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Prepared November 17, 2016 for December 9, 2016 Hearing

To: Commissioners and Interested Persons

From: Susan Craig, Central Coast District Manager
Yair Chaver, Coastal Planner

**Subject: De Minimis Amendment Determination for City of Morro Bay LCP Amendment
Number LCP-3-MRB-16-0056-2-Part B (Reasonable Accommodations)**

City of Morro Bay's Proposed Amendment

The City of Morro Bay is proposing to modify the Local Coastal Program (LCP) Implementation Plan (IP) to add new IP Section 17.48.400 designed to provide a process by which persons with disabilities can request reasonable accommodation from the strict application of LCP standards if required to ensure equal access to housing. Typically, such accommodations involve things like reducing the required front yard setback to allow construction of a ramp for wheelchair access. The reasonable accommodations ordinance differs from a typical variance ordinance in that it is not justified by the site-specific configuration of the property per se, but rather is justified by the needs of the disabled applicant in terms of his/her ability to use his or her property in compliance with LCP standards. The addition of this proposed amendment language would also bring the City's LCP into compliance with applicable State and Federal laws. See Exhibit 1 for the text of proposed IP Chapter 17.48.120 and 17.48.400.

De Minimis LCP Amendment Determination

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

1. The Executive Director determines that the proposed amendment would have no impact, either individually or cumulatively, on coastal resources, and that it is consistent with the policies of Chapter 3;
2. The local government provides public notice of the proposed amendment at least 21 days prior to submitting the amendment to the Commission, by one of the following methods: posting on-site and off-site in the affected area, newspaper publication, or direct mailing to owners and occupants of contiguous property; and

3. The amendment does not propose any change in use of land or water or allowable use of property.

At the time that the local government submits the proposed amendment to the Executive Director, the local government shall also submit any public comments that were received during the public notice/comment period provided, as specified above. If the Executive Director determines that an amendment is de minimis, that determination must be reported to the Commission. If three or more Commissioners object to the de minimis LCP amendment determination, then the amendment shall be set for a future public hearing; if three or more Commissioners do not object to the de minimis determination, then the amendment is deemed approved, and it becomes a certified part of the LCP ten days after the date of the Commission meeting (in this case, on December 19, 2016).

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

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

Although the primary intent of the amendment is to comply with State and Federal laws related to reasonable accommodations, the proposed language has also taken into account Coastal Act considerations, and has been designed to ensure that any reasonable accommodations granted will not result in impacts to coastal resources, either individually or cumulatively. Specifically, proposed Section 17.48.400.2.B requires that any applicant submitting a reasonable accommodation request that would require a coastal development permit (CDP), must file an application for the CDP for concurrent review. Further, before approval of the requested accommodation, it would be evaluated to determine whether it would require any fundamental change in the nature of a City program or laws, including the LCP (see proposed Section 17.48.400.4.D). These types of measures are consistent with the way in which other cities and counties have addressed Coastal Act concerns when addressing reasonable accommodations, and consistent with language typically certified by the Commission for this purpose.

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

- 2. Provision of public notice:** The City provided public notice in advance of the Planning Commission hearings (held on January 15, 2014 and October 21, 2014) and the City Council hearings (held on January 28, 2014, February 25, 2014, March 11, 2014, and December 9, 2014) where the proposed amendment was considered, well in advance of the 21-day notice period required prior to submitting the proposed amendment to the Executive Director. For the Planning Commission hearing, a newspaper advertisement notice was printed on November 17, 2013. For the City Council hearings, a newspaper advertisement notice was printed on January 17, 2014, February 14, 2014 and November 8, 2014. The amendment submittal was subsequently received by the Coastal Commission on October 17, 2016 (and filed as complete on November 9, 2016), and therefore, the 21-day noticing requirement has been satisfied.

As previously discussed, at the time that the local government submits the proposed amendment to the Executive Director, the local government shall also submit any public comments that were received during the public notice/comment period provided, as specified above. No comments were received.

- 3. No change in use of land or allowable use of property:** No change in use is proposed by this amendment.

California Environmental Quality Act (CEQA)

The Coastal Commission's review and development process for LCPs and LCP amendments has been certified by the Secretary of Resources as being the functional equivalent of the environmental review required by CEQA. (14 CCR § 15251(f).) Therefore, the City exempted the proposed amendment from environmental review under CEQA. This report has discussed the relevant coastal resource issues with the proposal, and has concluded that the proposed LCP amendment is not expected to result in any significant adverse impact on the environment. Thus, it is unnecessary for the Commission to suggest modifications to the proposed amendment to address adverse environmental impacts because the proposed amendment, as submitted, will not result in any significant environmental effects for which feasible mitigation measures would be required.

Coastal Commission Concurrence

The Executive Director will report this de minimis LCP amendment determination, and any comments received on it, to the Coastal Commission at its December 9, 2016 meeting in Ventura. If you have any questions or need additional information regarding the proposed amendment or the method under which it is being processed, please contact Yair Chaver at the Central Coast District Office in Santa Cruz. If you wish to comment on and/or object to the proposed de minimis LCP amendment determination, please do so by December 2, 2016.

Procedural Note - LCP Amendment Action Deadline

This proposed LCP amendment was filed as complete on November 9, 2016. It amends the IP only and the 60-day action deadline is January 8, 2017. (*See* Pub. Res. Code §§ 30513, 30514(b).) Thus, unless the Commission extends the action deadline (it may be extended by up to one year, per Pub. Res. Code § 30517), the Commission has until January 8, 2017 to take a final action on this LCP amendment.

Exhibit 1: Proposed IP Chapter 17.48.120 and 17.48.400 Reasonable Accommodations

Proposed IP Amendment:

17.48.120 Porch, landing place or stairway projections.

- A. Open, uncovered, raised porches, landing places, handicapped ramps or outside stairways in excess of thirty inches above ground elevation may project not closer than three feet to any interior side yard or rear lot line and not exceeding five feet into any required front yard or street side yard setback and no closer than five feet to said lot line. Wind screens/walls must be of a clear material and shall not exceed five feet in height above the floor of the landing or deck. Projections which are less than thirty inches above ground elevation may project closer than three feet to any lot line, provided however, that such projections which are made of combustible material may extend to the rear and interior side property line if they terminate at a noncombustible wall or fence which extends at least thirty inches above the projection.
- B. For downslope lots, stairs, decks or porches located in the front and exterior side yard setback may be permitted to exceed thirty inches above grade provided that:
 - 1. They do not extend above the height of the top of the curb (or height of the edge of pavement where there is no curb); and
 - 2. They do not extend into the interior side yard or rear yard setbacks.

17.48.400 – Reasonable Accommodation Procedure.

This section provides a procedure to request reasonable accommodation for persons with disabilities seeking equal access to housing under the Federal Fair Housing Act and the California Fair Employment and Housing Act (the Acts) in the application of zoning laws and other land use regulations, policies and procedures.

- 1. Applicability.
 - A. A request for reasonable accommodation may be made by any person with a disability, their representative or any entity, when the application of a requirement of this Zoning Ordinance or other city requirement, policy or practice acts as a barrier to fair housing opportunities. A person with a disability is a person who has a physical or developmental impairment that limits or substantially limits one or more major life activities, anyone who is regarded as having such impairment or anyone who has a record of such impairment. This chapter is intended to apply to those persons who are defined as disabled under the Acts.
 - B. A request for reasonable accommodation may include a modification or exception to the rules, standards and practices for the siting, development and use of housing or housing- related facilities that would eliminate regulatory barriers and provide a person with a disability equal opportunity to housing of their choice.
 - C. A reasonable accommodation is granted to the household that needs the accommodation and does not apply to successors in interest to the property.

- D. A reasonable accommodation may be granted in compliance with this chapter without the need for the approval of a variance.
 - E. Requests for reasonable accommodation shall be as described in the following section.
2. Application Procedure.
- A. Application. Requests for reasonable accommodation shall be submitted in the form of a letter to the Public Services Director and shall contain the following information:
 - B. The applicant's name, address and telephone number;
 - C. Address of the property for which the request is being made;
 - D. The current actual use of the property;
 - E. The basis for the claim that the individual is considered disabled under the Acts;
 - F. The Zoning Ordinance provision, regulation or policy from which reasonable accommodation is being requested; and
 - G. Why the reasonable accommodation is necessary to make the specific property accessible to the individual.
 - H. Review with Other Land Use Applications. If the project for which the request for reasonable accommodation is being made also requires some other discretionary approval (e.g., conditional use permit, coastal development permit, etc.), then the applicant shall file the application for discretionary approval together with the information required by Subsection A above for concurrent review.
3. Review Authority.
- A. Public Services Director. Requests for reasonable accommodation shall be reviewed by the Public Services Director, or his/her designee if no approval is sought other than the request for reasonable accommodation. The written determination to grant, grant with modifications, or deny the request for reasonable accommodation shall be made in accordance with the Findings and Decision as established below.
 - B. Other Review Authority. Requests for reasonable accommodation submitted for concurrent review with another discretionary land use application shall be reviewed by the authority responsible for reviewing the discretionary land use application. The written determination to grant, grant with modifications, or deny the request for reasonable accommodation shall be made in accordance with the Findings and Decision as established below.
4. Findings and Decision. The written decision to grant or deny a request for reasonable accommodation will be consistent with the Acts and shall be based on consideration of the following factors:

- A. Whether the housing, which is the subject of the request, will be used by an individual disabled under the Acts;
 - B. Whether the request for reasonable accommodation is necessary to make specific housing available to an individual with a disability under the Acts;
 - C. Whether the requested reasonable accommodation would impose an undue financial or administrative burden on the City;
 - D. Whether the requested reasonable accommodation would require a fundamental alteration in the nature of a City program or law, including but not limited to land use, zoning, or the Local Coastal Program;
 - E. Potential impact on surrounding uses;
 - F. Physical attributes of the property and structures; and
 - G. Alternative reasonable accommodations that may provide an equivalent level of benefit.
5. Conditions of Approval. In granting a request for reasonable accommodation, the reviewing authority may impose any conditions of approval deemed reasonable and necessary to ensure that the reasonable accommodation would comply with the findings required herein. The conditions shall also state whether the accommodation granted shall be rescinded in the event that the person for whom the accommodation was requested no longer resides on the property.