

CALIFORNIA COASTAL COMMISSION

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August 29, 2018

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TO: COMMISSIONERS AND INTERESTED PERSONS

**FROM: KARL SCHWING, DEPUTY DIRECTOR, SD COAST DISTRICT
DEBORAH LEE, DISTRICT MANAGER, SD COAST DISTRICT
ERIC STEVENS, COASTAL PROGRAM ANALYST, SD COAST DISTRICT**

**SUBJECT: STAFF RECOMMENDATION ON CITY OF ENCINITAS MAJOR LCP
AMENDMENT NO. LCP-6-ENC-18-0035-1 for Commission Meeting of
SEPTEMBER 12-14, 2018**

SYNOPSIS

The City of Encinitas submitted Local Coastal Program Amendment No. LCP-6-ENC-18-0035-1 on April 27, 2018. The subject LCP implementation plan amendment was filed as complete on June 27, 2018. The Commission approved a one year time extension on August 8, 2018. The date by which the Commission must take action is August 26, 2019. This report addresses the entire submittal.

SUMMARY OF AMENDMENT REQUEST

The City of Encinitas 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" and "junior accessory dwelling units" as proposed) consistent with recent changes in state law. Specifically, the City proposes to delete the definition of "Accessory Unit" and to add new definitions for "Accessory Dwelling Unit" and "Junior Accessory Dwelling Unit," and to modify development standards related to lot coverage, floor area ratio, setbacks, parking requirements, and number of stories. The proposed amendment consists of text changes only; the revisions will apply citywide.

SUMMARY OF STAFF RECOMMENDATION

Staff is first recommending denial of the Implementation Plan amendment (IP) as submitted, and then recommends approval of the IP amendment with four suggested modification(s). The proposed revisions to the City's Accessory Dwelling Unit regulations raise several issues.

The proposed regulations include various scenarios in which conversion of an existing structure into an ADU or a newly constructed ADU will be allowed reduced side and rear yard setbacks. Reduced setbacks for ADUs have the potential to conflict with LCP policies requiring buffers from sensitive habitat or geologic stability setbacks.

Conversion of an existing non-primary structure that encroaches into a sensitive habitat buffer or a geologic setback into an ADU would extend the life expectancy and economic value of the nonconforming structure, exacerbating the degree of nonconformity. Furthermore, construction of a new ADU structure that encroaches into a sensitive habitat buffer or a geologic setback would result in a new structure that may have continued adverse impacts to coastal resources. To address these concerns, a suggested modification is proposed to clarify that new detached and attached ADUs, new ADUs converted from a garage or other accessory building, and new ADUs built on top of a garage must be consistent with all sensitive habitat buffers and setbacks for geologic stability that are required in the certified LCP.

As currently proposed, the ordinance would allow ADUs to be constructed with reduced side and rear yard setbacks on properties directly adjacent to the coastal bluff. Reductions in side yard setbacks would result in impacts to side yard view corridors between existing homes, many of which currently allow for ocean and horizon views and prevent a walled-off effect on the first coastal roadway. A reduced rear yard setback, aside from raising geologic stability concerns, would also adversely impact the bluff silhouette line when viewing the property from the beach. Thus, such an approach would result in impacts to public views. A suggested modification is proposed that addresses preservation of existing coastal views from the roadway and from the beach, by requiring that ADUs constructed on coastal bluff properties be restricted to the same setbacks required for the primary dwelling unit.

Additionally, in order to promote the likelihood that the new accessory dwelling unit development will meet the intent of increasing the supply of affordable housing, the City's amendment prohibits renting out an accessory dwelling unit for a term of less than 30 days so as to prevent accessory dwelling units from being utilized as short term rentals. Thus, while the primary structure can be used as a short-term vacation rental, an ADU cannot. The City provided the following data related to existing overnight accommodations in the city: 312 units are registered through the City's short-term vacation rental program, with 36 pending renewals; and the City has 15 hotels with a total of 636 hotel rooms. While the Commission views short-term rentals as promoting public access through the provision of an additional avenue of lodging by the coast and offering a more affordable option for some, there is a sizeable inventory of overnight accommodations. Given the need for affordable housing in the city and region, there is rationale to focus on ADUs as expanding housing opportunities.

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, as modified, begin on Page 13.

ADDITIONAL INFORMATION

Further information on the City of Encinitas's LCP amendment LCP-6-ENC-18-0035-1 may be obtained from **Eric Stevens**, Coastal Planner, at (619) 767-2370.

EXHIBITS

[Exhibit 1 – Ordinance 2018-01 \(Accessory Dwelling Units\)](#)

[Exhibit 2 – Ordinance 2018-02 \(Junior Accessory Dwelling Units\)](#)

PART I. OVERVIEW**A. LCP HISTORY**

On November 17, 1994, the Commission approved, with suggested modifications, the City of Encinitas Local Coastal Program (both land use plan and implementing ordinances). The City accepted the suggested modifications and, on May 15, 1995, began issuing coastal development permits for those areas of the City within the 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. (Cal. Code of Regs., § 13542(b).)

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-ENC-18-0035-1 for the City of Encinitas 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 Encinitas 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-ENC-18-0035-1 for the City of Encinitas 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 Encinitas 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. Relocate Section 30.48.040T10 to Section 30.48.040T13 and modify as follows:

Any accessory dwelling unit that is permitted or constructed in reliance on the setback relief provisions established for accessory dwelling units in Subsection 30.48.040T~~10~~12 shall be:

- a. Maintained as an accessory dwelling unit and shall not be converted to or used for any other purpose.
- b. Shall be limited to a height of one story for (1) any portion of an attached ADU relying on the setback reliefs, or (2) an entire detached ADU structure if any portion of the structure relies on the setback reliefs.

2. Renumber and modify original Section 30.48.040T13 as follows:

Setbacks for accessory units:

- a. *Except as provided herein, attached and detached accessory dwelling units shall comply with the setbacks required for the primary dwelling unit as established by the underlying zoning designation.*
- b. Attached and detached accessory dwelling units shall comply with the setbacks established in Chapter 30.34 (Special Purpose Overlay Zones) of the Municipal Code.
- c. Attached or detached accessory dwelling units shall have a setback of not less than five feet from side and rear property lines, except:
 - i. An accessory dwelling unit that is constructed above (may be cantilevered, or supported by posts, but not solid walls) an existing attached or detached garage, ~~which existed prior to January 1, 2017,~~ shall have a setback of five feet from the side and rear property lines. However, an accessory dwelling unit that is constructed above a garage shall comply with the setbacks established in Chapter 30.34 (Special Purpose Overlay Zones) of the Municipal Code.
 - ii. No setback shall be required for the conversion of existing space, ~~as of January 1, 2017,~~ wholly within an existing primary residence or wholly within an existing accessory structure building to an accessory dwelling unit. However, an existing accessory building (including an

existing garage) that is converted to an accessory dwelling unit shall comply with the setbacks established in Chapter 30.34 (Special Purpose Overlay Zones) of the Municipal Code.

- iii. Roof eaves and other architectural projections for accessory dwelling units shall comply with Section 30.16.010E8.
- iv. Accessory dwelling units constructed on properties directly adjacent to a coastal bluff shall be consistent with the setbacks required for the primary dwelling unit as established by the underlying zoning designation.

3. Modify Sections 30.48.040T15, Parking, sub-sections cii and diii, as follows:

- c. Any required parking spaces removed in conjunction with the construction of an accessory dwelling unit shall be replaced on the same lot as the accessory dwelling unit. [...]
- ii. Uncovered replacement parking spaces may be located within building setback areas. [...]
- d. Notwithstanding the above or any other law, no parking standards shall be imposed for an accessory dwelling unit in any of the following instances: [...]
- iii. The accessory dwelling unit is contained wholly within the existing space of an existing primary residence or an existing accessory ~~structure~~ building, with no additional area added. If an accessory dwelling unit constructed under this provision is expanded, parking shall be provided for the accessory dwelling unit in accordance with this Section. [...]

4. Modify Section 30.48.040T16, Utilities, sub-section b. and Section 20, Definitions, sub-section d., “Living Area” to replace the term “Accessory Structure” with “Accessory Building.”

PART IV. FINDINGS FOR REJECTION OF THE CITY OF ENCINITAS 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 plan are proposed herein.

The City of Encinitas has provisions regulating second dwelling units in the coastal zone that were effectively certified by the Commission in November 1994 (Original LUP and IP Certification). The existing regulations (contained in Encinitas Municipal Code (EMC) Section 30.48.40T of the LCP IP) allow second dwelling units within all single-family zones and establish development standards regulating the design and construction of second dwelling units. Since the original 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 by Assembly Bill 2299 (Bloom, 2016), Assembly Bill 2406 (Thurmond, 2016), Senate Bill 1069 (Wieckowski, 2016), Assembly Bill 494 (Bloom 2017) and Senate Bill 229 (Wieckowski, 2017). The new state law authorizes local governments and agencies to provide for the creation of second units, termed “accessory dwelling units” and “junior accessory dwelling units (ADUs and jrADUs), in single-family and multi-family residential zones by ordinance. The laws, approved by the Governor and effective as of January 1, 2017 and January 1, 2018, specifically requires that applications for ADUs and jrADUs that comply with local regulations be approved magisterially within 120 days of submittal and not be subject to public hearings. The law also includes 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.

The City proposes to modify several sections of the IP to make its regulation of ADUs and jrADUs consistent with these new state law provisions. Specifically, in EMC Chapter 30.04 (Definitions), the City proposes to delete the definition of “Accessory Unit” and to add new definitions for “Accessory Dwelling Unit” and “Junior Accessory Dwelling Unit.” The City also proposes to delete existing EMC Section 30.48.040T (Accessory Unit) in its entirety and to replace it with new EMC Sections 30.48.040T (Accessory Dwelling Units, Attached and Detached) and 30.48.040U (Junior Accessory Dwelling Units).

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 include the following:

- In EMC Chapter 30.04 (Definitions), the definition of “Accessory Unit” will be deleted. The current definition allows for an attached or detached accessory unit on property zoned for single family dwellings and limits the size of the accessory unit to 750 sq. ft. or 30% of the area of the principal residence, whichever is less, and also allows for a minimum size accessory unit of 400 sq. ft. regardless of the size of the principal residence. New definitions will be added for “Accessory

Dwelling Unit” and “Junior Accessory Dwelling Unit.” The new definition for Accessory Dwelling Unit (ADU) provides for an attached or detached ADU on the same lot as an existing dwelling unit zoned for single-family or multifamily use. The new definition for Junior Accessory Dwelling Unit (jrADU) allows for a dwelling up to 500 sq. ft. contained entirely within an existing single-family residence.

- The existing EMC Section 30.48.040T (Accessory Units) will be deleted in its entirety and replaced with a completely new EMC Section 30.48.040T (Accessory Dwelling Unit).

The existing Accessory Unit section focuses primarily on design aspects relative to community character, establishing a minimum and maximum size for accessory units and requirements related to kitchen amenities. Accessory Units are required to be consistent with the underlying zoning for setbacks, height, lot coverage, and floor area ratio. In addition, one parking space is required for an accessory unit.

The new section for ADUs incorporates the recent changes in state law regarding ADUs, including mandating ministerial action on ADU permit applications within 120 days of submittal. The proposed regulations allow for an ADU in conjunction with a single-family residence on lots zoned for single- or multi-family uses, allow for an ADU and a jrADU on the same property, require rental of ADUs for a minimum of 30 days, allow roof eaves and other architectural features to project into setback areas consistent with existing EMC Section 30.16.010E8, provide for a 5 % lot coverage or 10% floor area ratio bonus for lots under 10,000 sq. ft., and contains definitions for “Accessory Dwelling Unit,” “Car Share Facility,” “Living Area,” “Major Public Transit Center,” and “Public Transit.”

The proposed regulations also provide for side and rear yard setback relief for ADUs. Specifically, an ADU constructed over a garage that existed prior to January 1, 2017 may be located within 5 ft. of the side or rear yard property lines; an ADU conversion located wholly within an existing home or accessory structure is not required to have a side or rear yard setback; a one-story detached ADU may be located within 5 ft. of the side or rear yard property lines; and an attached ADU can also be located within 5 ft. of the side or rear yard property lines, provided that the portion of the ADU relying on the setback relief is limited to one story.

Additional revisions are proposed related to parking. In particular, these changes limit the maximum parking requirement to one space per 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.

- A new EMC Section 30.48.040U (Junior Accessory Dwelling Unit) will be added and the existing EMC Sections 30.48.040U through 30.48.040Z will be renumbered, but not otherwise modified. The new section for jrADUs incorporates the recent changes in state law regarding jrADUs, including mandating ministerial action on jrADU permit applications within 120 days of submittal. The proposed regulations allow for a jrADU up to 500 sq. ft. provided that it is contained entirely within an existing single family home and results from conversion of an existing bedroom, allow for an ADU and a jrADU on the same property, require that the jrADU be rented for a minimum of 30 days, require that the property owner occupy either the jrADU or the primary dwelling unit, and affirms that no additional parking is required.

c) Adequacy of the Ordinance to Implement the Certified LUP Segments. The Commission may 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 Encinitas's certified LCP includes the following relevant LUP policies:

Land Use Element Goal 1 states:

Encinitas will strive to be a unique seaside community providing a balance of housing, commercial light industrial/office development, recreation, agriculture and open space compatible with the predominant residential character of the community.

Land Use Element Goal 7 states:

Development in the community should provide an identity for the City while maintaining the unique identity of the individual communities. (Coastal Act/ 30253)

Resource Management Element Goal 3 states:

The City will make every effort possible to preserve significant mature trees, vegetation and wildlife habitat within the Planning Area.

Resource Management Element Policy 4.9 states, in part:

It is intended that development would be subject to the design review provisions of the Scenic/Visual Corridor Overlay Zone for those locations within Scenic View Corridors, along scenic highways and adjacent to significant viewsheds and vista points with the addition of the following design criteria:

[...]

-Development Design

Building and vegetation setbacks, scenic easements, and height and bulk restrictions should be used to maintain existing views and vistas from the roadway.

[...]

Development should be minimized and regulated along any bluff silhouette line or on adjacent slopes within view of the lagoon areas and Escondido Creek...

Resource Management Element Goal 10 states:

The City will preserve the integrity, function, productivity, and long term viability of environmentally sensitive habitats throughout the City, including kelp-beds, ocean recreational areas, coastal water, beaches, lagoons and their up-lands, riparian areas, coastal strand areas, coastal sage scrub and coastal mixed chaparral habitats. (Coastal Act/30230/30231/30240)

Resource Management Element Policy 10.6 states, in part:

The City shall preserve and protect wetlands within the City's planning area...

The City shall also control use and development in surrounding area of influence to wetlands with the application of buffer zones. At a minimum, 100-foot wide buffers shall be provided upland of salt-water wetlands, and 50-foot wide buffers shall be provided upland of riparian wetlands...

Public Safety Element Policy 1.3 states:

The City will rely on the Coastal Bluff and Hillside/Inland Bluff Overlay Zones to prevent future development or redevelopment that will represent a hazard to its owner or occupants, and which may require structural measures to prevent destructive erosion or collapse.

Public Safety Element Policy 1.13 states:

In areas identified as susceptible to brush or wildfire hazard, the City shall provide for construction standards to reduce structural susceptibility and increase protection. Brush clearance around structures for fire safety shall not exceed a 30-foot perimeter in areas of native or significant brush, and as provided by Resource Management Policy 10.1.

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. Section 30.48.040T (Accessory Dwelling Units) of the City's proposed IP amendment raise concerns related to consistency with the certified LUP or its adequacy to carry it out.

As described previously, the proposed ordinance includes various scenarios in which conversion of an existing structure into an ADU or a newly constructed ADU will be allowed reduced side and rear yard setbacks. 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 substantive application of the Coastal Act. Reduced setbacks for ADUs have the potential to conflict with LCP policies requiring buffers from sensitive habitat or geologic stability setbacks. Conversion of an existing non-primary structure that encroaches into a sensitive habitat buffer or a geologic setback into an ADU would extend the life expectancy and economic value of the nonconforming structure, exacerbating the degree of nonconformity. Furthermore, construction of a new ADU structure that encroaches into a sensitive habitat buffer or a geologic setback would result in a new structure that would likely have continued adverse impacts to coastal resources.

LUP Land Use Element Policy 2.7, Resource Management Element Goal 3 and Policy 10.6, and Public Safety Element Policy 1.13 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, the ordinance would allow conversion of an existing primary structure or accessory structure into an ADU and would allow construction of a new ADU even if the existing structure or new structure encroaches into habitat buffers. One of the primary impacts to sensitive habitat that can result from an inadequate buffer is related to brush management activities. The Commission does not typically allow brush management around non-habitable structures. Thus, conversion of an existing non-habitable structure or construction of a new attached or detached accessory structure adjacent to sensitive habitat would likely result in adverse impacts.

LUP Public Safety Element Policy 1.3 requires that new development or additions to existing development be sited in a location that will not represent a hazard to its owner or occupants and also won't require structural measures to prevent destructive erosion or collapse. As proposed, the ordinance would allow conversion of an existing primary structure or accessory structure into an ADU and would allow construction of a new ADU even if the existing structure or new structure encroaches into geologic setbacks. As proposed by the City, an ADU applicant would not have to demonstrate that the proposed new use or structure would be safe for the lifetime of that development. The conversion of an existing accessory structure into an ADU or the addition of an ADU, without analysis of its geologic stability could place occupants and the structure itself at risk from

geologic hazards. Furthermore, the Commission does not typically approve shoreline armoring to protect accessory structures, including garages. Thus, such an approach would result in perpetuating development in a hazardous location and lead to possible future requests for shoreline armoring.

Resource Management Element Policy 4.9 requires development be designed to preserve existing views from the roadway and to minimize impacts to natural views on any bluff silhouette line. As currently proposed, the ordinance would allow ADUs to be constructed with reduced side and rear yard setbacks on properties directly adjacent to the coastal bluff. Reductions in side yard setbacks would result in impacts to side yard view corridors between existing homes, many of which currently allow for ocean and horizon views and prevent a walled-off effect on the first coastal roadway. A reduced rear yard setback, aside from raising geologic stability concerns, would also adversely impact the bluff silhouette line when viewing the property from the beach. Thus, such an approach would result in impacts to public views.

The proposed ordinance refers to the term “accessory structure” in two places. In the Encinitas LCP, the term “accessory structure” and “accessory building” are often used interchangeably. In the LCP, an accessory building is defined as follows:

Accessory building shall mean a building, part of a building, or structure, which is incidental or subordinate to the main building or use on the same building site, i.e., garage, barn, storage buildings, gazebo and the like.

However, the LCP does not include a definition for an accessory structure. Thus, the lack of a defined meaning of the term creates unnecessary uncertainty for the public and for the City and Commission to interpret its intent. Therefore, as proposed by the City, the amended regulations are not consistent with, and are inadequate to carry out, the certified LUP and must be rejected.

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

After submitting this amendment request to the Commission, the City suggested various changes to the text of the ordinance in order to improve organization and to address concerns related to geologic and ecological setbacks raised during Commission review of the ADU ordinances for neighboring cities in San Diego County. Specifically, the City suggested that Section 30.48.040T10 be relocated to Section 30.48.040T13 to improve the organizational flow of the ordinance. In addition, the City suggested that Section 30.48.040T12b be added to mandate that attached and detached accessory dwelling units must comply with the setbacks established in Chapter 30.34 (Special Purpose Overlay Zones) of the Municipal Code. Chapter 30.34 is a zoning ordinance which is part of the City’s certified Implementation Plan and, in part, specifies required geologic setbacks and buffers from wetlands and other sensitive habitat. Because the proposed changes to the ordinance were made after the City took its local action, the City has requested that the Commission incorporate the requested changes as suggested modifications. Even

accounting for the suggested modifications requested by the City, the portion of the City's proposed ordinance regarding setbacks required for ADUs (Section 30.48.040T) was not found to conform with, or to be adequate to carry out, the certified LUP policies as submitted. Thus, additional modifications are necessary to make the City's Implementation Plan consistent with the LUP policies. The description of the suggested modifications below includes both the modifications requested by the City and the additional changes necessary to find the ordinance consistent with the certified LUP.

Suggested Modification 1 is included to improve the organizational flow of the ordinance. Subsection 30.48.040T10 references Subsection 30.48.040T12 and therefore the ordinance reads more clearly if it's relocated after the subsection that it references.

Suggested Modification 2 clarifies that new detached and attached ADUs, new ADUs converted from a garage or other accessory building, and new ADUs built on top of a garage must be consistent with all sensitive habitat buffers 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 or human safety, by extending the lifetime of existing structures, or by constructing new structures, in an inappropriate location. Consistent with the requirements of the certified LUP, the suggested modification also addresses preservation of existing coastal views from the roadway and from the beach, by requiring that ADUs constructed on coastal bluff properties must comply with the setbacks required for the primary dwelling unit. This modification also deletes the date references because formalizing those dates would limit the opportunity of future homeowners to utilize the reduced setback incentives to create new ADUs. As long as reduced setbacks do not conflict with habitat buffers, geologic setbacks or public view protections, the Commission finds such incentives are appropriate to promote affordable housing opportunities.

Suggested Modification 3 clarifies that when existing required parking spaces are lost due to construction of an ADU, uncovered replacement parking may be located within building setback areas, as opposed to locating replacement parking in geologic setbacks or habitat buffers. The suggested modification replaces the term "Accessory Structure" with "Accessory Building." Although the two terms are often used interchangeably in the LCP, only "Accessory Building" is defined. Thus, this clarification is necessary in order to avoid ambiguity in future interpretation of what type of structure is considering an accessory building. **Suggested Modification 4** replaces the term "Accessory Structure" with "Accessory Building" in two other locations within the ordinance.

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. 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 Encinitas concluded that the proposed amendment is exempt from CEQA pursuant to Public Resources Code Section 15061(b)(3) of the CEQA Guidelines [no possibility of a significant effect on the environment].

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.