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Prepared August 25, 2017 for September 14, 2017 Hearing

To: Commissioners and Interested Persons
From: Nancy Cave, North Central Coast District Manager
Renée Ananda, Coastal Program Analyst
Subject: **San Mateo County Local Coastal Program (LCP) Amendment Number LCP-2-SMC-17-0033-1 (Second Unit Regulations)**

SUMMARY OF STAFF RECOMMENDATION

San Mateo County is requesting an amendment to its certified Local Coastal Program (LCP) Implementation Plan (IP). Specifically, the County proposes to modify the IP's second unit ordinance (Chapter 22.5) to facilitate and encourage the creation of second units in residential zones consistent with recently amended state law and to help address the housing shortage in the County. The proposed amendment would add and/or modify uniform development standards applicable to second units and remove a formerly required discretionary review process for second units that comply with the updated standards. In the coastal zone, the amendment would continue to limit the development of second units to areas zoned for single-family residences (R-1). Specific language added through the amendment also reinforces the applicability of LCP requirements to projects in the coastal zone, regardless of the specific changes made to the County's second unit regulations that potentially conflict with existing LCP standards.

Development of second units within R-1 zones facilitated by the proposed amendment will promote infill and allow for higher density growth in urban areas and rural service centers, discouraging sprawl, and maximizing the efficiency of existing public facilities and services, consistent with LCP policies directing the location of new development. Existing Land Use Plan (LUP) policies that regulate certain aspects of second units, including a total unit cap, allowable size, and prohibition of second units on non-conforming parcels in the coastal zone, would still apply under the proposed amendment. Similarly, development of new second units would also continue to count towards the annual residential growth limit quota established in the LUP. Therefore, in the coastal zone, the allowable densities and allowable buildout of second units would not change under the proposed amendment consistent with the permitted land uses and development densities established in the certified LUP.

The amendment does not propose any changes to coastal resource protection standards outside of LCP Chapter 22.5 and, as such, all second units must continue to be found consistent with all LCP policies related to the protection of sensitive habitat, agricultural land, visitor serving uses, public access and visual resources, and requirements for development in hazard areas. With regard to the approval process, second units found to comply with all relevant development standards, including LCP requirements, would not require a public hearing, and coastal development permits would be approved at the staff level. However, proposed second units that do not meet the relevant County development standards will require issuance of a conditional use permit, and a coastal development permit appealable to the Commission.

Therefore, the proposed amendment would allow for second units in residential areas to provide for additional housing in the County consistent with the LCP policies regulating location, size, density, and growth limits of new development, as well as all other LCP coastal resource protection policies. Staff recommends that the Commission approve this submittal. The motions necessary to effect this recommendation can be found on page 3 of this report.

Staff Note: LCP Amendment Action Deadline

This proposed LCP amendment was filed as complete on July 19, 2017. The proposed amendment includes IP changes only, and the original 60-day action deadline is September 18, 2017. Thus, unless the Commission extends the action deadline (it may extend the deadline by up to one year), the Commission has until September 18, 2017 to take a final action on this LCP amendment.

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APPENDICES

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EXHIBITS

[Exhibit 1: County Resolution 074972; Ordinance No. 04768 with Full Text of Amendment](#)

[Exhibit 2: Map of Coastal Zone R-1 Districts](#)

I. MOTIONS AND RESOLUTIONS

Staff recommends a **NO** vote on the motion below. Failure of this motion will result in certification of the IP Amendment as submitted and adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

Motion: *I move that the Commission **reject** Implementation Plan Amendment Number LCP-2-SMC-17-0033-1 as submitted by San Mateo County, and I recommend a no vote.*

Resolution: *The Commission hereby **certifies** Implementation Plan Amendment Number LCP-2-SMC-17-0033-1 as submitted by San Mateo County and adopts the findings set forth below on the grounds that the amendment conforms with, and is adequate to carry out, the provisions of the certified Land Use Plan, and certification of the Implementation Plan Amendment will meet the requirements of 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 Plan Amendment on the environment, or 2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts on the environment that will result from certification of the Implementation Plan amendment.*

II. FINDINGS AND DECLARATIONS

A. PROPOSED AMENDMENT BACKGROUND

The County has had an ordinance regulating second units in the coastal zone that was effectively certified by the Commission in January 1986 (Major Amendment No. 3-85). The existing ordinance (contained in Chapter 22.5 of the LCP IP) establishes development standards regulating the placement, location, design, and construction of second units, as well as their review and approval process. Since the LCP second 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 AB 2299 (Bloom, 2016). AB 2299 authorizes local governments/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 on January 1, 2017, specifically requires that ADUs that comply with local regulations be approved ministerially and not to 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 and exceptions to parking, growth limits, and density requirements. For example, Section 65852.2(a)(2) states that second dwelling units “shall not be considered in the application of any local ordinance, policy or program to limit residential growth.” However, except for lifting the requirement to hold a public hearing on CDPs for ADUs, AB 2299 did not change the effect or application of the Coastal Act. (Gov. Code, § 6582.2(j).)

There is an existing, documented housing crisis (i.e., shortage) in San Mateo County, particularly as the demand for affordable housing exceeds the available supply. Rent for a two bedroom apartment in San Mateo County, for example, has increased 51% since 2011. The American Community Survey found that, over 35,000 renter families, almost 35% of all the renter families in San Mateo County were paying more than 30% of their income for housing in 2013.¹ Therefore, the County is undertaking efforts to address the housing shortage for all income levels, including by facilitating the creation of second units. The County is updating its existing second unit ordinance in order to: 1) comply with changes directly mandated by state law; 2) advance the County's goal of facilitating the production of second units as a valuable source of affordable housing in San Mateo County; and 3) make the regulations more consistent, and easier to understand and apply.

B. DESCRIPTION OF PROPOSED LCP AMENDMENT

The proposed amendment would modify only the LCP IP's existing second unit ordinance (Chapter 22.5). The proposed changes to the County's ordinance modify and/or add development standards related to maximum floor area, setbacks, maximum height, parking requirements and exceptions, and placement of windows, balconies, and decks; include different, more permissive standards for units built within or above an existing garage; and remove a formerly required discretionary review process for second units that comply with the updated development standards. Under the proposed amendment, second units that do not meet the applicable standards would require issuance of a conditional use permit and an appealable coastal development permit if located in the coastal zone.

In response to public comments received on the amendment, the County Planning Commission incorporated additional changes into the second unit ordinance to ensure that second units in the coastal zone continue to be allowed only in the R-1 zoning district, and that nothing in the revised regulations would be construed to supersede existing LCP coastal zone protections, including and especially those related to sensitive habitats, visual resources, hazards and residential development quotas.

See [Exhibit 1](#) for the County ordinance and resolution approving the amendment along with the full text of the proposed regulations.

C. STANDARD OF REVIEW

The standard of review for the proposed amendment to the certified LCP's IP, pursuant to Coastal Act Section 30513, is whether or not the IP as proposed for amendment would conform with, and be adequate to carry out, the provisions of the certified LUP.

D. CONSISTENCY ANALYSIS

Applicable Land Use Plan Policies

The Land Use Plan (LUP) policies designate urban and rural areas in the coastal zone and define the type, amount, and density of development that can occur within such areas. Specifically, LCP Policy 1.5 allows for land uses and development densities consistent with those designated on

¹ San Mateo County Board of Supervisors, *Affordable Housing White Paper Preventing Displacement and Promoting Affordable Housing Development in San Mateo County*. January 22, 2015

the LCP LUP Map and provided for in LCP Tables 1.2 and 1.3, including R-1 designations ([Exhibit 2](#)). With respect to second units, the LUP policies: include development of second units within the established annual residential growth limit, provide a cap on the total number of units allowed within the coastal zone, limit the size of second units, and prohibit allowance of second units on non-conforming parcels below minimum parcel size. The total number of second units allowed in the coastal zone per LCP Policy 3.22 is also accounted for in the estimate of residential buildout included in the Midcoast LCP Update. LCP Policy 1.18 directs new development to urban areas and rural service centers to discourage sprawl, maximize efficiency of public facilities, services, and utilities, protect and enhance the natural environment, and revitalize existing developed areas. LCP Policy 1.18 also allows for higher density growth in areas where services are available and resources would not be endangered, and promotes the infill of urban areas and rural service centers. The LUP also provides for the protection of coastal resources including sensitive habitats, agricultural land, visitor serving uses, public access and visual resources; and provides specific restrictions on development located in hazard areas.

LUP Policy 1.1 - Coastal Development Permits. *After certification of the Local Coastal Program (LCP), require a Coastal Development Permit for all development in the Coastal Zone subject to certain exemptions.*

LUP Policy 1.4 - Designation of Urban Areas. *Designate as urban those lands shown inside the urban/rural boundary on the Land Use Plan Maps. Such areas include Montara, Moss Beach, El Granada, Princeton and Miramar.*

LUP Policy 1.5 - Land Uses and Development Densities in Urban Areas. *a) Incorporate the adopted Montara-Moss Beach-El Granada Community Plan into the land use plan for the Midcoast, but amend it where necessary to meet Local Coastal Program objectives; b) Permit in urban areas land uses designated on the LCP Land Use Plan Map and conditional uses up to the densities specified in Tables 1.2 and 1.3. The use and amount of development allowed on a parcel, including parcels in areas designated “General Open Space,” “Agriculture,” or “Public Recreation-Community Park” on the General Plan Land Use Map within the urban boundary in the Coastal Zone, shall be limited to the uses and to the amount, density and size of development permitted by the Local Coastal Program, including the density credit requirements of Policy 1.8c and Table 1.3.*

LUP Policy 1.18 - Location of New Development. *a) Direct new development to existing urban areas and rural service centers in order to: (1) discourage urban sprawl, (2) maximize the efficiency of public facilities, services, and utilities, (3) minimize energy consumption, (4) encourage the orderly formation and development of local governmental agencies, (5) protect and enhance the natural environment, and (6) revitalize existing developed areas; b) Concentrate new development in urban areas and rural service centers by requiring the “infilling” of existing residential subdivisions and commercial areas; c) Allow some future growth to develop at relatively high densities for affordable housing in areas where public facilities and services are or will be adequate and where coastal resources will not be endangered; d) Require the development of urban areas on lands designated as agriculture and sensitive habitats in conformance with Agriculture and Sensitive Habitats Component policies.*

LUP Policy 1.23 - Timing of New Housing Development in the Midcoast. a) In order to ensure that roads, utilities, schools and other public works facilities and community infrastructure are not overburdened by rapid residential growth, limit the maximum number of new dwelling units built in the urban Midcoast to 40 units each calendar year until: i) A comprehensive transportation management plan, as described in Policy 2.53, is incorporated into the LCP; ii) Facilities to adequately contain stormwater infiltration and inflow that exceed the existing Intertie Pipeline System (IPS) capacity during storm events and peak flows have been constructed and sufficient evidence has been presented that IPS capacity is adequate to avoid sewage overflows and water quality violations; and iii) The growth rate is changed by an LCP amendment. b) New dwelling units include each new single-family residential unit, each new unit in a two-family dwelling, each new unit in a multiple-family residential development, each new unit in mixed-use development, each new caretaker quarter, each new affordable housing unit, and each new second dwelling unit as further defined in 'd'; c) The number of each dwelling units built each year means that the number of units for which building permits have been issued authorizing construction to commence. The date of building permit issuance does not relate to the date of building permit application; d) If the number of issued building permits for any given year has reached the 40-unit maximum, building permits for affordable housing, including second dwelling units, may still be issued under the following circumstances:(1) the units are "affordable" as defined by Section 6102.48.6 of the certified zoning regulations and subject to income and cost/rent restrictions for the life of the development; and (2) the growth rate average over the three-year period, that includes the year of building permit issuance and the following two years, does not exceed 40 units/year; e) This annual limit on residential units is not an entitlement, i.e., it does not guarantee that any proposed development will be approved. A coastal development permit for residential units may only be approved if the proposed development can be found consistent with all applicable policies of the certified LCP.

LUP Policy 3.22 - Second Dwelling Units in R-1 Zoning Districts. Permit second dwelling units on building sites containing a one-family residence in R-1 Zoning Districts subject to the following restrictions: a. Limit the total number of approved second units to 466 in the Coastal Zone. b. Limit the size of the units to 700 sq. ft. or 35% of the floor area of the existing principal residence, whichever is greater. c. Comply with all applicable policies and procedures as required by the LCP. d. Second dwelling units shall not be permitted on non-conforming parcels less than 5,000 sq. ft.

Analysis of Proposed IP Changes

The proposed LCP amendment would continue to limit the development of second units in the coastal zone to single-family residential (R-1) zones, as shown in [Exhibit 2](#). LCP Policy 1.4 designates certain areas within the coastal zone as urban, which are shown to be located inside the urban/rural boundary on the LUP Maps. These areas include Montara, Moss Beach, El Granada, Miramar, Pescadero, and Princeton. The majority of R-1 zoned areas can be found within these LCP-designated urban areas or in close proximity to rural service centers along Highway 84 in San Gregorio, all of which are also within the CD (Coastal Development) and DR (Design Review) zoning districts. As such, additional development of second units within these

R-1 zones will promote infill and allow for higher density growth in urban areas and rural service centers, consistent with the requirements of LCP Policy 1.18.

Consistent with the Government Code, the proposed amendment would modify and/or provide exceptions for a number of development standards for second units as compared to the development standards provided in the underlying zoning district, including minimum lot area, maximum density, floor area, height, and setbacks. Proposed LCP Section 6432 (Coastal Development District) requires all second units in the CD District to comply with the applicable CD regulations and specifically states that nothing in Chapter 22.5 shall “be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act, the San Mateo County LCP, or the CD District regulations.” Therefore, in the event that the regulations found in Chapter 22.5 conflict with LCP standards, the LCP standards will apply. Proposed LCP Section 6432 (Coastal Development) provides that second units in the coastal zone are required to count toward the total residential development quotas established within LCP Policy 1.23, which limits the maximum number of new dwelling units built in the urban Midcoast to a maximum of 40 units each calendar year. Further, LCP Policy 3.22 limits the total number of second dwelling units in the Coastal Zone to 466.

Therefore, as directed by LCP Section 6432, LUP standards for second units provided in LCP Policy 3.22 would still apply and therefore, the total cap, allowable size, and prohibition of second units on non-conforming parcels in the coastal zone would not change under the proposed amendment. Similarly, development of new second units would continue to count towards the annual residential growth limit quota consistent with LUP Policy 1.23. Therefore, in the coastal zone, the allowable densities and allowable buildout of second units would not change under the proposed LCP amendment consistent with the permitted land uses and development densities already established in LCP Policy 1.5. Since the amendment does not propose any changes to coastal resource protection standards outside of Chapter 22.5 and all R-1 zones are within the CD District, all second units must still be found consistent with all LCP policies including those related to the protection of sensitive habitat, agricultural land, visitor serving uses, public access and visual resources; and specific restrictions on development located in hazard areas.

LCP Policy 1.1 requires a CDP for all development within the Coastal Zone. The County will continue to treat second units within the Coastal Zone as development requiring a CDP consistent with LCP Policy 1.1 except that no public hearing shall be required for second units that meet all relevant development standards, and approval of such second unit applications shall be made at the staff level. Even though proposed LCP Section 6433 (Decisions) of the proposed amendment, pursuant to Government Code, Section 65852.2, states that no public notice or public hearing shall be required for review and approval or denial of a second unit, it also specifies that second units that do not meet the relevant standards would require a conditional use permit, and a CDP appealable to the Commission. Further, as previously discussed, the proposed amendment requires that second units comply with regulations of the CD District including LCP Sections 6328.11.1 (Notice of Development Appealable to the Commission) and 6328.11.2 (Notice of Development Not Appealable to the Commission), which provide for noticing of development projects as defined by LCP Section 6328.3 (Definitions). As such, development proposed in appealable areas of the County’s coastal zone will still be noticed consistent with the existing noticing requirements outlined in the LCP. Second units located

outside of appealable jurisdiction areas, while not appealable to the Commission, may still be subject to other county review and permitting processes, such as Design Review (DR), which requires a public hearing and noticing. Since all R-1 zones fall within the DR district, all second units in the coastal zone, whether appealable or not, will have some level of noticing.

Therefore, the proposed amendment is consistent with the general LCP policies related to planning and locating new development, and the more specific policies regulating second units in the coastal zone. Development of second units will also continue to be developed consistent with the resource protection policies of the LCP and will be noticed consistent with existing LCP requirements. Thus, the amendment conforms with and is adequate to carry out the policies contained in the County's certified LUP.

E. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 21080.9 of the California Public Resources Code, within the California Environmental Quality Act (CEQA), exempts a local government from the requirement of preparing an environmental impact report (EIR) in connection with its activities and approvals necessary for the preparation and adoption of a LCP. Thus, local governments are not required to prepare an EIR in support of their proposed LCP amendments, although the Commission can and does use any environmental information that the local government submits in support of its proposed LCP amendments. The Commission's LCP review and approval program has been found by the Resources Agency to be the functional equivalent of the environmental review required by CEQA, pursuant to CEQA Section 21080.5. Therefore, Commission documents prepared during its review of an LCP submission, including this staff report, act in lieu of traditional CEQA documents such as an EIR.

Nevertheless, the Commission is required, in approving an LCP amendment submittal, to find that the approval of the proposed LCP, as amended, conforms with CEQA provisions, including the requirement in CEQA section 21080.5(d)(2)(A) that the amended LCP will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. As part of the local action on the subject LCP amendment, the County found that pursuant to CEQA Section 21080.17 and CEQA Guidelines Section 15282(h), adoption of an ordinance relating to second units (accessory dwelling units) to implement specific Government Code sections (Sections 65852.1 and 65852.2) is exempt from CEQA. Regardless, the County addressed all public comments received to date and this report discusses the relevant coastal resource issues. As such, there are no additional feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse environmental effects which approval of the amendment would have on the environment within the meaning of CEQA. Thus, the proposed amendment will not result in any significant environmental effects for which feasible mitigation measures have not been employed consistent with CEQA Section 21080.5(d)(2)(A).

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

1. AB 2299
2. Administrative record for LCP Amendment LCP-2-SMC-17-0033-1.