

CALIFORNIA COASTAL COMMISSION

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November 30, 2017

W24c**TO: COMMISSIONERS AND INTERESTED PERSONS****FROM: KARL SCHWING, DEPUTY DIRECTOR, SD COAST DISTRICT
DEBORAH LEE, DISTRICT MANAGER, SD COAST DISTRICT
ERIN PRAHLER, COASTAL PROGRAM ANALYST, SD COAST DISTRICT****SUBJECT: STAFF RECOMMENDATION ON CITY OF CARLSBAD MAJOR
AMENDMENT NO. LCP-6-CAR-17-0055-2 for Commission Meeting of
DECEMBER 13-15, 2017**

SYNOPSIS

The City of Carlsbad submitted Local Coastal Program Amendment No. LCP-6-CAR-17-0055-2 on September 28, 2017. The subject LCP implementation plan amendment was filed as complete on November 8, 2017. The date by which the Commission must take action, absent an extension of the time limits by the Commission, is January 7, 2018. This report addresses the entire submittal.

SUMMARY OF AMENDMENT REQUEST

The City of Carlsbad proposes revisions to the City's Zoning Ordinance, part of the certified LCP implementation plan, to make the City's regulation of second dwelling units ("accessory dwelling units" as proposed) consistent with recent changes in state law. Specifically, the City proposes to replace all references to "second dwelling unit" with "accessory dwelling unit," specify a deadline for decisions on accessory dwelling unit applications, modify and/or add development standards related to maximum floor area, setbacks, maximum height, parking requirements and exceptions to the parking requirements, and to clarify the types of development that are exempt from coastal development permit requirements. The proposed amendment consists of text changes only; the revisions will apply citywide, as well as affect development in all segments of the City's certified LCP.

SUMMARY OF STAFF RECOMMENDATION

Staff is first recommending denial of the Implementation Plan (IP) as submitted, and then recommends approval of the IP amendment with three suggested modification(s). The proposed revisions to the City's Second Dwelling Unit regulations to incorporate recent state law changes regarding regulation of accessory dwelling units (ADUs) raise several issues. The proposed regulations include a potential exception related to the maximum height limit for ADUs built above detached garages that could result in adverse impacts

to public views. Therefore, Suggested Modification 1 clarifies that when an ADU is added above a garage, the total structure is limited to a maximum of two stories, including the garage, to protect public views consistent with the certified Local Coastal Program Land Use Plan.

Another provision adopted by the City mandates a zero or reduced setback for the conversion of an existing garage into an ADU or the addition of an ADU above a garage. Improvements made to a garage structure in order to convert it to or add an ADU are likely to significantly extend the expected lifetime and economic value of such existing structures. In the limited circumstances that a garage is nonconforming with regard to habitat preserve buffers or is located within a setback area necessary to ensure geologic stability, extending the life of such structures could result in impacts to sensitive habitat or place the structures and their occupants at risk. Suggested Modification 2 clarifies that within the coastal zone, garage conversions or ADUs built above garages must conform with habitat preserve buffers and geologic stability setbacks required in the certified Local Coastal Program.

The City's provision regarding garage setbacks limits the application of the reduced setbacks for ADUs constructed above garages to those garages built prior to January 1, 2017, the effective date of the state law changes made by AB 2299. As a result, for garages built after January 1, 2017, the garage must meet the required habitable structure setback to build an ADU over it, rather than the "no more than five feet" setback requirement for garages constructed prior to January 1, 2017. This modification of the state law requirement appears to be inconsistent with the intent of AB 2299 to increase the supply of affordable housing and ensure that local ordinances do not unreasonably limit the ability of property owners to create ADUs. Suggested Modification 2 eliminates the reference to January 1, 2017 in order to ensure that the regulations meet the intention of the state law.

Finally, the City proposes several revisions to Section 21.201.060 that would exempt some improvements to single-family residential buildings from a coastal development permit requirement raising concerns regarding potential adverse impacts to coastal resources. Suggested Modification 3 clarifies that only ADUs converted from the existing space of an attached accessory structure could be exempt, while ADUs converted from the existing space of a detached accessory structure would remain subject to a permit requirement. In addition, the modification clarifies that improvements or residences that are located within ESHA are subject to a permit requirement. Finally, the suggested modification makes clear that a permit is required for improvements to an existing single-family residential building related to establishment of an ADU where the primary residence or attached accessory structure is nonconforming with respect to LCP policies related to habitat buffers and geologic stability setbacks.

The appropriate resolutions and motions begin on Page 4. The suggested modifications begin on Page 6. The findings for denial of the Implementation Plan Amendment as submitted begin on Page 7. The findings for approval of the plan amendment, if modified, begin on Page 14.

ADDITIONAL INFORMATION

Further information on the City of Carlsbad's LCP amendment LCP-6-CAR-17-0055-2 may be obtained from Erin Prahler, Coastal Planner, at (619) 767-2370.

EXHIBITS

[Exhibit 1 – Resolution No. 7254](#)

[Exhibit 2 – Proposed Text Changes in Strikeout/Underline](#)

[Exhibit 3 – Letters to Planning Directors of Coastal Cities and Counties from John Ainsworth, Executive Director of the California Coastal Commission re: New Accessory Dwelling Unit Legislation and Implementation of New Accessory Dwelling Unit Law, dated April 18, 2017 and November 20, 2017](#)

APPENDICES

Appendix A – Substantive File Documents

PART I. OVERVIEW

A. LCP HISTORY

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

B. STANDARD OF REVIEW

Pursuant to Section 30513 of the Coastal Act, the Commission may only reject zoning ordinances or other implementing actions, as well as their amendments, on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. The Commission shall take action by a majority vote of the Commissioners present.

C. PUBLIC PARTICIPATION

Section 30503 of the Coastal Act requires local governments to provide the public with maximum opportunities to participate in the development of the LCP amendment prior to its submittal to the Commission for review. The City has held Planning Commission and City Council meetings with regard to the subject amendment request. All of those local hearings were duly noticed to the public. Notice of the subject amendment has been distributed to all known interested parties.

PART II. LOCAL COASTAL PROGRAM SUBMITTAL - RESOLUTIONS

Following a public hearing, staff recommends the Commission adopt the following resolutions and findings. The appropriate motion to introduce the resolution and a staff recommendation are provided just prior to each resolution.

- I. MOTION I:** *I move that the Commission reject the Implementation Program Amendment No. LCP-6-CAR-17-0055-2 for the City of Carlsbad as submitted.*

STAFF RECOMMENDATION OF REJECTION:

Staff recommends a **YES** vote. Passage of this motion will result in rejection of Implementation Program and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DENY CERTIFICATION OF THE IMPLEMENTATION PROGRAM AS SUBMITTED:

The Commission hereby denies certification of the Implementation Program Amendment submitted for City of Carlsbad and adopts the findings set forth below on grounds that the Implementation Program as submitted does not conform with, and is inadequate to carry out, the provisions of the certified Land Use Plan. Certification of the Implementation Program would not meet the requirements of the California Environmental Quality Act as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Implementation Program as submitted

- II. MOTION II:** *I move that the Commission certify the Implementation Program Amendment No. LCP-6-CAR-17-0055-2 for the City of Carlsbad if it is modified as suggested in this staff report.*

STAFF RECOMMENDATION:

Staff recommends a **YES** vote. Passage of this motion will result in certification of the Implementation Program Amendment with suggested modifications and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO CERTIFY THE IMPLEMENTATION PROGRAM AMENDMENT WITH SUGGESTED MODIFICATIONS:

The Commission hereby certifies the Implementation Program Amendment for the City of Carlsbad if modified as suggested and adopts the findings set forth below on grounds that the Implementation Program Amendment, with the suggested modifications, conforms with and is adequate to carry out the certified Land Use Plan. Certification of the Implementation Program Amendment if modified as suggested complies with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Program Amendment on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.

PART III. SUGGESTED MODIFICATIONS

Staff recommends the following suggested revisions to the proposed Implementation Plan be adopted. The underlined sections represent language that the Commission suggests be added, and the ~~struck out~~ sections represent language which the Commission suggests be deleted from the language as originally submitted.

1. Modify Section 21.10.030 – Accessory Dwelling Units, Subsection “D” – Requirements for accessory dwelling units, as follows:
 5. Attached accessory dwelling units shall conform to the height limits applicable to the zone and detached accessory dwelling units shall be limited to one story, except that accessory dwelling units constructed above detached garages shall be permitted and shall conform to the height limits applicable to the zone. Structures that contain accessory dwelling units located above detached garages shall be limited to a maximum of two stories including the garage. Roof decks shall not be permitted on detached accessory dwelling units.
2. Modify Section 21.10.030 – Accessory Dwelling Units, Subsection “D” – Requirements for accessory dwelling units, as follows:
 6. No setback shall be required for an existing garage that is converted to an accessory dwelling unit, and a setback of no more than five feet from the side and rear lot lines shall be required for an accessory dwelling unit that is constructed above a garage ~~that existed prior to January 1, 2017.~~ However, within the coastal zone, an existing garage that is converted to an accessory dwelling unit or an accessory dwelling unit that is constructed above a garage shall be consistent with all habitat preserve buffers and geologic stability setbacks in the certified local coastal program.
3. Modify Section 21.201.060 – Exemptions and categorical exclusions from minor coastal development permit and coastal development permit procedures, Subsection “B” – Exemptions, as follows:
 - B. Exemptions. The following projects are exempt from the requirements of a minor coastal development permit and coastal development permit:
 1. Improvements to an existing single-family residential building, including an accessory dwelling unit that is attached to the primary residence, or converted from the existing space of a primary residence or attached accessory structure, except:
 - a. On a beach, wetland or seaward of the mean high tide line;

- b. Where the residence or proposed improvement would encroach in an environmentally sensitive habitat area or within fifty feet of the edge of a coastal bluff;
- c. Improvements that would result in an increase of ten percent or more of internal floor area of an existing structure or an additional improvement of ten percent or less where an improvement to the structure had previously been undertaken pursuant to Public Resources Code Section 30610(a), or an increase in height by more than ten percent of an existing structure and/or any significant nonattached structure such as garages, fences, shoreline protective works or docks, and such improvements are ~~to~~on property located:

[...]
- e. Expansion or construction of water wells or septic systems;
- f. Improvements to establish an accessory dwelling unit that is attached to the primary residence, or converted from the existing space of a primary residence or attached accessory structure where such primary residence or attached accessory structure is nonconforming with respect to habitat preserve buffers or geologic stability setbacks in the certified local coastal program.

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

A. AMENDMENT DESCRIPTION

This request involves a city-initiated LCP amendment to the City’s Zoning Ordinance (Municipal Code), which is certified as part of its LCP implementation Plan (IP). No changes to land use or the certified LCP land use plans are proposed herein.

The City of Carlsbad has had provisions regulating second dwelling units in the coastal zone that were effectively certified by the Commission in July 1997 (LCP Amendment No. 1-96G). The existing regulations (contained in Ch. 21.10 of the LCP IP) allow second dwelling units within all single-family and multi-family zones (which are developed with single family residences) and establish development standards regulating the placement, location, design and construction of second dwelling units, as well as their review and approval process. Since the LCP second dwelling unit ordinance was certified, Section 65852.2 of the California Government Code, related to land use and second units, has been amended a number of times, including most recently by Assembly Bill 2299 (Bloom, 2016) and Senate Bill 1069 (Wieckowski, 2016). The new state law authorizes local governments and agencies to provide for the creation of second units, termed “accessory dwelling units” (ADUs), in single-family and multi-family residential zones by ordinance. The law, approved by the Governor and effective as of January 1,

2017, specifically requires that applications for ADUs that comply with local regulations be approved ministerially within 120 days of submittal and not be subject to public hearings. AB 2299 also adds a number of criteria to be included in a local ordinance for ADUs, including those related to maximum size, setbacks, the number, location and configuration of required parking and exceptions to parking requirements, growth limits, and density requirements. However, except for removing the requirement to hold a public hearing on coastal development permits for ADUs, AB 2299 did not change the effect or application of the Coastal Act (Gov. Code § 6582.2(j)).

The City proposes to modify several sections of the IP to make its regulation of accessory or second dwelling units consistent with these new state law provisions. Specifically, the City proposes to replace all references to “second dwelling unit” with “accessory dwelling unit,” specify a 120 day deadline for ministerial approval of accessory dwelling unit applications, modify and/or add development standards related to maximum floor area, setbacks, maximum height, parking requirements and exceptions, and clarify the types of development that are exempt from coastal development permit requirements.

B. FINDINGS FOR REJECTION

The standard of review for LCP implementation plan submittals or amendments is their consistency with and ability to carry out the provisions of the certified LUP.

a) Purpose and Intent of the Ordinance. The purpose of this proposed Zoning Ordinance amendment is to revise the existing provisions that govern accessory dwelling units to be consistent with recent changes in state law.

b) Major Provisions of the Ordinance. The major provisions of the proposed ordinance would replace the definition of “second dwelling unit” with a definition of “accessory dwelling unit” in Chapter 21.04 of the Zoning Code and replace the terms throughout the Zoning Code.

The primary changes to the City’s Zoning Code are proposed in Chapter 21.10 regarding R-1 One-Family Residential Zone. Section 21.10.030 describes the City’s existing second dwelling unit regulations. The proposed revisions to this section incorporate the recent changes in state law regarding ADUs, including mandating ministerial action on ADU permit applications within 120 days of submittal.

Development standards applicable to ADUs are revised in this section, consistent with the changes in state law, except with slight modifications. For example, the City proposes to retain its existing 640 square foot limit on the size of ADUs. In addition, the City proposes to limit the application of AB 2299’s reduced setback requirements associated with conversion of garages and ADUs added above garages to only those garages constructed prior to January 1, 2017, the effective date of AB 2299.

Additional revisions are proposed to incorporate the changes in AB 2299 related to parking. In particular, these changes limit the maximum parking requirement to one space

per unit or one space per bedroom of an ADU and eliminate a parking requirement for ADUs where located within one-half mile of public transit; located within an architecturally and historically significant historic district; the ADU is converted from the existing space of the existing primary residence or an existing accessory structure; where on-street parking permits are required but not offered to the occupant of the ADU; or are located within one block of a designated car share pick up or drop off location. Proposed changes require replacement parking in any configuration on the lot where an existing garage for the primary residence is demolished or converted as part of the ADU project.

In addition, the City proposes revisions throughout Section 21.10.080 regarding Placement of Buildings in its R-1 One-Family Residential Zone to clarify that ADUs must meet all of the zone requirements relating to placement of a dwelling unit on a lot, including setbacks, except as otherwise specified in Section 21.10.030. These same changes regarding the placement of dwelling units are carried through in all residential zones throughout the Zoning Code, including in Chapters 21.08 R-A Residential Agricultural Zone, 21.09 R-E Rural Residential Estate Zone, 21.12 R-2 Two-Family Residential Zone, 21.16 R-3 Multiple-Family Residential Zone, 21.18 R-P Residential Professional Zone, 21.20 R-T Residential Tourist Zone, 21.22 R-W Residential Waterway Zone, 21.24 RD-M Residential Density-Multiple Zone, and 21.45 Planned Developments.

The number of off-street parking spaces, location, and configuration of required parking for ADUs are also revised in Chapter 21.44 Parking.

Finally, the City has proposed changes to Chapter 21.201 Coastal Development Permit Procedures to clarify when ADUs are exempt from coastal development permit requirements and to better reflect the categories of improvements described in California Code of Regulations Section 13250 that do require a coastal development permit.

c) Adequacy of the Ordinance to Implement the Certified LUP Segments. The Commission can only reject LCP implementation plan amendments where it can be shown that the amendment would be inconsistent with the certified land use plan (LUP) or render the IP inadequate to carry out the LUP. The City of Carlsbad's certified LCP includes the following relevant LUP policies:

Habitat Management Plan

Policy 7-1 Environmentally Sensitive Habitat Areas (ESHA) states:

Pursuant to Section 30240 of the California Coastal Act, environmentally sensitive habitat areas, as defined in Section 30107.5 of the Coastal Act, shall be protected against any significant disruption of habitat values, and only uses dependent upon those resources shall be allowed within those areas.

Policy 7-11 Buffers and Fuel Modification Zones states, in relevant part:

Buffers shall be provided between all preserved habitat areas and development. Minimum buffer areas shall be provided as follows:

- a. 100 ft. for wetlands
- b. 50 ft. for riparian areas
- c. 20 ft. for all other native habitats (coastal sage scrub, southern maritime chaparral, maritime succulent scrub, southern mixed chaparral, native grassland, oak woodland)

Mello II Segment

Policy 4-1 Coastal Erosion – I. Development Along Shoreline states in relevant part:

- (a) *For all new development along the shoreline, including additions to existing development, a site-specific geologic investigation and analysis similar to that required by the Coastal Commission’s Geologic Stability and Blufftop Guidelines shall be required; for permitted development, this report must demonstrate bluff stability for 75 years, or the expected lifetime of the structure, whichever is greater.*

Policy 8-1 Site Development Review states:

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

The Commission must reject amendments where it can be shown that the amendment would be inconsistent with the certified Land Use Plan (LUP) or render the Implementation Program (IP) inadequate to carry out the LUP. In this case, the updated accessory dwelling unit regulations cannot be found consistent with the certified LUP or are inadequate to carry it out, and therefore must be rejected as submitted.

The Commission’s recent guidance to local governments regarding the new accessory dwelling unit legislation clarifies that ADU provisions in LCPs should be consistent with the new requirements of Government Code Section 65852.2 to the greatest extent feasible while still protecting coastal resources, including wetlands and sensitive habitat, and considering the appropriate siting of development along the shoreline, as well as ensuring the safety of new ADUs and their occupants ([Exhibit 3](#)). Three subsections of the City’s proposed IP amendment raise concerns related to consistency with the certified LUP or their adequacy to carry it out. These revisions are located in Section 21.10.030 (Accessory Dwelling Units) and Section 21.201.060 (Exemptions and Categorical Exclusions From Minor Coastal Development Permit and Coastal Development Permit Procedures).

After submitting this amendment request to the Commission, the City identified a potential exception in their regulations related to height of ADUs. Section 21.10.030.D.5 states “Attached accessory dwelling units shall conform to the height limits applicable to the zone and detached accessory dwelling units shall be limited to one story, except that

accessory dwelling units constructed above detached garages shall be permitted and shall conform to the height limits applicable to the zone.” City staff is concerned that, as proposed, this subsection would allow ADUs constructed above detached garages to be more than one story above the garage, if the applicable zone regulations include a height limit that could accommodate a three story or higher structure. The City’s intention is that ADUs constructed above detached garages should be one story, so that the garage and dwelling unit are no more than two stories. Mello II LUP Policy 8-1 calls for protection of existing public views, including through the enforcement of height restrictions. A multi-story ADU above a detached garage could have significant impacts on public views. Thus, as proposed, Section 21.10.030.D.5 is inconsistent with and inadequate to carry out the certified LUP.

The City’s current regulations in Section 21.10.030 require that accessory dwelling units located in the coastal zone “be consistent with all certified local coastal program provisions, with the exception of density, or as otherwise specified within this subsection.” The provision remains in the proposed amendment, however, a new proposed provision (Section 21.10.030.D.6) states that “[n]o setback shall be required for an existing garage that is converted to an accessory dwelling unit, and a setback of no more than five feet from the side and rear lot lines shall be required for an accessory dwelling unit that is constructed above a garage that existing prior to January 1, 2017.” Reading these two provisions together, ADUs in Carlsbad must be consistent with all certified LCP policies except LCP policies related to density and any setbacks for garages where those garages are being converted into ADUs or an ADU is built on top of the garage.

The City’s proposed language in Section 21.10.030.D.6 regarding ADUs and garage setbacks deviates from the changes made by AB 2299. Although local governments must comply with the provisions of Government Code Section 65852.2, the state law also mandates that it does not supersede or lessen the application of the Coastal Act. There are two scenarios where a zero or reduced setback applicable to garages raise important concerns related to the City’s certified LUP: garages that are nonconforming with regard to LCP policies requiring buffers from sensitive habitat or geologic stability setbacks. In both cases, conversion or construction on top of a garage would extend the life expectancy and economic value of the nonconforming structure, exacerbating the degree of nonconformity. The Habitat Management Plan was certified as part of the City’s LUP in 2003 and applies to all geographic segments of the City’s coastal zone. Policy 7-1 requires protection of environmentally sensitive habitat areas (ESHA) and limiting development within ESHA. Policy 7-11 requires minimum buffers between wetland, riparian, and other native habitats and development. These policies are intended to protect sensitive coastal habitats and the species that rely on them from adverse impacts that can be associated with neighboring development and human use. As proposed, this provision would allow a garage that is encroaching into habitat preserve buffers to be improved to allow a residential dwelling use within or on top of a residential accessory structure. The improvements would extend the life expectancy and economic value of the structure itself, and the conversion to or addition of a dwelling unit could increase adverse impacts on adjacent sensitive habitats.

Mello II LUP Policy 4-1 requires that new development or additions to existing development be sited in a location that is geologically stable for 75 years or the expected lifetime of the structure, whichever is longer. As proposed by the City, an ADU converted from an existing garage or built on top of a garage would not have to demonstrate that the proposed new use or structure would be safe for the lifetime of that development. Improvements to an existing garage associated with conversion to or addition of an ADU would extend the expected life of that structure. Therefore, the conversion of an existing structure into, or addition of, an ADU without analysis of its geologic stability could place occupants and the structure itself at risk from geologic hazards. Such an approach would also perpetuate nonconforming development in a hazardous location and lead to possible future requests for shoreline armoring.

In addition to raising concerns regarding consistency with LUP policies regarding habitat protection and geologic stability, the City's proposed Section 21.10.030.D.6 raises a question of consistency with AB 2299. The City adopted the language directly from AB 2299, but then modified its application. The underlined text indicates the change that the City made to the language from AB 2299: "No setback shall be required for an existing garage that is converted to an accessory dwelling unit, and a setback of no more than five feet from the side and rear lot lines shall be required for an accessory dwelling unit that is constructed above a garage that existed prior to January 1, 2017." As proposed, the City's proposed amendment would limit the application of a reduced setback requirement for construction of an ADU above a garage to garages that were constructed prior to January 1, 2017, the effective date of AB 2299. The effect of this proposed language is that ADUs added above garages built after January 1, 2017 would have to meet the applicable zone's habitable structure setback, instead of the reduced five foot setback. The City's Zoning Code allows non-habitable accessory structures, including garages, to be constructed with smaller side and rear yard setbacks than is required for habitable structures. An ADU is habitable space that would typically have to comply with the City's habitable space setbacks, were it not for the language in AB 2299 mandating no or smaller setbacks for ADUs converted from or added above a garage.

As currently drafted, the date restriction proposed by the City only applies to construction of an ADU above a garage – it does not apply to conversions of existing garages. After seeking clarification regarding why the City chose to apply the more restrictive setback requirements to only construction of ADUs on top of garages and not to future conversions of existing garages, the City has indicated that its intent was to define the word "existing" in AB 2299. Therefore, the City intended to require both the conversion of garages into ADUs and the addition of an ADU above a garage to meet the habitable setbacks where the garage was built after the effective date of AB 2299. The City has requested an additional suggested modification to further revise Section 21.10.030.D.6 to clarify this date limit and to further revise the setback applicable to an ADU built above a garage: "For an existing garage that was constructed prior to January 1, 2017, no~~No~~ setback shall be required for ~~an existing garage that is converted~~ its conversion to an accessory dwelling unit, ~~and a~~ A minimum setback of ~~no more than~~ five feet from the side and rear lot lines shall be ~~required~~ provided for an accessory dwelling unit that is constructed above a garage that existed prior to January 1, 2017."

It appears to Commission staff that these changes are in direct conflict with the intent of AB 2299. The legislative findings for AB 2299 make clear that the bill was intended to increase the supply of lower-cost housing in the state to provide critically needed housing supply. Government Code Section 65852.150(b) further states: “It is the intent of the Legislature that an accessory dwelling unit ordinance adopted by a local agency has the effect of providing for the creation of accessory dwelling units and that provisions in this ordinance relating to matters including unit size, parking, fees, and other requirements, are not so arbitrary, excessive, or burdensome so as to unreasonably restrict the ability of homeowners to create accessory dwelling units in zones in which they are authorized by local ordinance.” As proposed, the date restriction the City added to the language of AB 2299 would unreasonably restrict the ability of property owners to add an ADU above their garage or convert their garage into an ADU if the garage did not already comply with the habitable setback. The further modification the City is now requesting to require a minimum setback of five feet in lieu of AB 2299’s “setback of no more than five feet” would also unreasonably restrict the ability of property owners to construct ADUs.

The City’s proposed revisions to Section 21.201.060.B relating to exemptions from coastal development permit procedures also raises questions regarding consistency with and adequacy to carry out the provisions of the certified LUP. The City made several changes to this section in order to clarify when an ADU is exempt from the permit requirements and to make this section more consistent with the Commission’s regulations regarding exemptions. The City’s proposed language clarifies that improvements to existing single family residences “including an accessory dwelling unit that is attached to the primary residence, or converted from the existing space of a primary residence or accessory structure” is exempt from the requirement to obtain a coastal development permit. The Commission’s guidance to local governments regarding the new ADU law states that in order to “qualify as an exempt improvement to a single-family dwelling, an ADU must be contained within or directly attached to the existing single-family structure. ‘[S]elf-contained residential units,’ i.e., detached residential units, do not qualify as part of a single-family residential structure and construction of or improvements to them are therefore not exempt development” ([Exhibit 3](#)).

However, as proposed by the City, an ADU that is converted from the existing space of a detached accessory structure would also be exempt from the permit requirements. The conversion of a detached accessory structure that was not previously habitable space into an ADU results in a significant change in the type and intensity of use of that structure which can raise significant concerns related to protection of coastal resources identified in the LUP. By contrast, the conversion of an accessory structure that is attached to an existing primary residence is likely to be less impactful because it is located in the area of the property that is already subject to a dwelling use. Detached accessory structures are often subject to smaller setbacks than the primary residence which could pose additional coastal resource impacts or safety concerns if converted to a new dwelling use. In addition, there are other situations in which improvements to accessory structures that are detached from the primary residence, like fences, are not exempted because of the risk of adverse environmental effects, including when such structures are located between the ocean and the first public road or within 300 feet of the inland extent of any beach. Therefore, there is precedent for more closely reviewing the potential impacts of

improvements to detached accessory structures. Where the conversion of a detached accessory structure would have no impact to coastal resources, review of such improvements could be expedited through the City's minor coastal development permit process. This provision raises a procedural and land use administration issue where the City's language would be inadequate to carry out the LUP because the land use provisions would not be invoked given the broader exemption. By including detached accessory structures converted into an ADU as exempt development, this proposed revision is inadequate to carry out the provisions of the certified LUP.

This section also clarifies situations in which improvements to existing single family residential buildings are not exempt from permit requirements because they pose a risk of adverse environmental effects. The City reworded these categories to be more consistent with California Code of Regulations Section 13250, however, they did not include one of the categories of single family residential improvements that are not exempt: improvements or residences located within environmentally sensitive habitat areas. This omission is also inconsistent with Policy 7-1 of the Habitat Management Plan protecting ESHA.

Finally, as proposed, improvements to establish an ADU that is attached to a primary residence or that is converted from the existing space of the primary residence or an attached accessory structure could be exempt from the requirements of a coastal development permit even when the existing structure being improved is nonconforming with regard to LCP policies requiring buffers from sensitive habitat or geologic stability setbacks. Only those projects which do not involve a risk of adverse environmental effect should be exempt from coastal development permit requirements. Improvements to establish an ADU could, in these limited circumstances, raise conflicts with Policies 7-1 and 7-11 of the Habitat Management Plan and Policy 4-1 of the Mello II LUP. Therefore, as proposed by the City, the amended regulations are not consistent with, and are inadequate to carry out, the certified LUP(s) and must be rejected.

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

The City's proposed provisions regarding setbacks required for ADUs converted from or built above garages (Section 21.10.030.D.6) and exemptions from coastal development permit requirements (Section 21.201.060.B.1) were not found to conform with, and adequate to carry out, the certified LUP policies as submitted. As such, two suggested modifications are required to make the City's Implementation Plan consistent with the LUP policies.

Suggested Modification 1 revises Section 21.10.030.D.5 to clarify that an ADU constructed above a detached garage would be a single level above the garage, not multiple levels above the garage. This revision will ensure that public coastal views in the City of Carlsbad remain protected, consistent with the visual resource protection policies of the LUP.

Suggested Modification 2 revises Section 21.10.030.D.6 to eliminate the City's proposed language limiting the application of reduced setbacks for ADUs built above garages to only those garages that were constructed prior to January 1, 2017. The City did not adopt any findings based on its certified LCP or identify any coastal resource protection measures to support their changes, and given the language of AB 2299, this change is inconsistent with the goal of increasing the supply of affordable housing that the legislation is trying to achieve. Instead of limiting the application of smaller setbacks based on date of construction, this subsection should only clarify that within the coastal zone, ADUs converted from or built on top of a garage must be consistent with all buffers from habitat preserve areas and setbacks for geologic stability that are required in the certified LCP. This revision will ensure that ADUs do not exacerbate nonconformities that will have adverse impacts on sensitive habitats, shoreline redevelopment and human safety by extending the lifetime of existing structures in an inappropriate location. This modification more directly addresses the limited circumstances in which such reduced garage setbacks might raise conflicts with the LCP.

Suggested Modification 3 revises Section 21.201.060.B.1 to clarify that ADUs converted from the existing space of an accessory structure may be exempt from the coastal development permit requirements only if the accessory structure is attached to the primary residence. This modification will ensure that conversion of detached accessory structures into a new dwelling unit will receive adequate review for consistency with the LUP policies related to protection of coastal resources, and therefore adequate to carry out the provisions of the certified LUP. Conversion of a detached accessory structure into an ADU will require a coastal development permit because it creates a "self-contained residential unit," which is explicitly identified as requiring a permit in California Code of Regulations Section 13250.

Subsection B.1.b is further revised to add language clarifying that improvements to existing single family residential structures are not exempt, and will require a coastal development permit, when the residence or improvement is located in an environmentally sensitive habitat area. Finally, a new subsection f is added to Section 21.201.060.B.1 in order to clarify that a coastal development permit is required for improvements to an existing single-family residential building related to establishment of an ADU that would otherwise be exempt, where the primary residence or attached accessory structure is nonconforming with respect to LCP policies related to habitat buffers and geologic stability setbacks.

With the three suggested modifications described above, the proposed amendment is consistent with and adequate to carry out the certified LUP.

PART VI. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 21080.9 of the California Environmental Quality Act (CEQA) exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its local coastal program. Instead, the Coastal Commission acts as lead

agency for the purposes of fulfilling CEQA. The Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under CEQA Section 21080.5, the Commission is relieved of the responsibility to prepare an EIR for each LCP submission. The City of Carlsbad concluded that the proposed amendment is exempt from CEQA pursuant to Public Resources Code Section 21080.17 and Section 15282(h) of the CEQA Guidelines [adoption of ordinances regarding second units].

Nevertheless, the Commission is required in an LCP submittal or, as in this case, an LCP amendment submittal, to find that the LCP, or LCP, as amended, does conform with CEQA provisions. In this particular case, the LCP amendment, with incorporation of the suggested modifications, will not have any significant adverse effects on the environment and no significant coastal resource impacts are anticipated. The suggested modifications will ensure that ADUs are consistent with LCP provisions related to protection of sensitive habitats and safety from geologic hazards. Therefore, the Commission finds that the subject IP, as amended, conforms with the CEQA provisions.