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RECORD PACKET COPY

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March 21, 1996

TO: Commissioners and Interested Persons

FROM: Charles Damm, South Coast District Director
Teresa Henry, Assistant District Director
Meg Vaughn, Staff Analyst

SUBJECT: CITY OF HUNTINGTON BEACH LOCAL COASTAL PROGRAM AMENDMENT 1-95
Implementation Plan amendment effective throughout the City's coastal zone (for Commission action at the meeting of April 9-12, 1996, in Monterey).

SUMMARY OF AMENDMENT REQUEST:

Request by the City of Huntington Beach for Commission action on proposed Implementation Plan amendment 1-95 to the Huntington Beach certified Local Coastal Program. The amendment proposes to update the City's existing certified Implementation Plan by replacing most of it with the City's adopted Zoning and Subdivision Ordinance. A few of the existing Implementation Plan Articles will remain the same.

STANDARD OF REVIEW AND TIME LIMIT TO ACT

For the proposed Implementation Plan amendment, the standard of review pursuant to Section 30514 of the Coastal Act, shall be conformance with and adequacy to carry out the provisions of the certified Huntington Beach Land Use Plan. Proposed LCP amendment submittal 1-95 was deemed complete on March 10, 1995. Pursuant to Section 30517 of the Coastal Act and 13535(c) of the California Code of Regulations, the Commission at its meeting of May 9, 1995, extended the 60 day time limit for action on the Implementation Plan amendment for up to one year.

ADDITIONAL INFORMATION

Copies of the staff report are available at the South Coast District Office of the Coastal Commission. To obtain copies of the staff report by mail, or for additional information, contact Meg Vaughn at the above address and telephone number.

STAFF RECOMMENDATION

Staff is recommending denial of the Implementation Plan amendment as submitted due to its non conformity with and inadequacy to carry out the provisions of the certified Land Use Plan regarding public access, visitor serving uses, visual resources, and environmentally sensitive habitat area. Staff recommends approval of the Implementation Plan amendment submittal with suggested modifications which will bring the submittal into conformity with and adequate to carry out the provisions of the certified Land Use Plan.

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LIST OF EXHIBITS

- A. Submittal Resolution, Resolution No. 6661
- B. Ordinance No. 3254
- C. Ordinance No. 3258
- D. Resolution No. 96-25, Modifying Amendment 1-95 Submittal to Include Coastal Conservation District Article 969.7
- E. Zoning Map Cross Reference

APPENDICES

- Appendix A: Section 245.40 Guarantees of Public Access/Access Implementation
- Appendix B: Suggested Modifications to Chapter 245 Coastal Development Permit
- Appendix C: Article 969.7 Coastal Conservation District

EXECUTIVE SUMMARY

The proposed amendment would replace most of the existing zoning with the City's proposed Zoning and Subdivision Ordinance. Some of the existing Implementation Plan zone districts would remain in effect, such as the Residential Agriculture zone, the Limited Use zone and the Qualified zone (see exhibit E). Some of the existing zone district suffixes are proposed to be deleted, such as Senior Residential Suffix (-SR), and Planned Development Suffix (-PD) (see exhibit E). Most of the existing zones are proposed to be renamed and the text reformatted and updated. For example the Single Family Residential (R-1) zone is proposed to be changed to Low Density Residential (RL) zone; and the Mobilehome (MH) zone is proposed to be changed to Manufactured Home Park (RMP) zone. The zoning map is proposed to be modified to reflect the new zone district names. The text of each of the zone districts to be renamed is proposed to be recodified and updated. No land is proposed to change its existing zoning, although the zone names and the text within the zone districts will change.

Specific Plans that have been certified as part of the Implementation Plan are proposed to be assigned numbers, but no change to the specific plan text or uses is proposed.

The City's existing Local Coastal Program Implementation Plan (IP) is a separate document from the entire City zoning provisions. Only those articles and zones necessary to implement the certified Land Use Plan are included in the existing Implementation Plan. The proposed Implementation Plan would incorporate the Zoning and Subdivision Ordinance which applies throughout the City. The proposed IP changes will allow the City to have a single zoning document. The result of replacing the existing Implementation Plan with a single zoning document that applies citywide is that the Local Coastal Program Implementation Plan will contain standards not applicable to or moot in the coastal zone. It is important to assure that the entire document does not conflict with the City's certified Land Use Plan. The recommended modifications are suggested to assure that the provisions of the Land Use Plan and procedural requirements of the Coastal Act and California Code of Regulations are adequately carried out.

Most of the modifications suggested are relatively minor in nature. The most extensive suggested modification is the public access ordinance (Appendix A). The City has proposed changes to the existing access provisions. Staff is recommending replacing the City's proposed access language with language the Commission has certified in a number of previous Local Coastal Programs. This language will assure that public access is required when appropriate and provides a detailed mechanism to secure the required access. Staff is also recommending a modification to the proposed affordable housing incentive section. The suggested modification would prohibit an affordable housing incentive if wetlands or other environmentally sensitive habitat areas would be adversely impacted.

Staff is also recommending suggested modifications to the coastal development permit ordinance, Chapter 245 (see Appendix B). These are primarily procedural and are suggested to reflect the requirements of the Coastal Act and California Code of Regulations that apply after a local government has assumed coastal development permit issuing authority.

The remainder of the suggested modifications are relatively minor in nature and are recommended to assure that specific Land Use Plan policies are carried through in the Implementation Plan.

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I. REJECTION OF THE AMENDMENT TO IMPLEMENTING ORDINANCES

MOTION I

I move that the Commission reject Implementation Plan Amendment 1-95 of the City of Huntington Beach, as submitted.

STAFF RECOMMENDATION

Staff recommends a YES vote which would result in the adoption of the following resolution and findings. An affirmative vote of a majority of the Commissioners present is needed to pass the motion.

RESOLUTION

The Commission hereby rejects Implementation Plan Amendment 1-95 to the City of Huntington Beach Local Coastal Program Implementation Plan on the grounds that it does not conform with or is inadequate to carry out the provisions of the Land Use Plan as certified. There are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the approval of the Implementation Plan Amendment would have on the environment.

II. APPROVAL OF THE AMENDMENT TO THE IMPLEMENTATION PLAN IF MODIFIED:

MOTION II

I move that the Commission approve the City of Huntington Beach LCP Implementation Plan Amendment 1-95 to the City's Local Coastal Program if it is modified in conformity with the modifications suggested below.

STAFF RECOMMENDATION:

Staff recommends a YES vote which would result in the adoption of the following resolution. The motion requires an affirmative vote of the majority of the Commissioners present to pass.

RESOLUTION TO CERTIFY THE IMPLEMENTATION PLAN AMENDMENT IF MODIFIED

The Commission hereby approves certification of the City of Huntington Beach Implementation Plan Amendment 1-95 if modified to the City's Local Coastal Program based on the findings set forth below on grounds that the zoning ordinances, zoning maps, and other implementing materials conform with and are adequate to carry out the provisions of the Land Use Plan as certified. There are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the approval of the amendment to the Implementation Plan if modified would have on the environment.

III. SUGGESTED MODIFICATIONS:

The Commission hereby suggests the following changes to the proposed Implementation Plan amendment which are necessary to bring it into conformity with and adequate to carry out the applicable provisions of the certified Huntington Beach Land Use Plan. If the local government accepts the suggested modifications, within six months of Commission action, by formal resolution of the City Council, the Implementation Plan Amendment will become effective upon Commission concurrence with the Executive Director finding that this has been properly done.

Suggested additions are underlined and deletions are crossed out.

Certification of the Implementation Plan Amendment is subject to the following modifications:

The suggested modifications that reflect the public access provisions are attached as Appendix A. The suggested modifications to Chapter 245 Coastal Development Permit is attached as Appendix B.

Chapter 201 Title, Components, and Purpose

201.02 Title

Titles 20-25 of the Municipal Code shall be known and cited as the "Zoning and Subdivision Ordinance of the City of Huntington Beach." Titles 20-25 shall constitute the Local Coastal Program Implementation Plan.

201.06 Purpose

The purpose of the zoning and subdivision ordinance is to implement the policies of the City of Huntington Beach General Plan, as provided in the California Government Code, Title 7, Division 1, Planning and Zoning, and Division 2, Subdivisions, and in the California Constitution, Chapter 11, Section 7. The purpose of the Local Coastal Program Implementation Plan is to implement the policies of the City of Huntington Beach certified Land Use Plan (Coastal Element) and the public access and recreation policies of the Coastal Act. It is further ... under the constitution of the State of California or the United States.

202.04 General Rules for Applicability of the Zoning and Subdivision Ordinance

- A. Applicability to Property. The Zoning and Subdivision Ordinance shall apply to all land within the City of Huntington Beach. The Local Coastal Program Implementation Plan shall apply to all land within the City of Huntington Beach coastal zone.
- C. Who Qualifies as an Applicant. ... The Director ~~may~~ shall require an applicant to submit proof of interest. The Director ~~may~~ shall require an agent to submit evidence of authority to act for the applicant. ...

K. Annexations/Pre-Zoning. Unincorporated territory adjacent to the City ... low-density residential. Inclusion of an annexed area within the coastal zone into the certified Local Coastal Program shall require approval of a Local Coastal Program amendment by the Coastal Commission.

202.08 Rules for Interpretation; Record-keeping

B. Zoning Map.

5. Should an uncertainty remain as to the location of a district boundary or other feature shown on the zoning map, the location shall be determined by the Director. If the area of uncertainty lies within the coastal zone, the determination shall be made in conjunction with the Executive Director of the Coastal Commission.

202.10 Responsibilities

- A. City Council. The City Council shall have final authority for the approval of zoning map and zoning text amendments, General Plan amendments and final maps; however, no such amendment shall be effective unless certified by the Coastal Commission as an amendment to the Local Coastal Program. The City Council also shall act as the appeals board for hearing appeals of actions by the Planning Commission and Zoning Administrator, as provided by this ordinance. Any decision on a coastal development permit for development located within the appealable area of the coastal zone as described in 245.04 B may be appealed to the California Coastal Commission; if such a project is appealed, final coastal development permit decision making authority lies with the California Coastal Commission.
- D. Planning Commission. The Planning Commission's responsibilities shall include initiating preparation and updating of the General Plan, Local Coastal Program, specific plans, ...

Chapter 203 Definitions

Modify the definition of feasible as follows:

Feasible. Capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors.

Modify the definition of Negative Declaration as follows:

Negative Declaration. A written statement briefly describing the reasons that a proposed project will not have a significant impact on the environment, which meets the requirements of the California Environmental Quality Act.

Chapter 204 Use Classification

204.02 Applicability

... The Director may determine that a specific use shall not be deemed to be within a classification, if its characteristics are substantially ~~incompatible with~~ different than those typical of uses named within the classification. ...

204.04 Uses Not Classified

Any new use, or any use that cannot be clearly determined to be in an existing use classification, may be incorporated into the zoning provisions by a Zoning and Subdivision Ordinance text amendment, as provided in Chapter 247. Such an incorporation shall not be effective unless certified by the Coastal Commission as a Local Coastal Program amendment.

204.10 Commercial Use Classifications

Y. Retail Sales. Add at end:

In the coastal zone the preferred retail sales uses are those of the Visitor Commercial District

Modify FF Visitor Accommodations as follows:

204.10 FF Visitor Accommodations.

2. ~~Hotels and Motels and Time-Share Facilities.~~
Establishments offering lodging on a weekly or less than weekly basis. Motels may have kitchens in no more than 25 percent of guest units, and "suite" hotels may have kitchens in all units. This classification includes eating, drinking, and banquet service associated with the facility.

Delete No. 3 Residential Hotels, and No. 4 Single Room Occupancy from FF Visitor Accommodations and move to new section. Create new section HH Quasi Residential, as follows:

HH. Quasi Residential

3. Time-Share Facilities. A facility in which the purchaser receives the right in perpetuity, for life or for a term of years, to the recurrent exclusive use or occupancy of a lot, parcel, unit or segment of real property, annually or on some other periodic basis for a period of time that has been or will be allocated from the use or occupancy periods into which the plan has been divided. A time-share plan may be coupled with an estate in the real property or it may entail a license or contract and/or membership right of occupancy not coupled with an estate in the real property.

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204.16 Temporary Use Classifications

- J. Temporary Event. Those temporary activities located within the coastal zone that do not qualify for an exemption pursuant to Section 245.08.

TITLE 21 BASE DISTRICTS

Chapter 210 Residential Districts

210.02 Residential Districts Established

The purpose of the residential districts are to implement the General Plan and LCP Land Use Plan residential land use designations. Five (5) residential zoning districts are established by this chapter as follows:

Chapter 211 Commercial Districts

211.02 Commercial Districts Established

The purpose of the Commercial Districts is to implement the General Plan and Local Coastal Program commercial land use designations. Three (3) commercial zoning districts are established by this chapter as follows:

- C. The CV Visitor Commercial District implements the Visitor Serving Commercial land use designation within the coastal zone and provides uses of specific benefit to coastal visitors. More specifically the CV district provides opportunities for visitor-oriented commercial activities, including speciality and beach related retail shops, restaurants, hotels, motels, theaters, museums, and related services.

211.04 CO, CG, and CV Districts: Land Use Controls

Add "J Additional Provisions", as modified below, to each of the sub-headings on the chart beginning on page 211-3 and continuing through page 211-5. (Including sub-headings Residential, Public and Semipublic, Commercial Uses, Industrial, Accessory Uses, Temporary Uses, and Nonconforming Uses.)

Also on the same chart on pages 211-3 through 211-5 delete the following uses from the CV column: under Public and Semipublic: clubs and lodges, emergency health care, and hospitals.

On page 211-5 of the chart, under Commercial Uses, Visitor Accommodations, in the CV Visitor Commercial column, modify as follows:

Visitor accommodations
Bed & Breakfast Inns
Hotels & Motels

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Quasi Residential

Time Shares	PC	(I), (J)
Residential Hotel	PC	(J)
Single Room Occupancy	PC	(O), (J)

Delete 211.04 L-3 (from chart and from the explanations that follow the chart) and modify (J) as follows:

In the CV District the entire ground floor area and at least one-third of the total floor area shall be visitor-serving commercial uses (as described in the certified Local Coastal Program Land Use Plan). Any use other than visitor serving commercial shall be located above the ground level, and a conditional use permit from the Planning Commission is required. Any use other than visitor serving commercial uses shall only be permitted if visitor serving uses are either provided prior to the other use or assured by deed restriction as part of the development. No office or residential uses shall be permitted in any visitor serving designation seaward of Pacific Coast Highway.

Chapter 213 Open Space District

Modify proposed Section 213.02 as follows:

213.02 Open Space District Established

An Open Space District is established by this Chapter. This district provides areas for public or private use and areas for preservation and enhancement. Four subdistricts have been identified.

A. OS-C Open Space - Conservation Subdistrict

The Open Space -Conservation Subdistrict shall only apply outside the coastal zone. All areas land use designated Conservation in the certified LCP Land Use Plan are zoned Coastal Conservation; see Chapter 969.9, Coastal Conservation District.

On page 213-2 under OS District Land Use Controls, modify as follows:

- P - Permitted
- L - Limited (See Additional Provisions)
- ...
- P/U - Requires conditional use permit on site of conditional use
- - Not Permitted

On page 213-3, modify L-4 as follows:

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- L-4 Allowed with a conditional use permit approval by the Zoning Administrator only as an ancillary use that is compatible with and part of a park or recreational facility. In the coastal zone, in public parks in the Parks and Recreational Subdistrict and in the Shoreline Subdistrict, only the following type of eating and drinking establishments shall be permitted:

take-out service establishments where:

patrons order and pay for their food at a counter or window before it is consumed and may either pick up or be served such food at a table or take it off-site for consumption and; persons are not served in vehicles.

On page 213-3, modify L-5 as follows:

- L-5 Public parking is permitted, but commercial parking facilities on City-owned land require a conditional use permit approval by the Planning Commission. Recreational vehicle overnight parking is limited to 10 percent of available public parking. No encroachment onto sandy beach area shall be permitted.

On page 213-3, modify L-6 as follows:

- L-6 Beach concession stands for sale of refreshments and sundries (not to exceed 2,500 square feet ~~of sales area~~) must be located a minimum 1,000 feet apart. Beach concession structures shall be located within or immediately adjacent to paved parking or access areas.

On page 213-4 and 213-5, delete all of (F).

Add new Additional Provision (I) on page 213-5 as follows:

- (I) The permitted uses for recreation areas on the Huntington Beach mesa shall be limited to low-intensity uses including picnic grounds, arboretums, bird sanctuaries, trails. High-intensity uses such as tennis courts, athletic fields, stables, campgrounds or other commercial or recreation uses shall be conditional only, and shall be located in nodes adjacent to existing developed areas or roads and shall avoid adverse impacts on environmentally sensitive habitats.

Add new Additional Provision I to the chart on page 213-2 so that it applies to Public and Semipublic Uses and to Commercial uses.

On page 213-7, modify (A) and (B) as follows:

- (A) All development shall be compatible with the established physical scale of the area and shall not encroach on major view corridors. Public visual resources within the coastal zone shall be preserved and enhanced.

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- (B) To the extent feasible, mature trees ~~//Native/vegetation/and sensitive/wildlife/habitats~~ shall be protected. Development shall assure maximum protection of native vegetation and sensitive wildlife habitats.

On page 213-7, OS District: Additional Development Standards, modify standard (A) as follows:

- (A) All development shall be compatible with the established physical scale of the area and shall not encroach on major view corridors. Maximum height limit for development within the coastal zone in the Open Space Recreation Subdistrict shall be 35 feet.

Chapter 214 PS Public-Semipublic District

214.02 Public-Semipublic District Established

The PS Public-Semipublic District is established by this chapter. This district provides areas for large public or semipublic uses. The intent of this District in the coastal zone is to implement the Public, Quasi-Public, and Institutional land use designation of the certified Local Coastal Program Land Use Plan.

Modify chart on page 214-4 to add new Additional Requirements (N) to Maximum Height of Structures (ft). Add Additional Requirement (N) on page 214-5 as follows:

- (N) In the coastal zone, the maximum allowable height of structures shall be reduced as necessary to retain compatibility with the established physical scale of the area and to preserve and enhance public visual resources.

Chapter 215 SP Specific Plan District

215.02 Specific Plan District Established

The SP Specific Plan District is established by this chapter. This district provides areas for the development and administration of Specific Plans, prepared in accord with the Government Code and consistent with the General Plan and, for specific plans located within the coastal zone, the Local Coastal Program.

215.04 SP District: Land Use Controls

No use other than an existing use shall be permitted in a SP district except in accord with a valid Specific Plan. Any permitted or conditional use authorized by this ordinance may be included in an adopted Specific Plan, consistent with the General Plan and, for development located within the coastal zone, Local Coastal Program Land Use Plan land use designation(s) for land within the SP district.

215.06. SP District: Development Standards

- B. Residential Unit Density. The total number of dwelling units in a SP Plan shall not exceed the maximum number permitted by the General Plan and Local Coastal Program Land Use Plan density for the total area of parcels designated for residential use.

215.12 Planning Commission Action

- A. Required Findings. The Planning Commission shall recommend to the City Council approval or conditional approval of a Specific Plan upon finding that:
1. The Specific Plan is consistent with the adopted Land Use Element of the General Plan, and if in the coastal zone, with the certified Local Coastal Program Land Use Plan, and other applicable policies and is compatible with surrounding development;

215.14 Status of Specific Plan

A Specific Plan adopted by resolution of the City Council shall be administered as prescribed by Council, consistent with the Government Code, Section 65450 et seq. A Specific Plan shall not become effective unless a Local Coastal Program amendment is effectively certified by the California Coastal Commission.

Chapter 220 0 Oil Production Overlay District

220.10 Criteria for Approval of a Reuse Plan

- F. If located in the coastal zone, the reuse plan is consistent with the certified Local Coastal Program.

Chapter 221 CZ Coastal Zone Overlay District

221.02 Coastal Zone Overlay District Established

The purpose of the CZ Coastal Zone Overlay District is ~~established~~ to provide supplementary provisions and specify permitted uses ~~for~~ within the City's Coastal Zone, consistent with the California Coastal Act of 1976 (Division 20 of the Public Resources Code), ~~and~~ the General Plan, and the Local Coastal Program Land Use Plan

Delete 221.10, Guarantees of Public Access. The public access component of the Implementation Plan is replaced with new Section 245.40 in the Coastal Development Permit Chapter, attached as Appendix A.

221.14 Preservation of Visual Resources

A. An applicant proposing new development ...

A/ 1. Preservation of public views

B/ 2. Preservation of existing ...

B. Any alteration of the natural landform of the bluffs seaward of Pacific Coast Highway including grading and the development of parking lots shall be prohibited.

Alterations necessary for development of public trails and stabilization of bluffs may be permitted subject to approval of a coastal development permit.

221.18 Diking, Dredging, and Filling

Diking, dredging or filling shall be permitted only where there is no feasible, less environmentally-damaging alternative and where feasible mitigation measures have been provided, consistent with:

1. the OS-C Open Space-Conservation Sub-District in Chapter 213, and

2. the Coastal Conservation District, Chapter 213.5 for development within the coastal zone.

221.22 Buffer Requirements

As a condition of development adjacent to environmentally-sensitive habitats delineated in the General Plan and, for development in the coastal zone, environmentally-sensitive habitats identified in the Local Coastal Program, a minimum 100-foot buffer from the landward edge of the habitat as determined by a site specific biological assessment ~~with the development~~ shall be provided. In the case of substantial development or significantly increased human impacts, a wider buffer may be required in accordance with an analysis of the factors identified in A through C below. If the existing development or site configuration cannot accommodate a 100-foot buffer, then the buffer shall be reviewed by the California Department of Fish and Game and designed to:

221.24 Energy Facilities

B. New pipelines shall be underground and:

4. Shall mitigate to the maximum extent feasible adverse environmental impacts.

5. Shall not jeopardize public, health, safety or welfare.

221.28 Maximum Height

- A. The maximum height limits within the CZ Overlay District are 35 feet for a residential structure and 50 feet for a commercial structure, or the base district height limit, whichever is lower. Any structure allowed higher than 3 stories shall meet all of the following requirements:
1. The development shall consolidate a minimum one half block area.
 2. The bulk and siting of structures shall be controlled to protect public access and scenic and visual resources. A number of approaches may be used to achieve this, such as a step approach to building heights, staggered building envelopes, limits on the site coverage and building orientation, and use of view corridors.
 3. Adequate parking shall be provided.

221.30 Off-Street Parking Requirements

All development shall comply with the off-street parking requirements of Chapter 231. If any existing oceanside or on-street parking is removed, it shall be replaced within walking distance of the site on a one-for-one basis in an area that would not result in the loss of any sandy beach area. Replacement parking shall be assured prior to the issuance of the coastal development permit for removal of existing parking. The replacement parking shall be provided prior to or concurrent with the removal of existing parking so that there will be no reduction in the number of parking spaces available.

Chapter 222 FP Floodplain Overlay District

222.08 Methods of Reducing Flood Hazards

- E. Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or which may increase flood hazards in other areas; and
- F. Any methods and provisions for reducing flood hazard within the coastal zone shall be consistent with the Coastal Conservation District.

222.16 Variances/Appeals

B. Factors to be Considered

7. Relationship of the proposed use to the General Plan, Local Coastal Program, and the floodplain management program for that area;

222.18 Coastal Development Permit Required

Development in the Coastal Zone requires a Coastal Development Permit unless the project is exempt; see Chapter 245.

Chapter 223 IS Interim Study Overlay District

223.04 Zoning Map Designator

The IS District may be initiated as prescribed by Chapter 247. Prior to approving an amendment reclassifying land to an IS District, the Planning Commission and City Council shall approve a study plan that identifies regulatory problems and states land-use and development issues to be resolved for the area proposed for reclassification. An amendment reclassifying land to an IS District shall not be effective unless certified as a Local Coastal Program amendment by the Coastal Commission. The IS District may be combined with any base district. Each IS District shall be shown on the zoning map with an "-IS" designator, numbered and identified sequentially by order of enactment and reference to the enacting ordinance.

223.06 Land Use Controls

B. Coastal Development Permit Required. Within the coastal zone, approval of a coastal development permit shall be required for establishment of a new or expanded use in an IS District if the new or expanded use meets the definition of development in Section 245.04 unless it is exempt pursuant to Section 245.08.

~~B/C.~~ C. Required Findings

223.10 Expiration of IS District Ordinance; Renewal

Any ordinance establishing an IS District shall contain a provision terminating the IS designation up to two years from its effective date. An ordinance establishing an IS District may be amended, reenacted, or superseded by a zoning map amendment, and certification of a Local Coastal Program amendment, adopted as prescribed by Chapter 247.

Chapter 224 NC Neighborhood Conservation Overlay District

224.06 Status of NC Overlay District and Approved Plan

Adoption of an NC overlay District ... for development consistent with the purposes of the plan.

Adoption of an NC overlay district within the coastal zone shall not become effective unless a Local Coastal Program amendment has been approved and effectively certified by the Coastal Commission.

All development shall be ...

224.08 Allowable Modification to Land Use Controls and Development Standards

- A. Provisions for specific use classifications may be modified by the Neighborhood Conservation Plan to accommodate unique or mixed uses serving the neighborhood, consistent with the General Plan, and within the coastal zone consistent with the Local Coastal Program.
- B. Development standards may be modified by the Neighborhood Conservation Plan, consistent with the General Plan, and within the coastal zone consistent with the Local Coastal Program.

224.12 Adoption Procedures

- D. The City Council shall ...to the base district standards. Adoption of a Neighborhood Conservation Overlay District shall not become effective until a Local Coastal Program amendment has been approved and effectively certified by the Coastal Commission.

224.16 Building Permits to Conform to Adopted Plan and Other Applicable Requirements

Applications for building permits for projects located in an NC Neighborhood Conservation Overlay District shall be accepted only if project plans are consistent with the adopted NC District ordinance and the approved Neighborhood Conservation Plan and all other applicable requirements of the Municipal Code, and in the coastal zone, with the Local Coastal Program.

Chapter 225 PAD Planned Area Development Overlay District

225.06 Status of PAD Planned Area Development Overlay District and Approved Plan

Adoption of a PAD District proposal shall be by amendment to the zoning map, but the ordinance amendment shall not alter the land use controls or development standards of the underlying district. An area plan shall be approved by the City Council at the same time as the ordinance amendment. Adoption of a PAD district shall not become effective until certified as a Local Coastal Program amendment by the Coastal Commission.

225.12 Adoption of PAD Overlay District and Area Plan

- C. Following the hearing, the City may adopt a PAD Planned Area Development Overlay District for the area described in the application and approve an Area Plan permit only after finding that:
 - 2. The area Plan is consistent with the General Plan, and for areas located within the coastal zone, with the Local Coastal Program, and is compatible with development in the surrounding area;
- E. Within the coastal zone, adoption of a Planned Area Development Overlay shall not become effective until a Local Coastal Program amendment has been approved and effectively certified by the Coastal Commission.

225.16 Building Permits to Conform to Adopted Plan and Other Applicable Requirements

Applications for building permits for projects located in a PAD Planned Area Development Overlay District shall be accepted only if project plans are consistent with the adopted PAD District ordinance and the approved Area Plan and all other applicable requirements of the Municipal Code, and in the coastal zone, with the Local Coastal Program.

Chapter 226 H High-Rise Overlay District

226.06 Land Use Controls

Any use permitted in the base zoning district shall be permitted in the H High-Rise Overlay District. The H High-Rise Overlay District shall not apply seaward of Pacific Coast Highway.

226.08 Development Standards

- F. Within the coastal zone, public visual resources shall be preserved and enhanced.

Chapter 227 MHP Mobilehome Overlay District

227.10 Removal of the Mobilehome Overlay District or Change of Use

A zoning map amendment to remove the MHP overlay designation or approve a change of use shall be subject to the provisions of Chapters 234 and 247. Removal of the MHP overlay designation or approval of a change of use within the coastal zone shall require an amendment to the Local Coastal Program approved and effectively certified by the Coastal Commission.

TITLE 23 PROVISIONS APPLYING IN ALL OR SEVERAL DISTRICTS

230.04 Front and Street Side Yards in Developed Areas

Where lots comprising 60 percent of the frontage on a blockface in an R district are improved with buildings that do not conform to the front-yard requirements, the Planning Commission may adopt by resolution a formula or procedure to modify the front and street side-yard setback requirements. The Planning Commission also may modify the required yard depths where lot dimensions and topography justify deviations. Blocks with such special setback requirements shall be delineated on the zoning map. Within the coastal zone any such setback modifications adopted by the Planning Commission shall be consistent with the Local Coastal Program Land Use Plan (Coastal Element).

230.10 Accessory Dwelling Units

- B. Design and Development Standards

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5. Parking. One additional off-street parking space shall be required for an accessory dwelling, except that in the coastal zone two off-street parking spaces shall be required. All parking spaces shall comply with Section 231.06.

230.14 Affordable Housing Incentives/Density Bonus

F. Required findings for approval

1. e. If located within the coastal zone, the proposed project which includes a density bonus will not result in the fill, dredge, or diking of wetlands
2. g. The granting of the proposed other incentive will not result in the filling or dredging of wetlands.

230.72 Exceptions to Height Limits

Chimneys; vent pipes; cooling towers; ... The Zoning Administrator may approve greater height with a conditional use permit. Within the coastal zone exceptions to height limits may be granted only when public visual resources are preserved and enhanced where feasible.

230.80 Antennae

- B. Permit Required. Approval of the Director shall be required for the installation of a satellite antenna to ensure compliance with the locational criteria. Construction shall be subject to the provisions of the Uniform building Code and National Electrical Code, as adopted by the City. Within the coastal zone approval of a coastal development permit shall be required for installation of any antenna that meets the definition of development in Section 245.04 unless it is exempt pursuant to Section 245.08.

230.88 Fencing and Yards

A. Permitted Fences and Walls

7. Within the coastal zone, no gate, fence or wall shall be permitted that restricts or obstructs public access to the shore.

Chapter 231 Off-Street Parking and Loading Provisions

Page 231-5 Off-Street Parking Spaces Required: Schedule A

Add under Residential and above Single-Family Dwellings:

Each single family dwelling unit located in the Coastal Zone shall have a minimum of 2 on-site parking spaces. If the total coastal parking requirements exceed the total minimum parking as required by this chapter, the additional required parking spaces may be in tandem with enclosed spaces, provided the tandem space is assigned to an enclosed space and complies with the required turning radius.

Note Superscript 1:

Open spaces may be behind any required spaces ~~and/or on a street adjacent to the property // On-street parking may not be reserved for guests and/or guests but must be available to the general public on a first-come, first-served basis.~~

231.18 Design Standards

G. Parking Structures. Parking structures above or below grade shall be subject to conditional use permit approval by the Planning Commission when no other entitlement is required. In addition, parking structures proposed within the coastal zone shall be subject to approval of a coastal development permit. All parking structures shall comply with the following requirements:

5. All parking structures proposed for conversion to a fee parking arrangement shall be subject to conditional use permit approval by the Planning Commission. Public parking structures within the coastal zone proposed for conversion to a fee parking arrangement shall be subject to approval of a coastal development permit.

231.28 Oceanside or On-Street Parking Within the Coastal Zone

If any existing oceanside or on-street parking within the coastal zone is removed, it shall be replaced on a one for one basis in an area that would not result in the loss of any sandy beach area and within walking distance of the existing site. Replacement parking shall be assured prior to the issuance of the coastal development permit and shall be provided before any existing parking is removed.

Chapter 233 Signs

233.08 On-Site Permitted Signs

All signs shall be governed ...

The Planning Commission may ...

Nothing in this chapter shall preclude public access signage. Public access signage is signage that directs the general public to the coast or sea and/or public amenities available for general public use.

Chapter 234 Mobilehome Park Conversions

234.06 Removal of MHP Overlay or RMP Zone or Change of Use

- B. That the proposed zoning is consistent with the General Plan of the City of Huntington Beach and all elements thereof; and for projects located within the coastal zone that the proposed zoning is consistent with the Land Use Plan portion of the Local Coastal Program.
- F. The zone change shall not become effective unless a Local Coastal Program amendment is effectively certified by the Coastal Commission.

Chapter 235 Residential Condominium Conversions

235.02 Definitions

- B. Date of Approval: The date the Planning Commission, or City Council on appeal, approves the conditional use permit and tentative subdivision or parcel map applications. However, if the project is located in the coastal zone, the date the coastal development permit appeal period has expired or if an appeal is filed the date of the final action on the appeal shall be the date of approval.

235.04 Permit Required

In addition to the applicable ... Zoning Administrator pursuant to Chapter 241. Within the coastal zone, a coastal development permit shall also be required.

Conversion of lower or moderate-income rental housing developed with federal, state or local assistance shall not be permitted. Within the coastal zone no visitor serving use, including hotel use, shall be converted to condominium, community apartment, stock cooperative, or time share.

235.06 Required Reports and Information

In addition to the conditional use permit, coastal development permit (where applicable), and tentative map applications, ...

235.16 Findings

- H. That either 1) the project is not located within the coastal zone, or 2) the project is located within the coastal zone and the existing use to be converted is not a visitor serving use (including hotels).

TITLE 24 ADMINISTRATION

Chapter 240 Zoning Approval; Environmental Review; Fees and Deposits

240.02 Zoning Approval

To ensure that each new or expanded use of a site and each new, expanded, reconstructed or structurally altered structure complies with Titles, 20-23, zoning approval shall be required prior to issuance of a building, grading, coastal development, or demolition permit, certificate of occupancy, business license, or utility service connection. If any grading or scraping is proposed as part of a project, ...

Chapter 241 Conditional Use Permits and Variances; Temporary Use Permits; Waiver of Development Standards

241.20 Temporary Use Permits

- C. Required Findings. The application shall be approved as submitted, or in modified form, if the Zoning Administrator finds:
1. That the proposed temporary use will be located, operated and maintained in a manner consistent with the policies of the General Plan, and if located within the coastal zone, consistent with the policies of the Local Coastal Program, and the provision of this chapter; and
- D. Conditions of Approval. In approving a temporary use permit, the Zoning Administrator may impose reasonable conditions necessary to:
1. To be consistent with the General Plan, and in the coastal zone to be consistent with the Local Coastal Program;

Chapter 246 Development Agreements

246.08 Public Hearing Required

Upon receipt of a complete application, the results of the environmental review, and the recommendation of the Department, the Planning Commission shall schedule a public hearing to determine whether the proposal conforms to the General Plan and, if the site of the development agreement is located within the coastal zone, to the Local Coastal Program. The Planning Commission hearing shall be scheduled within six (6) months following receipt of a complete application, unless the City and the applicant mutually agree to a later date.

Notice of intention to consider the application shall be given as provided in Sections 65090 and 65091 of the Government Code. In addition, if the application is being processed together with the development project, notice of such intention shall be given as required for consideration of the development project. If the development project is located within the coastal zone, a coastal development permit is required. If the site of the development agreement is in the coastal zone and the proposed development agreement is inconsistent with the certified Local Coastal Program, the development agreement shall not become effective unless and until a Local Coastal Program amendment is approved and effectively certified by the Coastal Commission.

246.10 Planning Commission Action

After the public hearing is closed, the Commission shall determine whether the agreement is consistent with the General Plan, and if the site of the development agreement is located within the coastal zone, the Local Coastal Program, and, on the basis of such findings, shall recommend either approval, modification, or disapproval of the proposed development agreement. The Commission shall transmit its recommendation and the development agreement to the City Council within 30 days and 30 days prior to the public hearing by the City Council.

246.12 City Council Action

- C. 1. After considering the Planning Commission's review that the agreement is consistent with the General Plan and with any Specific Plan, and if the site of the development agreement is located within the coastal zone, with the Local Coastal Program;

Chapter 247 Amendments

247.06 Public Hearing Scope and Notice

- A. Scope. The Director shall set a date, time, and place for the public hearing and prepare a report to the Planning Commission on an application for a zoning amendment describing the area, standard or provision to be considered for change and, if warranted, proposing alternative amendments. The notice shall also state whether an amendment to the Local Coastal Program is required. The hearings will be held within sixty (60) days after final environmental evaluation.

247.16 Local Coastal Program Amendments

The City Council may amend all or part of the local coastal program, but the amendment will not take effect until it has been effectively certified by the Coastal Commission. Any General Plan element or specific plan or ordinance of the City that is applicable to the same areas or matters affected by a local coastal program amendment must be reviewed and amended as necessary to provide consistency with the remainder of the Local Coastal Program.

- A. An amendment to the Local Coastal Program may be initiated by one of the following:
- (1) A resolution of intention initiated by the Planning Commission;
 - (2) A resolution of intention initiated by the City Council directing the Planning Commission to initiate an amendment;
 - (3) An application from a property owner or his/her authorized agent provided that such application involves the development or modification of property located within the area affected by such amendment.
- (B) Planning Commission Action On Amendments.
- (1) Upon receipt in proper form of a completed amendment application or duly adopted resolution of intention, and following any necessary investigation, a public hearing before the Planning Commission must be held and notice of such hearing given consistent with Section 13515 of the California Code of Regulations.
 - (2) The Planning Commission must make a written recommendation on the proposed amendment whether to approve, approve in modified form, or disapprove.

(3) Planning Commission action recommending that the proposed Local Coastal Program amendment be approved, approved in modified form or denied, must be considered for adoption by the City Council.

(C) City Council Action on Amendments.

The recommendation of the Planning Commission must be acted upon by the City Council. A public hearing on the amendment shall be conducted after first giving notice of the hearing pursuant to Section 13515 Of the California Code of Regulations. The City Council may approve, approve with modifications, or disapprove any amendment.

(D) City Council Submittal for Coastal Commission Action on Amendments.

Any proposed amendment to the Local Coastal Program shall not take effect until it has been certified by the Coastal Commission. Any amendment approved by the City shall be submitted to the Coastal Commission in accordance with Sections 30512 and 30513 of the Public Resources Code. An amendment to this Local Coastal Program as certified by the California Coastal Commission shall not become effective after City Council adoption until the amendment is submitted pursuant to the requirements of Section 13551 et seq. of the California Code of Regulations and also certified by the California Coastal Commission pursuant to Chapter 6, Article 2 of the California Coastal Act.

(E) City Council Denial of Amendment Request

(1) A denial by the City Council on an amendment request shall be final and no appeal to the Coastal Commission shall be allowed except as provided by subsection (E)(2) of this section;

(2) Pursuant to Section 30515 of the Coastal Act, any person or agency authorized to undertake a public works project or major energy facility development, who was denied a request to amend the Local Coastal Program, may file the request for amendment with the Coastal Commission.

(F) Fees.

The City Council, by resolution, shall establish and from time to time amend a schedule of fees imposed for any amendment to the Local Coastal Program.

Chapter 248 Notices, Hearings, Findings, Decisions and Appeals

248.02 Director's Duty to Give Notice

These notice requirements are declaratory of existing law. If state law prescribes a different notice requirement, notice shall be given in that manner. A reviewing body designated to hear a matter may direct that notice be given in a manner that exceeds the notice requirement prescribed by state

law. Public notice requirements for coastal development permits shall be as described in Section 245.20 or 245.22.

248.16 Finality of Decision and Time for Appeal

A decision on a discretionary approval is not final until the time for appeal expires. The time for appeal from a decision by the Zoning Administrator, the Environmental Assessment Committee, Subdivision Committee, Design Review Board, or the Planning Commission shall be filed within ten calendar days after the date of the decision. Appeals may not be processed on actions which must be heard by and receive final action by the City Council, except that coastal development permits for development located in the appealable area of the coastal zone may be appealed to the Coastal Commission as described in Section 245.32.

248.18 Designation of Hearing Body on Appeal

The Planning Commission shall hear an appeal from the decision of the director, Zoning Administrator, Design Review Board, Environmental Assessment Committee, and Subdivision Committee. The City Council shall hear an appeal from the decision of the Planning Commission. The decision of the City Council is final, except that coastal development permits for development located in the appealable area of the coastal zone may be appealed to the Coastal Commission.

248.30 Effective Date of Decision

A decision on a discretionary approval becomes effective at the end of the appeal period. The decision of the City Council is final on the date of its decision, except that decisions on coastal development permits for development located in the appealable area of the coastal zone, the effective date is the day after the Coastal Commission appeal period expires and no appeals were filed or the date upon which final action on the appeal occurs.

TITLE 25 SUBDIVISIONS

Chapter 250 General Provisions

250.04 Consistency

No land shall be subdivided and developed for any purpose that is inconsistent with the Huntington Beach General Plan, the Local Coastal Program for development within the coastal zone, or any applicable specific plan of the City or that is not permitted by Titles 20 - 24, Zoning, or other applicable provisions of this Code.

The type and intensity of land use as shown on the General Plan and Local Coastal Program Land Use Plan for land within the coastal zone and any applicable specific plan shall determine, together with the requirements of the Subdivision Map Act and this Title, the type of streets, roads, highways, utilities, and other public services that the subdivider shall provide.

250.06 Applicability

The provisions set forth in this Title shall apply to all or parts of subdivisions within the City and to the preparation of subdivision maps and to other maps provided for by the Subdivision Map Act and this Title after the effective date of this Title. All subdivisions and any part thereof lying within the City shall be made and all subdivision maps shall be prepared and presented for approval as provided for in this chapter.

All subdivisions and lot line adjustments located within the coastal zone that meet the definition of development as defined in Section 245.04(J) shall require approval of a coastal development permit.

250.10 Definitions

For the purposes of this Title, unless otherwise apparent from the context, certain words and phrases used in this Title are defined in this section as set forth below. All definitions provided in Chapters 1.04, 245.04, and 203 of the Municipal Code and all definitions provided in the Subdivision Map Act shall also be applicable to this Title and said definitions are hereby incorporated by this reference as though fully set forth herein.

250.12 Responsibilities

- G. Subdivision Committee. The Subdivision Committee's responsibilities shall include examining and determining that tentative and vesting tentative maps comply with the provisions of the Subdivisions Map Act, this Title, the Local Coastal Program for maps located within the coastal zone, and recommending approval, disapproval, or conditional approval of tentative or vesting tentative maps to the Planning Commission or Zoning Administrator.

- H. Coastal Commission. The Coastal Commission shall have appeal jurisdiction over coastal development permits approved for all subdivisions and lot line adjustments located within the appealable area of the coastal zone that constitute development as defined in Section 245.04 (J).

IV. FINDINGS FOR DENIAL AS SUBMITTED

The Commission hereby finds and declares as follows:

A. Local Coastal Program Background

The City of Huntington Beach is located in northern Orange County between the City of Seal Beach and the Santa Ana River with a coastal zone of about five square miles, including nine miles of public beach. At the northern end of the City is the Huntington Harbor marina residential and commercial centers. The shoreline contains major state and city beaches with support facilities and a municipal pier. The downtown and townlot areas are a mix of commercial uses and residential development. Significant oil and energy-related operations, including the Edison electrical power plant, also exist in the coastal zone along with environmentally sensitive habitats.

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Most of the Huntington Beach coastal zone is fully certified. The LUP for the City, minus two geographic areas of deferred certification (ADCs), was effectively certified on March 15, 1984. The areas of deferred certification that were excluded from certification are the Metropolitan Water District (MWD) site adjacent to the Bolsa Chica and the 232 acre Pacific Coast Highway (PCH) area. The Implementation Plan portion for the certified LUP area was approved by the Commission on March 13, 1985. The Commission approved LCP Amendment 90-1 in December, 1991 which updated, recodified and reformatted most of the Implementation Plan ordinances. A Land Use Plan for the MWD site has not yet been submitted.

A Land Use Plan for the Pacific Coast Highway ADC was certified by the Commission on October 8, 1986. The Commission approved, with suggested modifications, zoning for the Pacific Coast Highway area of deferred certification on November 16, 1995 (LCP amendment 2-94). On March 18, 1996, the Huntington Beach City Council adopted the suggested modifications to LCP amendment 2-94. The Executive Director has determined that the City's action was legally adequate. The item has been scheduled for Commission action on concurrence with the Executive Director's determination at this hearing.

In approving LCP amendment 2-94, the Commission certified the revised Coastal Conservation District (Article 969.7). The City has revised the current amendment request to incorporate the Coastal Conservation District as approved by the Commission.

B. Amendment Description

The proposed amendment would replace most of the existing zoning with the City's proposed Zoning and Subdivision Ordinance. Some of the existing Implementation Plan zone districts would remain in effect, such as the Residential Agriculture zone, the Limited Use zone and the Qualified zone (see exhibit E). Some of the existing zone district suffixes are proposed to be deleted, such as Senior Residential Suffix (-SR), and Planned Development Suffix (-PD) (see exhibit E). Most of the existing zones are proposed to be renamed and the text reformatted and updated. For example the Single Family Residential (R-1) zone is proposed to be changed to Low Density Residential (RL) zone; and the Mobilehome (MH) zone is proposed to be changed to Manufactured Home Park (RMP) zone. The zoning map is proposed to be modified to reflect the new zone district names. The text of each of the zone districts to be renamed is proposed to be recodified and updated. No land is proposed to change its existing zoning, although the zone names and the text within the zone districts will change.

Specific Plans that have been certified as part of the Implementation Plan are proposed to be assigned numbers, but no change to the specific plan text or uses is proposed.

The City's existing Local Coastal Program Implementation Plan (IP) is a separate document from the entire City zoning provisions. Only those articles and zones necessary to implement the certified Land Use Plan are included in the existing Implementation Plan. The proposed Implementation Plan would incorporate the Zoning and Subdivision Ordinance which applies throughout the City. The proposed IP changes will allow the City to have a single zoning document. The result of replacing the existing Implementation Plan with a

single zoning document that applies Citywide is that the Local Coastal Program Implementation Plan will contain standards not applicable to or moot in the coastal zone. It is important to assure that the entire document does not conflict with the City's certified Land Use Plan. The recommended modifications are suggested to assure that the provisions of the Land Use Plan and procedural requirements of the Coastal Act and California Code of Regulations are adequately carried out.

Most of the modifications suggested are relatively minor in nature. The most extensive suggested modification is the public access ordinance. The City has proposed changes to the existing access provisions. Staff is recommending replacing the City's proposed access language with language the Commission has certified in a number of previous Local Coastal Programs. This language will assure that public access is required when appropriate and provides a detailed mechanism to secure the required access. Staff is also recommending a modification to the proposed affordable housing incentive section. The suggested modification would prohibit an affordable housing incentive if wetlands or other environmentally sensitive habitat areas would be adversely impacted.

Staff is also recommending suggested modifications to the coastal development permit ordinance, Chapter 245 (see Appendix B). These are primarily procedural and are suggested to reflect the requirements of the Coastal Act and California Code of Regulations that apply after a local government has assumed coastal development permit issuing authority.

The remainder of the suggested modifications are relatively minor in nature and are recommended to assure that specific Land Use Plan policies are carried through in the Implementation Plan.

C. Public Access

Section 30210 of the Coastal Act states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with the public safety needs and the need to protect public rights, rights of private property owners, and natural resources areas from overuse.

This section of the Coastal Act has been specifically incorporated into the City's certified Land Use Plan (LUP). The LUP contains the following Recreation and Shoreline Access policies: "Provide for maximum recreational opportunities along the City and State Beaches" and "Provide public access to coastal resources when possible." In addition, the Land Use plan states that "further improvement of [shoreline] access opportunities is desirable." Provision of public access to Huntington Harbor is also identified in the LUP as an objective. The LUP prohibits development from in any way diminishing or interfering with the public's right of access to the sea where acquired through use or legislative authorization.

The LUP also requires "preservation of as much beach sand area as possible in order to accommodate future levels of beach attendance." The LUP limits structures on the beach sand area to public and/or safety uses such as

lifeguard towers, public restrooms, beach concessions, and bike trails. Public restrooms and beach concessions locations are restricted by the LUP to those areas adjacent to paved parking or access areas.

Guarantees of Public Access

The proposed public access requirements are contained in the proposed Coastal Zone Overlay District (-CZ). Although the proposed language recognizes the need to provide public access, it does not assure that it will be required in all cases where obtaining access is possible. It precludes the requirement to obtain access for any development on pre-existing residential lots which do not front a sandy beach or which have bulkheads and are not adjacent to recreation or public use areas. It is possible that an access requirement may be appropriate for future development even though it meets these criteria.

In addition, the mechanism for acquiring access when it is required, it not fully identified. The proposed language requires that an easement that meets the approval of the Director of Community Development and the City attorney be executed and recorded. But the easement standards are not all included, such as the range of type(s) of uses allowed within the easement, or the standards for legal description of the access. Also, standards for protection of historic public use are not provided, though the LUP specifically requires it. Nor are standards for a management plan, privacy buffers, implementation of the accessway provided. Finally, the findings that must be made in support of all approvals, conditional approvals, or denials of projects between the first public road and the sea, are not identified in the proposed language.

Because these aspects are missing from the proposed public access language, the Commission finds the proposed amendment is not adequate to carry out the public access provisions of the City's certified LUP and therefore must be denied.

Shoreline and Parks

As proposed the amendment would not limit beach concession facilities to walk up service with incidental seating only. In addition, the currently certified Implementation Plan restricts beach concession structures to a total of 2,500 square feet of area. The proposed amendment would change that to 2,500 square feet of sales area. If the 2,500 square feet is changed to only include sales area, any area for storage or preparation etc. would not be included in the 2,500 square foot figure and could result in a larger structure. This would not assure the low intensity uses outlined in the LUP. In addition, a larger structure may not be consistent with minimizing encroachment onto sandy beach area.

Further, the proposed amendment does not contain an explicit prohibition on construction or expansion of parking lots onto sandy beach area, as required in the LUP.

The LUP also provides policies for the development of the Bolsa Chica Linear Park (recently renamed Harriett Weider Regional Park). The LUP requires that lower intensity recreation uses be emphasized in the park. The proposed amendment does not reflect this requirement and there is no assurance that lower intensity uses will be emphasized.

For these reasons the Commission finds that the proposed amendment is not consistent with nor adequate to carry out the public access and recreation standards of the certified Land Use Plan.

Parking

The City's certified LUP requires the provision of maximum public access. Adequate parking is necessary to accommodate visitors to the coastal zone. The LUP states that the ability to accommodate recreational demand also includes the provision of adequate support facilities and that the provision of adequate parking is a significant issue. The proposed amendment does require that any existing oceanside or on-street parking that is proposed to be removed, be replaced within walking distance of the site on a one-for-one basis. But no timing provision for when the parking must be provided is included in the proposed amendment. Therefore, there could be a significant gap between the time the parking is lost and when it is replaced. This would create adverse access impacts.

In addition, the proposed amendment would allow some of the residential parking spaces to be provided on-street. The on-street spaces would not be for the exclusive use of the residents. However, allowing parking necessary to serve private development to be provided on-street could result in residents competing with coastal zone visitors for limited beach area parking spaces. Consequently, the coastal zone visitors may be displaced. Allowing private parking to occur on-street has the potential for creating adverse impacts on public access.

Therefore, the Commission finds that the proposed amendment is not adequate to carry out the LUP policies requiring the provision of maximum public access.

D. Coastal Development Permit Ordinance

The California Coastal Act provides for the transfer of much of the Commission authority to local jurisdictions upon effective certification of a Local Coastal Program for their geographic area. The Coastal Act and accompanying implementing Regulations therefore require that the Implementation Plan portion of the LCP include procedures for carrying out this transferred authority. Among the basic elements that must be adequately addressed is the Coastal Development Permit Ordinance. The proposed Coastal Development Permit ordinance is contained the Chapter 245 of the Zoning and Subdivision Ordinance.

Definitions

The Coastal Act indicates that, with few exceptions, all new development undertaken in the coastal zone is subject to a coastal development permit. Development is defined in Section 30106 of the Coastal Act. In order to maintain the transfer of the Commission's permit authority, local governments must grant themselves the same jurisdiction over projects that the Commission has. A common definition of what constitutes development is, therefore, essential to a full transfer of authority. The proposed Coastal Development Permit Ordinance contains a definition that is not consistent with the Coastal Act definition. The proposed definition leaves out key activities that constitute development including grading, removing, dredging, mining, or extraction of any materials, and lot splits. Likewise, other proposed

definitions are incomplete. The proposed definition of appealable areas leaves out tidelands, submerged lands, and public trust lands. The proposed definition of approving authority does not recognize that the approving authority could be the Coastal Commission for permits issued in the Commission's original permit jurisdiction or on appeal. The proposed definition of coastal development permit also does not recognize the Commission's role in issuing permits. The proposed definition for exclusion areas does not identify all areas specifically not included in the City's Categorical Exclusion Order. These proposed definitions limit the City's ability to issue permits consistent with the requirements of the Coastal Act and accompanying implementing Regulations and therefore the amendment must be denied.

Permit Required

All development within the coastal zone requires a coastal development permit unless specifically exempt or excluded. Permit authority for development on any tidelands, submerged lands, or on public trust lands, whether filled or unfilled, lying within the coastal zone remains with the Coastal Commission after certification of a Local Coastal Program. Except that permit authority for lands subject to the public trust may be transferred to the local government if the Commission, after consultation with the State Lands Commission, determines that the lands are filled and developed and are located within an area which is committed to urban uses. The Commission made such a determination regarding the islands in Huntington Harbor.

In the language proposed under Permit Required, all areas that constitute the Commission's original permit jurisdiction are not identified. This limits the City's ability to issue permits consistent with the requirements of the Coastal Act and accompanying implementing Regulations and therefore the amendment must be denied.

Exemptions and Categorical Exclusions

The intent of the proposed Exemption section is to identify categories of development that are exempt from coastal development permit requirements. The types of development that can be exempted are very specifically defined in the Coastal Act and the accompanying implementing Regulations. The proposed exemptions include categories that are not identified in the Coastal Act or Regulations.

Also the proposed amendment categorizes types of development that are part of the City's approved Categorical Exclusion Order as exemptions. To amend a categorical exclusion requires a two thirds vote of the Coastal Commission. Whereas to amend a Local Coastal Program requires a simple majority. Categorical Exclusions are subject to more stringent Coastal Commission review standards than exempted development identified in the LCP. Therefore, the distinction between categorically excluded development and exempt development must be maintained. As proposed, the amendment would not maintain the distinction.

In addition, the proposed section on Categorical Exclusions does not include language on the separate standards for making any changes to the City's approved Categorical Exclusion Order. Again, this is necessary so that a change in the LCP is not mistaken as having changed the Categorical Exclusion Order.

These inadequacies limit the City's ability to issue permits consistent with the requirements of the Coastal Act and accompanying implementing Regulations and therefore the amendment must be denied.

Emergency Permits

In both the City's certified IP and in the proposed amendment, the provisions for public service emergency measures are included under items that are exempt. The Coastal Act contains two provisions for emergency work, Section 30611 (public service emergencies) and 30624 (all other emergencies). Of the two, only 30624 states that that authority may be passed to a local government upon certification of the LCP. The emergency provision identified in the LCP reflects the provisions of Section 30611, which does not authorize local governments to issue emergency permits for public service development.

In addition, the emergency permit provisions cannot be identified as exemptions. In order to obtain an emergency permit the emergency permit procedures must be followed, which is not required for development that is exempt from permit requirements.

These inadequacies limit the City's ability to implement the Local Coastal Program consistent with the requirements of the Coastal Act and accompanying implementing Regulations and therefore the amendment must be denied.

Appeals

The proposed amendment section on Appeals does not make it clear that under certain conditions items may be appealed directly to the Coastal Commission, and it does not allow denials of major public works projects to be appealed to the Coastal Commission. This limits the City's ability to implement the Local Coastal Program consistent with the requirements of the Coastal Act and accompanying implementing Regulations and therefore the amendment must be denied.

E. Affordable Housing Provisions

The proposed amendment contains affordable housing provisions that require the City to grant a residential density bonus, upon request, and at least one incentive unless the City finds that the incentive is not needed to make the housing affordable. These provisions appear to implement the requirements of Government Code § 65915, which requires local governments to provide residential density increases to developers who agree to develop affordable housing. The statute requires that local governments grant a density bonus of "at least 25 percent" to developers who agree to make a specified percentage of new units affordable to low income or senior households. Govt. Code § 65915(b) also requires local governments to grant at least one other incentive, in addition to the density bonus, unless the local government finds that the additional incentive is not necessary to allow for affordable housing.

The density bonus provisions of the proposed amendment enable the City to approve residential development that exceeds the residential densities of the certified Land Use Plan. In addition, the incentives provisions of the proposed amendment enable the City to approve residential development that is

inconsistent with development standards, such as parking and ESHA protections. Such standards are required by the City's certified Implementation Plan to carry out policies of the certified Land Use Plan. Because the proposed amendment enables the City to approve residential development projects that are not in conformity with policies and standards of the certified local coastal program, the proposed amendment may not conform with and be adequate to carry out the City's certified Land Use Plan.

1. General Harmonization of Govt. Code § 65915 and the Coastal Act

In general, to conform with the Coastal Act, an LCP must contain provisions that harmonize the requirements of both Government Code § 65915 and the Coastal Act. Harmonization of the two statutes is achieved by provisions that give effect to the mandatory provisions of Government Code § 65915, while implementing all discretionary provisions of Government Code § 65915 in a manner that also conforms with Chapter 3 policies.

The mandatory provisions of Government Code § 65915(b) are: (1) the requirement that local governments grant a density increase of 25% to developers who agree to make specified percentages of new units affordable to low income and/or senior households, and (2) the requirement that local governments grant an incentive in addition to the density increase unless the incentive is not necessary to make the housing affordable. Government Code § 65915 mandates an increase in density of 25% but does not require a density increase beyond 25%. Further, the Government Code does not specify how the 25% density bonus is to be accommodated. Accordingly, how the increase is accommodated and whether to provide an increase beyond 25% are within local government's discretion. Therefore, under the Coastal Act, local coastal programs must insure that if there are means of accommodating the 25% density bonus without creating inconsistencies with the policies and development standards of the certified local coastal program, those means shall be used. Coastal resources can be adversely affected only when it is impossible to accommodate the density increase without such impacts. In those situations, the density increase must be accommodated by those means that are the most protective of significant coastal resources. For example, if the density bonus can be accommodated only by either increasing building heights thereby reducing public views to the ocean, or filling wetlands, the increase must be accommodated by the height increase, since that will be most protective of significant coastal resources. If relief from more than one standard is necessary to accommodate the 25% density bonus, the LCP may provide for such relief.

Similarly, LCPs must insure that density increases beyond 25% will not occur unless it can be demonstrated that the increase will not result in inconsistency (or inconsistency beyond that created by accommodation of a 25% density bonus) with the policies and development standards of the certified local coastal program. Thus, a land use plan could specify regions where there are means of accommodating a density increase beyond 25% that will not adversely affect coastal resources. A land use plan could provide that in those regions, the discretion to provide a density bonus beyond 25% could be exercised without reducing protection of coastal resources.

Government Code § 65915(f) requires the increase in density granted to a developer be 25% over the "maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan." Many

local government general plans and ordinances address residential densities by identifying both a density range that indicates the approximate density for an area, as well as a list of the development standards and other factors (e.g., setbacks, heights, yard size, proximity to circulation element roads, etc.) that will be applied to determine the maximum density that will be allowed on any particular site within the area. The Government Code requires that the 25% density increase be applied to the density that will be the maximum allowed under the general plan and zoning ordinances. Therefore, the base density to which the density bonus will be applied is the density that would be identified after application of both the density range for an area and the factors applicable to the developer's particular site.

Government Code § 65915(b) requires local governments to provide not only a density bonus but also "at least one of the concessions or incentives identified in [§ 65915(h)]" unless the local government finds that the additional concession or incentive is not required to provide for affordable housing. Thus, the provision of at least one incentive is mandatory unless the local government finds that the additional incentive is unnecessary. However, Government Code § 65915 does not require local governments to provide more than one incentive in addition to the density bonus. Further, it does not indicate how a local government is to choose which incentive to provide. Therefore, whether to award more than one incentive and which incentive to award are discretionary under the Government Code.

Therefore, under the Coastal Act, LCPs may not provide for more than one incentive unless it can be demonstrated that the grant of additional incentives will not result in inconsistencies with the policies and development standards of the certified local coastal program. Similarly, in applying the one incentive, LCPs must insure that if there are incentives that will encourage development of low income or senior housing without adversely affecting coastal resources, those incentives will be used. If all possible incentives will have an adverse effect on coastal resources, the LCP must provide for use of the incentive that is the most protective of significant coastal resources.

For example, if the potential incentives are: (1) a reduction in parking standards that may impede coastal access, and (2) allowing otherwise impermissible fill of wetlands, the first incentive should be awarded, rather than the second, since the Coastal Act places greater restrictions upon the filling of wetlands. LCPs should either rank incentives in terms of impacts on coastal resources or identify criteria or a process for determining which incentives will be used. This will insure that incentives that impose either no burden or lesser burdens will be granted instead of incentives that impose a greater burden on coastal resources.

2. The City's Proposed Harmonization of Govt. Code § 65915 and the Coastal Act

The proposed amendment fails to harmonize the requirements of Government Code Section 65915 and the Coastal Act. The proposed amendment does not limit the density bonus to 25%. Nor does the amendment limit the number of incentives that may be granted. Further, the proposed amendment does not require that density bonuses be accommodated by those means that are most protective of coastal resources. Nor does the proposed amendment insure that incentives are chosen based upon protection of coastal resources.

In addition, the proposed amendment requires that a developer identify the maximum possible residential density permitted under the applicable zoning and general plan designation. This provision is inconsistent with the Govt. Code § 65915(f) requirement that the base density upon which the 25% density increase is to be calculated is the maximum allowable density for a particular site under all applicable provisions of the certified local coastal program policies and ordinances. The certified Land Use Plan and the certified ordinances set forth various provisions that are applied to determine the maximum allowable density on a particular site. These provisions include the density ranges for various areas of the community, which are identified in the LUP. The provisions also include the development standards set forth in the zoning ordinances. The maximum allowable density of a particular development project is determined by application of all of these provisions, not just the general plan designation and the zoning. Thus, under Government Code § 65915(f), the "otherwise maximum allowable residential density under the applicable zoning ordinance and the land use element of the general plan" is the maximum density determined after application of both the density range and the development standards set forth in the zoning ordinance. The proposed amendment fails to insure that the base density to which the density increase is applied is the maximum allowable under both the certified land use plan and zoning ordinances.

In addition, the proposed amendment requires that a developer identify the number of density bonus units being proposed above and beyond the number of units permitted under the applicable zoning and general plan designation. This requirement fails to insure that proper base density and all site-specific applicable development standards not just general plan designation and zoning are identified before the density bonus is applied.

The proposed amendment sets forth several findings that the City must make in order to approve a density bonus or incentive. These findings insure that development projects that benefit from the density bonus and incentive requirements are consistent with the overall intent of the General Plan. However, the findings do not insure that density bonus projects are consistent with all applicable policy and development standards to the maximum extent possible.

Thus, the proposed amendment does not contain provisions necessary to achieve harmonization of Government Code Section 65915 with the Coastal Act. However, except for its failure to address protection of wetlands in accordance with the wetland protection policies of certified Land Use Plan, the proposed amendment can be found to conform with the Land Use Plan. The proposed amendment could be found to conform with the Land Use Plan, with one exception, because the areas that could receive the density bonus based on the proposed affordable housing program are located in an area where density increases beyond 25%, and additional incentives can be accommodated without adverse impacts to coastal resources. Although the proposed amendment does not limit the amount of density increase and the number of incentives granted, with one exception, these limits are not necessary to insure that the Implementation Plan carries out the policies of the Land Use Plan. The proposed amendment limits the application of the density bonus and incentives to areas that are currently zoned for 5 or more dwelling units per site. Most residential areas in the City are zoned for single family and medium density

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with pockets of high density. Further, all residentially zoned areas are located inland of Pacific Coast Highway (PCH), which, in Huntington Beach, is the first road parallel to the ocean. There is one existing multifamily development on the beach but it does not conform with zoning and therefore cannot expand. The entire shoreline in the City, except for the existing multi-family development on the beach, consists of State or City-owned public beach. Thus, there is no potential for density bonuses and incentives to result in decreases in the extent of lateral and vertical beach access.

The streets within the residential areas inland of PCH are considered a reservoir for public beach parking only to a very limited extent. Although there are medium and high density zones within the coastal zone on the inland side of Pacific Coast Highway, large public beach parking lots exist on the seaward side of Pacific Coast Highway. In addition, both sides of Pacific Coast Highway are available for metered public use. Further, for approval of a density bonus the City is required to make the finding that the density bonus will not adversely impact recreational resources. The City could not make this finding if beach parking is adversely impacted because recreational use of the beach would be adversely impacted. Therefore, density bonuses and incentives will not adversely affect these areas.

The City does not contain ESHA areas that are zoned for residential development. Thus, there is no potential for a density bonus or other incentive to result in the degradation of an ESHA. The City does not have steep slopes, coastal bluffs, or other areas where development is limited due to policies regarding geologic hazards or protection of natural land formations. Thus, increases in density or granting incentives will not conflict with policies concerning geologic hazards or protection of natural land formations.

Finally, the City has several wetland areas most of which are protected from development by the Coastal Conservation District zoning. This zoning does not allow residential development in the wetlands. However, the one wetland area that is not included within this zoning is the area adjacent to the northern side of Beach Boulevard within the Downtown Specific Plan Area 8b. This wetland area is zoned for multi-family residential development and is contiguous with vacant land that is also zoned for multi-family residential development. Residential development in wetlands is prohibited under the City's Land Use Plan as well as in the Implementing Ordinances. However, the proposed amendment does not specify how the City will accommodate density increases or how the City will grant incentives, other than the general requirement that the City make findings that the density bonus and incentive are consistent with the intent of the General Plan. Thus, under the proposed amendment, the City could grant a density bonus and/or incentive that enables a developer to fill in the wetland area.

Thus, with one exception relating to the wetlands in Area 8b, the application of density bonuses and incentives will not result in development that is inconsistent with the City's certified local coastal program. However, without provisions to address protection of the wetlands in Area 8b, the amended implementation plan cannot be found to conform with and be adequate to carry out the policies of the Land Use Plan, which prohibits the fill of wetlands.

Because the proposed amendment fails to include provisions that insure that density bonus requirements will be not conflict with LUP policies that protect wetlands, the Commission finds that the affordable housing provisions of the proposed amendment do not conform with, and are inadequate to carry out, the policies of certified Land Use Plan.

F. Visitor Serving Uses

The City's certified LUP contains the following policy:

Protect, encourage, and where feasible provide visitor serving facilities in the coastal zone which are varied in type and price.

In addition, the LUP states that the City's coastal policies further aim to achieve the following objectives: Provision of lower cost visitor-serving facilities; increased numbers of hotel/motel rooms and restaurants in the coastal zone; provision of additional areas for overnight recreational vehicle camping. The LUP also specifically prohibits office and residential uses in visitor serving areas seaward of Pacific Coast Highway.

The proposed zoning includes a Visitor Commercial (CV) District. However, the uses allowed within the zone as proposed do not clearly promote visitor use in all cases. Other less desirable uses are proposed to be allowed in the visitor serving areas, such as clubs and lodges, emergency health care and hospitals. And some visitor-serving uses described in the Land Use Plan, though not precluded under the IP, are not specifically identified as a use in the CV District, such as speciality and beach related retail shops, theaters, and museums. The LUP allows limited residential and office use within the Visitor Commercial District on the landward side of Pacific Coast Highway. As proposed, the amendment does not specifically preclude residential or office use seaward of Pacific Coast Highway.

In addition, Time Shares, Residential Hotels, and Single Room Occupancies are treated as visitor serving uses. Because of the long term nature of these uses, and in terms of time-share facilities, the fact that they are not available to the general public but only to private owners, they are not considered visitor serving uses. In fact they have the potential of displacing visitor serving uses in the event existing hotels or motels are converted to such uses.

Allowing non-priority uses in the visitor serving district and not identifying all potential visitor uses does not protect or encourage visitor serving facilities in the coastal zone as required by the LUP. Further, allowing quasi-residential uses to qualify as visitor serving uses does not protect or enhance visitor serving facilities either. Therefore, the Commission finds that the proposed Implementation Plan amendment is not consistent with nor adequate to carry out the visitor serving provisions of the the City's certified Land Use Plan.

G. Visual Resources

The City's certified Land Use Plan requires that visual resources within the coastal zone be preserved and enhanced, and specifically requires preservation of public views to and from bluffs, to the shoreline and ocean, and to wetlands. In addition, the LUP prohibits alteration of the bluffs seaward of Pacific Coast Highway except as necessary for public trails and bluff stabilization. The certified LUP also provides height standards to preserve and enhance visual resources.

The proposed amendment allows heights inconsistent with the LUP standards and does not require that heights be modified as necessary to preserve and enhance public views when feasible. In addition, the proposed amendment does not specifically prohibit alteration of the bluffs as required by the LUP. Consequently, the proposed amendment could allow development that would not preserve and enhance public views. Therefore, the Commission finds that the proposed amendment is not consistent with nor adequate to carry out the visual resources policies of the City's certified Land Use Plan.

H. Environmentally Sensitive Habitat Areas

The City's certified LUP requires that environmentally sensitive habitats including wetlands be preserve and enhanced. In addition, the LUP provides specifications for buffers between development and environmentally sensitive habitat areas (ESHA).

The proposed amendment includes provisions for energy facilities, including the requirement to underground all energy facility pipelines and that environmentally sensitive habitat areas be avoided unless there is not a feasible, less environmentally-damaging, alternative location. However, the proposed amendment does not require, when adverse environmental impacts are unavoidable, that mitigation measures to offset the adverse impacts are provided to the maximum extent feasible. Consequently, the proposed amendment could result in adverse environmental impacts that are not adequately mitigated.

The proposed amendment does include buffer requirements adjacent to environmentally sensitive habitat areas. However, the proposed language does not reflect the LUP buffer requirements and is not clear. The proposed language requires that the buffer be established from the "landward edge of the habitat." But what constitutes the landward edge is not clear. In addition, the proposed language refers to the "habitat within the development." The intent of the buffer is to keep development out of the habitat, and so this language too is unclear. The LUP requires a 100 foot buffer but also states that in cases of substantial development or increased human impacts, a wider buffer may be required. This is not reflected in the proposed language. The LUP also requires that buffers be reviewed by the California Department of Fish and Game (CDFG). The proposed amendment does not require buffer review by the CDFG. Consequently, under the proposed amendment development may be allowed with an inadequate buffer and preservation and enhancement of the ESHA would not be assured.

Therefore, for the reasons discussed above, the Commission finds that the proposed amendment is not consistent with nor adequate to carry out the environmentally sensitive habitat protection policies of the City's certified Land Use Plan.

I. Inclusion of Coastal Act and Regulations Requirements

The proposed amendment identifies when a General Plan or Zoning and Subdivision Ordinance amendment would be required. In addition, the proposed amendment provides the standards necessary for when City discretionary review, such as when a conditional use permit from the Planning Commission or Zoning Administrator is necessary. The standard for review for the City discretionary permits are also provided throughout the amendment. However, as proposed, it is not obvious when an LCP amendment is required or what standards must be met for development in the coastal zone. In order to consolidate the local permitting process, the City has submitted the zoning for the entire City. But in order for this to be effective, it must be clear when the Local Coastal Program is effected. As proposed, this is not clear.

The California Coastal Act provides for the transfer of much of the Commission authority to local jurisdictions upon effective certification of a Local Coastal Program for their geographic area. The Coastal Act and accompanying implementing Regulations therefore require that the Implementation Plan portion of the LCP include procedures for carrying out this transferred authority. As proposed, for the reasons discussed above, the amendment is not adequate to do this. Therefore, the Commission finds that the proposed amendment is not adequate to carry out the certified Land Use Plan.

V. FINDINGS FOR APPROVAL IF MODIFIED:

The Commission hereby finds and declares as follows:

The Commission hereby incorporates by reference its findings for denial of the proposed implementation plan amendment as submitted. Below are additional specific findings to support each of the modifications contained in section III of this report:

A. Coastal Conservation District

The subject amendment request, Huntington Beach LCP amendment 1-95, was submitted to the South Coast District office prior to Commission action on Huntington Beach LCP amendment 2-94. The Commission approved Huntington Beach LCP amendment 2-94 subject to suggested modifications on November 16, 1995. Huntington Beach LCP amendment 2-94 provided the zoning necessary to implement the Pacific Coast Highway area of deferred certification. Huntington Beach LCP amendment 2-94 modified the Coastal Conservation (CC) District, Article 969.7, in the Implementation Plan. When LCP amendment 1-95 was submitted, the modified version of the Coastal Conservation District, as approved by the Coastal Commission, was not submitted because it had not yet been adopted by the City.

The Coastal Conservation District provides standards for the protection of ESHA including wetlands. In addition, the Coastal Conservation District provides procedures for determining whether application of the CC District would deprive a property owner of viable economic use of his or her property. The CC District establishes standards that apply to development when some development other than the uses allowed under the CC District must be allowed to provide an economic use. The CC District also provides mitigation standards for unavoidable adverse impacts to ESHA including wetlands.

On March 18, 1996, the Huntington Beach City Council adopted the Commission's suggested modifications to LCP amendment 2-94. Subsequently, the City modified the current amendment request, 1-95 to include the Coastal Conservation District, Article 969.7, as approved by the Commission under LCP amendment 2-94. The Coastal Conservation District, Article 969.7 submitted by the City is attached as Appendix C of this report.

No change is proposed to the previously certified Coastal Conservation District, Article 969.7. The Commission previously found that Coastal Conservation District, Article 969.7, is consistent with and adequate to carry out the Conservation land use designation and the environmentally sensitive habitat policies of the City's certified Land Use Plan. The findings for denial as submitted and approval if modified of Local Coastal Program amendment 2-94 are hereby incorporated by reference.

Proposed amendment 1-95 contains the zone district Open Space - Conservation (OS-C) in Chapter 213. A modification is suggested to apply the OS-C zone only outside the coastal zone. This will clarify that the Coastal Conservation District, Article 969.7, is the implementing zone for the Local Coastal Program land use designation conservation.

As submitted, the Coastal Conservation District retains its previously certified codification (969.7). The City may recodify the Coastal Conservation District consistent with the Zoning and Subdivision Ordinance codification provided there is no change to the text or intent of the Coastal Conservation District as approved by the Commission pursuant to LCP amendment 2-94. If the City chooses to recodify the Coastal Conservation District, the recodification must be submitted for approval by the Executive Director and concurrence by the Commission as part of the final certification of LCP amendment 1-95.

B. Public Access

As discussed previously in this report, the proposed amendment is not adequate to carry out and is inconsistent with the public access policies of the certified Land Use Plan. However, if the proposed amendment is modified to include the access implementation language attached as Appendix A, the amendment will meet the LUP requirements for providing public access easements. The suggested access language includes provisions for when access can be required, detailed easement standards, including the range of potential uses within the easement (such as pass and repass, passive recreational use, active recreational use). In addition the proposed language provides the standards for legal description of the easement and standards for protection of historic public use when appropriate. The proposed access language also provides standards for a management plan, privacy buffers, and implementation

of the access easement. The findings that must be made in support of all approvals, conditional approvals, and denials are included in the suggested access language. In addition, the proposed access language recognizes that access may not be required when findings cannot be made that the development will adversely affect, either individually or cumulatively, the ability of the public to reach and use public tidelands and coastal resources or that an access dedication will not alleviate the access burdens identified or is not reasonably related to those burdens in both nature and extent.

If modified to add all of these standards into the City's access component, the amendment will be consistent with and adequate to carry out the public access provisions of the City's certified Land Use Plan.

Shoreline and Parks

The suggested modifications retain the City's existing language to limit beach concession facilities to a total of 2,500 square feet and limit the use to walk up service and incidental seating. This will assure the lower intensity nature of the Shoreline District and assure maximum preservation of beach sand area. The suggested modifications would also prohibit construction and expansion of parking lots onto sandy beach area, as explicitly specified by the LUP. The suggested modifications would also allow development of the Bolsa Chica Linear Park (recently renamed Harriett Weider Regional Park) only as described in the LUP which requires that lower intensity recreational uses be emphasized over higher intensity uses. Therefore, the Commission finds that as modified the proposed amendment is consistent with and adequate to carry out the public access and recreation policies of the certified Land Use Plan.

Parking

The suggested modifications require that accessory dwelling units provide two parking spaces per unit. The certified Land Use Plan requires that adequate access be provided, and identifies parking as an issue within the coastal zone. An effective way to assure maximum access is the provision of adequate parking. The Commission's Statewide Guidelines recommend two parking spaces for each residential unit. The Commission has consistently imposed this parking standard. The City's current parking standards require two spaces per dwelling except for studio and one bedroom units. Accessory dwelling units are not restricted to one bedroom units. It is reasonable to expect that a single accessory dwelling unit could generate the need for two parking spaces. The suggested modification would assure maximum access by requiring adequate parking be provided on-site for accessory dwelling units.

The suggested modifications would delete the language that would allow on-street parking to serve private residential use. This will eliminate the potential for increased competition between residents and coastal zone visitors for limited coastal zone parking.

Therefore, as modified, the Commission finds that the proposed amendment is consistent with the LUP policies requiring maximizing public access by provision of adequate parking.

C. Coastal Development Permit

Definitions

The suggested modifications would revise the definitions consistent with the Coastal Act and Commission's Regulations. If modified to include the revised definitions necessary for the Implementation Plan to adequately carry out the transferred permit authority, this proposed section of the City's Implementation Plan will be adequate.

Permit Required

The suggested modification identifies all areas that are subject to the Commission's original permit jurisdiction. This suggested modification clarifies the permit jurisdiction of the Commission and the City.

Exemptions & Categorical Exclusions

The suggested modifications assures that only development that is specifically identified in the Coastal Act and the Commission's Regulations will be exempt. Further, it differentiates between development that is exempt and development that is categorically excluded pursuant to a Coastal Commission approved Categorical Exclusion Order. The suggested modifications also establish the requirement to amend an approved categorical exclusion with the Commission before a change to the approved Categorical Exclusion Order becomes effective.

Emergency Permits

This suggested modification is necessary to assure that the City's emergency coastal development permit authority reflects Section 30624 of the Coastal Act which allows transferring emergency permit authority to a local government. It is also necessary to establish that the emergency permit procedure does not qualify as an exemption from coastal development permit requirements.

Appeals

The suggested modifications are necessary to assure that in the instances specified in the Commission's Regulations, an appeal may be filed directly to the Coastal Commission without exhausting the local appeal process first. In addition, the suggested modifications are necessary to assure that, in addition to the projects listed by the City, denials of major public works projects are also appealable to the Coastal Commission.

The suggested modifications affecting the Coastal Development Permit Chapter, although primarily procedural in nature, are based on the requirements of the Coastal Act and the California Code of Regulations. They are necessary to ensure that the City adequately implements the Coastal Act authority transferred to the City upon certification.

D. Affordable Housing Provisions

Without provisions that insure protection of wetlands in conformity with the Land Use Plan, the density bonus provisions of the amended Implementation Plan

do not conform with the Land Use Plan. The Commission has suggested modifications. The modifications require that in order for the City to approve a density bonus project, it must find that the project will not result in the fill or dredging of wetlands. The modifications also require that in order for the City to grant an incentive, it must find that the incentive will not enable the development to fill or dredge wetlands. With these modifications, the amended Implementation Plan insures that the City's Implementation Plan conforms with and is adequate to carry out the policies of the Land Use Plan.

E. Visitor Serving Uses

This suggested modification is necessary to assure that visitor serving uses will be the priority uses in the Visitor Commercial District and that lesser priority uses, although allowable, will maintain a secondary status. This is necessary to assure that visitor serving facilities will be protected and enhanced as required by the City's certified LUP polices. The Commission finds that only as modified is the proposed amendment consistent with and adequate to carry out the City's certified Land Use Plan policies requiring encouragement of visitor serving facilities.

F. Visual Resources

The suggested modifications are necessary to assure that height limits are consistent with those identified in the LUP and that public views will be protected and enhanced when feasible. In addition, this suggested modification will assure that only development consistent with the LUP (public trails and bluff stabilization) will be allowed on bluffs. The Commission finds that only as modified is the proposed amendment consistent with and adequate to carry out the City's certified Land Use Plan policies regarding protection and enhancement of visual resources.

G. Environmentally Sensitive Habitat Areas

The suggested modifications are necessary to assure that Environmentally Sensitive Habitat Areas (ESHAs) are protected and that any unavoidable adverse impacts are adequately mitigated. In addition the suggested modifications are necessary to assure that any affordable housing incentive granted by the City will not adversely impact ESHA. The Commission finds that only as modified is the proposed amendment consistent with and adequate to carry out the City's certified Land Use Plan policies regarding protection of environmentally sensitive habitat areas.

H. Inclusion of Coastal Act and Regulations Requirements

This suggested modification is necessary to assure that the need for a Local Coastal Program Amendment, and that the standard for review for coastal developments, is identified where appropriate throughout the Implementation Plan. Although primarily procedural in nature, this suggested modification is necessary to carry out the transferred Commission authority to the City.

I. Conclusion

The suggested modifications listed in Section III (and Appendices A and B) of this report are necessary to make the proposed amendment consistent with and

adequate to carry out the City's certified Land Use Plan. In addition, some of the suggested modifications are necessary to adequately maintain the transferred authority of the Commission to the City consistent with the Coastal Act and the California Code of Regulations. The Commission finds, for the reasons set out in this report, that only as modified is the amendment consistent with and adequate to carry out the standards of the City's certified Land Use Plan.

VI. CEQA FINDINGS

Pursuant to SB 1873, which amended the California Environmental Quality Act the Coastal Commission is the lead agency in terms of meeting California Environmental Quality Act (CEQA) requirements for local coastal programs. In addition to making a finding that the implementation plan amendment is in full compliance with CEQA, the Commission must make a finding consistent with Section 21080.5 of the Public Resources Code. Section 21080.5(d)(2)(i) of the Public Resources Code requires that the Commission not approve or adopt an LCP:

... if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment.

The Commission's approval the LCP amendment is effective only if the amendment is modified to assure protection of environmentally sensitive habitat areas, maximize public access, encourage visitor serving uses, and protect visual resources. The Commission finds that as modified there are no feasible mitigation measures available that could substantially reduce adverse environmental impacts of the amendment. For the reasons discussed in this report, there are no feasible alternatives or mitigation measures available that could substantially reduce adverse environmental impacts. The Commission further finds, therefore, that the Implementation Plan amendment, as modified, is consistent with Section 21080.5(d)(2)(i) of the Public Resources Code.

APPENDIX A

SUGGESTED MODIFICATIONS TO HUNTINGTON BEACH LCP AMENDMENT 1-95
PUBLIC ACCESS IMPLEMENTATION

APPENDIX A

SUGGESTED MODIFICATIONS TO HUNTINGTON BEACH LCP AMENDMENT 1-95
ACCESS IMPLEMENTATION

Insert in Coastal Zone Overlay District at Section 245.40 replacing Procedures for Open Space Easements and Public Access.

(Note: Entire ordinance should appear in underline but has not been provided in underline form for the ease of the reader.)

ARTICLE 1. APPLICABILITY

Section 1 Purpose.

The purpose of this Chapter includes the following:

- (a) To achieve the basic state goals of maximizing public access to the coast and public recreational opportunities, as set forth in the California Coastal Act codified at section 30000 through 30900 of the California Public Resources Code. Section 30001.5(c) states that public access both to and along the shoreline shall be maximized consistent with sound resource conservation principles and constitutionally protected rights of private property owners;
- (b) To implement the public access and recreation policies of Chapter 3 of the Coastal Act (Section 30210 - 30255); and
- (c) To implement the certified land use plan of the Local Coastal Program which is required by Section 30500(a) of the Coastal Act to include a specific public access component to assure that maximum public access to the coast and public recreation areas is provided.
- (d) In achieving these purposes, this ordinance shall be given the most liberal construction possible so that public access to the navigable waters shall always be provided and protected consistent with the goals, objectives and policies of the California Coastal Act and Article X, Section 4, of the California Constitution.

Section 2 Definitions

The following definitions shall govern the implementation of the public access requirements of the Coastal Act and this public access ordinance.

(a) Development

The placement or erection of any solid material or structure on land, in or under water; discharge or disposal of any materials; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to Section 66410 of the Government Code, and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public

recreational use; and change in the intensity of use of water, or access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation.

As used in this section "structure" includes but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.

(b) New development

For purposes of implementing the public access requirements of Public Resources Code Section 30212 and of this ordinance, "new development" includes "development: as defined in (a) above except the following:

(1) Structures destroyed by natural disaster

The replacement of any structure, other than a public works facility, destroyed by a disaster; provided that the replacement structure conforms to applicable existing zoning requirements, is for the same use as the destroyed structure, does not exceed either the floor area, height, or bulk of the destroyed structure by more than 10%, and is sited in the same location on the affected property as the destroyed structure. As used in this section, "disaster" means any situation in which the force or forces which destroyed the structure to be replaced were beyond the control of the owners.

(2) Demolition and Reconstruction

The demolition and reconstruction of a single-family residence; provided that the reconstructed residence shall not exceed either the floor area, height or bulk of the former structure by more than 10 percent, and that the reconstructed residence shall be sited in the same location on the affected property as the former structure.

(3) Improvements

Improvements to any structure which do not change the intensity of its use, which do not increase either the floor area, height or bulk of the structure by more than 10 percent, which do not block or impede access, and which do not result in a seaward encroachment by the structure.

(4) Repair and Maintenance

Repair and maintenance activity which, pursuant to Public Resources Code Section 30610, requires no permit unless the activity will have an adverse impact on lateral public access along the beach.

(5) Reconstruction and Repair

The reconstruction or repair of any seawall; provided that the reconstructed or repaired seawall is not seaward of the location of the former structure. As used in this section, "reconstruction or repair" of

a seawall shall not include replacement by a different type of structure or other modification in design or construction which results in different or greater impacts to shoreline resources than those of the existing structure.

(c) Sea

The Pacific Ocean and all harbors, bays, channels, estuaries, salt marshes, sloughs, and other areas subject to tidal action through any connection with the Pacific Ocean, excluding nonestuarine rivers, streams, tributaries, creeks and flood control and drainage channels.

(d) Types of Public Access and Recreation

(1) Lateral public access: provides public access and use along or parallel to the sea.

(2) Bluff top access: provides public access and coastal viewing along a coastal bluff top area.

(3) Vertical access: provides a public access connection between the first public road, trail, or public use area nearest the sea and the publicly owned tidelands or established access.

(4) Trail Access: provides public access along a coastal recreational path, including to and along lakes, rivers, streams, freshwater marshes, significant habitat and open space areas or similar resource areas, and which also may link inland recreational facilities to the shoreline.

(5) Recreational Access: provides public access to coastal recreational resources through means other than those listed above, including but not limited to parking facilities, viewing platforms and blufftop parks.

(e) Character of Accessway Use

(1) Pass and Repass

Refers to the right of the public to walk and run along an accessway. Because this use limitation can substantially restrict the public's ability to enjoy adjacent publicly owned tidelands by restricting the potential use of lateral accessways, it will be applied only in connection with vertical access or other types of access where the findings required by Sections 15 and 18 establish that the limitation is necessary to protect natural habitat values, topographic features (such as eroding bluffs), or privacy of the landowner.

(2) Passive Recreational Use

Refers to the right of the public to conduct activities normally associated with beach use, such as walking, swimming, jogging, sunbathing, fishing, surfing, picnicking, but not including organized sports, campfires, or vehicular access other than for emergencies or maintenance.

(3) Active Recreational Use

Refers to the right of the public to conduct the full range of beach-oriented activities, not including horseback riding and use of motorized vehicles unless specifically authorized.

Section 3.0 Access Required.

As a condition of approval and prior to issuance of a permit or other authorization for any new development identified in (a) through (d) of this section, except as provided in Section 4.0, an offer to dedicate an easement (or other legal mechanism pursuant to Section 13(b)) for one or more of the types of access identified in Section 5.0-8.0 shall be required and shall be supported by findings required by Sections 15.0-17.0; provided that no such condition of approval for coastal access shall be imposed if the analysis required by Sections 15.0 (a) and (b) establishes that the development will not adversely affect, either individually or cumulatively, the ability of the public to reach and use public tidelands and coastal resources or that the access dedication requirement will not alleviate the access burdens identified or is not reasonably related to those burdens in both nature and extent.

(a) New development on any parcel or location where public access is identified in the Land Use Plan as desirable.

(b) New development between the nearest public roadway and the sea.

(c) New development on any site where there is substantial evidence of a public right of access to the sea acquired through use or a public right of access through legislative authorization.

(d) New development on any site where a trail, bluff top access or other recreational access is necessary to mitigate impacts of the development on public access.

Section 4.0 Exceptions

Section 2.0 shall apply except in the following instances:

(a) Projects excepted from the definition of "new development" in Section 3.0.

(b) Where findings required by Sections 15.0 and 16.0 establish any of the following:

(1) Public access is inconsistent with the public safety, military security needs, or protection of fragile coastal resources;

(2) Adequate access exists nearby; or,

(3) Agriculture would be adversely affected.

(c) Exceptions identified in (b) shall be supported by written findings required by Section 17.0 of this ordinance.

ARTICLE 2

STANDARDS FOR APPLICATION OF ACCESS CONDITIONS

Section 5.0. Lateral public access

(a) Minimum requirements. A condition to require lateral access as a condition of approval of a coastal development permit (or other authorization

to proceed with development) pursuant to Section 3.0 shall provide the public with the permanent right of lateral public access and passive recreational use along the shoreline (or public recreational area, bikeway, or blufftop area, as applicable); provided that in some cases controls on the time, place and manner of uses may be justified by site characteristics including sensitive habitat values or fragile topographic features, or by the need to protect the privacy of residential development.

Active recreational use may be appropriate in many cases where the development is determined to be especially burdensome on public access. Examples include cases where the burdens of the proposed project would severely impact public recreational use of the shoreline, where the proposed development is not one of the priority uses specified in Public Resources Code Section 30222, where active recreational uses reflect the historic public use of the site, where active recreational uses would be consistent with the use of the proposed project, and where such uses would not significantly interfere with the privacy of the landowner. In determining the appropriate character of public use, findings shall be made on the specific factors enumerated in Section 16.0. Lateral access shall be legally described as required in Section 10.0.

Section 6.0 Vertical public access

(a) Minimum requirements. A condition to require vertical public access as a condition of approval of a coastal development permit (or other authorization to proceed with development) pursuant to Section 3.0 shall provide the public with the permanent right of access, (1) located in specific locations identified in the certified Local Coastal Program for future vertical access, or (2) located in a site for which the local government has reviewed an application for a development permit and has determined a vertical accessway is required pursuant to the access and recreation policies of the Coastal Act or the applicable provisions of the Local Coastal Program.

A condition to require vertical access as a condition of approval of a coastal development permit (or other authorization to proceed with development) shall provide the public with the permanent right of vertical access and be limited to the public right of passive recreational use unless another character of use is specified as a condition of the development. In determining whether another character of use is appropriate, findings shall be made on the specific factors identified in Section 16.0.

Each vertical accessway shall extend from the road to the shoreline (or bluff edge) and shall be legally described as required in Section 10.0. The access easement shall be a minimum of 10 feet wide. If a residential structure is proposed, the accessway should not be sited closer than 10 feet to the structure.

Section 7.0 Bluff top access

(a) Minimum requirements. A condition to require public access along a bluff top as a condition of approval of a coastal development permit (or other authorization to proceed with development) pursuant to Section 3.0 shall provide the public with the permanent right of scenic and visual access from the bluff top to the public tidelands.

The bluff top access shall be limited to passive recreational use and coastal viewing purposes unless another character of use is specified as a

condition of development. In determining the appropriate character of use findings shall be made on the specific factors identified in Section 16.0.

Each bluff top accessway shall be described in the conditions of approval of the coastal development permit as an area beginning at the current bluff edge extending 25 feet inland. However, the accessway shall not extend any closer than 10 feet from an occupied residential structure. Due to the potential for erosion of the bluff edge, the condition shall include a mechanism that will cause the accessway to be adjusted inland as the edge recedes. Any permanent improvements should be set back from the accessway by a distance derived by multiplying the annual rate of blufftop retreat by the life expectancy in years of the improvements.

The accessway shall be legally described as required in Section 10.0, with the furthest inland extent of the area possible referenced as a distance from a fixed monument in the following manner:

"Such easement shall be ____ feet wide located along the bluff top as measured inland from the daily bluff edge. As the daily bluff top edge may vary and move inland, the location of this right of way will change over time with the then current bluff edge, but in no case shall it extend any closer than ____ feet from ____ (a fixed inland point, such as the centerline of a public road or other easement monument)."

Section 8.0 Trail access

(a) Minimum requirements. A condition to require public access as a condition of approval of a coastal development permit (or other authorization to proceed with development) pursuant to Section 3.0 shall provide the public with the permanent right of access and active recreational use, (1) along a designated alignment of a coastal recreational path or trail in specific locations identified in the LCP for implementation of trail access, or (2) in locations where it has been determined that a trail access is required to link recreational areas to the shoreline or provide alternative recreation and access opportunities pursuant to the access and recreation policies of the LCP and Coastal Act, consistent with other provisions of this chapter. In determining if another character of use is appropriate, findings shall be made on the specific factors enumerated in Section 16.0. The trail access shall be legally described as required by Section 10.0.

Section 9.0 Protection of historic public use

(a) Siting and design requirements. Development shall be sited and designed in a manner which does not interfere with or diminish any public right of access which may have been established based on historic public use. Only when site constraints are so severe that siting of the accessway or recreational use area in its historic location would significantly impair the proposed development and alternative development siting is not feasible, development may be sited in the area of public right of access based on historic use provided that the applicant provides an equivalent area of public access or recreation to and along the same destination and including the same type and intensity of public use as previously existed on the site. Mechanisms for guaranteeing the continued public use of the area or equivalent area shall be required in accordance with Sections 5.0 through 8.0 above.

(b) Minimum requirements. An access condition shall not serve to extinguish or waive public prescriptive rights. In permits where evidence shows the possibility of such prescriptive rights, the following language shall be added to the access condition:

"Nothing in this condition shall be construed to constitute a waiver of any prescriptive rights which may exist on the parcel itself or on the designated easement."

Section 10.0 Legal description of an accessway; recordation

An access dedication required pursuant to Section 3.0 shall be described in the condition of approval of the permit or other authorization for development in a manner that provides the public, the property owner, and the accepting agency with the maximum amount of certainty as to the location of the accessway. As part of the condition of approval, easements shall be described as follows: (1) for lateral access: along the entire width of the property from the mean high tide line to (as applicable): the toe of the bluff, the toe of the seawall, or other appropriate boundary such as stringline or dripline; (2) for blufftop access or trail access: extending inland from the bluff edge or along the alignment of a recreational trail; (3) for vertical access: extending from the road to the shoreline (or bluff edge). A privacy buffer provided pursuant to Section 12.0 shall be described, as applicable.

Prior to the issuance of the coastal development permit or other authorization for development, the landowner shall execute and record a document in a form and content acceptable to the the Coastal Commission [or local agency authorized pursuant to 14 Cal. Admin. Code Section 13574(b)], consistent with provisions of the Coastal Development Permit ordinance, irrevocably offering to dedicate to a public agency or private association approved by the Coastal Commission [or local agency authorized by the Commission pursuant to 14 Cal. Admin. Code Section 13574(b)] an easement for a specific type of access and a specific character of use as applicable to the particular condition.

The recorded document shall provide that the offer to dedicate shall not be used or construed to allow anyone, prior to acceptance of the dedication, to interfere with any rights of public access acquired through use which may exist on the property.

The recorded document shall include legal descriptions of both the applicant's entire parcel and the easement area and a map to scale. The offer shall be recorded free of prior liens and any other encumbrances which the Coastal Commission [or local agency authorized by the Commission] determines may affect the interest being conveyed. The offer to dedicate shall run with the land in favor of the People of the State of California, binding all successors and assignees, and shall be irrevocable for a period of 21 years, such period running from the date of recording.

Section 11.0 Management plan

(a) Minimum requirements. A management plan may be required in conjunction with a dedication of public access in any case where there is substantial evidence of potential conflicts between public access use and other uses on or immediately adjacent to the site. Examples include access in areas of sensitive habitats, agricultural resources, or significant hazards,

or adjoining residential neighborhoods or military security areas. The plan shall be prepared by the accepting agency and approved by the City prior to the opening of the access to public use. Where applicable, the plan should specify management controls on time and intensity of use, standards for privacy buffers, and requirements for maintenance of aesthetic values through such measures as litter control.

Section 12.0 Privacy buffers

(a) Minimum requirements. Separation between a public accessway and adjacent residential use may be provided when necessary to protect the landowner's privacy or security as well as the public's right to use of the accessway. Any such buffer shall be provided within the development area. Access should not be sited closer to any residential structure than 10 feet. The buffer can be reduced where separation is achieved through landscaping, fences or grade separation.

Section 13.0 Implementation

(a) A dedicated accessway shall not be required to be opened to public use until a public agency or private association approved in accordance with Section 10.0 agrees to accept responsibility for maintenance and liability of the access, except in cases where immediate public access is implemented through a deed restriction.

(b) In any case where the size and character of a development would impose very substantial burdens on public access, such as a large resort development on the shoreline, and where the applicant has the capacity to operate and maintain the accessway or recreation area, a deed restriction may be required instead of an offer to dedicate in order to assure immediate public use of the area and maintenance of the area by the applicant and successors in interest. In any such case, all other applicable provisions of this ordinance shall apply.

(c) Access facilities constructed on access easements (e.g., walkways, paved paths, boardwalks, etc.) should be no wider than necessary to accommodate the numbers and types of users that can reasonably be expected. Width of facilities can vary for ramps or paved walkways, depending on site factors.

Section 14.0 Title information

As a requirement for any public access condition, prior to the issuance of the permit or other authorization for development, the applicant shall be required to furnish a title report and all necessary subordination agreements. Title insurance may also be required where easements are being granted. The amount of insurance shall reflect the estimated cost to acquire an equivalent accessway or recreational use elsewhere in the vicinity. All offers shall be made free of all encumbrances which the approving authority pursuant to Section 10.0 determines may affect the interest being conveyed. If any such interest exists which could erase the access easement, it must be subordinated through a written and recorded agreement.

ARTICLE 3

REQUIRED FINDINGS and SUPPORTING ANALYSIS FOR PUBLIC ACCESS DEDICATIONS

Section 15.0 Required overall findings

Written findings of fact, analysis and conclusions addressing public access must be included in support of all approvals, denials or conditional approvals of projects between the first public road and the sea (whether development or new development) and of all approvals or conditional approvals of projects (whether development or new development) where an access dedication is included in the project proposal or required as a condition of approval. Such findings shall address the applicable factors identified by Section 16.0 and shall reflect the specific level of detail specified, as applicable. Findings supporting all such decisions shall include:

(a) A statement of the individual and cumulative burdens imposed on public access and recreation opportunities based on applicable factors identified pursuant to Section 16.0. The type of affected public access and recreation opportunities shall be clearly described.

(b) An analysis based on applicable factors identified in Section 16.0 of the necessity for requiring public access conditions to find the project consistent with the public access provisions of the Coastal Act.

(c) A description of the legitimate governmental interest furthered by any access condition required.

(e) An explanation of how imposition of an access dedication requirement alleviates the access burdens identified.

Section 16.0 Required project-specific findings

In determining any requirement for public access, including the type of access and character of use, the City shall evaluate and document in written findings the factors identified in subsections (a) through (e), to the extent applicable. The findings shall explain the basis for the conclusions and decisions of the City and shall be supported by substantial evidence in the record. If an access dedication is required as a condition of approval, the findings shall explain how the adverse effects which have been identified will be alleviated or mitigated by the dedication. As used in this section, "cumulative effect" means the effect of the individual project in combination with the effects of past projects, other current projects, and probable future projects, including development allowed under applicable planning and zoning.

(a) Project effects on demand for access and recreation. Identification of existing and open public access and coastal recreation areas and facilities in the regional and local vicinity of the development. Analysis of the project's effects upon existing public access and recreation opportunities. Analysis of the project's cumulative effects upon the use and capacity of the identified access and recreation opportunities, including public tidelands and beach resources, and upon the capacity of major coastal roads from subdivision, intensification or cumulative buildout. Projection of the anticipated demand and need for increased coastal access and recreation opportunities for the public. Analysis of the contribution of the project's cumulative effects to any such projected increase. Description of the physical characteristics of the site and its proximity to the sea, tideland

viewing points, upland recreation areas, and trail linkages to tidelands or recreation areas. Analysis of the importance and potential of the site, because of its location or other characteristics, for creating, preserving or enhancing public access to tidelands or public recreation opportunities.

(b) Shoreline processes. Description of the existing shoreline conditions, including beach profile, accessibility and useability of the beach, history of erosion or accretion, character and sources of sand, wave and sand movement, presence of shoreline protective structures, location of the line of mean high tide during the season when the beach is at its narrowest (generally during the late winter) and the proximity of that line to existing structures, and any other factors which substantially characterize or affect the shoreline processes at the site. Identification of anticipated changes to shoreline processes and beach profile unrelated to the proposed development. Description and analysis of any reasonably likely changes, attributable to the primary and cumulative effects of the project, to: wave and sand movement affecting beaches in the vicinity of the project; the profile of the beach; the character, extent, accessibility and useability of the beach; and any other factors which characterize or affect beaches in the vicinity. Analysis of the effect of any identified changes of the project - alone or in combination with other anticipated changes - will have upon the ability of the public to use public tidelands and shoreline recreation areas.

(c) Historic public use. Evidence of use of the site by members of the general public for a continuous five-year period (such use may be seasonal). Evidence of the type and character of use made by the public (vertical, lateral, blufftop, etc. and for passive and/or active recreational use, etc.). Identification of any agency (or person) who has maintained and/or improved the area subject to historic public use and the nature of the maintenance performed and improvements made. Identification of the record owner of the area historically used by the public and any attempts by the owner to prohibit public use of the area, including the success or failure of those attempts. Description of the potential for adverse impact on public use of the area from the proposed development (including but not limited to, creation of physical or psychological impediments to public use).

(d) Physical obstructions. Description of any physical aspects of the development which block or impede the ability of the public to get to or along the tidelands, public recreation areas, or other public coastal resources or to see the shoreline.

(e) Other adverse impacts on access and recreation. Description of the development's physical proximity and relationship to the shoreline and any public recreation area. Analysis of the extent to which buildings, walls, signs, streets or other aspects of the development, individually or cumulatively, are likely to diminish the public's use of tidelands or lands committed to public recreation. Description of any alteration of the aesthetic, visual or recreational value of public use areas, and of any diminution of the quality or amount of recreational use of public lands which may be attributable to the individual or cumulative effects of the development.

Section 17.0 Required findings for public access exceptions

Any determination that one of the exceptions of Section 4.0 applies to a development shall be supported by written findings of fact, analysis and conclusions which address all of the following:

(a) The type of access potentially applicable to the site involved

(vertical, lateral, bluff top, etc.) and its location in relation to the fragile coastal resource to be protected, the agricultural use, the public safety concern, or the military facility which is the basis for the exception, as applicable.

(b) Unavailability of any mitigating measures to manage the type, character, intensity, hours, season or location of such use so that agricultural resources, fragile coastal resources, public safety, or military security, as applicable, are protected.

(c) Ability of the public, through another reasonable means, to reach the same area of public tidelands as would be made accessible by an accessway on the subject land.

Section 18.0 Findings for management plan conditions

Written findings in support of a condition requiring a management plan for regulating the time and manner or character of public access use must address the following factors, as applicable:

(a) Identification and protection of specific habitat values including the reasons supporting the conclusion that such values must be protected by limiting the hours, seasons, or character of public use.

(b) Topographic constraints of the development site.

(c) Recreational needs of the public.

(d) Rights of privacy of the landowner which could not be mitigated by setting the project back from the accessway or otherwise conditioning the development.

(e) The requirements of the possible accepting agency, if an offer of dedication is the mechanism for securing public access.

(f) Feasibility of adequate setbacks, fencing, landscaping, and other methods as part of a management plan to regulate public use.

APPENDIX B

SUGGESTED MODIFICATIONS TO HUNTINGTON BEACH LCP AMENDMENT 1-95

CHAPTER 245 COASTAL DEVELOPMENT PERMIT

APPENDIX B

SUGGESTED MODIFICATIONS TO HUNTINGTON BEACH LCP AMENDMENT 1-95
COASTAL DEVELOPMENT PERMIT CHAPTER 245

Following are the suggested modifications to Chapter 245, Coastal Development Permit. They are included separately here for clarity. Strike-out indicates deletions and underscoring indicates additions.

Chapter 245 Coastal Development Permit

245.04 Definitions

- B. Appealable Area: That area between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or the mean high tide line of the sea where there is no beach, whichever is greater, tidelands, submerged lands, public trust lands, that area within 300 feet of the top of any coastal bluff, and that area within 100 feet of any wetland, estuary, or stream.
- E. Approving Authority: The Director, Zoning Administrator, Planning Commission, ~~or City Council,~~ or the Coastal Commission on appeal, whichever approves a Coastal Development Permit.
- H. Coastal Development Permit (CDP): A permit issued by the City or the California Coastal Commission in accord with this chapter. A Coastal Development Permit includes all application materials, plans and conditions on which the approval is based.
- J. Development: The placement or erection of any solid material or structure on land, in or under water; discharge or disposal of any materials; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to ~~XXXX/28~~ Section 66410 of the Government Code, and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; and change in the intensity of use of water, or access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation.
- K. Exclusion Areas: The geographic areas of the coastal zone of the City except for tide and submerged lands, beaches and lots immediately adjacent to the inland extent of any beach, or of the

mean high tide line of the sea where there is no beach, in a wetland, estuary, stream, river or within 100 feet of such areas, or any areas defined as "environmentally sensitive habitats" or their buffers by the certified Land Use Plan and so designated on the Land Use Plan maps, or on slopes greater than 20%, and all areas within 300 feet of the top of the seaward face of any coastal bluff, and all lands and waters subject or potentially subject to the public trust.

- L. Local Coastal Program (LCP): The City's land-use plans, zoning ordinance, zoning map, and implementing actions certified by the Coastal Commission ~~as meeting the requirements of~~ pursuant to the Coastal Act and adopted by the City Council for the purpose of carrying out the provisions of the Coastal Act.

245.06 Permit Required

Any person, partnership, or corporation, or state or local government agency wishing to undertake a development in the ~~the coastal zone~~ coastal zone shall obtain a Coastal Development Permit in accord with the provisions of this chapter, unless exempt or categorically excluded. Such permit must be issued prior to the start of development and shall be required in addition to any other permits or approvals required by the City.

All development within the coastal zone requires a coastal development permit unless specifically exempted or excluded. After certification of the LCP, the City shall issue all coastal development permits for development not located within the Coastal Commission's original permit jurisdiction. The Coastal Commission's original permit jurisdiction includes all tidelands, submerged lands, or public trust lands whether filled or unfilled unless the Coastal Commission has delegated original permit jurisdiction to the City for areas potentially subject to the public trust but which are determined by the Coastal Commission to be filled, developed, and committed to urban use pursuant to Section 30613 of the Coastal Act. Development located in the Coastal Commission's original permit jurisdiction requires approval of a coastal development permit issued by the Coastal Commission in accordance with the procedure as specified by the California Coastal Act.

245.08 Exemptions

- A. 5. Any significant alteration of land forms including removal or placement of vegetation, on a beach, wetland or sand dune, or within 50 feet of the edge of the coastal bluff.
6. Any addition to a structure where the coastal development permit issued for the original structure by the City or Coastal Commission indicated that any future additions would require a coastal development permit.
- E. Replacement of Destroyed Structures. The replacement of any structure, other than a public works facility, destroyed by natural disaster is exempt, provided such replacement structure conforms to applicable current zoning regulations, is designed and intended for the same use as the destroyed structure, does not exceed the floor

area, height or bulk of the destroyed structure by more than 10 percent, and is sited in the same location on the same building site as the destroyed structure.

1) As used in this subdivision:

- a) "Disaster" means any situation in which the force or forces which destroyed the structure to be replaced were beyond the control of its owner.
- b) "Bulk" means total interior cubic volume as measured from the exterior surface of the structure.
- c) "Structure" includes landscaping and any erosion control structure or device which is similar to that which existed prior to the occurrence of the disaster.

- G. Ongoing Repair and Maintenance By Public Agencies and Utilities. Ongoing routine repair and maintenance activities of public agencies and public utilities as described in "Repair, Maintenance and Utility Hook-Up Exclusions from Permit Requirements" adopted by the California Coastal Commission on September 5, 1978, are exempt, provided no new roads are constructed, grading or clearing an undisturbed area does not exceed 500 square feet, no trees exceeding 12 dbh are removed, or the height or bulk of an existing structure will not be altered.

Add new section J. Temporary Events as follows:

J. Temporary Events.

1. A temporary event is an activity or use that constitutes development as defined in Section 245.04 J of this Chapter; and is an activity or function which does not exceed a two week period on a continual basis, or does not exceed a consecutive four month period on an intermittent basis; and involves the placement of non-permanent structures (including but not limited to bleachers, perimeter fencing, vendor tents/canopies, judging stands, trailers, portable toilets, sound/video equipment, stages, platforms, etc., which do not involve grading or landform alteration for installation); and/or exclusive use of a sandy beach, parkland, filled tidelands, water, streets or parking area which is otherwise open and available for general public use.

2. Exclusive use means a use that precludes use in the area of the event for public recreation, beach access or access to coastal waters other than for or through the event itself. Sandy beach area includes publicly owned and privately owned sandy areas fronting on coastal waters, regardless of the existence of potential prescriptive rights or a public trust interest. Coastal resources include, but are not limited to, public access opportunities, visitor and recreational facilities, water-oriented activities, marine resources, biological resources, environmentally sensitive habitat areas, agricultural lands, and archaeological or paleontological resources.

3. Except as provided in section 4 below, the Director of Community Development shall exclude from coastal development permit requirements all temporary events except those which meet all of the following criteria:

- a) It is held between Memorial Day weekend and Labor Day; and,
- b) It occupies all or a portion of a sandy beach area; and,
- c) It involves a charge for general public admission or seating where no fee is currently charged for use of the same area (not including booth or entry fees).

Only temporary events meeting all of the above criteria shall require coastal development permit review, however,

The Director of Community Development may also exclude from permit requirements temporary events meeting all of the above criteria when:

- d) The fee is for preferred seating only and more than 75% of the provided seating capacity is available free of charge for general public use; or,
- e) The event is held on sandy beach area in a remote location with minimal demand for public use, and there is no potential for adverse effect on sensitive coastal resources; or,
- f) The event is less than one day in duration; or,
- g) The event has previously received a coastal development permit and will be held in the same location, at a similar season, and for the same duration, with operating and environmental conditions substantially the same as those associated with the previously-approved event.

4. The Director of Community Development or the City Council through direction to the Director of Community Development, may determine that a temporary event shall be subject to coastal development permit review, even if the criteria in Section 3. are not met, if the Director or City Council determines that unique or changing circumstances exist relative to a particular temporary event that have the potential for significant adverse impacts on coastal resources. Such circumstances may include the following:

- a) The event, either individually or together with other temporary events scheduled before or after the particular event, precludes the general public from use of a public recreational area for a significant period of time;
- b) The event and its associated activities or access requirements will either directly or indirectly impact environmentally sensitive habitat areas, rare or endangered species, significant

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scenic resources, or other coastal resources as described in Section 2.;

- c) The event is scheduled between Memorial Day weekend and Labor Day and would restrict public use of roadways or parking areas or otherwise significantly impact public use or access to coastal waters;
- d) The event has historically required a coastal development permit to address and monitor associated impacts to coastal resources.

Delete: 245.08 F. Public Service Emergency Measures
and replace with new Section 245.07 Emergency Coastal Development Permit as follows:

245.07 Emergency Coastal Development Permit

In the event of a verified emergency, temporary emergency authorization to proceed with remedial measures may be given by the director of community development or his/her designee until such time as a full coastal development permit application shall be filed.

- A. Application. Application shall be made to the director of community development by letter if time allows, or in person or by telephone, if time does not allow. The information, to be reported at the time of the emergency or within three days after the emergency, shall include the following:
 - 1) Nature of the emergency;
 - 2) Cause of the emergency insofar as this can be established;
 - 3) Location of the emergency;
 - 4) The remedial, protective, or preventive work required to deal with the emergency;
 - 5) The circumstances during the emergency that appeared to justify the cause(s) of action taken, including the probable consequences of failing to take action.
- B. Limitations. The director of Community Development shall not grant an emergency coastal development permit for any development that falls within an area in which the Coastal Commission retains direct permit review authority, or for any development that is appealable to the Coastal Commission. In such areas and for such developments, a request for an emergency authorization must be made to the Coastal Commission.
 - 1) In addition, a waiver for a coastal development emergency permit may be obtained from the Coastal Commission executive director for development that is required to protect life or public property in accordance with Section 30611 of the Coastal Act.

- C. Noticing. The director of Community Development shall provide notice of the proposed emergency action. The extent and type of the notice shall be determined on the basis of the nature of the emergency. If the nature of the emergency does not allow sufficient time for public notice to be given before the emergency work begins, the director of Community Development shall provide public notice of the action taken, or being taken, as soon as is practical. Public notice of the nature of the emergency and the remedial actions to be taken shall be posted on the site in a conspicuous place and mailed to all persons the director of Community Development has reason to know would be interested in such action and to the Coastal Commission.
- D. Findings and Conditions. The director of Community Development may grant an emergency coastal development permit upon reasonable terms and conditions, which shall include an expiration date and the necessity for a regular permit application later, if the director of Community Development finds that:
- 1) An emergency exists that requires action more quickly than permitted by the procedures for a coastal development permit and the work can and will be completed within thirty days unless otherwise specified by the terms of the permit;
 - 2) Public comment on the proposed emergency action has been reviewed, if time allows;
 - 3) The work proposed would be consistent with the requirements of the certified Local Coastal Program.
- E. Expiration of Emergency Permit. An emergency permit shall be valid for sixty days from the date of issuance by the director of Community Development. Prior to expiration of the emergency permit, the permittee must submit a regular coastal development permit application for the development even if only to remove the development undertaken pursuant to the emergency permit and restore the site to its previous condition.
- F. Report to City Council and Coastal Commission. The director of Community Development shall report in writing and orally, the granting of an emergency permit to the City Council at its next scheduled meeting, and to the Coastal Commission. The report shall include a description of the nature of the emergency, the development involved, and the person or entity undertaking the development. Copies of the report shall be available at the meeting and shall be mailed to the Coastal Commission and to all persons requesting such notification of local coastal development decisions.

H. Minor Developments

Move to new section 245.09 Categorical Exclusions Minor Development

I. Miscellaneous Activities

Move to new section 245.9.1 Categorical Exclusions Miscellaneous Activities

245.10 Categorical Exclusions

Pursuant to Huntington Beach Categorical Exclusion Order E-84-2 approved by the California Coastal Commission on March 1, 1985, the following specific categories within specific geographical areas (exclusion areas) as shown on a map approved by the California Coastal Commission will not require a coastal development permit. A current record of all permits issued for categorically-excluded developments shall be available for public and Coastal Commission review and shall contain the name of applicant, location (street address and assessor's parcel number of property on which development is proposed), and brief description of the ~~project~~ development, date of application of other local permit(s), all terms and conditions of development imposed by the City in granting its approval, the site plan and vicinity map of the development.

Pursuant to California Code of Regulations section 13243, any change to the categorical exclusion order requires action by the California Coastal Commission on the categorical exclusion. The categorical exclusion order cannot be modified through changes to the LCP alone. A request for amendment to a categorical exclusion order shall be processed pursuant to California Code of Regulations sections 13241 - 13245.

- A. Permitted uses (excluding S.245.08A) within RL, RM, RMH, and RH ~~and~~ /IX districts, except Downtown Specific Plan (Specific Plan 5) District 2, which are consistent with the zoning provisions of this code and do not require any discretionary review.

245.24 Notice of City Action

- C. Effective Date of City Action. The City's final decision on an application for an appealable development shall become effective after the ten on the eleventh appeal period of the Commission has expired working day after the Coastal Commission has received notice of the completed City action in accordance with 245.24 B unless either of the following occur:

1. An appeal is filed in accordance with this chapter;
2. The notice of final City action does not meet the requirements of this chapter.

245.32 Appeals

- A. Action by the Zoning Administrator or Planning Commission to approve, conditionally approve, or deny any Coastal Development Permit may be appealed on or before the tenth working day following such action. Action by the Zoning Administrator may be appealed to the Planning Commission. Action by the Planning Commission may be appealed ~~only~~ to the City Council.

Actions by the Zoning Administrator, Planning Commission, or City Council to approve or conditionally approve development located within the appealable area of the coastal zone may be appealed directly to the Coastal Commission, if a fee is charged for local appeal. Approval, conditional approval, or denial of a coastal development permit for development located in the appealable area of the coastal zone that constitutes a major public works project or a major energy facility may also be appealed directly to the Coastal Commission if a fee is charged for local appeal.

8. Action by the City Council ~~to approve/conditionally approve/or deny~~ on a Coastal Development Permit for the following types of development may be appealed to the Coastal Commission in accordance with Coastal Commission provisions.
1. Approval~~d~~ or conditionally approval~~d~~ of coastal development permits for developments located within the appealable area;
 2. Approval~~d~~, conditionally approval~~d~~, or denial~~d~~ of coastal development permits for ~~projects~~ development that constitutes a major public works project or a major energy facility located in the appealable area of the coastal zone.

245.38 Permit Amendment

Upon application by the permittee, a Coastal Development Permit may be amended by the approving authority. Application for and action on an amendment shall be accomplished in the same manner specified by this chapter for initial approval of Coastal Development Permit. In addition, hearing notice shall be given to any person who the Director ~~determines~~ has reason to know would be interested in the matter. Public hearing notice requirements for permit amendments shall be the same as required for public hearings for the permit application.

245.40 Procedures for Open Space Easements and Public Access

Delete and replace with new Section 245.40 Guarantees of Public Access, attached as Appendix B.