

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA

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W19a

DATE: June 21, 2018

TO: Commissioners and Interested Persons

FROM: Steve Hudson, Deputy Director
Barbara Carey, District Manager
Deanna Christensen, Supervising Coastal Program Analyst
Megan Sinkula, Coastal Program Analyst

SUBJECT: County of Santa Barbara Local Coastal Program Amendment No. LCP-4-STB-18-0039-1-Part A (Like-for-Like Rebuild Ordinance), for public hearing and Commission action at the July 11, 2018 Commission Hearing in Scotts Valley.

DESCRIPTION OF THE SUBMITTAL

Santa Barbara County is requesting an amendment to the Implementation Program/Coastal Zoning Ordinance (IP/CZO) component of its certified Local Coastal Program (LCP) to revise existing regulations and permit procedures to include a de minimis waiver procedure. As proposed, the de minimis waiver would allow the County to waive the Coastal Development Permit (CDP) requirement for development that includes the restoration or replacement of structures damaged or destroyed as a result of a debris flow or other catastrophic event that creates a significant change in topography or an alteration of creeks, streams, or drainage features on a project site. In addition, the CDP requirement would only be waived if certain findings can be made, which are intended to track the Coastal Act and Commission's Regulations on waiver provisions. These findings include that the project does not involve the potential for adverse impacts on coastal resources, is consistent with the certified LCP, and is not of a type or in a location where it would be appealable to the Coastal Commission.

The proposed amendment also includes certain procedural requirements for de minimis waivers, including an administrative determination by the County's Planning Director that the criteria and findings required to issue a de minimis waiver are met, providing a notice of such determination to the Coastal Commission's Executive Director and posting public notice of the determination, requiring Commission staff to report the waiver determination at the next regularly scheduled Commission hearing after receipt of notice from the County, and details regarding the effective date of the waiver and the expiration of the waiver.

In addition to the criteria, findings, and procedural requirements discussed above, the proposed amendment includes siting and design requirements for development that qualifies for the de minimis waiver. These requirements allow for restored or replaced structures to be located in a different location on a lot than the damaged structure if the County's Planning Director, in consultation with the County's Flood Control District, makes a determination that relocation is necessary to: (1) comply with existing certified LCP standards for development setbacks from top-of-creek bank, and (2) reduce flood hazards. The County also proposes to limit the height of

the restored or replaced structure, such that the new height of the structure can only exceed the height of the damaged or destroyed structure by no more than ten percent (as measured from the lowest finished floor to the highest part of the structure). However, the height of the structure as measured from post-event grade cannot exceed the maximum height limit of the applicable zone. Lastly, the proposed requirements for a de minimis waiver include design review of the preliminary and final design of the restored or replaced structure only if the design of the structure is “substantially different” from the prior structure.

The County of Santa Barbara submitted Local Coastal Program Amendment LCP-4-STB-18-0039-1-Part A to the Commission as part of a four part submittal on May 21, 2018, and the submittal was deemed complete on June 5, 2018. The 90-day statutory time limit for Commission action on the amendment submittal will end on September 3, 2018 unless extended.

BACKGROUND

The Thomas Fire was a massive wildfire in Ventura and Santa Barbara Counties that began on December 5, 2017 and spread rapidly until it was fully contained on January 12, 2018. The fire burned a total of 281,893 acres, including mountainous areas within south Santa Barbara County adjacent to the communities of Montecito, Summerland, and Carpinteria. On January 9, 2018, the freshly scorched, hydrophobic soils on the steep mountain watershed above Montecito were subject to a 200-year rainstorm that included a half-inch of rain falling within just five minutes. This confluence of conditions resulted in debris flows that affected numerous areas throughout southern Santa Barbara County and damaged and/or destroyed approximately 468 structures in the Montecito area. Of these 468 damaged and/or destroyed structures, 57 structures were completely destroyed in the inland portion of the County and 2 structures were completely destroyed in the Coastal Zone. The County has classified the remaining 409 damaged structures according to their level of damage as either “unsafe to occupy” (red tag), “limited entry” (yellow tag), or “habitable” (green tag). Within the Coastal Zone,¹ there are currently 42 damaged structures classified as unsafe to occupy, 64 damaged structures classified as limited entry, and 64 damaged structures classified as habitable.

In addition to structural damage, the January 9, 2018 debris flow event also resulted in significant changes to topography, including the expansion of creek beds and banks and the general alteration of drainage features. Consequently, the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRM) for Santa Barbara County are no longer representative of on-the-ground conditions; the topographical and drainage feature changes have created a new base flood elevation for numerous properties in the Montecito area. To address changes to floodways, flood hazard areas, and base flood elevations, FEMA is preparing new FIRM maps for the County, and FEMA anticipates this effort will take three to five years. In the meantime, the County is working with FEMA to produce Flood Hazard/Recovery Mapping that will include, among other things, advisory base flood elevations. These maps are anticipated to be complete by June 2018, and they will provide property owners with the critical data needed to rebuild on affected lots prior to the completion of new FIRM maps.

¹ Within the inland portion of the County, there are currently 80 damaged structures classified as unsafe to occupy, 92 damaged structures classified as limited entry, and 67 damaged structures classified as habitable.

Currently, the County has two available types of permitting procedures for property owners who choose to rebuild their structure(s) after a disaster; namely: (1) a Coastal Development Permit (CDP) exemption (Section 35-51B of the IP/CZO), typically utilized after a fire to replace a destroyed structure within the same footprint, and (2) a regular CDP if the replacement structure does not meet the criteria for a disaster replacement exemption to apply. Unlike disasters caused by fire, disasters caused by debris flows cause changes to the base flood elevations and the location of drainage features. The County's existing CDP exemption does not allow property owners to raise restored or replaced structures to meet a new base flood elevation or move the restored or replaced structures to meet new creek setbacks after a debris flow event. Instead, the existing CDP exemption requires that restored or replacement structures occupy the same development footprint as the damaged or destroyed structure, pursuant to the requirements of Public Resources Code Section 30610(g)(1). In the present case, it may not be possible to site replacement structures in the same location as the damaged or destroyed structures due to topographical changes and the movement of drainage features caused by the debris flows. Additionally, the County would like to encourage property owners to rebuild structures further from the top-of-creek bank, where feasible, to create larger setbacks between the restored or replacement structures and the flood hazard.

Alternatively, if a CDP was pursued in lieu of a CDP exemption, the property owner could relocate the restored or replacement structure outside of the development footprint of the damaged or destroyed structure on the affected property, but the timeline for CDP issuance is oftentimes longer than the timeline for issuance of a CDP exemption. Thus, a CDP is not an ideal permitting process for some property owners seeking an expeditious process for the restoration or replacement of residences damaged or destroyed by disaster.

Therefore, in order to provide a permitting procedure that allows for relocation of restored or replaced structures damaged or destroyed by debris flows or similar events, larger development setbacks between the structures and the flood hazard, and a shorter processing timeframe than regular CDPs, the County is proposing to amend its certified IP/CZO to include de minimis CDP waivers.

SUMMARY OF STAFF RECOMMENDATION

Commission staff recommends that the Commission **deny** the proposed County of Santa Barbara LCP Amendment No. LCP-4-STB-18-0039-1-Part A as submitted and **approve** the amendment only if modified pursuant to **one (1) suggested modification**. This modification is necessary to provide procedural clarifications regarding the County's proposed process for de minimis CDP waivers. The suggested modification will ensure that waivers are consistent with both the certified IP/CZO and the Land Use Plan and that the waiver provisions are carried out in conformity with the Coastal Act's de minimis waiver provisions. Specifically, the modification will streamline the processing of waivers by including the Coastal Commission as a known interested party in the noticing of waivers rather than requiring a separate noticing process for providing notice to the Commission, require a ten-day noticing period between the waiver determination and the reporting of the waiver determination to a hearing body, clarify that the

size of restored or replaced structures shall not exceed the floor area of the damaged or destroyed structure by more than ten percent, require waivers to be reported at a local County hearing rather than a Coastal Commission hearing, and allow another waiver to be obtained should the first waiver issued expire. The suggested modification requires the County to report waivers to the Board of Supervisors rather than the Coastal Commission because the proposed amendment, if certified, will transfer de minimis CDP waiver authority to the County. Thus, the County will be responsible for administratively determining whether projects meet the criteria for a de minimis waiver, and this administrative determination should be reported to the County's own local hearing body for concurrence, rather than to the Commission. Commission staff worked with County staff to determine which local hearing body would be the most appropriate venue for the reporting of waiver determinations, and the County has indicated that the Board of Supervisors is the appropriate hearing body.

The motions and resolutions to accomplish this recommendation are found on **Pages 6-7** of this staff report.

Additional Information: Please contact Megan Sinkula at the South Central Coast District Office of the Coastal Commission at (805) 585-1800 or 89 South California Street, Suite 200, Ventura, CA 93001

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EXHIBITS

- [Exhibit 1 –Santa Barbara County Board of Supervisors Resolution No. 18-253](#)
- [Exhibit 2 – Santa Barbara County Ordinance No. 5043 containing the proposed Coastal Zoning Ordinance amendment text](#)

I. PROCEDURAL OVERVIEW

A. STANDARD OF REVIEW

The standard of review for the proposed amendment to the Implementation Plan (Coastal Zoning Ordinance) of the certified Local Coastal Program, pursuant to Sections 30513 and 30514 (regarding amendments) of the Coastal Act, is whether the Implementation Plan, as amended, would be in conformance with, and adequate to carry out, the provisions of the Land Use Plan portion of the County of Santa Barbara's certified Local Coastal Program.

B. PUBLIC PARTICIPATION

Section 30503 of the Coastal Act requires public input in the preparation, approval, certification and amendment of any LCP. The County of Santa Barbara held three public hearings on the subject of this amendment request. Specifically, the Montecito Planning Commission and Montecito Board of Architectural Review considered the proposed amendment on April 17, 2018, the County Planning Commission considered the proposed amendment on April 25, 2018, and the County Board of Supervisors considered the proposed amendment on May 15, 2018. All hearings were duly noticed to the public consistent with Sections 13551 and 13552 of the California Code of Regulations. Notice of the subject amendment was posted in a local newspaper at least ten days prior to the July 11, 2018 Coastal Commission hearing, and individual notices have been distributed to all known interested parties.

C. PROCEDURAL REQUIREMENTS

Pursuant to Section 13551(b) of Title 14 of the California Code of Regulations, the County's submittal may specify that a LCP amendment will either require formal local government adoption after the Commission approval, or that it is an amendment that will take effect automatically upon the Commission's approval pursuant to Public Resources Code Sections 30512, 30513, and 30519. In this case, the County's Ordinance No. 5043 states that the amendment will take effect automatically upon the Commission's approval. Because this approval is subject to a suggested modification by the Commission, if the Commission approves this amendment, the County must act to accept the certified suggested modifications within six months from the date of Commission action in order for the amendment to become effective (14 CCR Sections 13537 and 13544.5). Pursuant to Section 13544 of the California Code of Regulations, the Executive Director shall determine whether the County's action is adequate to satisfy all requirements of the Commission's certification order and report on such adequacy to the Commission. If the Commission denies the LCP amendment, or approves the LCP amendment as submitted, no further action is required by either the Commission or the County.

II. MOTIONS AND RESOLUTIONS

A. Denial of the IP/CZO Amendment as Submitted

MOTION I: *I move that the Commission **reject** Implementation Plan Amendment No. LCP-4-STB-18-0039-1-Part A as submitted by the County of Santa Barbara.*

STAFF RECOMMENDATION TO DENY AS SUBMITTED:

Staff recommends a **YES** vote. Passage of this motion will result in rejection of Implementation Plan Amendment No. LCP-4-STB-18-0039-1-Part A 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.

RESOLUTION TO DENY THE IMPLEMENTATION PLAN AMENDMENT AS SUBMITTED:

The Commission hereby denies certification of Implementation Plan Amendment No. LCP-4-STB-18-0039-1-Part A as submitted by the County of Santa Barbara and adopts the findings set forth below on the grounds that the Implementation Plan amendment as submitted does not conform with, and is not adequate to carry out, the provisions of the certified Land Use Plan. Certification of the Implementation Plan amendment will not meet the requirements of the California Environmental Quality Act as there are feasible mitigation measures and/or alternatives that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Amendment to the Implementation Program as submitted.

B. Approval of the IP/CZO Amendment if Modified as Suggested

MOTION II: *I move that the Commission **certify** Implementation Plan Amendment No. LCP-4-STB-18-0039-1-Part A submitted by the County of Santa Barbara if it is modified as suggested in this staff report.*

STAFF RECOMMENDATION TO CERTIFY IF MODIFIED AS SUGGESTED:

Staff recommends a **YES** vote. Passage of this motion will result in the certification of Implementation Plan Amendment No. LCP-4-STB-18-0039-1-Part A with one suggested modification and adoption of the following resolution and findings. The motion passes only by an affirmative vote of the majority of the Commissioners present.

RESOLUTION TO CERTIFY IF MODIFIED AS SUGGESTED:

The Commission hereby certifies Implementation Plan Amendment No. LCP-4-STB-18-0039-1-Part A to the County of Santa Barbara certified Local Coastal Program if modified as suggested and adopts the findings set forth below on grounds that the Amendment to the Implementation Plan with one suggested modification conforms with, and is adequate to carry out, the provisions of the certified Land Use Plan. Certification of the Amendment to the Implementation Plan 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 Plan on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts on the environment.

III. SUGGESTED MODIFICATION

SUGGESTED MODIFICATION TO THE IMPLEMENTATION PLAN/COASTAL ZONING ORDINANCE

The County's proposed amendment language to the certified Implementation Plan/Coastal Zoning Ordinance is shown in straight type. Language recommended by Commission staff to be deleted is shown in ~~line out~~. Language recommended by Commission staff to be inserted is shown in underline.

SUGGESTED MODIFICATION NO. 1

Section 35.51C of the proposed Implementation Plan/Coastal Zoning Ordinance amendment shall be modified as follows:

Section 35-51C. De Minimis Waiver of Coastal Development Permit.

A. General Requirements for De Minimis Waiver. If a structure was damaged or destroyed as a result of a debris flow or other catastrophic event resulting in a significant change in topography or alteration of drainage features (e.g., creeks, streams, waterways, etc.) located on or affecting the lot on which the replaced or restored structure would be located, and is not otherwise exempt pursuant to Section 35.51B, Exemptions from Planning Permit Requirements, the Director may waive the requirement for a Coastal Development Permit through a De Minimis Coastal Development Permit Waiver to replace or restore the structure(s) on the same lot in compliance with this Section, upon a determination that the development meets all of the following criteria and procedural requirements. Such decision is not locally appealable.

- 1. No Adverse Coastal Resource Impacts.** The development has no potential for adverse effects, either individually or cumulatively, on coastal resources;
- 2. Local Coastal Program Consistency.** The development is consistent with the certified Santa Barbara County Local Coastal Program, including the resource protection policies, as applicable;
 - a.** The replaced or restored structure may be relocated on the lot if the Director, in consultation with the Flood Control District, determines the relocation to be necessary to comply with applicable setbacks from top-of-bank and to reduce flood hazards, as long as the structure otherwise complies with this Chapter and with the applicable policies of the Local Coastal Program~~Coastal Land Use Plan~~.
 - b.** The restored or replaced structure shall not exceed the floor area of the damaged or destroyed structure by more than 10 percent. Notwithstanding the height measurement methodology contained in Section 35-127.A, the height of the replaced or restored structure (as measured from the post-

event grade to peak roof height) may exceed the height of the destroyed or damaged structure by more than 10 percent if the Director, in consultation with the Flood Control District, determines the change in the finished floor elevation to be necessary to comply with the base flood elevation that exists for the lot after the debris flow or other catastrophic event, as long as the structure otherwise complies with this Chapter and with the applicable policies of the Local Coastal Program~~Coastal Land Use Plan~~. In no case shall the height of the structure, as measured from the lowest, finished floor to the highest part of the structure, excluding chimneys, vents, and noncommercial antennas, exceed the equivalent height of the damaged or destroyed structure by more than 10 percent. The height of the structure, as measured from post-event grade, shall not exceed the height limit of the applicable zone.

- 1) For the purposes of this Subsection A.2.b, post-event grade is defined as the existing grade on the lot at the time of application submittal.
- c. The restored or replaced structure, even if relocated on the lot or increased in height, shall not require Design Review unless the exterior design or specifications of the replaced or restored structure are substantially different from the prior structure(s), as determined by the Director. If the structure is eligible to receive a De Minimis Waiver but requires Design Review, the structure shall receive preliminary and final design review approval before the Director waives the requirement for a Coastal Development Permit through a De Minimis Coastal Development Permit Waiver.
3. **Not Appealable to the California Coastal Commission.** The development is not of a type or in a location where an action on the development would be appealable to the Coastal Commission (For development appealable to the Coastal Commission, see Section 35-169.4(2)).
4. **Posting of Public Notice.** At the time the application is submitted, public notice of the proposed De Minimis Waiver for a Coastal Development Permit shall be conspicuously posted at a minimum of one location on the subject lot with at least one notice posted in a location that can be viewed from the nearest street. If the subject lot is a through lot, then the applicant shall conspicuously post a notice adjacent to each street frontage in a location that can be viewed from the street. The notice shall remain onsite until the effective date of the De Minimis Waiver.
5. **Director Determination.** The Director shall provide a notice of determination of the De Minimis Waiver determination to all known interested parties, including the Executive Director of the Coastal Commission at least ten days prior to the waiver determination being reported to the Board of Supervisors.

6. **Effective Date of Waiver.** After the expiration of the ten-day noticing period, Upon receipt of notice of a De Minimis Waiver determination by the Director, the County Coastal Commission staff shall report the De Minimis Waiver to the Board of Supervisors Coastal Commission at the next regularly scheduled hearing meeting. If, after consideration of the waiver and any public objections to it the Coastal Commission requests at this meeting that the waiver not be effective, the Board of Supervisors requests that the waiver not be effective, then the applicant shall be advised that a Coastal Development Permit is required for the development. Otherwise, the waiver is effective immediately after the Board of Supervisors hearing Coastal Commission meeting.
7. **Waiver Expiration.** A De Minimis Waiver shall expire and be of no further force and effect if the authorized development is not commenced pursuant to a valid Grading and/or Building Permit, as applicable, within five years of the effective date of the waiver. If expired, a Coastal Development Permit or another waiver shall be required for the replaced or restored structure.

IV. FINDINGS FOR DENIAL AS SUBMITTED & APPROVAL IF MODIFIED AS SUGGESTED

The following findings support the Commission's denial of the proposed Implementation Plan amendment as submitted and approval if modified as suggested. The Commission hereby finds and declares as follows:

A. AMENDMENT DESCRIPTION

The County of Santa Barbara is requesting an amendment to the IP/CZO component of its certified LCP to revise existing regulations and permit procedures to include a de minimis waiver procedure. The impetus for the proposed amendment request is to expedite the permit process for property owners to rebuild structures affected by the January 9, 2018 debris flow event in southern Santa Barbara County. As proposed, the de minimis waiver would allow the County to waive the CDP requirement for development that includes the restoration or replacement of structures damaged or destroyed as a result of a debris flow or other catastrophic event that creates a significant change in topography or an alteration of creeks, streams, or drainage features on a project site. These proposed changes are described in detail below. The ordinance language is attached as **Exhibit 2**.

Definitions

The County proposes to add two definitions to Division 2 of Article II (Chapter 35, Section 35-58 that include a definition of "Base Flood Elevation" and a definition of "Debris Flow."

Section 35-58 is proposed to be amended to include the definition of Base Flood Elevation (BFE) as the computed elevation to which floodwater is anticipated to rise during the base flood, which is a flood having a once percent chance of being equaled or exceeded in any given year.

The definition also states that this term is also known as the regulatory standard referred to as the “100-year flood.” The definition notes that BFEs are shown on Flood Insurance Rate Maps which may be supplemented by studies for areas subject to Chapter 15A of the County Code and recommended to the Board of Directors by the floodplain administrator on the flood profiles. The definition further clarifies that the BFE is the regulatory requirement for the elevation or flood-proofing of structures.

Section 35-58 is also proposed to be amended to include the definition of a Debris Flow as a saturated mass of loose particles, including rock, earth, and other debris, that travels down a slope and often into creek and/or stream channels.

Criteria, Findings & Procedural Requirements for De Minimis Waivers

The County is proposing to amend Chapter 35 of Article II to add Section 35.51C to provide the required criteria and findings to allow a de minimis waiver of a CDP and associated procedural requirements.

Although the proposed amendment is intended to address the need for the relocation of restored or replaced structures after the debris flow event in Montecito, the de minimis waiver will provide a permitting procedure for the County’s entire Coastal Zone and may be used in other circumstances in the future if certain criteria are met. Specifically, the waiver will apply to structures damaged or destroyed as a result of a debris flow or another type of catastrophic event that results in a significant change in topography and/or an alteration of drainage features (e.g., creeks, streams, waterways, etc.) on the affected lot on which the restored or replaced structure would be located. If a project meets these criteria, is not otherwise exempt pursuant to Section 35.51B of the IP/CZO (“Exemptions from Planning Permit Requirements”), and the findings described below can be made, the County Planning Director may administratively waive the requirement for a CDP through a de minimis CDP waiver. The waiver must then be reported to the Board of Supervisors, but the issuance of the waiver would not be locally appealable.

The County’s proposed amendment includes specific findings that must be made in order to waive the CDP requirement for redevelopment after catastrophic events. First, the proposed development must have no potential for adverse effects, either individually or cumulatively, on coastal resources. Second, the proposed development must be consistent with the County’s certified LCP.

As part of the second finding, if a restored or replaced structure is relocated on the lot, the Planning Director, in consultation with the County’s Flood Control District, must determine that relocation is necessary to comply with development setbacks from top-of-bank required by the LCP, that relocation would reduce the flood hazards present on the site, and that the redeveloped structure complies with Chapter 35 (“Zoning”) and the policies of the Land Use Plan.

The second finding also includes specific requirements for the height of redeveloped structures. The replaced or restored structure may exceed the height of the destroyed or damaged structure by more than ten percent, as measured from the post-event grade to peak roof height, only if necessary to comply with the required base flood elevation that exists for the affected lot after

the debris flow or other similar type of event. However, the height of the structure, from finished floor to the highest part of the structure, cannot exceed the equivalent height of the damaged or destroyed structure by more than ten percent, and the height of the structure as measured from post-event grade cannot exceed the maximum height limit of the applicable zone.

Lastly, the second finding includes the requirement for Design Review of the restored or replaced structure if the exterior design or specifications of the redeveloped structure is substantially different from the prior structure. Whether or not the redeveloped structure differs substantially from the prior structure is a determination made by the County's Planning Director. If the Planning Director determines that the redeveloped structure is substantially different than the damaged or destroyed structure, the restored or replaced structure must receive preliminary and final design review approval before the CDP requirement is waived.

A third finding specifies that development within the Coastal Zone that is of a type or in a location where an action on the development would be appealable to the Coastal Commission cannot qualify for a de minimis CDP waiver.

The fourth, fifth, sixth and seventh proposed findings address procedural requirements of the waiver. The fourth finding requires that public notice is conspicuously posted at the time the waiver application is submitted. This notice is required to be posted at a minimum of one location on the subject lot with at least one notice posted in a location that can be viewed from the nearest street. In addition, if the subject lot is a through lot, the applicant is required to conspicuously post a notice adjacent to each street frontage in a location that can be viewed from the street. The notice must remain on the subject lot until the effective date of the waiver.

The fifth proposed finding states that the County's Planning Director is required to provide a notice of determination of the de minimis CDP waiver to the Executive Director of the Coastal Commission. The sixth proposed finding requires Coastal Commission staff, upon receipt of the de minimis CDP waiver determination from the County, to report the waiver to the Coastal Commission at the next regularly scheduled Commission hearing. If, at the hearing, the Commission requests that the waiver not be effective, the County must advise the applicant that a CDP is required for the proposed development. If the Commission does not object to the County's waiver determination, the waiver will become effective immediately after the Commission hearing.

Lastly, the proposed sixth finding states that the waiver will expire if development is not commenced within five years of the effective date of the waiver. In addition, the finding states that a CDP will be required for the restored or replaced structure if the waiver expires.

The County also proposes to amend Sections 35.161 and 35.162 of Chapter 35 of Article II to add requirements for the de minimis CDP waiver if applied to the redevelopment of damaged or destroyed nonconforming structures and lots on which nonconforming uses are present. As proposed, the nonconforming damaged or destroyed structure and/or lot with a nonconforming use may be eligible for redevelopment through a CDP waiver if the criteria, findings, and requirements described above are met. The amendments to Sections 35.161 and 35.162 add the additional requirement that the damage caused by the debris flow or other similar catastrophic

event on the lot on which the nonconforming use and/or structure occurs must be less than seventy-five percent of the replacement cost of the total structure before the damage. Whether or not the damage to the nonconforming structure and/or use meets this threshold of seventy-five percent will be determined administratively by the County's Planning Director.

The final component of the County's proposed amendment adds the requirements described above regarding Design Review to Section 35-184.3(1) ("Exceptions", "Board of Architectural Review") of Chapter 35 of Article II.

B. CONSISTENCY ANALYSIS

1. Applicable Coastal Act Policies

The County has incorporated all Chapter 3 policies of the Coastal Act into the certified Land Use Plan (LUP) as guiding policies of the LUP.

Coastal Act Section 30253 states:

New development shall: (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard. (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

2. Applicable Land Use Plan Policies

County of Santa Barbara Land Use Plan Policy 3-11 states:

All development, including construction, excavation, and grading, except for flood control projects and non-structural agricultural uses, shall be prohibited in the floodway unless off-setting improvements in accordance with HUD regulations are provided. If the proposed development falls within the floodway fringe, development may be permitted, provided creek setback requirements are met and finish floor elevations are above the projected 100-year flood elevation, as specified in the Flood Plain Management Ordinance.

County of Santa Barbara Land Use Plan Policy 3-12 states:

Permitted development shall not cause or contribute to flood hazards or lead to expenditure of public funds or flood control works, i.e., dams, stream channelizations, etc.

County of Santa Barbara Land Use Plan Policy 3-14:

All development shall be designed to fit the site topography, soils, geology, hydrology, and any other existing conditions and be oriented so that grading and other site preparation is kept to an absolute minimum. Natural features, landforms, and native vegetation, such as trees, shall be preserved to the maximum extent feasible. Areas of the site which are not suited for development because of known soil, geologic, flood, erosion or other hazards shall remain in open space.

Eastern Goleta Valley Community Plan Policy HYD-EGV-2.1 states:

Adequate setbacks from floodways and flood hazards shall be required.

Eastern Goleta Valley Community Plan Policy HYD-EGV-2.2 states:

Setbacks of a minimum of 50 feet from the top of bank but adjusted upward as needed to adequately protect life and property from potential flood hazards shall be required as determined by County Flood Control.

Montecito Community Plan Policy FD-M-2.1 states:

Development shall be designed to minimize the threat of on-site and downstream flood potential and to allow recharge of the groundwater basin to the maximum extent feasible.

Montecito Community Plan Policy FD-M-2.2 states:

New development shall be located in a manner that minimizes the need for flood control measures.

Toro Canyon Plan Policy FLD-TC-1 states:

Flood risks shall be minimized through appropriate design and land use controls, as well as through feasible engineering solutions that address existing problems.

3. IP/CZO Amendment Consistency Analysis

To approve the proposed amendment to the IP/CZO, the Commission must find the IP/CZO, as amended, conforms with, and is adequate to carry out, the provisions of the County's certified Land Use Plan (LUP) pursuant to Section 30513 of the Coastal Act. Furthermore, LUP Policy 1-1 incorporates the policies of the Coastal Act as the guiding policies of the LUP. In addition, the new de minimis waiver provisions must be consistent with the Coastal Act's statutory framework, and the Commission's regulatory framework, for de minimis waivers.

De Minimis CDP Waiver Authority and Limits

Local governments may expedite their local permitting procedures by issuing permit waivers for non-appealable de minimis development consistent with Section 30624.7 of the Coastal Act where such provisions are specifically certified as part of the LCP. The authority for local governments to issue de minimis waivers emanates from Section 30519 of the Coastal Act, which authorizes delegation to local governments of all of the development review authority provided for in Chapter 7 of the Coastal Act (which includes Coastal Act Section 30624.7). Local governments may incorporate this de minimis waiver authority into their LCPs as long as the waiver procedure follows certain review criteria and procedural requirements, and these requirements are discussed below.

Under Section 30624.7, the requirement for a Coastal Development Permit may be waived by the Coastal Commission for any development that is de minimis if it involves no potential for adverse effects on coastal resources, either individually or cumulatively, and is consistent with the policies of Chapter 3 of the Coastal Act. When this waiver authority is delegated to local

governments, such as the County of Santa Barbara in this case, the development must be found consistent with the County's certified LCP rather than the Chapter 3 policies of the Coastal Act.

Examples of de minimis development may include replacement of existing structures or facilities in-kind, or smaller developments such as fencing or grading within an existing developed footprint. Due to the fact that the development, as proposed, must ensure protection of coastal resources and be consistent with the LCP, implementation of the development cannot be subject to any special permit conditions. However, proposed mitigation measures can be incorporated into the project design or included in the terms of the waiver, such as water quality Best Management Practices.

The local waiver process follows the same Commission waiver process procedures, which means that the local government must implement the functional equivalent of the Commission's noticing and hearing requirements. Notably, this includes noticing the Executive Director of the Coastal Commission as an interested party so that the Executive Director may then request that a CDP be required in lieu of the waiver if the waiver determination does not meet the necessary requirements. Additionally, local jurisdictions may only use de minimis waiver provisions for development that is not appealable to the Coastal Commission. This is because Section 13566 of the Commission's regulations requires that local jurisdictions hold at least one public hearing on all appealable development. Because no such public hearing occurs for de minimis waivers, they may not be issued for appealable development. If local jurisdictions wish to waive local public hearing requirements for minor development, they may utilize the procedures in Coastal Act Section 30624.9. However, the County is not proposing any such process at this time.

There are two main benefits of waivers. First, the fee for a waiver is less than the fee required for a CDP. Second, waivers are typically processed significantly faster and are thus more streamlined than CDPs, because the development is minor in nature and the project will not be subject to special conditions since there is no potential to adversely impact coastal resources. In addition, waivers are typically reported to a hearing body through a process that requires less preparation and is less formal than a CDP hearing.

Consistency with the County's LCP

As discussed above, the County's amendment requires that the restoration or replacement of damaged or destroyed structures be consistent with the County's certified LCP in order to receive a waiver of the CDP requirement. Accordingly, the County cannot issue a CDP waiver for redevelopment of structures damaged or destroyed by debris flows or similar catastrophic events unless the redevelopment is found to be consistent with the resource protection policies and provisions of the County's LCP. In addition, the County has included a required finding that the development must have no potential for adverse impacts, either individually or cumulatively, on coastal resources.

The County has requested the subject amendment to create a streamlined permitting process for the restoration or replacement of structures damaged or destroyed during debris flows or other similar catastrophic events that would allow for the restored or replaced structure to be relocated when redeveloped on affected lots. In many cases, relocation is necessary due to significant

topographical and drainage feature changes that have occurred as a result of the debris flow event. Additionally, the County wants to encourage applicants, where feasible, to redevelop affected lots with larger development setbacks between new development and onsite drainage features (i.e., streams and creeks) to achieve consistency with the LCP and reduce flood hazards in the future. As proposed, the relocation of restored or replaced structures that were damaged or destroyed during the debris flow event is consistent with Coastal Act Section 30253, which requires new development to minimize risks to life and property in areas of high flood hazard. The relocation of structures is also consistent with the requirements of LUP Policies 3-12 and 3-14, Eastern Goleta Valley Community Plan Policies HYD-EGV-2.1 and HYD-EGV-2.2, Montecito Community Plan Policies FD-M-2.1 and FD-M-2.2, and Toro Canyon Plan Policy FLD-TC-1 which, collectively, require adequate setbacks from flood hazards and the minimization of flood risks through appropriate siting and design. The restored or replaced structures can only be relocated if the new siting of the structure is consistent with the County's LCP and has no potential for adverse impacts on coastal resources.

By allowing the relocation of damaged or destroyed structures to achieve greater development setbacks from onsite drainage features, the proposed amendment is also consistent with the policies and provisions of the County's LCP that protect biological resources. Generally, larger development setbacks from streams and creeks and their associated riparian corridors will provide greater protections from human disturbances to riparian corridors and will avoid adverse impacts of development on water quality, riparian vegetation, and wildlife.

As proposed, the IP/CZO amendment describes how waivers may be issued if the restoration or replacement of damaged or destroyed structures is consistent with the LUP and the chapter of the IP/CZO that contains zoning requirements. **Suggested Modification One** has been added in order to clarify that the redevelopment of damaged or destroyed structures that receives a CDP waiver must be consistent with the *entirety* of the County's LCP, including all chapters of the IP/CZO.

Additionally, as the amendment title of "Like-for-Like Rebuild" indicates, the County intended restored or replaced structures that qualify for a de minimis CDP waiver pursuant to the proposed amendment to be "in kind" with the structure that was damaged or destroyed. This is due to the fact that the de minimis waiver is only an appropriate permitting procedure for minor development that has no potential for adverse impacts on coastal resources. If the size of the replacement structure is significantly increased, and the development footprint is expanded accordingly, it becomes likely that the new development footprint could displace and/or adversely impact coastal resources, especially in the quasi-rural areas affected by the past mudslides. In such cases, a de minimis CDP waiver is no longer an appropriate permitting process for the proposed development. The County intends to implement the proposed amendment language in a similar way as the County's existing disaster replacement CDP exemption, such that the restored or replaced structure would not be allowed to exceed the floor area of the damaged or destroyed structure by more than ten percent. However, this limitation on the size of the redeveloped structure is not clear within the amendment language as proposed. Therefore, **Suggested Modification One** also clarifies that the restored or replaced structure cannot exceed the floor area of the damaged or destroyed structure by more than ten percent.

As proposed, the County's amendment carves out a separate noticing process for notice to the Coastal Commission apart from that of noticing interested parties and the general public. In order to align the waiver procedures proposed by the amendment with the waiver procedures within the Coastal Act and the Commission's regulations, and to further streamline the processing of waivers, **Suggested Modification One** changes the proposed amendment language to include the Coastal Commission as a known interested party in the noticing of waivers and requires a ten-day noticing period between the date the County's Planning Director makes the waiver determination and the date the waiver determination is reported to a hearing body for concurrence. The ten-day noticing period is necessary to allow time for Commission staff and the public to review the waiver determination and analyze whether the criteria, findings and procedural requirements have been met. During the noticing period, any interested party, including the Executive Director of the Commission, has the right to request that a waiver not be issued and that a regular CDP be obtained, consistent with the process for de minimis waivers specified in the Commission's regulations.

The County's amendment also proposes to require Commission staff to report each of the County's administrative waiver determinations at the regularly scheduled Commission hearing following each determination, and would give the Commission the authority to reject the County's administrative waiver determination. However, certification of the County's proposed amendment will delegate de minimis waiver authority to the County, pursuant to Coastal Act Section 30519. As such, it is more appropriate that the County's administrative waiver determination is reported to the County's own local hearing body for concurrence so that the local hearing body has the opportunity to object to the waiver determination. Therefore, **Suggested Modification One** is also necessary to require the County to report such determinations to their Board of Supervisors to allow for a local hearing body to consider whether the administrative waiver determination meets the necessary criteria, findings, and procedural requirements. If, after consideration of the waiver and any public objections to it, the Board of Supervisors requests that the waiver not be effective, then the applicant shall be advised that a CDP is required for the development. Otherwise, the waiver is effective immediately after the Board of Supervisors hearing. Commission staff worked with County staff to determine which local hearing body would be the most appropriate venue for the reporting of waiver determinations, and the County has indicated that the Board of Supervisors is the appropriate hearing body.

Lastly, as proposed, the County's amendment requires an applicant to obtain a CDP should an issued de minimis CDP waiver expire before the commencement of any development authorized pursuant to the waiver. In order to streamline processing in the event that a waiver expires before the commencement of development authorized by the waiver, **Suggested Modification One** amends the County's proposed language to allow another waiver to be obtained as an alternative to obtaining a CDP.

4. Conclusion

Coastal Act Section 30519 allows the Commission to delegate de minimis CDP waiver authority that meets the criteria of Coastal Act Section 30624.7 to local governments through a LCP amendment. If modified as suggested, the County's proposed amendment tracks the

requirements for a de minimis CDP waiver process found within the Coastal Act and the Commission's regulations and allows the County to utilize a streamlined permitting process to address the need to expeditiously restore and replace structures damaged during the January 9, 2018 debris flow event in the Montecito area. This de minimis CDP waiver process will also allow for the relocation of this new development further from flood hazard areas to minimize risks to life and property going forward and, in some cases, further from sensitive biological resources. Although this amendment was proposed in response to the damage and destruction caused by the January 9th debris flow event, this waiver process will provide the County with a streamlined permitting process to address the need for redevelopment following any future debris flow or similar catastrophic event. Therefore, the Commission finds that the proposed amendment, if modified as suggested, conforms to and is adequate to implement the LUP policies. It also conforms with the procedures for de minimis waivers contained in Coastal Act Section 30624.7 and the Commission's regulations.

C. CALIFORNIA ENVIRONMENTAL QUALITY ACT

California Public Resources Code (PRC) Section 21080.9, within the California Environmental Quality Act (CEQA), exempts local governments from the requirement of preparing an environmental impact report (EIR) in connection with their adoption of a local coastal program (LCP). Instead, the CEQA responsibilities are assigned to the Coastal Commission. However, because the California Natural Resources Agency found the Commission's LCP review and approval process to be functionally equivalent to the EIR process (*See* 14 C.C.R. Section 15251(f)), PRC Section 21080.5 relieves the Commission of the responsibility to prepare an EIR for its approval of LCP amendments. Nevertheless, some elements of CEQA continue to apply to this review process.

Specifically, pursuant to CEQA and the Commission's regulations (*See* 14 C.C.R. Sections 13540(f), 13542(a), and 13555(b)), the Commission's certification of this LCP amendment must be based in part on a finding that it meets the CEQA requirements listed in PRC Section 21080.5(d)(2)(A). That Section 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 effect which the activity may have on the environment."

As outlined in this staff report, the Implementation Plan amendment as submitted does not fully track the de minimis CDP waiver requirements of the Coastal Act and the Commission's regulations. However, if modified as suggested, the proposed amendment would be in conformity with, and adequate to carry out, the provisions of the Land Use Plan component of the certified LCP, including provisions calling for the minimization of risks to life and property in areas of flood hazard, and more generally, the policies and provisions that protect biological resources. It would also conform with the de minimis waiver requirements of the Coastal Act and Commission's regulations, thereby assuring that any development that obtains permit waivers will be fully consistent with the County's LCP and will not have any individual or cumulative adverse coastal resource impacts. Therefore, the Commission finds that approval of the LCP amendment as modified will address the impacts of the submitted amendment and will not result

in significant adverse environmental impacts within the meaning of the California Environmental Quality Act.