility in the application of land use, zoning, and building code regulations, policies, practices and procedures in response to existing laws requiring that cities make reasonable accommodations for people with disabilities. The language proposed for new subsection 25.05.080 is included in attached Exhibit 3.

Changes proposed via Ordinance No. 1528: This ordinance is proposed to modify Chapter 25.08 *Definitions* by modifying the existing definition of the term "family" and "dwelling unit" and adding one new term and definition – "single housekeeping unit." The existing definition of family is proposed to be modified as follows (language proposed to be deleted by the City is shown in ~~strike-out~~ text; language proposed to be added by the City is shown in underline text):

~~“Family” means an individual or two or more persons related by blood, marriage or adoption, living together or a group of not more than six persons (excluding servants) not all of whom are related by blood, marriage or adoption but all of whom are living together as a single housekeeping unit within a dwelling so that all persons within the unit maintain free access to all living spaces within the dwelling one or more persons living together as a single housekeeping unit in a dwelling unit; -~~

The existing definition of “dwelling unit” is proposed to be modified as follows:

“Dwelling Unit” means a room or suite of rooms within a structure with a single kitchen, other than a hotel unit with a kitchen, designed or used for the residential use and occupancy of ~~one~~ a family.

The term “single housekeeping unit” with the following definition is proposed to be added to Chapter 25.08:

“Single Housekeeping Unit” means the functional equivalent of a traditional family, whose members are an interactive group of persons jointly occupying a single dwelling unit, including the joint use of and responsibility for common areas, and sharing household activities and responsibilities, such as meals, chores, household maintenance and expenses; and where, if the dwelling unit is rented, all adult (18 years or older) residents have chosen to jointly occupy the entire premises of the dwelling unit, under a single written lease with joint use and responsibility for the premises, and the makeup of the household occupying the unit is determined by the residents of the dwelling unit rather than the landlord or property manager.

The City has indicated that these changes are proposed in order to be consistent with federal and state housing laws.

Changes proposed via Ordinance No. 1529: This ordinance is proposed to modify Sections 25.10.005 and 25.10.006 to correct an existing inconsistency between Chapter 25.10 R-1 Residential Low Density and Chapter 25.23 Short Term Lodging. Chapter 25.23 Short Term Lodging was added to the certified IP via LCPA No. 1-07C, approved by the Commission on April 10, 2008. Presently, Chapter 25.23 titled “Short Term Lodging” specifies that in zones where short term lodging is allowed, approval of an Administrative Use Permit is required to implement the short term lodging use. However, in Chapter 25.10 R-1 Zone, the short term lodging use is identified as needing approval of a Conditional Use Permit. This is the result of an oversight at the time LCPA No. 1-07C was processed. More specifically, the proposed amendment would modify the R-1 zone, Section 25.10.005 Uses Permitted Subject to an Administrative Use Permit, as follows:

25.10.005 Uses Permitted Subject to an Administrative Use Permit  
The following may be permitted subject to the granting of an Administrative Use Permit as provided for in Section 25.05.020.

(A) Family day care home, ... no change

- (B) Parking or storage of ... no change
- (C) Short-term lodging as defined and specified in Chapter 25.23 of this Title.

And the R-1 zone, Section 25.10.006 Uses Permitted Subject to Conditional Use Permit, is proposed to be modified as follows (language proposed to be deleted by the City is shown in ~~strike-out~~ text; language proposed to be added by the City is shown in underline text):

25.10.006 Uses Permitted Subject to Conditional Use Permit.

The following uses may be permitted subject to the granting of a conditional use permit as provided for in Subsection 25.05.0303 of this Title.

(A) Recreation facilities, ...

no change

(F) Public and Private schools;

~~(G) Short term lodging as defined and specified in Chapter 25.23 of this title;~~

~~(H) Rest home; and~~

(H) Utility substation.

Changes proposed via Ordinance No. 1530: This ordinance is proposed to modify Subsection 25.56.014 of Chapter 25.56 *Nonconforming Buildings, Lots and Uses*. The change is proposed to establish a time limit within which a structure destroyed by a natural disaster may be reconstructed retaining nonconformities that existed prior to the disaster. The proposed new time limit for replacement is within 5 years of the occurrence of the damage or destruction. The specific language proposed is as follows (language proposed to be added by the City is shown in underline text):

25.56.014 Restoration of Nonconforming Structure.

Notwithstanding the extent of damage, any legal nonconforming building, structure or improvement which has been damaged by fire, flood, wind, earthquake, or other disasters may be repaired, restored, replaced or reconstructed up to the original size, placement and density within five years of such damage or destruction, notwithstanding any other provision of this title; provided, however, that no multiple-family dwelling which has been so damaged to the extent of more than fifty percent of the value of such building, structure or improvement immediately prior to such calamity shall be repaired, restored, replaced or reconstructed unless the provisions of Chapter 25.52 are complied with in full; and provided further, however, that no shore protective device shall be repaired, restored, replaced or reconstructed unless it is consistent with prevailing zoning regulations and general plan policy.

Changes proposed via Ordinance No. 1531: This ordinance is proposed to modify subsection 25.05.070(B)(9) of the IP by adding a proposed new subsection (h). Chapter 25.05 *Administration* is intended to provide procedures for processing of planning and development applications and requests. Subsection 25.05.070 is intended to provide standardized appeal procedures for discretionary decisions, determinations and

requirements with respect to planning and development applications and requests. The intent of the proposed change is to prohibit an applicant from making changes to plans in the interim between receiving denial from the City's Design Review Board and a hearing on appeal to the City Council. The City has indicated that this raises issues because the revised plans that are put before the City Council on appeal have not been analyzed by City staff and the Design Review Board has not had an opportunity to conduct a public hearing on the matter. The proposed language would require, under such circumstances, either not allowing review of the revised plans or remanding the modified plans back to the Design Review Board. The specific language proposed to be added to subsection 25.05.070(B)(9), as new section (h) is (language proposed to be added by the City is shown in underline text):

(h) In the event of an appeal by the applicant of a project denial, the City Council hearing shall be limited to the plans that were the subject of the Design Review Board's decision. The City Council shall not consider or act on new plans submitted by the applicant after the appeal is filed, although the City Council may determine to remand to the Design Review Board any revised plans presented by the applicant for further proceedings pursuant to such direction as may be given by the City Council. This provision shall not preclude the City Council, on its initiative and at its discretion, from imposing project modifications without a requirement for remand.

Of the proposed changes, those included in Ordinance Nos. 1528, 1529, 1530, and 1531 raise no issue with regard to consistency with the City's certified Land Use Plan. However, as described below, changes proposed under Ordinance Nos. 1525, 1526, and 1527 do raise issue with regard to conformance with and adequacy to carry out the policies of the City's certified Land Use Plan.

## **B. Findings for Denial of Implementation Plan Amendment 2-10 as Submitted**

The standard of review for amendments to the Implementation Plan of a certified LCP is whether the Implementation Plan, as amended by the proposed amendment, will be in conformance with and adequate to carry out, the policies of the certified Land Use Plan (LUP).

### **1. Resource Protection**

Below are relevant LUP policies:

The City's certified Land Use Plan (LUP) includes the City's Land Use Element (LUE), the Open Space/Conservation Element (OS/C Element), and the Coastal Land Use Plan Technical Appendix. Following are the applicable policies from the certified LUP:

#### **Open Space/Conservation Element**

### Public Beaches and Shoreline Access

**3-A** Retain and improve existing public beach accessways in the City, and protect and enhance the public rights to use the dry sand beaches of the City.

### Parks

**5-B** Support the recreational use and development of surrounding open space lands, where environmentally feasible, to relieve demand for parklands within the City. Encourage preservation of Laguna Greenbelt in the natural state, with recreational access limited to passive activities such as nature trails and wildlife observation areas.

### Visual Resources

**7-A** Preserve to the maximum extent feasible the quality of the public views from the hillsides and along the city's shoreline.

### Vegetation and Wildlife Resources

**8-A** Preserve the canyon wilderness throughout the city for its multiple benefits to the community, protecting critical areas adjacent to canyon wilderness, particularly stream beds whose loss would destroy valuable resources.

**8-C** Identify and maintain wildlife habitat areas in their natural state as necessary for the preservation of species.

**8-K** As a condition of new development in South Laguna, require the identification of environmentally sensitive areas, including chaparral and coastal sage scrub. Intrusion into these areas for wildlands fuel modification programs should not be permitted.

**8-L** Preserve and protect fish and/or wildlife species for future generations.

**8-M** Preserve a continuous open space corridor within the hillsides in order to maintain animal migration opportunities.

### Ridgelines

**13-A** Preserve the function of ridgelines, hillsides and canyons as a link between adjoining open space areas.

**13-C** Discourage ridgeline development in order to protect highly visible and exposed portions of the ridgeline, including outstanding physical features, such as rock outcroppings, vertical slopes, caves, and study the feasibility of prohibiting development on the prominent ridgelines.

**13-H** Preserve public views of coastal and canyon areas from ridgelines.

The Coastal Land Use Plan Technical Appendix incorporates the following Coastal Act policies regarding visitor serving uses:

Section 30210

*In carrying out the requirement of Section 2 of Article XV of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

Section 30222

*The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general commercial development, but not over agriculture or coastal-dependent industry.*

The LUP policies cited above require that public access and recreation be maximized. Regarding public access the City's certified LUP states:

*Laguna Beach is a major visitor destination, attracting nearly three million tourists annually [1984 figure]. The popularity of the City imposes significant demand on the community's shoreline recreational facilities with summer beach attendance sometimes exceeding 30,000 people daily [1984 figure].*

In addition, LUP policies require that public views be protected. Regarding public views, the City's certified LUP Open Space/Conservation Element states:

*The scenic value of the hillside and coastal areas is especially important, because they are so visible to residents and visitors alike. More than any other function of the City's open space, it is its scenic aspect that most greatly contributes to Laguna's unique community identity. Preservation of the City's natural open space on the basis of its scenic quality, therefore, is an issue of special importance to the community.*

and

*The scenic value of even large natural areas can be diminished when its visual continuity is disrupted by "islands" or "peninsulas" of manmade intrusions.*

In addition, the certified LUP policies require that wetlands and environmentally sensitive habitat areas be protected and that only limited, specific uses be allowed within them. Regarding vegetation and wildlife resources within the City, the City's certified LUP Open Space/Conservation Element states:

*Vegetation and wildlife within previously undeveloped areas are particularly vulnerable to human intrusion which disrupts or destroys native plant communities and wildlife corridors. Increased awareness of this vulnerability has made the protection of natural vegetation and wildlife habitats a major component of this element.*

Clearly the City's certified LUP places high value on maximizing public access and recreation, protecting and enhancing public views, and protecting natural habitats and wildlife. As proposed, Ordinance Nos. 1525 and 1527 of the Implementation Plan amendment would not assure that these resources would remain adequately protected.

a) Split Zoned Parcels - Ordinance No. 1525

Ordinance No. 1525 proposes to introduce new language as new Section 25.02.070 which would clarify that, in the case of split zoned parcels, all applicable zoning regulations, such as setbacks, be taken from the zone boundary rather than from the property line. Under the current language, the City is concerned that an applicant could interpret the required setback or other zoning restriction as applying to the property line rather than the zone boundary line. Such a situation may not be most protective of resources, particularly where a zone in question may be an open space or other resource protection zone. While the Commission concurs with the City that the proposed language is more protective than the language that currently exists in the IP, it is important to make clear that greater setbacks than the uniform linear setbacks described in the zoning ordinances may be necessary to adequately protect resources (such as public access and recreation, public views, and sensitive habitats including wetlands).

The certified LUP policies cited above require that development not interfere with and/or minimize impacts to coastal resources when development is considered in visually prominent areas including hillside slopes and ridgelines, near accessways and trails, and near habitat areas. Application of these LUP policies may require greater setbacks than are identified in the IP even with the proposed additional language of new Section 25.02.070. Moreover, the proposed additional language may encourage the erroneous conclusions that if the IP setback is applied, the resource is thus protected. However, the LUP language requires that development be sited as necessary to protect coastal resources, whatever that distance may be. The LUP required setback may be greater than the minimum distance described in the IP. The requirements of the LUP policies supersede the IP's generic linear feet setback when greater setbacks are necessary to assure protection of the coastal resource. The IP setback represents the minimum potential setback. To assure that it is clear that development must be setback from coastal resources as necessary to adequately protect those resources, a cross reference to the

LUP requirements could be inserted into the proposed language. However, no such cross reference is proposed.

Although it may be argued that the more restrictive LUP language applies regardless of whether a cross reference is inserted, adding the proposed new language alone may further the potential for misunderstanding that the IP's linear feet setback is the only setback that need be applied. The proposed added language is intended to clarify that setbacks be taken from the zone boundary, not the property line. The reason for this clarification is to protect resources on the site, whether they are one of the coastal resources discussed above, or a non-coastal resource such as light or privacy. Adding the proposed new language may reinforce the idea that the setback is definitively defined in the IP, rather than in the LUP.

In order to assure that future developers and approving authorities are aware that greater setbacks may be needed and imposed to assure protection of coastal resources as required by the LUP, a cross reference back to the requirements of the LUP must be inserted into the proposed language. However, such a cross reference is not included in the proposed language. The proposed amendment does not include language necessary to assure that all coastal resources are protected and therefore is inconsistent with and inadequate to carry out the policies of the certified LUP.

b) Reasonable Accommodation – Ordinance No. 1527

This ordinance proposes to modify Chapter 25.05 *Administration* by adding new subsection 25.05.080 *Reasonable Accommodation*. The City's intent in adding this new subsection is to provide flexibility in the application of land use, zoning, and building code regulations, policies, practices and procedures for projects that require approval of permits and/or other entitlements in order to provide reasonable accommodations for people with disabilities. The City is proposing these changes in response to State and Federal laws (including the federal Americans with Disabilities Act) requiring that cities make reasonable accommodations for people with disabilities. The requirement for consistency with federal law supersedes any state law that conflicts with the federal mandate to the extent of the conflict.

The Commission recognizes that the City must make reasonable accommodations available as necessary to assure that structures are accessible by all people, including those with disabilities. The City's proposed language would allow flexibility in application of land use, zoning and building code, regulations, policies, practices and procedures such that if a land use restriction precludes or limits accessibility, the restriction will not be imposed. However, the proposed language does not address impacts to coastal resources such as public access and recreation, public views, and sensitive habitats including wetlands. As is reflected in the certified LUP policies cited above, the City's certified LUP places high value on maximizing public access and recreation, protecting and enhancing public views, and protecting natural habitats and wildlife. The certified LUP

requires that development not interfere with and/or minimize impacts to coastal resources when development is considered in visually prominent areas including hillside slopes and ridgelines, near accessways and trails, and near habitat areas. As proposed, the City's reasonable accommodation language does not recognize the importance of protecting coastal resources as required by the certified LUP.

The Commission recognizes that such impacts may be necessary to provide accessibility as required by federal law. However, if there is an alternative that accomplishes the goal of accessibility and avoids or minimizes adverse impacts to coastal resources, that alternative must be pursued. The federal law addressing reasonable accommodations for people with disabilities does not expressly prohibit a government entity's consideration of a project's environmental impacts in its project review nor does federal law prohibit a government entity from requiring an applicant to construct a feasible project alternative that would avoid or minimize environmental impacts. The City has indicated that the proposed language requires that any approval include a finding that no feasible alternative is available. However, the proposed language regarding alternatives states (proposed Section 25.05.080(E)(1)(g):

*(E) Findings and Decision.*

*(1) Findings. The written decision to grant or deny a request for reasonable accommodation shall be consistent with the Acts and shall be based on consideration of the following factors:*

*(a) ...*

*(g) Alternative reasonable accommodations which may provide an equivalent level of benefit.*

This language requires consideration of alternatives, but does not specify whether the alternatives considered should avoid or minimize impacts. Furthermore, although it may require consideration of an alternative, it does not require that the least damaging alternative be implemented. Moreover, the proposed language would not require that a proposed project's impacts be identified by an impact assessment and submitted with an accessibility request. Finally, for projects where impacts are unavoidable, the proposed language would not require that mitigation be provided. Absent these measures, coastal resource protection is not maximized. Thus, the City's proposed *Reasonable Accommodation* language cannot be found to be consistent with or adequate to carry out the policies of the certified Land Use Plan.

## **2. Administration: Ordinance 1526 - Appeals**

This ordinance is proposed to modify Section 25.05.070 *Appeals*, of Chapter 25.05 *Administration*. Specifically, changes included in the proposed amendment are (language proposed to be deleted by the City is shown in ~~strike-out~~ text; language proposed to be added by the City is shown in underline text):

*25.05.070 Appeals.*

*(B) Procedures.*

- (3) *All decisions, ~~determinations and requirements~~ regarding Administrative Use Permits (Section 25.05.020), Administrative Design Review (Section 25.05.040(B)(3)), Coastal Development Permits (Section 25.05.050 and Chapter 25.07), Conditional Use Permits (Section 25.05.030), Design Review (Section 25.05.040), Interpretations (Chapter 25.06), Reasonable Accommodation (Section 25.05.080), Temporary Use Permits (Section 25.05.035) and Variances (Section 25.05.025), of the Planning Commission, Board of Adjustment/Design Review Board ~~and~~ or Director of Community Development may be appealed to the City Council by the applicant, any other property owner within three hundred feet of the subject property, or by a member of the City Council. In those cases where the City is the applicant or an aggrieved property owner, the decision, determination or requirement may be appealed to the City Council by the City Manager.*

The City has indicated that their intent in making the proposed changes is to make clear the types of entitlement decisions that may be appealed. As an example, the City states that it is their intent that ministerial Building Permits may not be appealed. However, as proposed, the new language could be construed to mean that the City's ministerial decisions regarding the coastal development permit process may not be appealed. This includes decisions such as whether certain projects are exempt from the need to obtain approval of a coastal development permit and whether certain coastal development permits may be appealed to the Coastal Commission.

Some decisions affecting the coastal development permit process may be considered ministerial and some projects may qualify for exemptions from the need to obtain a coastal development permit. But when there is disagreement on such issues, the final decision belongs with the Coastal Commission. Adverse impacts to coastal resources could result if a project is determined to be ministerial by the City pursuant to the proposed language, and there is a question as to whether the project should require a coastal development permit. If no coastal development permit is required, such a decision could not be challenged under the proposed language. In such a case there would be no recourse to a decision that a coastal development permit is not required, and protection of coastal resources would not be implemented.

The process outlined in Chapter 25.07 *Coastal Development Permit* is most protective of coastal resources in that it assures that adequate review will be undertaken and that coastal resources will be protected. By assuring that the Coastal Commission, where identified in Chapter 25.07, is included in the final decision on questions that affect the coastal development permit process and the related coastal resources, an additional layer of review and protection is provided. Thus, it is important to assure that each such decision be based on the procedures outlined in Chapter 25.07 *Coastal Development Permits*.

As proposed, the amendment would not assure that all decisions regarding the coastal development permit process outlined in Chapter 25.07 *Coastal Development Permits* would be implemented as required. Without such assurance adverse impacts to coastal resources may not be avoided, and where unavoidable, may not be adequately mitigated. Thus, the proposed language cannot be found to be consistent with and adequate to carry out the policies of the certified Land Use Plan.

**C. Findings for Approval of Implementation Plan Amendment 1-10 if Modified as Recommended**

**1. Incorporation of Findings for Denial of Implementation Plan Amendment 1-10 as Submitted**

The findings for denial of the Implementation Plan amendment as submitted are incorporated as if fully set forth herein.

**2. Resource Protection**

a) Split Zoned Parcels - Ordinance No. 1525

As proposed, the amendment would not make clear that setbacks in addition to the minimum linear setback described in the IP may be imposed as necessary to protect coastal resources. Coastal resources include but are not limited to public access and recreation, public views, and sensitive habitats including wetlands. As proposed, the language could lead to application of setbacks that do not adequately protect coastal resources, inconsistent with the requirements of the certified Land Use Plan. However, if the proposed language were modified to clarify that greater setbacks from resources may be imposed, then there would be an assurance that the coastal resources would be protected and the portion of the amendment proposed via Ordinance No. 1525 could be found to be consistent the policies of the certified Land Use Plan. Therefore, only if modified as suggested can the proposed amendment be found to be consistent with and adequate to carry out the policies of the certified Land Use Plan.

b) Reasonable Accommodation – Ordinance No. 1527

As proposed, the new language intended to allow flexibility in application of land use and zoning standards, policies and regulations in order to provide for reasonable accommodation in developments intended for people with disabilities, does not require that the alternative that is the least damaging to coastal resources be implemented. A project which requests land use flexibility should identify whether impacts to coastal resources would result and, if so, identify the specific resource(s) impacted. The alternatives review should also describe feasible alternatives to the project as proposed and identify the alternative with the least impact to coastal resources. And, a request for land use flexibility should also identify mitigation for any unavoidable impacts the project would create. As

proposed, the amendment language would not require any of these measures and therefore must be denied. However, if the amendment language proposed via Ordinance No. 1527 were modified to require these measures then this aspect of the proposed amendment could be found to be consistent with the policies of the certified Land Use Plan. Therefore, only if modified as suggested can the proposed amendment be found to be consistent with and adequate to carry out the policies of the certified Land Use Plan.

**3. Administrative – Ordinance No. 1526 - Appeals**

The changes to Section 25.05.070 *Appeals* proposed via Ordinance No. 1526 are intended to make clear that ministerial City actions, such as actions on building permits, may not be appealed. However, as proposed, the language could be construed to mean that the City's ministerial decisions regarding the coastal development permit process may not be appealed. This includes decisions such as whether certain projects are exempt from the need to obtain approval of a coastal development permit and whether certain coastal development permits may be appealed to the Coastal Commission. As proposed, the amendment would not assure that all decisions regarding the coastal development permit process outlined in Chapter 25.07 *Coastal Development Permits* would be implemented as required. Without such assurance adverse impacts to coastal resources may not be avoided, and where unavoidable, may not be adequately minimized and mitigated as required by the City's certified LUP. However, if the amendment language proposed via Ordinance No. 1526 were modified to make clear that all decisions regarding the coastal development permit process must be consistent with Chapter 25.07 *Coastal Development Permits*, then this aspect of the proposed amendment could be found to be consistent with the policies of the certified Land Use Plan. Therefore, only if modified as suggested can the proposed amendment be found to be consistent with and adequate to carry out the policies of the certified Land Use Plan.

**4. Ordinance Nos. 1528, 1529, 1530, & 1531**

The remaining changes of the proposed LCP amendment, proposed pursuant to Ordinance Nos. 1528, 1529, 1530, and 1531 do not raise any issues of conformity with and adequacy to carry out the policies of the certified LUP. Ordinance 1528 proposes language that would add and clarify definitions. Ordinance 1529 would correct an internal inconsistency in a manner consistent with the Coastal Commission's approval of LCPA 1-07C. Ordinance No. 1530 would establish a time frame within which natural disaster replacement of a non-conforming structure may occur. The ordinance would limit such non-conforming replacements to within five years of the occurrence of the disaster. And, Ordinance No. 1531 would prohibit an applicant from modifying project plans in the interim between denial of a project by the City's Design Review Board and being heard on appeal by the City Council. Modifying plans at the appeal stage of review does not allow for adequate analysis by the approving authority and its staff. These proposed changes raise no issue of conformity with the certified Land Use Plan and are consistent as proposed. No modifications are suggested for the changes proposed via any of the four ordinances described above.

## **5. Conclusion**

The certified LUP requires that coastal resources such as public access and recreation, public views, and sensitive habitats including wetlands be protected.

For the reasons described above, only if modified as suggested can the proposed Implementation Plan amendment be found to be consistent with and adequate to carry out the public access and recreation, public view and habitat protection policies of the City's certified Land Use Plan. Therefore, the Commission finds that, only as modified is the proposed Implementation Plan amendment consistent with and adequate to carry out the provisions of the certified Land Use Plan (LUP).

## **IV. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

Section 21080.9 of the California Public Resources Code – within the California Environmental Quality Act (CEQA) - exempts local governments from the requirement of preparing an environmental impact report (EIR) in connection with its activities and approvals necessary for the preparation and adoption of a local coastal program (LCP). 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 Section 21080.5 of CEQA, the Commission is relieved of the responsibility to prepare an EIR for each LCP. Nevertheless, the Commission is required in approving an LCP submittal to find that the LCP does conform with the provisions of CEQA, including the requirement in CEQA section 21080.5(d)(2)(A) that the amended LCP will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. 14 C.C.R. Sections 13542(a), 13540(f), and 13555(b). The City of Laguna Beach LCP amendment 2-10 consists of an amendment to Implementation Plan (IP) only.

As outlined in this staff report, the proposed the IP amendment is inconsistent with the public access and recreation, public views, and habitat protection policies of the certified Land Use Plan. However, if modified as suggested, the IP amendment will be consistent with the policies of the Land Use Plan. Thus, the Commission finds that the IP amendment, if modified as suggested, is in conformity with and adequate to carry out the land use policies of the certified LUP. Therefore, the Commission finds that approval of the LCP amendment as modified will not result in significant adverse environmental impacts under the meaning of CEQA. Therefore, the Commission certifies LCP amendment request 2-10 if modified as suggested herein.

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RESOLUTION NO. 10.090

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LAGUNA BEACH, CALIFORNIA, ADOPTING LOCAL COASTAL PROGRAM AMENDMENT 2010-04 A, B, C, D, F, G AND H AND REQUESTING ITS CERTIFICATION BY THE COASTAL COMMISSION.

WHEREAS, after notice duly given pursuant to Government Code Section 65090 and Public Resources Code Sections 30503 and 30510, the Planning Commission of the City of Laguna Beach held public hearings to consider the adoption of Laguna Beach Local Coastal Program Amendment No. 2010-04A-H, (note: LCP 2010-04E was withdrawn as part of this package of ordinance amendments), and such amendment was recommended to the City Council for adoption; and

WHEREAS, the City Council after giving notice as described by law, held at least one public meeting regarding the proposed Laguna Beach Local Coastal Program Amendment No. 2010-04A-H (not including 2010-04E), and the City Council finds that the proposed amendment is consistent with the Certified Laguna Beach Coastal Land Use Plan and Chapter 6 of the California Coastal Act; and

WHEREAS, the City Council of the City of Laguna Beach intends to implement the Local Coastal Program in a manner fully consistent with the California Coastal Act.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA BEACH DOES RESOLVE AND ORDER as follows:

SECTION 1. That Laguna Beach Local Coastal Program Amendment No. 2010-04A-H (not including 2010-04E) is hereby approved, consisting of Ordinance Numbers 1525, 1526, 1527, 1528, 1529, 1530 and 1531 pertaining to a number of miscellaneous municipal code regulations. Copies of the aforesaid seven Ordinances are attached hereto as

LGB LCPA 2-10 Exhibit 1  
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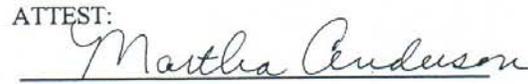
Exhibits "A" through "G" and are incorporated by those references as though fully set forth herein.

SECTION 2. That the California Coastal Commission is hereby requested to consider, approve and certify Local Coastal Program Amendment 2010-04A-H (not including 2010-04E).

SECTION 3. That pursuant to Section 13551(b) of the Coastal Commission Regulations, Laguna Beach Local Coastal Program Amendment No. 2010-04A-H (not including 2010-04E) will take effect automatically upon Coastal Commission approval, as provided in Public Resources Code Sections 30512, 30513 and 30519.

ADOPTED this 20<sup>th</sup> day of July, 2010.

  
Elizabeth Pearson, Mayor

ATTEST:  
  
City Clerk

I, MARTHA ANDERSON, City Clerk of the City of Laguna Beach, California, do hereby certify that the foregoing Resolution No. 10.090 was duly adopted at a Regular Meeting of the City Council of said City held on July 20, 2010 by the following vote:

AYES: COUNCILMEMBER(S): Boyd, Egly, Rollinger, Iseman, Pearson  
NOES COUNCILMEMBER(S): None  
ABSENT COUNCILMEMBER(S): None

  
City Clerk of the City of Laguna Beach, CA

Exhibit 1  
page 2

ORDINANCE 1526

AN ORDINANCE OF THE CITY OF LAGUNA BEACH, CALIFORNIA  
AMENDING SUBSECTION 25.05.070 OF THE LAGUNA BEACH  
MUNICIPAL CODE REGARDING APPEALS.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA  
BEACH DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: The City Council does hereby amend Subsection 25.05.070(B)(1) –  
“Appeal Procedures” to read in its entirety as the following:

25.05.070 Appeals.  
(B) Procedures.

- (1) All decisions, ~~determinations and requirements~~ regarding Administrative Use Permits (Section 25.05.020), Administrative Design Review (Section 25.05.040(B)(3)), Coastal Development Permits (Section 25.05.050 and Chapter 25.07), Conditional Use Permits (Section 25.05.030), Design Review (Section 25.05.040), Interpretations (Chapter 25.06), Reasonable Accommodation (Section 25.05.080), Temporary Use Permits (Section 25.05.035) and Variances (Section 25.05.025), of the Planning Commission, Board of Adjustment/Design Review Board ~~and or~~ Director of Community Development may be appealed to the City Council by the applicant, any other property owner within three hundred feet of the subject property, or by a member of the City Council. In those cases where the City is the applicant or an aggrieved property owner, the decision, determination or requirement may be appealed to the City Council by the City Manager.

SECTION 2: Environmental Determination. The City Council finds that the adoption and implementation of this ordinance are exempt from the provisions of the California Environmental Quality Act in that the Council finds there is no possibility that the implementation of this ordinance may have significant effects on the environment.

SECTION 3: This Ordinance shall take effect and be in full force and effect thirty days after final adoption.

SECTION 4: The City Clerk shall certify to the passage of this Ordinance and shall cause this Ordinance to be published or posted as required by law.

COASTAL COMMISSION  
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PAGE 1 OF 1

ORDINANCE 1527

AN ORDINANCE OF THE CITY OF LAGUNA BEACH, CALIFORNIA  
AMENDING CHAPTER 25.05 OF THE LAGUNA BEACH MUNICIPAL  
CODE REGARDING REASONABLE ACCOMMODATION  
PROCEDURES FOR PERSONS WITH A DISABILITY

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA  
BEACH DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: The City Council does hereby amend Chapter 25.05 of the Laguna  
Beach Municipal Code by adding Subsection 25.05.080 – Reasonable Accommodation, to  
read in its entirety as the following:

**25.05.080 Reasonable Accommodation**

(A) Applicability. A reasonable accommodation in the land use, zoning and building context means providing individuals with disabilities or developers of housing for people with disabilities, flexibility in the application of land use, zoning and building code, regulations, policies, practices and procedures, or even waiving certain requirements, when it is necessary to eliminate barriers to housing opportunities. A request for reasonable accommodation may be made by any person with a disability, their representative or any entity, when the application of a zoning, land use or building code, regulation, policy or practice acts as a barrier to fair housing opportunities. A person with a disability is a person who has a physical or mental impairment that limits or substantially limits one or more major life activities, anyone who is regarded as having such impairment or anyone who has a record of such impairment. The section is intended to apply to those persons who are defined as disabled under the Federal Fair Housing Act and the California Fair Employment and Housing Act (the Acts).

A request for reasonable accommodation may include a modification or exception to the rules, standards and practices for the siting, development and use of housing or housing-related facilities that would eliminate regulatory barriers and provide a person with a disability equal opportunity to housing of their choice.

(B) Application Requirements.

(1) Requests for reasonable accommodation shall be submitted in the form of a letter to the Director of Community Development and shall contain the following information:

- (a) The applicant's name, address and telephone number.
- (b) Address of the property for which the request is being made.
- (c) The current actual use of the property.
- (d) The basis for the claim that the individual is considered disabled under the Acts.
- (e) The zoning, land use or building code provision, regulation, policy or practice from which reasonable accommodation is being requested.

COASTAL COMMISSION  
LGB LCPA 2-10  
EXHIBIT # 3  
PAGE 1 OF 3

- (f) Why the reasonable accommodation is necessary to make the specific property accessible to the individual.
- (2) Review and Other Land Use Applications. If the project for which the request for reasonable accommodation is being made also requires some other discretionary approval (including, but not limited to: Conditional Use Permit, Coastal Development Permit, Design Review, Variance, General Plan Amendment, Zone change, etc.), then the applicant shall file the information required by Subsection (b) above together for the concurrent review with the application for discretionary approval.
- (C) Review Authority.
- (1) Director of Community Development. Request for reasonable accommodation shall be reviewed by the Director of Community Development (Director), or his/her designee if no approval is sought other than the request for reasonable accommodation.
- (2) Other Review Authority. Requests for reasonable accommodation submitted for concurrent review with another discretionary land use application shall be reviewed by the authority reviewing the discretionary land use application.
- (D) Review Procedure.
- (1) Director Review. The Director, or designee, shall make a written determination within 45 days and either grant, grant with modifications, or deny a request for reasonable accommodation in accordance with Section 25.05.080(E) (Findings and Decision).
- (2) Other Reviewing Authority. The written determination on whether to grant or deny the request for reasonable accommodation shall be made by the authority responsible for reviewing the discretionary land use application in compliance with the applicable review procedure for the discretionary review. The written determination to grant or deny the request for reasonable accommodation shall be made in accordance with Section 25.05.080(E) (Findings and Decision).
- (E) Findings and Decision.
- (1) Findings. The written decision to grant or deny a request for reasonable accommodation shall be consistent with the Acts and shall be based on consideration of the following factors:
- (a) Whether the housing, which is the subject of the request, will be used by an individual disabled under the Acts.
- (b) Whether the request for reasonable accommodation is necessary to make the specific housing available to an individual with a disability under the Acts.
- (c) Whether the request for reasonable accommodation would impose an undue financial or administrative burden on the City.
- (d) Whether the request for reasonable accommodation would require a fundamental alteration in the nature of a City program or law, including, but not limited to land use and zoning.
- (e) Potential impact on surrounding uses.
- (f) Physical attributes of the property and structures.

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Exhibit 3  
page 2

(g) Alternative reasonable accommodations which may provide an equivalent level of benefit.

(2) Conditions of Approval. In granting a request for reasonable accommodation, the reviewing authority may impose any conditions of approval deemed reasonable and necessary to ensure that the reasonable accommodation is appropriate based on the factors considered in Subsection (E)(1) above. In addition, the reviewing authority may impose a condition that the City has the right to terminate any approved exterior reasonable accommodation when it has been determined that the approved reasonable accommodation is no longer necessary.

(F) Appeal of Determination. A determination by the reviewing authority to grant or deny a request for reasonable accommodation may be appealed to the City Council in compliance with Appeals Section of the Zoning Code (Section 25.05.070).

**SECTION 2:** Environmental Determination. The City Council finds that the adoption and implementation of this ordinance are exempt from the provisions of the California Environmental Quality Act in that the Council finds there is no possibility that the implementation of this ordinance may have significant effects on the environment.

**SECTION 3:** This Ordinance shall take effect and be in full force and effect thirty days after final adoption.

**SECTION 4:** The City Clerk shall certify to the passage of this Ordinance and shall cause this Ordinance to be published or posted as required by law.

ADOPTED this 20<sup>th</sup> day of July, 2010.

\_\_\_\_\_  
Elizabeth Pearson, Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

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Exhibit 3  
page 3

ORDINANCE 1528

AN ORDINANCE OF THE CITY OF LAGUNA BEACH, CALIFORNIA  
AMENDING CHAPTER 25.08 OF THE LAGUNA BEACH MUNICIPAL  
CODE REGARDING THE DEFINITIONS OF "DWELLING UNIT,"  
"FAMILY" AND "SINGLE HOUSEKEEPING UNIT"

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA  
BEACH DOES HEREBY ORDAIN AS FOLLOWS:

**SECTION 1:** The City Council does hereby amend Chapter 25.08 of the Laguna Beach Municipal Code by amending Subsection 25.08.012 – Words Beginning with "F" the following definition of "Family" to read in its entirety as the following:

**"Family"** means ~~an individual or two or more persons related by blood, marriage or adoption, living together or a group of not more than six persons (excluding servants) not all of whom are related by blood, marriage or adoption but all of whom are living together as a single housekeeping unit within a dwelling so that all persons within the unit maintain free access to all living spaces within the dwelling~~ one or more persons living together as a single housekeeping unit in a dwelling unit;

**SECTION 2:** The City Council does hereby amend Chapter 25.08 of the Laguna Beach Municipal Code by amending Subsection 25.08.008 – Words Beginning with "D" the following definition of "Dwelling Unit" to read in its entirety as the following:

**"Dwelling Unit"** means a room or suite of rooms within a structure and with a single kitchen, other than a hotel unit with a kitchen, designed or used for the residential use and occupancy of ~~one a~~ family.

**SECTION 3:** The City Council does hereby amend Chapter 25.08 of the Laguna Beach Municipal Code by amending Subsection 25.08.034 – Words Beginning with "S" by adding the following definition, in its entirety, of "Single Housekeeping Unit" in alphabetical order to that subsection.

**"Single Housekeeping Unit"** means the functional equivalent of a traditional family, whose members are an interactive group of persons jointly occupying a single dwelling unit, including the joint use of and responsibility for common areas, and sharing household activities and responsibilities, such as meals, chores, household maintenance and expenses; and where, if the dwelling unit is rented, all adult (18 years or older) residents have chosen to jointly occupy the entire premises of the dwelling unit, under a single written lease with joint use and responsibility for the premises, and the makeup of the household occupying the unit is determined by the residents of the dwelling unit rather than the landlord or property manager.

**COASTAL COMMISSION** **SECTION 4:** Environmental Determination. The City Council finds that the adoption and implementation of this ordinance are exempt from the provisions of the California Environmental Quality Act in that the Council finds there is no possibility that the implementation of this ordinance may have significant effects on the environment.  
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2-10  
EXHIBIT # 4  
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Seven Changes  
Page 29

**SECTION 5:** This Ordinance shall take effect and be in full force and effect thirty days after final adoption.

**SECTION 6:** The City Clerk shall certify to the passage of this Ordinance and shall cause this Ordinance to be published or posted as required by law.

ADOPTED this 20<sup>th</sup> day of July, 2010.

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Elizabeth Pearson, Mayor

ATTEST:

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City Clerk

I, MARTHA ANDERSON, City Clerk of the City of Laguna Beach, California, do hereby certify that the foregoing Ordinance was introduced at a regular meeting of the City Council on July 6, 2010, and was finally adopted at a regular meeting of the City Council of said City held on July 20, 2010, by the following vote:

AYES: COUNCILMEMBER(S): Boyd, Egly, Rollinger, Iseman, Pearson

NOES: COUNCILMEMBER(S): None

ABSENT: COUNCILMEMBER(S): None

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City Clerk, of the City of Laguna Beach, CA

*Exhibit 4  
page 2*

ORDINANCE 1529

AN ORDINANCE OF THE CITY OF LAGUNA BEACH, CALIFORNIA  
AMENDING CHAPTER 25.10 OF THE LAGUNA BEACH MUNICIPAL  
CODE REGARDING ADMINISTRATIVE USE PERMITS FOR SHORT-  
TERM LODGING UNITS IN THE R1 ZONE.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA  
BEACH DOES HEREBY ORDAIN AS FOLLOWS:

**SECTION 1:** The City Council does hereby amend Chapter 25.10 of the Laguna Beach Municipal Code by amending Subsections 25.10.005 – Uses Permitted Subject to an Administrative Use Permit and 25.10.006 - Uses Permitted Subject to Conditional Use Permit to read in their entirety as the following:

**25.10.005 Uses Permitted Subject to an Administrative Use Permit.**

The following may be permitted subject to the granting of an Administrative Use Permit as provided for in Section 25.05.020.

- (A) Family day care home, large, subject to the following standards:
- (1) The operator of the facility must be licensed pursuant to Chapter 3.5 or 3.6 of the State Health and Safety Code;
  - (2) A business license shall be obtained in accordance with Chapter 5.08, Business Licenses;
  - (3) No signs identifying the day care facility are permitted other than those permitted pursuant to Section 25.54.010;
  - (4) Parking shall be in compliance with Chapter 25.52;
  - (5) Hours of operation shall be limited to the hours between seven a.m. and seven p.m.;
  - (6) Outdoor play for children shall not begin before nine-thirty a.m.;
  - (7) The facility shall comply with State Fire Marshal fire and life safety standards.
- (B) Parking or storage of recreational vehicles (meaning any travel trailer, boat, camper, motor home, van, travel and utility trailer or converted bus) that is more than twenty feet in length and more than six feet in height, subject to the following:
- (1) The vehicle shall be owned by the owner of the property or the tenant who is the primary resident of the property.
  - (2) The outdoor parking of such vehicles shall not be closer than five feet to a property line, shall not be parked in the front or side yards and shall be located on a paved, or any other stable, all-weather surface approved by the director of community development.
  - (3) The vehicle shall not be connected to electricity, sewer or water.
  - (4) The vehicle shall not be used, either temporarily or permanently, for sleeping or living purposes.
  - (5) The vehicle shall not be used for storage of goods, materials or equipment other than those that constitute part of the unit or are essential for its immediate use.

COASTAL COMMISSION

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EXHIBIT # 5

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- (6) The vehicle shall be in operable condition.
- (7) The vehicle shall be effectively screened from a public right-of-way and/or adjacent residences with fencing and/or landscaping to the maximum extent allowed under the zoning regulations.

All vehicles being parked or stored as of the effective date of this subsection and not conforming to the provisions hereof shall within three months after receiving appropriate notice from the community development department, either obtain approval of an administrative use permit or cause the vehicle to be removed from the property.

(C) Short-term lodging as defined and specified in Chapter 25.23 of this Title.

**25.10.006 Uses Permitted Subject to Conditional Use Permit.**

The following uses may be permitted subject to the granting of a Conditional Use Permit as provided for in Subsection 25.05.030 of this Title.

- (A) Recreation facilities, municipal and public;
- (B) Church;
- (C) Horse stables;
- (D) Nursery school;
- (E) Planned Residential Development. (The Conditional Use Permit must be approved by the City Council after the Planning Commission makes a recommendation regarding the project. A subdivision proposal shall be processed in conjunction with the Conditional Use Permit application for the Planned Residential Development);
- (F) Public and private schools;
- ~~(G) Short-term lodging as defined and specified in Chapter 25.23 of this title;~~
- ~~(H) Rest home; and~~
- ~~(I) Utility substation.~~

**SECTION 2:** Environmental Determination. The City Council finds that the adoption and implementation of this ordinance are exempt from the provisions of the California Environmental Quality Act in that the Council finds there is no possibility that the implementation of this ordinance may have significant effects on the environment.

**SECTION 3:** This Ordinance shall take effect and be in full force and effect thirty days\* after final adoption.

**SECTION 4:** The City Clerk shall certify to the passage of this Ordinance and shall cause this Ordinance to be published or posted as required by law.

ADOPTED this 20th day of July, 2010.

ATTEST:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Elizabeth Pearson, Mayor

*Exhibit 5  
page 2*

ORDINANCE 1530

AN ORDINANCE OF THE CITY OF LAGUNA BEACH, CALIFORNIA  
AMENDING CHAPTER 25.56 OF THE LAGUNA BEACH MUNICIPAL CODE  
REGARDING A TIME LIMIT FOR THE RESTORATION OF NONCONFORMING  
STRUCTURE.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA  
BEACH DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: The City Council does hereby amend Chapter 25.56 of the Laguna  
Beach Municipal Code by amending Subsection 25.56.014 – “Restoration of Nonconforming  
Structure” to read in its entirety as the following:

**25.56.014 Restoration of Nonconforming Structure.**

Notwithstanding the extent of damage, any legal nonconforming building, structure or  
improvement which has been damaged by fire, flood, wind, earthquake or other disasters  
may be repaired, restored, replaced or reconstructed up to the original size, placement and  
density within five years of such damage or destruction, notwithstanding any other provision  
of this title; provided, however, that no multiple-family dwelling which has been so damaged  
to the extent of more than fifty percent of the value of such building, structure or  
improvement immediately prior to such calamity shall be repaired, restored, replaced or  
reconstructed unless the provisions of Chapter 25.52 are complied with in full; and provided  
further, however, that no shore protective device shall be repaired, restored, replaced or  
reconstructed unless it is consistent with prevailing zoning regulations and general plan  
policy.

SECTION 2: Environmental Determination. The City Council finds that the adoption  
and implementation of this ordinance are exempt from the provisions of the California  
Environmental Quality Act in that the Council finds there is no possibility that the  
implementation of this ordinance may have significant effects on the environment.

SECTION 3: This Ordinance shall take effect and be in full force and effect thirty days  
after final adoption.

SECTION 4: The City Clerk shall certify to the passage of this Ordinance and shall  
cause this Ordinance to be published or posted as required by law.

ADOPTED this 20<sup>th</sup> day of July, 2010.

ATTEST:

\_\_\_\_\_  
City Clerk

Elizabeth Pearson, Mayor

**COASTAL COMMISSION**  
LGB LC PA 2-10

EXHIBIT # 6

PAGE 1 OF 1

ORDINANCE 1531

AN ORDINANCE OF THE CITY OF LAGUNA BEACH, CALIFORNIA  
AMENDING SUBSECTION 25.05.070 OF THE LAGUNA BEACH  
MUNICIPAL CODE REGARDING APPEALS OF PROJECT DENIALS  
BY THE DESIGN REVIEW BOARD.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAGUNA  
BEACH DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: The City Council does hereby amend Section 25.05.070(B)(9) –  
“Design Review Appeals” by adding Subsection (h) so that the entire Section  
25.05.070(B)(9) reads in its entirety as the following:

**25.05.070(B)(9) Design Review Appeals.**

(9) Design Review Appeals. Notwithstanding the provisions of paragraphs (1)  
through (8) above, appeals of decisions on design review applications shall be subject  
to the following special provisions. In the event of any conflict or inconsistency  
between the provisions of paragraphs (1) through (8) and this paragraph (9), the  
provisions of paragraph (9) shall control:

- (a) Decisions on design review applications by the approval authority may  
be appealed to the city council by the applicant, any other owner of  
property within three hundred feet of the subject property or by a  
member of the City Council (either directly or through the City  
Manager). In those cases where the city is the applicant or an  
aggrieved property owner, the decision may be appealed to the City  
Council by the City Manager.
- (b) Any appeal shall be in written form and shall specifically state each  
and every ground for the appeal, and shall be filed with the city clerk  
within fourteen calendar days of the decision. More than one appeal of  
a decision on a design review application may be filed.
- (c) The fee for appeals shall be determined by City Council resolution.  
Except for appeals by a member of the City Council or the City  
Manager, the filing of any appeal shall be accompanied by payment of  
the required appeal fee, and no such appeal shall be deemed filed  
absent payment of the fee. If more than one appeal is filed, then  
following the filing expiration date for appeals, the City Clerk shall  
prorate the required appeal fee among the total number of appeals and  
refund the excess amount paid by each appellant.
- (d) Upon the City Clerk’s receipt of a timely and otherwise proper appeal  
of a decision on a design review application, the appeal shall be set for  
a public hearing before the City Council no less than fourteen calendar  
days nor more than sixty calendar days after receipt of the appeal.  
Notice of the hearing for the appeal shall be subject to the provisions  
of Section 25.05.065(B) and (C), except that posting shall not be  
required. Notice of the hearing shall include the ground(s) specified in  
the appeal(s).

COASTAL COMMISSION  
LGB LCPA 2-10  
EXHIBIT # 7  
PAGE 1 OF 2

- (e) The hearing by the City Council of appeals of a decision on a design review application shall be limited to the grounds specifically stated in the underlying notice(s) of appeal(s). There shall be a presumption that the decision made by the approval authority was reasonable, valid and not an abuse of discretion; and the appellant shall have the burden of proof of demonstrating otherwise by a preponderance of the evidence presented.
- (f) Upon the hearing of the appeal of a decision on a design review application, the City Council may remand back to the approval authority, uphold or reverse, wholly or partly, or may modify the appealed decision. A remand, reversal or modification shall be approved by the City Council upon adoption of a resolution, approved by not less than three members that sets forth in writing the reasons relied upon.
- (g) In addition to the forgoing, appeals of decisions on design review applications are subject to the provisions of Section 25.07.016 when a Coastal Development Permit is required.
- (h) In the event of an appeal by the applicant of a project denial, the City Council hearing shall be limited to the plans that were the subject of the Design Review Board's decision. The City Council shall not consider or act on new plans submitted by the applicant after the appeal is filed, although the City Council may determine to remand to the Design Review Board any revised plans presented by the applicant for further proceedings pursuant to such direction as may be given by the City Council. This provision shall not preclude the City Council, on its initiative and at its discretion, from imposing project modifications without a requirement for remand.

**SECTION 2:** Environmental Determination. The City Council finds that the adoption and implementation of this ordinance are exempt from the provisions of the California Environmental Quality Act in that the Council finds there is no possibility that the implementation of this ordinance may have significant effects on the environment.

**SECTION 3:** This Ordinance shall take effect and be in full force and effect thirty days after final adoption.

**SECTION 4:** The City Clerk shall certify to the passage of this Ordinance and shall cause this Ordinance to be published or posted as required by law.

Exhibit 7  
page 2

## EX-PARTE COMMUNICATIONS DISCLOSURE

Person(s) initiating communication: Steve Ray – Banning Ranch Conservancy  
Penny Elia - Sierra Club

Person(s) receiving communication: Commissioner Kram

Location of communication: Telephone

Time/Date of communication: October 31, 2011 – 10 AM

Type of communication: Teleconf

Name or description of the project(s)/topics of discussion:

W15b. **City of Laguna Beach LCP Amendment No. LGB-MAJ-2-10 (7 Changes)**. Public hearing and action on request by City of Laguna Beach to amend the certified Implementation Plan to change provisions related to 1) setbacks on split zoned parcels, 2) reasonable accommodation, 3) definitions, 4) the type of local action required for short-term lodging permits, 5) establishing time limits by which requests for disaster replacement authorization must be made, 6) establishes new limitations on the types of local ministerial actions that can be appealed, and 7) new rules related to appeals of design review board denials. The LCPA affects only the Implementation Plan portion of the certified LCP. (MV-LB)

- Request support of staff's recommendations

W16a. **Application No. 5-10-168 (City of Newport Beach Sunset Ridge)** Application of City of Newport Beach to construct, on vacant land, active recreational park (Sunset Ridge Park) of approximately 18 acres at northwest corner of intersection of West Coast Highway and Superior Ave, including access road, parking lot, public restroom, playground, sports fields, paths, viewpoint, retaining wall, landscaping, and coastal sage scrub habitat enhancement. Grading consists of approximately 110,000 cu.yds. of cut, and 102,000 cu.yds. of fill, at 4850 West Coast Highway and on portion of Banning Ranch, Newport Beach, Orange County. (JDA-LB)

- The planned Sunset Ridge Park entrance road encroaches upon Environmentally Sensitive Habitat Area (ESHA).
- Banning Ranch Conservancy has long supported a public park, but opposes the current project as proposed.
- The planned Sunset Ridge Park entrance road, built on the adjacent Banning Ranch, is intimately connected to the planned Banning Ranch development.
- Alternatives to the planned Sunset Ridge Park entrance road exist. Discussion of Tom Brohard's alternative submitted on behalf of Banning Ranch Conservancy.
- Any new proposal from the City should require a new application and staff and the Commission should have an opportunity to review in detail via a new staff report that would allow for careful analysis and public input.
- Request support of staff recommendation for denial.
- Comments to Schmitz 10-19-11 letter provided.

## EX-PARTE COMMUNICATIONS DISCLOSURE

Person(s) initiating communication: Penny Elia - Sierra Club  
Person(s) receiving communication: Commissioner Bloom  
Location of communication: Telephone  
Time/Date of communication: October 31, 2011 – 11:35 AM  
Type of communication: Teleconf

Name or description of the project(s)/topics of discussion:

W15b. **City of Laguna Beach LCP Amendment No. LGB-MAJ-2-10 (7 Changes)**. Public hearing and action on request by City of Laguna Beach to amend the certified Implementation Plan to change provisions related to 1) setbacks on split zoned parcels, 2) reasonable accommodation, 3) definitions, 4) the type of local action required for short-term lodging permits, 5) establishing time limits by which requests for disaster replacement authorization must be made, 6) establishes new limitations on the types of local ministerial actions that can be appealed, and 7) new rules related to appeals of design review board denials. The LCPA affects only the Implementation Plan portion of the certified LCP. (MV-LB)

- Request support of staff's recommendations

W16a. **Application No. 5-10-168 (City of Newport Beach Sunset Ridge)** Application of City of Newport Beach to construct, on vacant land, active recreational park (Sunset Ridge Park) of approximately 18 acres at northwest corner of intersection of West Coast Highway and Superior Ave, including access road, parking lot, public restroom, playground, sports fields, paths, viewpoint, retaining wall, landscaping, and coastal sage scrub habitat enhancement. Grading consists of approximately 110,000 cu.yds. of cut, and 102,000 cu.yds. of fill, at 4850 West Coast Highway and on portion of Banning Ranch, Newport Beach, Orange County. (JDA-LB)

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- Alternatives to the planned Sunset Ridge Park entrance road exist. Note Tom Brohard's alternative submitted on behalf of Banning Ranch Conservancy.
- Any new proposal from the City should require a new application and staff and the Commission should have an opportunity to review in detail via a new staff report that would allow for careful analysis and public input.
- Request support of staff recommendation for denial.
- Comments to Schmitz 10-19-11 letter and Access Agreement provided via email.