

CALIFORNIA COASTAL COMMISSION

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Prepared September 18, 2014 for October 10, 2014 Hearing

To: Commissioners and Interested Persons
From: Susan Craig, District Manager
Kevin Kahn, District Supervisor, LCP Planning
Subject: **De Minimis Amendment Determination for San Luis Obispo County LCP
Amendment Number LCP-3-SLO-14-0829-2 (Reasonable Accommodations)**

San Luis Obispo County's Proposed Amendment

The County of San Luis Obispo is proposing to modify the Local Coastal Program (LCP) Implementation Plan (IP) to add new IP Section 23.01.046 designed to provide a process by which persons with disabilities can request reasonable accommodation from the strict application of LCP standards if required to ensure equal access to housing. Typically, such accommodations involve such things as reducing the required front yard setback to allow construction of a ramp for wheelchair access. The reasonable accommodations ordinance differs from a typical variance ordinance in that it is not related to the configuration of the property per se, but rather to the needs of the disabled person in terms of his/her ability to use the residential stock of the County. The addition of this proposed amendment language would bring the County's LCP into compliance with applicable State and Federal laws. See Exhibit A for the text of proposed IP Section 23.01.046.

De Minimis LCP Amendment Determination

Pursuant to Coastal Act Section 30514(d), the Executive Director may determine that a proposed LCP amendment is "de minimis." In order to qualify as a de minimis amendment, the amendment must meet the following three criteria:

1. The Executive Director determines that the proposed amendment would have no impact, either individually or cumulatively, on coastal resources, and that it is consistent with the policies of Chapter 3;
2. The local government provides public notice of the proposed amendment at least 21 days prior to submitting the amendment to the Commission, by one of the following methods: posting on-site and off-site in the affected area, newspaper publication, or direct mailing to owners and occupants of contiguous property; and
3. The amendment does not propose any change in use of land or water or allowable use of property.

If the Executive Director determines that an amendment is de minimis, that determination must be reported to the Commission. If three or more commissioners object to the de minimis LCP amendment determination, then the amendment shall be set for a future public hearing; if three or more commissioners do not object to the de minimis determination, then the amendment is deemed approved, and it becomes a certified part of the LCP ten days after the date of the Commission meeting (in this case, on October 10, 2014).

The purpose of this notice is to advise interested parties of the Executive Director's determination that the proposed LCP amendment is de minimis. Each of the de minimis criteria is discussed briefly below:

- 1. No impact to coastal resources and consistency with Chapter 3 of the Coastal Act:** The Federal Fair Housing Act and the California Fair Employment and Housing Act prohibit discrimination against persons with disabilities, and require cities and counties to take affirmative action to eliminate regulations and practices that deny housing opportunities to persons with disabilities. Fair housing laws also require that cities and counties provide persons with disabilities flexibility in the application of land use, zoning, and building regulations, and related practices and procedures, by modifying or waiving certain requirements when it is necessary in order to eliminate barriers to housing. The proposed amendment would allow for the granting of minor modifications to LCP requirements to give persons with disabilities equal access to housing opportunities, including, for example, allowing for ramps within required building setbacks and/or a reduction in required off-street parking when the applicant's disability limits his/her ability to operate a vehicle. The reasonable accommodations process would take place during the course of any other required reviews/approvals engendered by any particular request (e.g., if a coastal permit or other planning permit/approval was also necessary).

Although the primary intent of the amendment is to comply with State and Federal laws related to reasonable accommodations, the proposed language has also taken into account the Coastal Act, and has been designed to ensure that any reasonable accommodations granted will not result in impacts to coastal resources. Specifically, proposed Section 23.01.046(d)(9) requires the reviewing authority to base its decision to grant a request for reasonable accommodations in part on the finding that "the requested accommodation will not negatively impact coastal resources." Further, the requested accommodation would have to be the minimum necessary to accommodate the needs of the individual, cannot allow a land use that is otherwise prohibited by the underlying land use and zoning district, and cannot require a fundamental alteration of County ordinances, including the LCP (see proposed Sections 23.01.046(d) and (e)). These types of measures are consistent with the way in which other cities and counties have addressed Coastal Act concerns when addressing reasonable accommodations, and are also consistent with language typically certified by the Commission for this purpose.

Thus, the proposed amendment will not adversely affect coastal resources, and it is consistent with the policies of Chapter 3 of the Coastal Act.

- 2. Provision of public notice:** The County provided public notice in advance of the Planning Commission hearing (held on April 10, 2014) and the Board of Supervisors hearing (held on June 17, 2014) where the proposed amendment was considered. For the Planning Commission hearing, a newspaper advertisement notice was printed on March 17, 2014. For the City Council hearing, a newspaper advertisement notice was printed on June 6, 2014. In addition, the proposed text was made available at the Department of Planning and Building's office and on the County's website for public inspection, all in advance of the County's hearings. In addition, notice of both the Planning Commission and Board of Supervisors public hearings was sent to affected agencies and interested persons. The amendment submittal was subsequently received by the Commission on September 5, 2014 (and filed as complete on September 5, 2014), and therefore, the 21-day noticing requirement has been satisfied.
- 3. No change in use of land or allowable use of property:** No change in use is proposed by this amendment.

California Environmental Quality Act (CEQA)

The Coastal Commission's review and development process for LCPs and LCP amendments has been certified by the Secretary of Resources as being the functional equivalent of the environmental review required by CEQA. The County exempted the proposed amendment from environmental review under CEQA. This report has discussed the relevant coastal resource issues with the proposal, and has concluded that the proposed LCP amendment is not expected to result in any significant adverse impact on the environment. Thus, it is unnecessary for the Commission to suggest modifications to the proposed amendment to address adverse environmental impacts because the proposed amendment, as submitted, will not result in any significant environmental effects for which feasible mitigation measures would be required.

Coastal Commission Concurrence

The Executive Director will report this de minimis LCP amendment determination, and any comments received on it, to the Coastal Commission at its October 10, 2014 meeting at City Hall, 100 Civic Center Drive, in Newport Beach. If you have any questions or need additional information regarding the proposed amendment or the method under which it is being processed, please contact Kevin Kahn at the Central Coast District Office in Santa Cruz. If you wish to comment on and/or object to the proposed de minimis LCP amendment determination, please do so by October 3, 2014.

Procedural Note - LCP Amendment Action Deadline

This proposed LCP amendment was filed as complete on September 5, 2014. It amends the IP only and the 60-day action deadline is November 4, 2014. Thus, unless the Commission extends the action deadline (it may be extended by up to one year), the Commission has until November 4, 2014 to take a final action on this LCP amendment.

Exhibit

Exhibit A: Proposed IP Section 23.01.046---Reasonable Accommodation Adjustment

ATTACHMENT B – LRP2013-00009

ORDINANCE NO. 3263

Planning Commission Recommended Draft April 10, 2013

AN ORDINANCE ADDING SECTION 23.01.046 TO THE COASTAL ZONE LAND USE ORDINANCE (CZLUO), TITLE 23 OF THE COUNTY CODE REFERRING TO REASONABLE ACCOMMODATIONS. THE PURPOSE OF THE AMENDMENTS IS TO PROVIDE INDIVIDUALS WITH DISABILITY FLEXIBILITY IN THE APPLICATION OF LAND USE REGULATIONS.

SECTION 1: Chapter 23.01 of the Coastal Zone Land Use Ordinance, Title 23 of the San Luis Obispo County Code, is hereby amended by adding new Section 23.01.046 as follows:

23.01.046 – Reasonable Accommodation Adjustment

- a. **Purpose.** The purpose of this section is to provide a procedure for an individual with a disability to seek a reasonable accommodation in the application of this Title to ensure equal access to housing and to facilitate the development of housing for individuals with disabilities as provided by the federal Fair Housing Amendments Act of 1988 and California's Fair Employment and Housing Act, herein known as the "Acts". Reasonable accommodation means providing an individual with a disability flexibility in the application of land use regulations, including modification or exception to the requirements for siting development when necessary to eliminate regulatory barriers.
- b. **Applicability.** Any person seeking approval to construct and/or modify residential housing and/or emergency shelters to allow for the accommodation by person(s) with disabilities, and/or operate residential care facilities, which will serve persons with disabilities, may apply for a reasonable accommodation adjustment.
- c. **Application filing.** An adjustment request shall be filed with the Department in the form of an attachment to the project application, with appropriate supporting materials including:
 - (1) The applicant's name, address and telephone number.
 - (2) Address of the property for which the request is being made.
 - (3) The current actual use of the property and how the property will be used by the individual protected under the Acts.
 - (4) The basis for the claim that the individual is considered disabled under the Acts.
 - (5) The provision, regulation or policy from which reasonable accommodation is being requested.
 - (6) Why the reasonable accommodation is necessary to make the specific property accessible to the individual.

d. **Review procedure.** The request shall specify the Coastal Zone Land Use Ordinance standard requested for adjustment, and document the manner in which the proposed project qualifies for the adjustment. A request for adjustment shall not be accepted for processing by the Department unless the request is within the range of adjustments prescribed by this Section. A request for adjustment shall be approved by the Director when the Director finds the following:

- (1) The housing, which is the subject of the request, will be used by an individual with a disability protected under the Acts
- (2) The request for reasonable accommodation is necessary to make specific housing available to an individual with a disability protected under the Acts.
- (3) The requested reasonable accommodation would not impose an undue financial or administrative burden on the County.
- (4) The requested reasonable accommodation would not require a fundamental alteration in the nature of County ordinances or general plan.
- (5) The requested reasonable accommodation would not waive a requirement for a land use permit building permit or encroachment permit when otherwise is required.
- (6) The requested reasonable accommodation will not result in approved uses that are otherwise prohibited by the County's ordinances and general plan.
- (7) If the Director grants, or grants with modifications, the adjustment, the adjustment shall be granted to an individual and shall not run with the land unless the Director also finds that the modification is physically integrated into the structure and cannot be easily removed or altered to comply with this Title.
- (8) The requested is limited to the minimum reasonable accommodation necessary to accommodate the needs of the individual protected under the Acts.
- (9) The reasonable accommodation will not negatively impact coastal resources.

e. **Reasonable accommodation adjustment.**

- (1) **Adjustments allowed.** Adjustments may include, but are not limited to:
 - i. setbacks and encroachments for ramps, handrails or other such accessibility improvements;
 - ii. hardscape additions such as widening driveways, parking areas or walkways that would not otherwise comply with landscaping or open space provisions;
 - iii. reduction of off-street parking where the disability clearly limits the number of people operating vehicles;
 - iv. tree removal; and building addition(s) necessary to afford the applicant and equal opportunity to use and enjoy a dwelling.

- (2) Adjustments prohibited. Adjustments may not include accommodations which would impose an undue financial or administrative burden on the County or require a fundamental alteration in the County's Ordinances or General Plan. A reasonable accommodation cannot waive a requirement for a land use permit, including a Coastal Development Permit, when one is otherwise required or result in approved uses otherwise prohibited by the County's Ordinances and General Plan.

f. Duration of reasonable accommodation.

- (1) The reasonable accommodation may continue to be used and maintained by the individual with a disability for the duration of his or her tenancy in the dwelling subject to the finding in Subsection D.7.
- (2) Within 60 days of the termination of the tenancy the reasonable accommodation shall be removed unless the Director has determined that the reasonable accommodation may remain as provided in Subsection D.7.

SECTION 2. That this project is covered by the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment. It can be seen with certainty that there is no possibility that this project may have a significant effect on the environment; therefore, the activity is not subject to CEQA. [Reference: State CEQA Guidelines sec. 15061(b)(3), General Rule Exemption].

SECTION 3. If any section, subsection, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, such decision shall not affect the validity or constitutionality of the remaining portion of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and each section, subsection, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

SECTION 4: The local coastal program is intended to be carried out in a manner fully in conformity with the Coastal Act.

SECTION 5: This amendment shall become operative automatically, pursuant to 14 California Code of Regulations Section 13551(b)(1), upon the certification without any modifications to said amendments by the California Coastal Commission and upon acknowledgement by the San Luis Obispo County Board of Supervisors of receipt of the Commission's resolution of certification pursuant to 14 California Code of Regulations Section 13544. In the event that the California Coastal Commission recommends modifications to said amendments, the amendments with modification shall be processed in accordance with Government Code Section 65350 et seq., before final local government adoption of the amendments with modifications suggested by the Coastal Commission pursuant to 14 California Code of Regulations Section 13551(b)(2), or before the Board of Supervisors resubmits, pursuant to Public Resources Code Sections 30512 and 30513, any additional amendments to satisfy the Commission's recommended changes.

PASSED AND ADOPTED by the Board of Supervisors of the County of San Luis Obispo, State of California, on the 17th day of June, 2014, by the following roll call vote, to wit:

AYES: Supervisors Chairperson Bruce S. Gibson, Frank R. Mecham, Adam Hill, Caren Ray, and Debbie Arnold

NOES: None

ABSENT: None

ABSTAINING: None

Bruce S. Gibson
Chairman of the Board of Supervisors,
County of San Luis Obispo,
State of California

ATTEST:

JULIE L. RODEWALD
County Clerk and Ex-Officio Clerk
of the Board of Supervisors
County of San Luis Obispo, State of California

By: Annette Ramirez
Deputy Clerk

[SEAL]

ORDINANCE CODE PROVISIONS APPROVED
AS TO FORM AND CODIFICATION:

RITA L. NEAL
County Counsel

By: /s/ Timothy McNulty
Assistant County Counsel

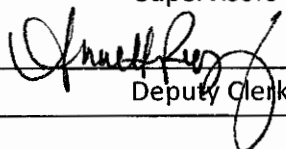
Dated: June 2, 2014

STATE OF CALIFORNIA) ss.
COUNTY OF SAN LUIS OBISPO)

I, JULIE L. RODEWALD, County Clerk of the above entitled County, and Ex-Officio Clerk of the Board of Supervisors thereof, do hereby certify the foregoing to be a full, true and correct copy of an order entered in the minutes of said Board of Supervisors, and now remaining of record in my office.

Witness, my hand and seal of said Board of Supervisors this 30th day of June, 2014.

JULIE L. RODEWALD,
County Clerk and Ex-Officio Clerk of the Board of
Supervisors

By: 
Deputy Clerk