

CALIFORNIA COASTAL COMMISSION

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Th24a

Addendum

October 3, 2012

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To: Commissioners and Interested Persons

From: California Coastal Commission
San Diego Staff

Subject: Addendum to **Item Th24a** City of Carlsbad Major LCP Amendment No. CAR-MAJ-2-11-A (Reasonable Accommodation) for the Commission Meeting of October 10-12, 2012

Since the time of the original staff report, the City submitted comments in response to the staff report regarding its LCP amendment request which would add a new chapter into its LCP in order to review and grant reasonable accommodations. The City's correspondence is attached. The City asserts that they do not expect many requests for reasonable accommodation to be sought and since coastal development permits will still need to be obtained, adequate protection of coastal resources will be provided. The City has therefore requested that the majority of suggested modifications be removed from the staff report. Commission staff has reviewed the City's comments, and, in response to this request, as well as the review of other state-wide Coastal Commission precedents regarding reasonable accommodations, staff concurs. Specifically, the modifications inserting language describing the coastal development permit review process into the City's chapter for reasonable accommodation requests can be removed. That being said, three suggested modifications clarifying the definition of "reasonable accommodation" and the procedure for reviewing reasonable accommodations are still included.

As such, staff recommends the Commission **ADOPT** the following changes to the above-referenced staff report. Language to be added will be shown in underline and language to be deleted will be shown in ~~strike-out~~.

1. Modify the "Summary of Staff Recommendation" beginning on Page 2 as follows:

The Commission can only reject such amendments where it can be shown that the amendment would be inconsistent with the certified Land Use Plan (LUP) and/or render the Implementation Program (IP) inadequate to carry out the LUP.

Staff recommends denial of the amendment as proposed, and then approval of the amendment with ~~five~~ three suggested modifications. For the most part, the Commission is not chiefly concerned with the review and approval of a request for a reasonable accommodation as it relates to the threshold criteria of whether or not a requestor of a reasonable accommodation is medically qualified to make such a request. However, when the authorization of reasonable accommodations includes allowing flexibility in the City's application of land use, zoning, and building code regulations, the Commission does have an interest in assuring that any potential impacts to coastal resources be identified, feasible alternatives reviewed, the least environmentally damaging alternative implemented; and, if impacts to any coastal resources are determined to be unavoidable, the appropriate feasible mitigation is provided. Without the inclusion of this process, protection of coastal resources cannot be assured. In this case, the City has included language in three separate sections of the proposed Reasonable Accommodation ordinance (21.87.030(C), 21.87.050(A), and 21.87.060(D)) that specifies when a reasonable accommodation is requested within the coastal zone, the request must still fundamentally comply with the LCP and issuance of a coastal development permit will still be necessary. It is through the review and issuance of the coastal development permit that impacts to coastal resources will be adequately analyzed. That being said, Therefore, staff is recommending denial of the implementation plan as submitted, and then approval of the zoning amendment with five three suggested modifications to address this concern. The basis for the inclusion of the three suggested modification are discussed below.

~~The primary intent of the suggested modifications is to clarify that review of any proposed reasonable accommodation still needs to be found consistent with the policies and adhere to all the regulations included in the City's LCP unless it is demonstrated that reasonable accommodation would be precluded. As proposed by the City, the provisions do not require the applicant to identify any potential impacts to any coastal resources associated with a development proposal, nor does it require an alternatives analysis to be included in the proposal and the least environmentally damaging alternative to be implemented. The language also fails to require that, should impacts to coastal resources be unavoidable, appropriate feasible mitigation measures are included.~~

~~Without this type of review, the protection of coastal resources cannot be guaranteed, which is inconsistent with the underlying purpose of the City's certified LCP. The term "coastal resources" includes: visual or physical access to and along the coast; sensitive vegetation and wildlife; natural features of the coast such as bluffs, as well as the protection of existing structures from hazards such as flood, fire, and geologic stability; and, without adequate protection of these resources, the proposed amendment is inconsistent with numerous policies within the City's LCP. As such, staff is suggesting two modifications to the City's proposed language. Suggested modification #2 would require any applicant to provide, as a component of their reasonable accommodation application, an assessment prepared by a qualified professional, which would include identification of any impacts to coastal resources, an alternatives analysis minimizing the identified impacts, and proposed feasible~~

~~mitigation should the impacts be unavoidable. Suggested modification #4 requires that the City find, when reviewing a specific reasonable accommodation application, that the proposed development has been sited in order to eliminate or minimize any impacts to coastal resources, that the alternative implemented is the least environmentally damaging alternative feasible; and, that all unavoidable impacts be mitigated consistent with the mitigation requirements of the City's certified LCP.~~

Staff is also suggesting three additional modifications, including the following: (1) require that review of the reasonable accommodation request shall be done concurrently with any discretionary review, including a coastal development permit application (Suggested Modification No. 3); (2) clarify that if the reasonable accommodation proposal also includes a coastal development permit, an appeal of the decision will also be governed by the appeal procedure for coastal development permits (Suggested Modification No. 5); and (3) Suggested Modification #1 has been included to further define "reasonable accommodation" to include that a reasonable accommodation may be one that requires a deviation from an LCP policy but it may not be a request that fundamentally alters the nature of the LCP. Suggested Modification #2 has been included to clarify that both an individual or any developer of housing for an individual with disabilities is obligated to comply with other applicable regulations not at issue in the requested accommodation (Suggested Modification No. 1). Suggested Modification #3 has been included to specify that any request for reasonable accommodation shall also include the zoning, land use, or building code provision, regulation, policy or practice from which modification or exception is being requested as well as an explanation of how application of the existing zoning, land use or building code provision, regulation, policy, or practice precludes reasonable accommodation.

2. Modify the "Suggested Modifications" section, beginning on Page 6, as follows. For purposes of revising the suggested modifications, changes to them will be shown in double-underline or ~~double-strikethrough~~. In addition, a new Suggested Modification #1 shall be added to the "definitions" section of the City's ordinance. Therefore, the existing Suggested Modification #1 shall be renumbered to Suggested Modification #2 and the existing Suggested Modification #2 shall be renumbered to Suggested Modification #3. Finally, the originally proposed Suggested Modifications 3, 4 and 5 shall be deleted in their entirety.

1. Modify Section 21.87 -Definitions" as follows:

2. "Reasonable accommodation" means, in the land use and zoning context, providing individuals with disabilities or developers of housing for people with disabilities: (1) reasonable, necessary, or feasible flexibility in the application of land use and zoning and building regulations, policies, practices and procedures, or (2) the waiver of certain requirements when it is necessary to provide equal opportunity to use and enjoy housing and/or eliminate barriers to housing opportunities; so long as the requested flexibility or waiver would not require a fundamental alteration in the nature of the city's land use and zoning and building

regulations, policies, practices, and procedures, and the City's Local Coastal Program

12. Modify Section 21.87.030 – “Applicability” as follows:

- A. A request for reasonable accommodation may be made by any individual with a disability, his or her representative, or a developer or provider of housing for individuals with disabilities, when the application of a land use, zoning or building regulation, policy, practice or procedure acts as a barrier to housing opportunities.
- B. A request for reasonable accommodation may include a modification or exception to the rules, standards, development and use of housing-related facilities that would eliminate regulatory barriers and provide a person with a disability equal opportunity to the housing of their choice.
- C. A request for reasonable accommodation in regulations, policies, practices and procedures may be filed at any time that the accommodation may be necessary to ensure equal access to housing. A reasonable accommodation does not affect the obligations of an individual's or a developer of housing for an individual with disabilities ~~obligations~~ to comply with other applicable regulations not at issue in the requested accommodation.

23. Modify Section 21.87.040 – “Request for reasonable accommodation” as follows:

A. Application for a request for reasonable accommodation shall be made in writing on a form provided by the planning director. The form shall be signed by the property owner or authorized agent. The application shall state fully the circumstances and conditions relied upon as grounds for the application and shall be accompanied by adequate plans and all other materials as specified by the planning director. The application shall include the zoning, land use or building code provision, regulation, policy or practice from which modification or exception for 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. ~~In addition, the application shall include an assessment, prepared by a qualified professional, of the potential adverse impacts to wetlands, environmentally sensitive habitat areas, public access, public views, and/or hazards such as geologic, flood and fire. The assessment shall also include a detailed feasible alternatives analysis and proposed feasible mitigation measures if unavoidable impacts are identified.~~

B. Proof of applicable disability shall be provided in the form of a note from a medical doctor or other third party professional documentation deemed acceptable to the planning director.

C. Any information identified by an applicant as confidential shall be retained in a manner so as to respect the privacy rights of the applicant and shall not be made available for public inspection.

D. If an individual needs assistance in making the application for reasonable accommodation, the city will provide assistance to ensure the process is accessible.

3. The City's comments also noted that Section 21.87.060 – Required Findings of its proposed ordinance was incorrectly cited in the report. Language was inadvertently left out; the correct citation is as follows:

A. The housing, which is the subject of the request for reasonable accommodation, will be occupied by an individual with a disability protected under fair housing laws;

B. The requested accommodation is necessary to make housing available to an individual with a disability protected under the fair housing laws;

C. The requested accommodation would not impose an undue financial or administrative burden on the city;

D. The requested accommodation would not require a fundamental alteration in the nature of the city's land use and zoning and building regulations, policies, practices, and procedures; and for housing in the Coastal Zone, the City's Local Coastal Program.

E. The requested accommodation would not result in a detriment to the surrounding uses or character of the surrounding neighborhood.

4. Modify the "Specific Findings for Denial" beginning on Page 12 as follows:

The City of Carlsbad is proposing to amend its implementation plan to include a new chapter (Chapter 21.87) to formalize the process by which requests for reasonable accommodations are reviewed and approved. For the most part, the Commission is not chiefly concerned with the review and approval of a request for a reasonable accommodation as it relates to the threshold criteria of whether or not a requestor of a reasonable accommodation is medically qualified to make such a request. However, when the approval of reasonable accommodations includes flexibility in the City's application of land use, zoning, and building code regulations, the Commission does have an interest in assuring that any potential impacts to coastal resources are avoided and/or minimized to the maximum extent feasible ~~if some impact is determined to be necessary~~. In order for such approvals to be found consistent with the City's LCP, all potential impacts need to be identified, feasible alternatives reviewed, and the least damaging feasible alternative implemented. ~~Additionally, if impacts to any coastal resources are unavoidable, the appropriate feasible mitigation must be required. The City failed to include this process in its review for reasonable accommodations.~~

~~Without this detailed review by the City, the proper protection of coastal resources cannot be assured.~~

The Commission realizes that the City and other regulated parties must, by federal law, make reasonable accommodations available as necessary to assure that structures are accessible by all people, including those with disabilities. The City's proposed language will allow flexibility such that if land use restrictions preclude or limit accessibility to people with disabilities, the restrictions will not be imposed unless relaxing such restrictions fundamentally alters the nature of the city's land use and zoning and building regulations, policies, practices, and procedures, or the City's Local Coastal Program. ~~However, the proposed language does not clearly address how the flexibility or complete removal of development restrictions will be approved should those improvements result in impacts to coastal resources.~~ As is reflected in the City's certified LUP policies cited above, the City's certified LUP places high value on maximizing public access and recreation, protecting and enhancing public views, protecting natural habitats and wildlife, and protecting structures from geologic, flood and fire hazards. Additionally, these policies require that impacts to coastal resources be minimized to the maximum extent feasible and require feasible mitigation for any unavoidable impacts.

The Commission further recognizes that such impacts may be necessary to provide accessibility to those with disabilities, again, as required by federal law. However, if there is a feasible alternative that accomplishes the goals of accessibility without impacting coastal resources, that should be the alternative implemented. If there are no feasible alternatives that eliminate impacts to coastal resources, then the *least environmentally impacting* feasible alternative should be the alternative implemented. However, approval of a project that fundamentally alters the nature of the land use and zoning and building regulations, policies, practices, and procedures of the City's Local Coastal Program shall not be allowed. Federal law addressing reasonable accommodations for people with disabilities does not expressly prohibit the consideration of a project's environmental impacts in its project review nor does it prohibit requiring an applicant to construct a feasible project alternative that would avoid or minimize environmental impacts. Finally, for projects where impacts are unavoidable, the federal law does not prohibit requiring feasible mitigation measures for such impacts.

~~To provide illustrative examples, without inclusion of the above stated process (impacts identified, feasible alternatives reviewed, impacts minimized, feasible mitigation provided), a proposal may be approved on a coastal bluff that is not safely sited or located in an area that would result in obstructing expansive public views to and along the ocean and scenic coastal areas, when a feasible alternative location that has a more appropriate geologic setback or does not provide such a view impact was overlooked. The siting of development can also result in development located on a portion of a lot that contains sensitive habitat or wetlands. All of these scenarios could be avoided if a proper alternatives analysis was required. Finally, the City could approve a development without the imposition of feasible mitigation measures for~~

~~such impacts. As previously stated, the City's proposed amendment does not clearly include the review of potential impacts and potential feasible alternatives, nor does it require feasible mitigation for unavoidable impacts. Absent these measures, coastal resource protection is not maximized.~~

~~Additionally, the City failed to clarify how the coastal development permit process is incorporated into approval of reasonable accommodation proposals. The coastal development permit process is the time when the City would review the project for consistency with the City's LCP. If this process is not clearly identified, there is potential that the City may approve a proposal that is not consistent with its LCP. Without detailed review of all potential impacts to coastal resources or clear inclusion of the coastal development permit process, the proposed amendment cannot be found consistent with the City's LCP, and; therefore shall be denied as submitted. In this case, the City has included language in three sections of the proposed ordinance indicating that if the proposed development is located in the coastal zone, then the request must fundamentally comply with the city's certified LCP and issuance of a coastal development permit process will also be necessary. Specifically, Section 21.87.030 –Applicability – states that “a reasonable accommodation does not affect the individual's obligations to comply with other applicable regulations not at issue in the requested accommodation.” Additionally, Section 21.87.050 –Review Authority and Procedure – states that “approval of a reasonable accommodation may be conditioned upon the approval of other related permits. Finally, Section 21.87.060 Required Findings – states that a reasonable accommodation can only be approved if “the requested accommodation would not require fundamental alteration in the nature of the city's land use and zoning and building regulations, policies, practices, and procedures, and for housing in the Coastal Zone, the city's Local Coastal Program. The combination of these three sections of language can be found adequate to assure that the request for reasonable accommodation will not supersede other applicable regulations, will be fundamentally consistent with the City's LCP, and will include adequate review of potential impacts to coastal resources.~~

~~That being said, the City failed to include a requirement for the applicant of any reasonable accommodation to submit the provision or policy from which modification or exception is being requested or an explanation on how application of the existing provision or policy precludes reasonable accommodation. Additionally, the submitted amendment does not clarify that either an individual or a developer of housing for the disabled must comply, to the maximum extent feasible, with all other required development policies and standards. Finally, for purposes of consistency with the LCP, the City did not include language in its definition of reasonable accommodation that mirrors language in its proposed “Request for reasonable accommodation” section to further define that a reasonable accommodation may be one that requires a deviation from an LCP policy but it may not be a request that fundamentally alters the nature of the LCP. Without these inclusions, the administration for granting reasonable accommodations is not clear; and, therefore, the amendment shall be denied as submitted.~~

5. Modify the “Findings for Approval of the City of Carlsbad Implementation Plan Amendment, if Modified,” beginning on Page 14, as follows:

~~As proposed, the City’s language allows for flexibility in application of land use and zoning standards, policies and regulations in order to provide for reasonable accommodation in development intended for people with disabilities so long as such flexibility in the coastal zone does not fundamentally alter the nature of the land use and zoning and building regulations, policies, practices, and procedures of the City’s Local Coastal Program. but the ordinance does not adequately address review of potential impacts to coastal resources or include an alternatives analysis. In addition, it does not require that the least environmentally damaging feasible alternative be implemented, nor does it require that if impacts are unavoidable, feasible mitigation has to be provided consistent with the certified LCP.~~

~~A project located in the coastal zone which requests land use and zoning 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 feasible alternative with the least impacts to coastal resources. And, finally, a request for reasonable accommodation should also identify and include feasible mitigation for any unavoidable impacts the project would create. As previously discussed, the City has included language in Sections 21.87.030 and 21.87.050 of the proposed ordinance that reaffirms the issuance coastal development permit is still necessary; and, thus, it is at that time that adequate alternatives analysis will be accomplished. Additionally, Section 21.87.060 also requires that the request for reasonable accommodations will not require fundamental alteration in the nature of the City’s certified LCP.~~

~~That being said, the procedure for reviewing and granting reasonable accommodations is still not clearly described. The Commission is therefore suggesting ~~three~~ five modifications to the City’s proposed amendment. The overarching intent of these modifications is to clearly identify that the approval of reasonable accommodations may also require review and issuance of a coastal development permit. To that end, two suggested modifications were included to address the projects *consistency* with the City’s LCP and three modifications have been included to highlight to clarify the *process* for approving a coastal development permit for any reasonable accommodation proposal.~~

~~Suggested modifications (Nos. 2 and 4 respectively) modify the City’s language to include 1) the requirement for any applicant to provide, as a component of their reasonable accommodation application, an assessment prepared by a qualified professional, which would include identification of any impacts to coastal resources, an alternatives analysis minimizing the identified impacts, and proposed mitigation should the impacts be unavoidable. Suggested modification (No. 4) requires that the City find, when reviewing a specific reasonable accommodation application, that the proposed development has been sited in order to eliminate or minimize any impacts to coastal resources, that the feasible alternative implemented is the least environmentally~~

~~damaging alternative feasible; and, that all unavoidable impacts be mitigated consistent with the mitigation requirements of the City's certified LCP. With the inclusion of Suggested Modification Nos. 2 and 4, all coastal resources impacts will be minimized to the maximum extent feasible, and any unavoidable impacts will be adequately mitigated. It is only with the inclusion of these modifications that the proposed amendment can be found consistent with the City's LUP.~~

~~The remaining three modifications serve to clarify the coastal development permit process. To ensure maximum compliance with LCP policies when approving a reasonable accommodation, Suggested Modification No. 1 includes additional language that if a reasonable accommodation requires a deviation from an LCP policy then the City can only approve such a project so long as the requested deviation does not fundamentally alter the nature of the City's LCP. Suggested Modification No. 2 clarifies that an individual or any developer of housing for an individual with disabilities is obligated to comply with other applicable regulations not at issue in the requested accommodation. Suggested Modification No. 3 requires the applicant to include in any request for reasonable accommodation the regulation, policy or practice from which modification or exception is necessary and an explanation of how the application of such regulation, policy, etc. precludes reasonable accommodation. 3 require that a request for reasonable accommodation shall be processed concurrent with any other required discretionary approval. Finally Suggest Modification No. 5 clarifies that if the reasonable accommodation proposal also includes a coastal development permit, an appeal of the decision will also be governed by the appeal procedure for coastal development permits.~~

To conclude, the certified LUP requires that coastal resources such as public access and recreation, public views, and sensitive habitats; including wetlands, be protected. In this case, the City is proposing language that will make it clear to any applicant that if the proposed development is located in the coastal zone, the proposal will also have to be found consistent with the City's LCP, to the maximum degree feasible, and that any deviation from the LCP, in approving a reasonable accommodation, does not fundamentally alter the nature of the land use and zoning and building regulations, policies, practices, and procedures of the City's Local Coastal Program. 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 in addition to policies related to assuring that any proposed reasonable accommodation will be safe from potential flood, fire and geologic hazards.~~ Therefore, the Commission finds that, as modified, the proposed Implementation Plan amendment will be consistent with and adequate to carry out the provisions of the certified Land Use Plan (LUP).

6. Modify Part VI “Consistency with the California Environmental Quality Act (CEQA)” as follows:

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 a LCP submittal or, as in this case, a LCP amendment submittal, to find that the approval of the proposed LCP, or LCP, as amended, conforms to CEQA provisions, 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 alternative 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. §§ 13542(a), 13540(f), and 13555(b)). The Commission finds that approval of the proposed LCP amendment, as submitted, would result in significant impacts under the meaning of the California Environmental Quality Act. ~~Specifically, the proposed LCP amendment as proposed would result in potential impacts to public access/recreation, public views, sensitive habitat and wildlife, and could increase coastal hazard concerns such as safe geologic setbacks, flood, and fire.~~ However, with the inclusion of the suggested modifications, the revised zoning ordinance would not result in significant impacts to the environment within the meaning of the California Environmental Quality Act. Therefore, the Commission finds that approval of the LCP amendment will not result in any significant adverse environmental impacts.



CITY OF
CARLSBAD

Planning Division

www.carlsbadca.gov

September 27, 2012

Sherilyn Sarb, Deputy Director
California Coastal Commission, San Diego Coast District
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108

SUBJECT: CITY OF CARLSBAD LCP AMENDMENT NO. CAR-MAJ-2-11A – REQUESTED CHANGES

Dear Ms. Sarb:

City staff has reviewed the September 20, 2012, staff report prepared for the above item, which is scheduled for Coastal Commission review October 11, 2012. We appreciate the opportunity to both review the staff report and provide comments.

Based on our review, we request the following changes, all of which affect Part III, Suggested Modifications. Due to the shortness of time, the recommended changes are shown handwritten on the attached portion of the staff report copy. Also attached is Ordinance CS-125, the city's adopted Reasonable Accommodation standards.

The requested changes by city staff bear explanation, as noted below.

1. Suggested modification 1 (Modify Section 21.87.030 – "Applicability"). On page 6, subsection C should be rewritten as shown to make it clearer.
2. Suggested modification 2 (Modify Section 21.87.040 – "Request for reasonable accommodation"). At the top of staff report page 7, part of the suggested modification requires an assessment prepared by a "qualified professional." As written, it would apply to all reasonable accommodation requests, whether inside or outside the Coastal Zone. Additionally, we believe this requirement would be unnecessary in most cases and thus overly burdensome for the applicant and the city. Based on experience, city staff anticipates processing very few reasonable accommodations; those that are will likely affect existing homes, be proposed by homeowners, and be minor in nature (e.g., a ramp to provide access to the front door). Moreover, a reasonable accommodation request does not necessarily run with the land (see Section 21.87.030 E.).

The Reasonable Accommodations standards (Section 21.87.060 D) already adopted by the city contain this finding (emphasis added):

The requested accommodation would not require a fundamental alteration in the nature of the city's land use and zoning and building regulations, policies, practices, and procedures, and for housing in the Coastal Zone, the city's Local Coastal Program.

We believe this finding adequately ensures compliance with Coastal Act provisions. Therefore, we believe the majority of Suggested Modification 2 as the attached page shows is unnecessary and should be deleted.

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Moreover, city staff notes the September 13, 2012, Coastal Commission approval of Port Hueneme's reasonable accommodation ordinance (LCPA MAJ-1-12) lacks the three additional findings recommended in the suggested modification and instead contains a single, similar finding to that already existing in the Carlsbad ordinance; Port Hueneme's finding states (emphasis added):

The requested accommodation will not require a fundamental alteration of the zoning or building laws, policies, and/or other procedures of the City including those implementing the City's Local Coastal Program.

In fact, the staff report for LCPA MAJ-1-12 on page 5 notes:

Additionally, in consultation with Commission staff, the City has revised their originally proposed amendment in order to specifically add the requirement that reasonable accommodations in the Coastal Zone may only be granted if they do not fundamentally alter or conflict with any provision of the certified LCP.

Additionally, staff report page 9 states:

Further, the addition of procedures regarding reasonable accommodation measures for disabled or handicapped individuals...does not in any way reduce the adequacy of the IP in carrying out the provisions of the LUP, which include Chapter 3 Policies of the Coastal Act.

We believe the rationale applied to Port Hueneme's reasonable accommodation LCPA is also applicable in our case and that the City of Carlsbad's adopted reasonable accommodation procedures likewise do not reduce the adequacy of our IP in carrying out the provisions of the LUP, which include Chapter 3 Policies of the Coastal Act.

3. Suggested modification 3 (Modify Section 21.87.050 – "Review authority and procedure"). City staff recommends no changes to this section. We disagree with the suggested modification requiring concurrent review. We purposely wrote the ordinance to allow a reasonable accommodation request to be processed administratively and independent of any discretionary permit. This was done to avoid embarrassment to the disabled person which could have a chilling effect on their ability to require a reasonable accommodation. Public opposition may not be relevant where the law mandates a reasonable accommodation.

A May 15, 2001, California Attorney General letter (attached) advising cities to adopt reasonable accommodation procedures warns of problems that could arise if a request is processed as a discretionary permit (e.g., a variance or conditional use permit) versus a reasonable accommodation request. While not directly aimed at the issue of concurrent processing, the letter points out the pitfalls of inappropriate review that city staff believes could result if a request were processed with other permits:

Further, and perhaps even more important, it may well be that reliance on these alternative procedures [e.g., conditional use permit], with their different governing criteria, serves at least in some circumstances to encourage community opposition to projects involving desperately needed housing for the disabled. As you are well aware, opposition to such housing is often grounded on stereotypical assumptions about people with disabilities and apparently equally unfounded concerns about the impact of such homes on surrounding property values. Moreover, once triggered, it is difficult to quell. Yet this is the very type of opposition that, for example, the typical conditional use permit procedure, with its general health, safety, and welfare standard, would seem rather predictable to invite, whereas a procedure conducted

pursuant to the more focused criteria applicable to the reasonable accommodation determination would not.

Inasmuch as we expect most reasonable accommodation requests to be of such a nature as not to trigger a discretionary review (e.g., they would only need a building permit), it makes sense that the reasonable accommodation request be handled as a separate procedure. In cases where a reasonable accommodation request would also require other development permits (including a coastal development permit), granting the request would be conditioned upon approval of the other development permits, as provided in Section 21.87.0950. In this manner the Coastal Commission can be assured that coastal resources will be adequately protected.

Furthermore, city staff notes the September 2012 Coastal Commission approval of Port Hueneme's reasonable accommodation ordinance did not contain a requirement for concurrent review.

4. Suggested modification 4 (Modify Section 21.87.060 – "Required Findings"). Because of the existing finding already in place that ensures a reasonable accommodations request substantially complies with Local Coastal Program requirements (see item 2 above), the addition of findings D, E, and F are unnecessary.

Additionally, proposed finding G (originally finding D) needs correction as it lacks important Coastal plan compliance language already approved by the City Council. (Note that this comment was previously emailed to Coastal Program Analyst Toni Ross on September 25, 2012.)

5. Suggested modification 5 (Modify Section 21.87.070 – "Effective date of order – appeal of decision"). The suggested modification to add "and 21.80" should be stricken. This section contains appeal requirements for coastal development permits, which would not be applicable to an appeal of a reasonable accommodations request. The section already referenced, 21.54, is correct and adequate. (Note that this comment also was previously emailed to Toni Ross on September 25, 2012.)

Please contact me with any questions at (760) 602-4618 or scott.donnell@carlsbadca.gov.

Sincerely,

Signature on File

SCOTT DONNELL

Senior Planner

Enclosures

- c: Toni Ross, Coastal Program Analyst, California Coastal Commission, San Diego Coast District, 7575 Metropolitan Drive, Suite 103, San Diego, CA 92108
Jane Mobaldi, Assistant City Attorney
Gary Barberio, Community and Economic Development Director
Don Neu, Planning Director
David de Cordova, Principal Planner

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**RESOLUTION TO CERTIFY THE IMPLEMENTATION PROGRAM
AMENDMENT WITH SUGGESTED MODIFICATIONS:**

The Commission hereby certifies the Implementation Program Amendment for the City of Carlsbad 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 carryout the certified Land Use Plan. 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 MODIFICATIONS

Staff recommends the following suggested revisions 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. Modify Section 21.87.030 – “Applicability” as follows:

- A. A request for reasonable accommodation may be made by any individual with a disability, his or her representative, or a developer or provider of housing for individuals with disabilities, when the application of a land use, zoning or building regulation, policy, practice or procedure acts as a barrier to housing opportunities.
- B. A request for reasonable accommodation may include a modification or exception to the rules, standards, development and use of housing-related facilities that would eliminate regulatory barriers and provide a person with a disability equal opportunity to the housing of their choice.
- C. A request for reasonable accommodation in regulations, policies, practices and procedures may be filed at any time that the accommodation may be necessary to ensure equal access to housing. A reasonable accommodation does not affect ~~on~~ the obligations of an individual ~~or developer of housing for an individual with disabilities~~ obligations to comply with other applicable regulations not at issue in the requested accommodation.

2. Modify Section 21.87.040 – “Request for reasonable accommodation” as follows:

- A. Application for a request for reasonable accommodation shall be made in writing on a form provided by the planning director. The form shall be signed by the property owner or authorized agent. The application shall state fully the circumstances and conditions relied upon as grounds for the application and shall be accompanied by

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adequate plans and all other materials as specified by the planning director. The application shall include the zoning, land use or building code provision, regulation, policy or practice from which modification or exception for 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. In addition, the application shall include an assessment, prepared by a qualified professional, of the potential adverse impacts to wetlands, environmentally sensitive habitat areas, public access, public views, and/or hazards such as geologic, flood and fire. The assessment shall also include a detailed feasible alternatives analysis and proposed feasible mitigation measures if unavoidable impacts are identified.

} delete

- B. Proof of applicable disability shall be provided in the form of a note from a medical doctor or other third party professional documentation deemed acceptable to the planning director.
 - C. Any information identified by an applicant as confidential shall be retained in a manner so as to respect the privacy rights of the applicant and shall not be made available for public inspection.
 - D. If an individual needs assistance in making the application for reasonable accommodation, the city will provide assistance to ensure the process is accessible.
3. Modify Section 21.87.050 – “Review authority and procedure” as follows:

A. Request for reasonable accommodation may be approved or conditionally approved by the planning director and shall be processed independent of concurrent with any other required discretionary approval (including but not limited to, Conditional Use Permit, Coastal Development Permit, Design Review, Variance, General Plan Amendment, Zone change, etc.). development permits. However, approval of a reasonable accommodation may be conditioned upon approval of other related permits.

} Restore original wording

4. Modify Section 21.87.060 – “Required Findings” as follows:

- A. The housing, which is the subject of the request for reasonable accommodation, will be occupied by an individual with a disability protected under fair housing laws;
- B. The requested accommodation is necessary to make housing available to an individual with a disability protected under the fair housing laws;
- C. The requested accommodation would not impose an undue financial or administrative burden on the city;

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~~D. The requested accommodation would eliminate or minimize impacts on wetlands, environmentally sensitive habitat areas, public access, public views and/or hazards to the maximum extent feasible, as documented in a detailed alternatives analysis;~~

~~E. The alternative to be implemented is the least environmentally damaging feasible alternative;~~

~~F. If any impacts to wetlands, environmentally sensitive habitat areas, public access, public views or hazards associated with the accommodation are unavoidable, feasible mitigation for all unavoidable impacts have been included consistent with the City's Local Coastal Program;~~

delete

D.G. The requested accommodation would not require a fundamental alteration in the nature of the city's land use and zoning and building regulations, policies, practices, and procedures and for housing in the Coastal Zone, the City's Local Coastal Program

E.H. The requested accommodation would not result in a detriment to the surrounding uses or character of the surrounding neighborhood.

5. Modify Section 21.87.070 – Effective Date of Order – appeal of decision as follows:

Effective date of order – appeal of decision.

A. The effective date of the planning director's decision and method for appeal of such decision shall be governed by Sections 21.54 and 21.80 of this title...

PART IV. FINDINGS FOR REJECTION OF THE CITY OF CARLSBAD IMPLEMENTATION PLAN AMENDMENT, AS SUBMITTED

A. AMENDMENT DESCRIPTION

The proposed LCP amendment includes changes to the City's Implementation Plan only. The amendment incorporates a new chapter (Chapter 21.87 – Reasonable Accommodation) into the City's certified implementation plan. This new chapter establishes procedures and regulations governing requests for reasonable accommodations by people with disabilities.

Specifically, Chapter 21.87 includes: 1) a description of the purpose and intent of the reasonable accommodation zoning chapter; 2) definitions commonly associated with reasonable accommodations; 3) the applicability of reasonable accommodations; 4) a list of what's necessary to request a reasonable accommodation; 5) the identification of the review authority and procedure to review such requests; 6) the findings necessary to approve a reasonable accommodation; and, 7) lists the appeal procedures for any decision granting/denying a request for reasonable accommodations.

16

ORDINANCE NO. CS-125

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARLSBAD, CALIFORNIA, APPROVING A ZONE CODE AMENDMENT TO ADD AND ENACT CHAPTER 21.87 - REASONABLE ACCOMMODATION OF THE ZONING ORDINANCE.

CASE NAME: REASONABLE ACCOMMODATION

CASE NO.: ZCA 10-06

The City Council of the City of Carlsbad, California, does ordain as follows:

SECTION I: That the list of Chapters contained in Title 21 of the Carlsbad Municipal Code is amended to add the following chapter in numerical order:

21.87 Reasonable Accommodation

SECTION II: That Chapter 21.87 of the Carlsbad Municipal Code is added and enacted to read as follows:

Chapter 21.87

REASONABLE ACCOMMODATION

Sections:

- 21.87.010 Purpose and Intent.**
- 21.87.020 Definitions.**
- 21.87.030 Applicability.**
- 21.87.040 Request for reasonable accommodation.**
- 21.87.050 Review authority and procedure.**
- 21.87.060 Required findings.**
- 21.87.070 Effective date of order - appeal of decision.**

21.87.010 Purpose and Intent

A. The purpose and intent of this chapter is as follows:

1. To provide individuals with disabilities reasonable accommodation in land use and zoning and building regulations, policies, practices, and procedures to provide equal opportunity to use and enjoy housing and facilitate the development of housing for individuals with disabilities pursuant to the federal Fair Housing Amendments Act of 1988 and the California Fair Employment and Housing Act (hereafter "fair housing laws").

2. To establish a procedure for making requests for reasonable accommodation in land use, zoning and building regulations, policies, practices and procedures of the city to comply fully with the intent and purpose of fair housing laws.

3. To establish findings that ensure a requested accommodation, if granted, is necessary and reasonable, and would not require a fundamental alteration in the nature of the city's land use and zoning and building regulations, policies, practices, and procedures.

21.87.020 Definitions.

A. For the purposes of this chapter, the terms used in this chapter relating to the provisions of reasonable accommodation are defined as follows:

1. "Individual with a disability" means someone who has a physical or mental impairment that limits one or more major life activities; anyone who is regarded as having such impairment; or anyone with a record of such impairment. This section is intended to apply to those persons who are defined as disabled under the fair housing laws.

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1 2. "Reasonable accommodation" means, in the land use and zoning context,
2 providing individuals with disabilities or developers of housing for people with disabilities: (1)
3 reasonable, necessary, or feasible flexibility in the application of land use and zoning and
4 building regulations, policies, practices and procedures, or (2) the waiver of certain
5 requirements when it is necessary to provide equal opportunity to use and enjoy housing and/or
6 eliminate barriers to housing opportunities.

7 **21.87.030 Applicability**

8 A. A request for reasonable accommodation may be made by any individual with a
9 disability, his or her representative, or a developer or provider of housing for individuals with
10 disabilities, when the application of a land use, zoning or building regulation, policy, practice or
11 procedure acts as a barrier to housing opportunities.

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

16 C. A request for reasonable accommodation in regulations, policies, practices and
17 procedures may be filed at any time that the accommodation may be necessary to ensure equal
18 access to housing. A reasonable accommodation does not affect an individual's obligations to
19 comply with other applicable regulations not at issue in the requested accommodation.

20 D. Requests for reasonable accommodation shall be made in the manner
21 prescribed by Section 21.87.040 of this chapter.

22 E. If a request for reasonable accommodation is granted, the request shall be
23 granted to an individual and shall not run with the land unless it is determined that (1) the
24 modification is physically integrated into the residential structure and cannot easily be removed
25 or altered to comply with applicable city or state codes or (2) the accommodation is to be used
26 by another individual with a disability.

27 F. Nothing in this ordinance shall require the city to waive or reduce development or
28 building fees associated with the granting of a reasonable accommodation request.

21.87.040 Request for reasonable accommodation.

 A. Application for a request for reasonable accommodation shall be made in writing
 on a form provided by the planning director. The form shall be signed by the property owner or
 authorized agent. The application shall state fully the circumstances and conditions relied upon
 as grounds for the application and shall be accompanied by adequate plans and all other
 materials as specified by the planning director.

 B. Proof of applicable disability shall be provided in the form of a note from a
 medical doctor or other third party professional documentation deemed acceptable to the
 planning director.

 C. Any information identified by an applicant as confidential shall be retained in a
 manner so as to respect the privacy rights of the applicant and shall not be made available for
 public inspection.

 D. If an individual needs assistance in making the application for reasonable
 accommodation, the city will provide assistance to ensure the process is accessible.

21.87.050 Review authority and procedure.

 A. A request for reasonable accommodation may be approved or conditionally
 approved by the planning director and shall be processed independently of any other required
 development permits. However, approval of a reasonable accommodation may be conditioned
 upon approval of other related permits.

 B. The filing of an application for request for reasonable accommodation shall not
 require public notice.

1 C. If necessary to reach a determination on the request for reasonable
accommodation, the planning director may request:

2 1. Further information from the applicant consistent with fair housing laws,
specifying in detail the information that is required.

3 2. Information from other city departments and divisions or other agencies.

4 D. Conditions may be imposed to ensure that any removable structures or physical
design features that are constructed or installed in association with the reasonable
accommodation be removed once those structures or physical design features are unnecessary
5 to provide access to the dwelling unit for the current occupants.

6 **21.87.060 Required findings.**

7 A. The housing, which is the subject of the request for reasonable accommodation,
will be occupied by an individual with a disability protected under fair housing laws;

8 B. The requested accommodation is necessary to make housing available to an
individual with a disability protected under the fair housing laws;

9 C. The requested accommodation would not impose an undue financial or
administrative burden on the city;

10 D. The requested accommodation would not require a fundamental alteration in the
nature of the city's land use and zoning and building regulations, policies, practices, and
procedures, and for housing in the Coastal Zone, the city's Local Coastal Program.

11 **21.87.070 Effective date of order – appeal of decision.**

12 A. The effective date of the planning director's decision and method for appeal of
such decision shall be governed by Section 21.54 of this title.

13 B. Nothing in this procedure shall require the planning director to disclose any
information provided to support the request for reasonable accommodation which, in the opinion
14 of the city attorney, would violate State or Federal privacy rights of the individual with a
disability.

15 C. Nothing in the procedure shall preclude an aggrieved individual from seeking any
other state or federal remedy available.

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17 EFFECTIVE DATE: This ordinance shall be effective thirty days after its
18 adoption, and the City Clerk shall certify to the adoption of this ordinance and cause it to be
19 published at least once in a publication of general circulation in the City of Carlsbad within
20 fifteen days after its adoption. Notwithstanding the preceding, this ordinance shall not be
21 effective until approved by the California Coastal Commission.

22 INTRODUCED AND FIRST READ at a regular meeting of the Carlsbad City
23 Council on the 22nd day of March 2011, and thereafter.

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PASSED, APPROVED AND ADOPTED at a Regular Meeting of the City Council of the City of Carlsbad on the 5th day of April 2011 by the following vote to wit:

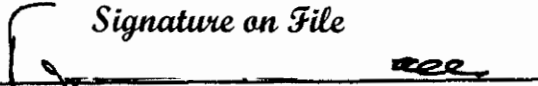
AYES: Council Members Hall, Kulchin, Blackburn, Douglas, Packard.

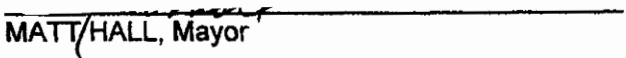
NOES: None.


ABSENT: None.

ABSTAIN: None.

APPROVED AS TO FORM AND LEGALITY

Signature on File

RONALD R. BALL, City Attorney

Signature on File

MATT HALL, Mayor

ATTEST:
Signature on File

LORRAINE M. WOOD, City Clerk



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STATE OF CALIFORNIA
OFFICE OF THE ATTORNEY GENERAL
BILL LOCKYER
ATTORNEY GENERAL

May 15, 2001

RE: Adoption of A Reasonable Accommodation Procedure

Dear

Both the federal Fair Housing Act ("FHA") and the California Fair Employment and Housing Act ("FEHA") impose an affirmative duty on local governments to make reasonable accommodations (*i.e.*, modifications or exceptions) in their zoning laws and other land use regulations and practices when such accommodations "may be necessary to afford" disabled persons "an equal opportunity to use and enjoy a dwelling." (42 U.S.C. § 3604(f)(3)(B); see also Gov. Code, §§ 12927(c)(1), 12955(l).)¹ Although this mandate has been in existence for some years now, it is our understanding that only two or three local jurisdictions in California provide a process specifically designed for people with disabilities and other eligible persons to utilize in making such requests. In my capacity as Attorney General of the State of California, I share responsibility for the enforcement of the FEHA's reasonable accommodations requirement with the Department of Fair Employment and Housing. Accordingly, I am writing to encourage your jurisdiction to adopt a procedure for handling such requests and to make its availability known within your community.²

¹ Title II of the Americans with Disabilities Act (42 U.S.C. §§ 12131-65) and section 504 of the Rehabilitation Act (29 U.S.C. § 794) have also been found to apply to zoning ordinances and to require local jurisdictions to make reasonable accommodations in their requirements in certain circumstances. (See *Bay Area Addiction Research v. City of Antioch* (9th Cir. 1999) 179 F.3d 725; see also 28 C.F.R. § 35.130(b)(7) (1997).)

² A similar appeal has been issued by the agencies responsible for enforcement of the FHA. (See Joint Statement of the Department of Justice and the Department of Housing and Urban Development, *Group Homes, Local Land Use and the Fair Housing Act* (Aug. 18, 1999), p. 4, at <<http://www.bazelton.org/cpfha/cpfha.html>> [as of February 27, 2001].)

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It is becoming increasingly important that a process be made available for handling such requests that operates promptly and efficiently. A report issued in 1999 by the California Independent Living Council makes it abundantly clear that the need for accessible and affordable housing for Californians with disabilities will increase significantly over the course of the present decade.³ The report's major findings include the following:

- Between 1999 and 2010, the number of Californians with some form of physical or psychological disability is expected to increase by at least 19 percent, from approximately 6.6 million to 7.8 million, and may rise as high as 11.2 million. The number with severe disabilities is expected to increase at approximately the same rate, from 3.1 million to 3.7 million, and may reach 6.3 million.⁴ Further, most of this increase will likely be concentrated in California's nine largest counties.⁵
- If the percentages of this population who live in community settings—that is, in private homes or apartments (roughly 66.4 percent) and group homes (approximately 10.8 percent)—is to be maintained, there will have to be a substantial expansion in the stock of suitable housing in the next decade. The projected growth of this population translates into a need to accommodate an additional 800,000 to 3.1 million people with disabilities in affordable and accessible private residences or apartments and an additional 100,000 to 500,000 in group homes.

I recognize that many jurisdictions currently handle requests by people with disabilities for relief from the strict terms of their zoning ordinances pursuant to existing variance or conditional use permit procedures. I also recognize that several courts called upon to address the matter have concluded that requiring people with disabilities to utilize existing, non-

³See Tootelian & Gacdeke, *The Impact of Housing Availability, Accessibility, and Affordability On People With Disabilities* (April 1999) at <<http://www.calsilc.org/housing.html>> [as of February 27, 2001].

⁴The lower projections are based on the assumption that the percentage of California residents with disabilities will remain constant over time, at approximately 19 percent (i.e., one in every five) overall, with about 9.2 percent having severe disabilities. The higher figures, reflecting adjustments for the aging of the state's population and the higher proportion of the elderly who are disabled, assume that these percentages will increase to around 28 percent (i.e., one in every four) overall, with 16 percent having severe disabilities. (*Ibid.*)

⁵These are: Alameda, Contra Costa, Los Angeles, Orange, Riverside, Sacramento, San Bernardino, San Diego, and Santa Clara. (*Ibid.*)

May 15, 2001

Page 3

discriminatory procedures such as these is not of itself a violation of the FHA.⁶ Several considerations counsel against exclusive reliance on these alternative procedures, however.

Chief among these is the increased risk of wrongfully denying a disabled applicant's request for relief and incurring the consequent liability for monetary damages, penalties, attorneys' fees, and costs which violations of the state and federal fair housing laws often entail.⁷ This risk exists because the criteria for determining whether to grant a variance or conditional use permit typically differ from those which govern the determination whether a requested accommodation is reasonable within the meaning of the fair housing laws.⁸

Thus, municipalities relying upon these alternative procedures have found themselves in the position of having refused to approve a project as a result of considerations which, while sufficient to justify the refusal under the criteria applicable to grant of a variance or conditional use permit, were insufficient to justify the denial when judged in light of the fair housing laws' reasonable accommodations mandate. (See, e.g., *Hovson's Inc. v. Township of Brick* (3rd Cir. 1996) 89 F.3d 1096 (township found to have violated the FHA's reasonable accommodation mandate in refusing to grant a conditional use permit to allow construction of a nursing home in a "Rural Residential--Adult Community Zone" despite the fact that the denial was sustained by the state courts under applicable zoning criteria); *Trovato v. City of Manchester, N.H.* (D.N.H. 1997) 992 F.Supp. 493 (city which denied disabled applicants permission to build a paved parking space in front of their home because of their failure to meet state law requirements for a variance found to have violated the FHA's reasonable accommodation mandate).

⁶See, *U.S. v. Village of Palatine, Ill.* (7th Cir. 1994) 37 F.3d 1230, 1234; *Oxford House, Inc. v. City of Virginia Beach* (E.D.Va. 1993) 825 F.Supp. 1251, 1262; see generally Annot. (1998) 148 A.L.R. Fed. 1, 115-121, and later cases (2000 pocket supp.) p. 4.

⁷See 42 U.S.C. § 3604(f)(3)(B); Gov. Code, §§ 12987(a), 12989.3(f).

⁸Under the FHA, an accommodation is deemed "reasonable" so long as it does not impose "undue financial and administrative burdens" on the municipality or require a "fundamental alteration in the nature" of its zoning scheme. (See, e.g., *City of Edmonds v. Washington State Bldg. Code Council* (9th Cir. 1994) 18 F.3d 802, 806; *Turning Point, Inc. v. City of Caldwell* (9th Cir. 1996) 74 F.3d 941; *Hovsons, Inc. v. Township of Brick* (3rd Cir. 1996) 89 F.3d 1096, 1104; *Smith & Lee Associates, Inc. v. City of Taylor, Michigan* (6th Cir. 1996) 102 F.3d 781, 795; *Erdman v. City of Fort Atkinson* (7th Cir. 1996) 84 F.3d 960; *Shapiro v. Cadman Towers, Inc.* (2d Cir. 1995) 51 F.3d 328, 334; see also Gov. Code, § 12955.6 [explicitly declaring that the FEHA's housing discrimination provisions shall be construed to afford people with disabilities, among others, no lesser rights or remedies than the FHA].)

May 15, 2001

Page 4

Further, and perhaps even more importantly, it may well be that reliance on these alternative procedures, with their different governing criteria, serves at least in some circumstances to encourage community opposition to projects involving desperately needed housing for the disabled. As you are well aware, opposition to such housing is often grounded on stereotypical assumptions about people with disabilities and apparently equally unfounded concerns about the impact of such homes on surrounding property values.⁹ Moreover, once triggered, it is difficult to quell. Yet this is the very type of opposition that, for example, the typical conditional use permit procedure, with its general health, safety, and welfare standard, would seem rather predictably to invite, whereas a procedure conducted pursuant to the more focused criteria applicable to the reasonable accommodation determination would not.

For these reasons, I urge your jurisdiction to amend your zoning ordinances to include a procedure for handling requests for reasonable accommodation made pursuant to the fair housing laws. This task is not a burdensome one. Examples of reasonable accommodation ordinances are easily attainable from jurisdictions which have already taken this step¹⁰ and from various nonprofit groups which provide services to people with disabilities, among others.¹¹ It is, however, an important one. By taking this one, relatively simple step, you can help to ensure the inclusion in our communities of those among us who are disabled.

Sincerely,

(Signature on File

BILL LOCKYER
Attorney General

⁹Numerous studies support the conclusion that such concerns about property values are misplaced. (See Lauber, *A Real LULU: Zoning for Group Homes and Halfway Houses Under The Fair Housing Amendments Act of 1988* (Winter 1996) 29 J. Marshall L. Rev. 369, 384-385 & fn. 50 (reporting that there are more than fifty such studies, all of which found no effect on property values, even for the homes immediately adjacent).) A compendium of these studies, many of which also document the lack of any foundation for other commonly expressed fears about housing for people with disabilities, is available. (See Council of Planning Librarians, *There Goes the Neighborhood . . . A Summary of Studies Addressing the Most Often Expressed Fears about the Effects Of Group Homes on Neighborhoods in which They Are Placed* (Bibliography No. 259) (Apr. 1990).)

¹⁰ Within California, these include the cities of Long Beach and San Jose.

¹¹ Mental Health Advocacy Services, Inc., of Los Angeles for example, maintains a collection of reasonable accommodations ordinances, copies of which are available upon request.

CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
(619) 767-2370



September 20, 2012

Th24a

TO: COMMISSIONERS AND INTERESTED PERSONS

**FROM: SHERILYN SARB, DEPUTY DIRECTOR, SAN DIEGO COAST DISTRICT
DEBORAH LEE, DISTRICT MANAGER, SAN DIEGO COAST DISTRICT
TONI ROSS COASTAL PROGRAM ANALYST, SD COAST DISTRICT**

**SUBJECT: STAFF RECOMMENDATION ON CITY OF CARLSBAD LCP AMENDMENT
No. CAR-MAJ-2-11A (Reasonable Accommodation) for Commission Meeting of
October 10-12, 2012**

SYNOPSIS

The subject LCP implementation plan amendment was submitted and filed as complete on August 1, 2011. A one-year time extension was granted on September 15, 2011. As such, the last date for Commission action on this item is October 30, 2012. This is the first of two unrelated items submitted as LCP Amendment No. 2-11 to be heard by the Commission. The second item is LCP Amendment No. CAR-MAJ-2-11B (Prop D) and it is scheduled separately for this same hearing.

SUMMARY OF AMENDMENT REQUEST

Currently, in the City of Carlsbad, applications for reasonable accommodations have been processed by either the Planning or Building Division on a case-by-case basis. The City does not have a formalized procedure to review and approve or conditionally approve a reasonable accommodation request. During a recent review of the City's Housing Element by the Housing and Community Development Department (HCD), the Department requested that the City formalize its procedures. The subject LCP amendment is the City's response to this request. This LCP amendment proposes a new chapter, Chapter 21.87 – Reasonable Accommodation to the City's certified implementation plan, which establishes procedures and regulations governing requests for reasonable accommodations for people with disabilities. Specifically, this new chapter includes a description of the purpose and intent of the reasonable accommodation zoning chapter, definitions commonly associated with reasonable accommodations, the applicability of reasonable accommodations, a list of what's necessary to request a reasonable accommodation, identification of the review authority and the procedure to review such requests, the findings necessary to approve a reasonable accommodation, and lists the appeal procedures for any decision granting/denying a proposal for reasonable accommodations. This new chapter and its provisions will apply citywide.

SUMMARY OF STAFF RECOMMENDATION

The Commission can only reject such amendments where it can be shown that the amendment would be inconsistent with the certified Land Use Plan (LUP) and/or render the Implementation Program (IP) inadequate to carry out the LUP.

Staff recommends denial of the amendment as proposed, and then approval of the amendment with five suggested modifications. For the most part, the Commission is not chiefly concerned with the review and approval of a request for a reasonable accommodation as it relates to the threshold criteria of whether or not a requestor of a reasonable accommodation is medically qualified to make such a request. However, when the authorization of reasonable accommodations includes allowing flexibility in the City's application of land use, zoning, and building code regulations, the Commission does have an interest in assuring that any potential impacts to coastal resources be identified, feasible alternatives reviewed, the least environmentally damaging alternative implemented; and, if impacts to any coastal resources are determined to be unavoidable, the appropriate feasible mitigation is provided. Without the inclusion of this process, protection of coastal resources cannot be assured. Therefore, staff is recommending denial of the implementation plan as submitted, and then approval of the zoning amendment with five suggested modifications to address this concern.

The primary intent of the suggested modifications is to clarify that review of any proposed reasonable accommodation still needs to be found consistent with the policies and adhere to all the regulations included in the City's LCP unless it is demonstrated that reasonable accommodation would be precluded. As proposed by the City, the provisions do not require the applicant to identify any potential impacts to any coastal resources associated with a development proposal, nor does it require an alternatives analysis to be included in the proposal and the least environmentally damaging alternative to be implemented. The language also fails to require that, should impacts to coastal resources be unavoidable, appropriate feasible mitigation measures are included.

Without this type of review, the protection of coastal resources cannot be guaranteed, which is inconsistent with the underlying purpose of the City's certified LCP. The term "coastal resources" includes: visual or physical access to and along the coast; sensitive vegetation and wildlife; natural features of the coast such as bluffs, as well as the protection of existing structures from hazards such as flood, fire, and geologic stability; and, without adequate protection of these resources, the proposed amendment is inconsistent with numerous policies within the City's LCP. As such, staff is suggesting two modifications to the City's proposed language. Suggested modification #2 would require any applicant to provide, as a component of their reasonable accommodation application, an assessment prepared by a qualified professional, which would include identification of any impacts to coastal resources, an alternatives analysis minimizing the identified impacts, and proposed feasible mitigation should the impacts be unavoidable. Suggested modification #4 requires that the City find, when reviewing a specific reasonable accommodation application, that the proposed development has been sited in order to eliminate or minimize any impacts to coastal resources, that the alternative

implemented is the least environmentally damaging alternative feasible; and, that all unavoidable impacts be mitigated consistent with the mitigation requirements of the City's certified LCP.

Staff is also suggesting three additional modifications, including the following: (1) require that review of the reasonable accommodation request shall be done concurrently with any discretionary review, including a coastal development permit application (Suggested Modification No. 3); (2) clarify that if the reasonable accommodation proposal also includes a coastal development permit, an appeal of the decision will also be governed by the appeal procedure for coastal development permits (Suggested Modification No. 5); and (3) clarify that both an individual or any developer of housing for an individual with disabilities is obligated to comply with other applicable regulations not at issue in the requested accommodation (Suggested Modification No. 1).

The appropriate resolutions and motions begin on Page 5. The suggested modifications begin on Page 6. The findings for denial of the Implementation Plan Amendment as submitted begin on Page 8. The findings for approval of the plan, if modified, begin on Page 15.

ADDITIONAL INFORMATION

Further information on the City of Carlsbad LCP Amendment 2-11A may be obtained from Toni Ross, Coastal Planner, at (619) 767-2370.

PART I. OVERVIEW

A. LCP HISTORY

The City of Carlsbad's certified LCP contains six geographic segments as follows: Agua Hedionda, Mello I, Mello II, West Batiquitos Lagoon/Sammis Properties, East Batiquitos Lagoon/Hunt Properties, and Village Redevelopment. Pursuant to Sections 30170(f) and 30171 of the Public Resources Code, the Coastal Commission prepared and approved two portions of the LCP, the Mello I and II segments in 1980 and 1981, respectively. The West Batiquitos Lagoon/ Sammis Properties segment was certified in 1985. The East Batiquitos Lagoon/Hunt Properties segment was certified in 1988. The Village Redevelopment Area LCP was certified in 1988; the City has been issuing coastal development permits there since that time. On October 21, 1997, the City assumed permit jurisdiction and has been issuing coastal development permits for all segments except Agua Hedionda. The Agua Hedionda Lagoon LCP segment is a deferred certification area until an implementation plan for that segment is certified. This amendment modifies the City's Implementation Plan (IP) only.

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 City of Carlsbad LCPA No. 2-11A 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 Carlsbad 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 Plan. 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 City of Carlsbad LCPA No. 2-11A, 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 Carlsbad 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 carryout the certified Land Use Plan. 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 MODIFICATIONS

Staff recommends the following suggested revisions 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. Modify Section 21.87.030 – “Applicability” as follows:
 - A. A request for reasonable accommodation may be made by any individual with a disability, his or her representative, or a developer or provider of housing for individuals with disabilities, when the application of a land use, zoning or building regulation, policy, practice or procedure acts as a barrier to housing opportunities.
 - B. A request for reasonable accommodation may include a modification or exception to the rules, standards, development and use of housing-related facilities that would eliminate regulatory barriers and provide a person with a disability equal opportunity to the housing of their choice.
 - C. A request for reasonable accommodation in regulations, policies, practices and procedures may be filed at any time that the accommodation may be necessary to ensure equal access to housing. A reasonable accommodation does not affect an individual’s or developer of housing for an individual with disabilities obligations to comply with other applicable regulations not at issue in the requested accommodation.
2. Modify Section 21.87.040 – “Request for reasonable accommodation” as follows:
 - A. Application for a request for reasonable accommodation shall be made in writing on a form provided by the planning director. The form shall be signed by the property owner or authorized agent. The application shall state fully the circumstances and conditions relied upon as grounds for the application and shall be accompanied by

adequate plans and all other materials as specified by the planning director. The application shall include the zoning, land use or building code provision, regulation, policy or practice from which modification or exception for 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. In addition, the application shall include an assessment, prepared by a qualified professional, of the potential adverse impacts to wetlands, environmentally sensitive habitat areas, public access, public views, and/or hazards such as geologic, flood and fire. The assessment shall also include a detailed feasible alternatives analysis and proposed feasible mitigation measures if unavoidable impacts are identified.

B. Proof of applicable disability shall be provided in the form of a note from a medical doctor or other third party professional documentation deemed acceptable to the planning director.

C. Any information identified by an applicant as confidential shall be retained in a manner so as to respect the privacy rights of the applicant and shall not be made available for public inspection.

D. If an individual needs assistance in making the application for reasonable accommodation, the city will provide assistance to ensure the process is accessible.

3. Modify Section 21.87.050 – “Review authority and procedure” as follows:

A. Request for reasonable accommodation may be approved or conditionally approved by the planning director and shall be processed ~~independent of concurrent~~ with any other required discretionary approval (including but not limited to, Conditional Use Permit, Coastal Development Permit, Design Review, Variance, General Plan Amendment, Zone change, etc.). development permits. However, ~~approval~~ of a reasonable accommodation may be conditioned upon approval of other related permits.

4. Modify Section 21.87.060 – “Required Findings” as follows:

A. The housing, which is the subject of the request for reasonable accommodation, will be occupied by an individual with a disability protected under fair housing laws;

B. The requested accommodation is necessary to make housing available to an individual with a disability protected under the fair housing laws;

C. The requested accommodation would not impose an undue financial or administrative burden on the city;

D. The requested accommodation would eliminate or minimize impacts on wetlands, environmentally sensitive habitat areas, public access, public views and/or hazards to the maximum extent feasible, as documented in a detailed alternatives analysis;

E. The alternative to be implemented is the least environmentally damaging feasible alternative;

F. If any impacts to wetlands, environmentally sensitive habitat areas, public access, public views or hazards associated with the accommodation are unavoidable, feasible mitigation for all unavoidable impacts have been included consistent with the City's Local Coastal Program;

~~D.G.~~ The requested accommodation would not require a fundamental alteration in the nature of the city's land use and zoning and building regulations, policies, practices, and procedures; and

~~E.H.~~ The requested accommodation would not result in a detriment to the surrounding uses or character of the surrounding neighborhood.

5. Modify Section 21.87.070 – Effective Date of Order – appeal of decision as follows:

Effective date of order – appeal of decision.

A. The effective date of the planning director's decision and method for appeal of such decision shall be governed by Sections 21.54 and 21.80 of this title...

**PART IV. FINDINGS FOR REJECTION OF THE CITY OF CARLSBAD
IMPLEMENTATION PLAN AMENDMENT, AS SUBMITTED**

A. AMENDMENT DESCRIPTION

The proposed LCP amendment includes changes to the City's Implementation Plan only. The amendment incorporates a new chapter (Chapter 21.87 – Reasonable Accommodation) into the City's certified implementation plan. This new chapter establishes procedures and regulations governing requests for reasonable accommodations by people with disabilities.

Specifically, Chapter 21.87 includes: 1) a description of the purpose and intent of the reasonable accommodation zoning chapter; 2) definitions commonly associated with reasonable accommodations; 3) the applicability of reasonable accommodations; 4) a list of what's necessary to request a reasonable accommodation; 5) the identification of the review authority and procedure to review such requests; 6) the findings necessary to approve a reasonable accommodation; and, 7) lists the appeal procedures for any decision granting/denying a request for reasonable accommodations.

B. 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.

a) Purpose, Intent, and Major Provisions of the Ordinance.

The City's intent of the proposed new ordinance is to provide some flexibility in the application of land use, zoning, and building codes regulations, policies, practices, and procedures for project 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) that require cities to provide reasonable accommodations for people with disabilities.

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

The Commission can only reject such amendments where it can be shown that the amendment would be inconsistent with the certified Land Use Plan (LUP) and/or render the Implementation Program (IP) inadequate to carry out the LUP. In this case, the LUP includes the Mello I, Mello II, Agua Hedionda, Village Redevelopment Area, East Batiquitos Lagoon and West Batiquitos Lagoon LUP segments.

Many sections within the respective LUPs contain policies that address protection of public views, public access and recreation, sensitive habitat and wildlife, and reduction in potential flood, fire and geologic hazards. The addition of the City's proposed language raises several inconsistencies with the policies certified in the City's LUP. The most applicable policies are stated, wholly or in part, below:

c) Applicable Land Use Plan Policies.

Development Along the Shore

Policy 4-1 Coastal Erosion - Development Along the Shoreline

a. For all new development along the shoreline, including additions to existing development, a site-specific geological investigation and analysis similar to that required by the Coastal Commission's Geologic Stability and Blufftop Guidelines shall be required, for all permitted development, this report must demonstrate bluff stability for 75 years, or the expected lifetime of the structure, whichever is greater. Additionally, permitted development shall incorporate drought-resistant vegetation in landscaping, as well as adhering to the standards for erosion control contained in the City of Carlsbad Drainage Master Plan. A waiver of public liability shall be required for any permitted development for which an assurance of structural stability cannot be provided.

Policy 4-1 Coastal Erosion - III. Shoreline Structures

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply.

Policy 4-1 Coastal Erosion - Undevelopable Shoreline Features

No development shall be permitted on any sand or rock beach or on the face of any ocean bluff, with the exception of accessways to provide public beach access and of limited public recreation facilities.

Public Access

Policy 7-3 – Access Along the Shoreline

The City will cooperate with the state to ensure that lateral beach access is protected and enhanced to the maximum degree feasible, and will continue to formalize shoreline prescriptive rights. Irrevocable offers of dedication for lateral accessways between the mean high tide line and the base of the coastal bluffs, and vertical accessways where applicable, shall be required in new development consistent with Section 30212 of the California Coastal Act of 1976. There is evidence of historic public use adjacent to Buena Vista Lagoon. Paths crisscross the area near the railroads tracks to the ocean shoreline. Development shall provide access and protect such existing access consistent with the needs to protect the habitat.

Public Views

Mello II Policy 8-1- Site Development Review:

The Scenic Preservation Overlay Zone should be applied where necessary throughout the Carlsbad coastal zone to assure the maintenance of existing views and panoramas. Sites considered for development should undergo review to determine if the proposed development will obstruct views or otherwise damage the visual beauty of the area. The Planning Commission should enforce appropriate height limitations and see-through construction, as well as minimize alterations to topography.

Sensitive Habitat

3-1.2 Environmentally Sensitive Habitat Areas (ESHA)

Pursuant to Section 30240 of the California Coastal Act, environmentally sensitive habitat areas, as defined in Section 30107.5 of the Coastal Act, shall be protected

against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

3-1.3 Coastal Sage Scrub

Coastal Sage Scrub is a resource of particular importance to the ecosystems of the Coastal Zone, due in part to the presence of the Coastal California gnatcatcher (Federal Threatened) and other species. Properties containing Coastal Sage Scrub shall conserve a minimum 67% of the Coastal Sage Scrub and 75% of the gnatcatchers onsite, Conservation of gnatcatchers shall be determined in consultation with the wildlife agencies.

3-1.7 Wetlands

[...]

Wetlands shall be delineated following the definitions and boundary descriptions in Section 13577 of the California Code of Regulations.

Pursuant to California Public Resources Code Section 30233, no impacts to wetlands shall be allowed except as follows:

a. The diking, filling, or dredging of open coastal waters, wetlands, estuaries, and lakes shall be permitted in accordance with other applicable provisions of this division, where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and shall be limited to the following:

(1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.

(2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.

(3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.

(4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings

for public recreational piers that provide public access and recreational opportunities.

(5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intakes and outfall lines.

(6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.

(7) Restoration purposes.

(8) Nature study, aquaculture, or similar resource dependent activities...

3-1.8 Wetland Mitigation Requirements

If impacts to a wetland are allowed consistent with Policy 3-1.7, mitigation shall be provided at a ratio of 3:1 for riparian impacts and 4:1 for saltwater or freshwater wetland or marsh impacts.

3-1.9 No Net Loss of Habitat

There shall be no net loss of Coastal Sage Scrub, Maritime Succulent Scrub, Southern Maritime Chaparral, Southern Mixed Chaparral, Native Grassland, and Oak Woodland within the Coastal Zone of Carlsbad. Mitigation for impacts to any of these habitat types, when permitted, shall include a creation component that achieves the no net loss standard. Substantial restoration of highly degraded areas (where effective functions of the habitat type have been lost) may be substituted for creation subject to the consultation and concurrence of the U.S. Fish and Wildlife Service and the California Department of Fish and Game (wildlife agencies). The Coastal Commission shall be notified and provided an opportunity to comment upon proposed substitutions of substantial restoration for the required creation component. Development shall be consistent with Policy 3-1.2 of this section, unless proposed impacts are specifically identified in the HMP; these impacts shall be located to minimize impacts to Coastal Sage Scrub and maximize protection of the Coastal California gnatcatcher and its habitat.

d. Specific Findings for Denial.

The City of Carlsbad is proposing to amend its implementation plan to include a new chapter (Chapter 21.87) to formalize the process by which requests for reasonable accommodations are reviewed and approved. For the most part, the Commission is not chiefly concerned with the review and approval of a request for a reasonable accommodation as it relates to the threshold criteria of whether or not a requestor of a reasonable accommodation is medically qualified to make such a request. However, when the approval of reasonable accommodations includes flexibility in the City's application of land use, zoning, and building code regulations, the Commission does have

an interest in assuring that any potential impacts to coastal resources are avoided and/or minimized to the maximum extent feasible, if some impact is determined to be necessary. In order for such approvals to be found consistent with the City's LCP, all potential impacts need to be identified, feasible alternatives reviewed, and the least damaging feasible alternative implemented. Additionally, if impacts to any coastal resources are unavoidable, the appropriate feasible mitigation must be required. The City failed to include this process in its review for reasonable accommodations. Without this detailed review by the City, the proper protection of coastal resources cannot be assured.

The Commission realizes that the City and other regulated parties must, by federal law, make reasonable accommodations available as necessary to assure that structures are accessible by all people, including those with disabilities. The City's proposed language will allow flexibility such that if land use restrictions preclude or limit accessibility to people with disabilities, the restrictions will not be imposed. However, the proposed language does not clearly address how the flexibility or complete removal of development restrictions will be approved should those improvements result in impacts to coastal resources. As is reflected in the City's certified LUP policies cited above, the City's certified LUP places high value on maximizing public access and recreation, protecting and enhancing public views, protecting natural habitats and wildlife, and protecting structures from geologic, flood and fire hazards. Additionally, these policies require that impacts to coastal resources be minimized to the maximum extent feasible and require feasible mitigation for any unavoidable impacts.

The Commission further recognizes that such impacts may be necessary to provide accessibility to those with disabilities, again, as required by federal law. However, if there is a feasible alternative that accomplishes the goals of accessibility without impacting coastal resources, that should be the alternative implemented. If there are no feasible alternatives that eliminate impacts to coastal resources, then the *least environmentally impacting* feasible alternative should be the alternative implemented. Federal law addressing reasonable accommodations for people with disabilities does not expressly prohibit the consideration of a project's environmental impacts in its project review nor does it prohibit requiring an applicant to construct a feasible project alternative that would avoid or minimize environmental impacts. Finally, for projects where impacts are unavoidable, the federal law does not prohibit requiring feasible mitigation measures for such impacts.

To provide illustrative examples, without inclusion of the above stated process (impacts identified, feasible alternatives reviewed, impacts minimized, feasible mitigation provided), a proposal may be approved on a coastal bluff that is not safely sited or located in an area that would result in obstructing expansive public views to and along the ocean and scenic coastal areas, when a feasible alternative location that has a more appropriate geologic setback or does not provide such a view impact was overlooked. The siting of development can also result in development located on a portion of a lot that contains sensitive habitat or wetlands. All of these scenarios could be avoided if a proper alternatives analysis was required. Finally, the City could approve a development without the imposition of feasible mitigation measures for such impacts. As previously

stated, the City's proposed amendment does not clearly include the review of potential impacts and potential feasible alternatives, nor does it require feasible mitigation for unavoidable impacts. Absent these measures, coastal resource protection is not maximized.

Additionally, the City failed to clarify how the coastal development permit process is incorporated into approval of reasonable accommodation proposals. The coastal development permit process is the time when the City would review the project for consistency with the City's LCP. If this process is not clearly identified, there is potential that the City may approve a proposal that is not consistent with its LCP. Without detailed review of all potential impacts to coastal resources or clear inclusion of the coastal development permit process, the proposed amendment cannot be found consistent with the City's LCP, and; therefore shall be denied as submitted.

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

As proposed, the City's language allows for flexibility in application of land use and zoning standards, policies and regulations in order to provide for reasonable accommodation in development intended for people with disabilities, but the ordinance does not adequately address review of potential impacts to coastal resources or include an alternatives analysis. In addition, it does not require that the least environmentally damaging feasible alternative be implemented, nor does it require that if impacts are unavoidable, feasible mitigation has to be provided consistent with the certified LCP.

A project located in the coastal zone which requests land use and zoning 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 feasible alternative with the least impacts to coastal resources. And, finally, a request for reasonable accommodation should also identify and include feasible mitigation for any unavoidable impacts the project would create.

The Commission is therefore suggesting five modifications to the City's proposed amendment. The overarching intent of these modifications is to clearly identify that the approval of reasonable accommodations may also require review and issuance of a coastal development permit. To that end, two suggested modifications were included to address the projects *consistency* with the City's LCP and three modifications have been included to highlight the *process* for approving a coastal development permit for any reasonable accommodation proposal.

Suggested modifications (Nos. 2 and 4 respectively) modify the City's language to include 1) the requirement for any applicant to provide, as a component of their reasonable accommodation application, an assessment prepared by a qualified professional, which would include identification of any impacts to coastal resources, an

alternatives analysis minimizing the identified impacts, and proposed mitigation should the impacts be unavoidable. Suggested modification (No. 4) requires that the City find, when reviewing a specific reasonable accommodation application, that the proposed development has been sited in order to eliminate or minimize any impacts to coastal resources, that the feasible alternative implemented is the least environmentally damaging alternative feasible; and, that all unavoidable impacts be mitigated consistent with the mitigation requirements of the City's certified LCP. With the inclusion of Suggested Modification Nos. 2 and 4, all coastal resources impacts will be minimized to the maximum extent feasible, and any unavoidable impacts will be adequately mitigated. It is only with the inclusion of these modifications that the proposed amendment can be found consistent with the City's LUP.

The remaining three modifications serve to clarify the coastal development permit process. Suggested Modification No. 1 clarifies that an individual or any developer of housing for an individual with disabilities is obligated to comply with other applicable regulations not at issue in the requested accommodation. Suggested Modification No. 3 requires that a request for reasonable accommodation shall be processed concurrent with any other required discretionary approval. Finally Suggest Modification No. 5 clarifies that if the reasonable accommodation proposal also includes a coastal development permit, an appeal of the decision will also be governed by the appeal procedure for coastal development permits.

To conclude, 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 in addition to policies related to assuring that any proposed reasonable accommodation will be safe from potential flood, fire and geologic hazards. Therefore, the Commission finds that, as modified, the proposed Implementation Plan amendment will be consistent with and adequate to carry out the provisions of the certified Land Use Plan (LUP).

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 a LCP submittal or, as in this case, a LCP amendment submittal, to find that the approval of the proposed LCP, or LCP, as

amended, conforms to CEQA provisions, 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 alternative 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. §§ 13542(a), 13540(f), and 13555(b)). The Commission finds that approval of the proposed LCP amendment, as submitted, would result in significant impacts under the meaning of the California Environmental Quality Act. Specifically, the proposed LCP amendment as proposed would result in potential impacts to public access/recreation, public views, sensitive habitat and wildlife, and could increase coastal hazard concerns such as safe geologic setbacks, flood, and fire. However, with the inclusion of the suggested modifications, the revised zoning ordinance would not result in significant impacts to the environment within the meaning of the California Environmental Quality Act. Therefore, the Commission finds that approval of the LCP amendment will not result in any significant adverse environmental impacts.