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Date: October 22, 2020

To: COMMISSIONERS AND INTERESTED PERSONS

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Subject: STAFF RECOMMENDATION ON COUNTY OF SAN DIEGO LCP-6-SDC-20-0031-1 (COUNTY IMPLEMENTATION PLAN) for Commission Meeting of November 4-6, 2020)

SYNOPSIS

The subject LCP implementation plan was submitted and filed as complete on June 16, 2020. A one-year time extension was granted on July 8, 2020. As such, the last date for Commission action on this item is September 10, 2021.

SUMMARY OF IMPLEMENTATION PLAN

The County of San Diego does not yet have a certified Local Coastal Program (LCP). However, the proposed County of San Diego LCP Implementation Plan is a critical next step and this submittal establishes development regulations implementing the County of San Diego Land Use Plan (LUP), which the Commission certified in December 2018. The IP will be incorporated into the existing County Zoning Ordinance as a new section (Part Nine: Coastal Zone Regulations). The submittal includes zoning maps and other implementing actions to carry out the provisions of the certified County LUP. The proposed IP establishes special requirements for development near sensitive resources, limits development in the 100-year floodplain, and includes regulations addressing fire hazard management in the County Coastal Zone. This ordinance establishes application requirements and review procedures, including noticing, hearing and appeal processes, and includes a list of development exemptions consistent with the Commission's code of regulations.

SUMMARY OF STAFF RECOMMENDATION

Staff is recommending rejection of the ordinances as submitted and approval with suggested modifications. The modifications are proposed to address areas where the proposed IP ordinances do not fully implement the certified LUP, and to reflect recent direction by the Coastal Commission on LCP Implementation Plans from other coastal

jurisdictions. The majority of the suggested modifications are associated with the proposed coastal permit ordinance, to assure that the County's procedures for processing coastal permits are fully consistent with the requirements of the Coastal Act. Additionally, there are modifications that ensure ordinances governing biological resource protection, water quality, and scenic resources are not only consistent with the certified LUP, but also adequate to carry out the LUP policies. The appropriate resolutions and motions begin on page 5. The suggested modifications are contained in Exhibit #2. The findings for denial of the Implementation Plan as submitted begin on page 7. The findings for approval of the plan, if modified, begin on page 17.

BACKGROUND

The County received a Coastal Commission grant to complete a certified LCP for its coastal zone area in May 2015. The grant contract includes project goals, such as producing an LCP that reflects current circumstances and new scientific information, including new understanding and concerns for the effects of climate change, wildfires, and sea level rise. The final product would result in a comprehensively updated LCP submittal that, after effective certification by the Commission, would allow the County of San Diego to assume permitting authority.

Some tasks related to the development of the IP were moved outside of the grant term to allow County and Commission staff more time to provide feedback on the IP and to work through any outstanding issues. County staff has spent the last four years coordinating with Commission staff and other stakeholders to identify and draft implementation measures that would support the goals and policies of the County LUP, which was fully certified by the Commission in December 2018.

ADDITIONAL INFORMATION

Further information on the County of San Diego LCP Implementation Plan may be obtained from Dennis Davis, Coastal Planner, at (619) 767-2370.

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EXHIBITS

[Exhibit 1 – County Board of Supervisors Approved Implementation Plan](#)

[Exhibit 2 – Suggested Modifications \(~~Strikethrough~~/Underline\)](#)

I. OVERVIEW

A. LCP HISTORY

The County LUP was originally approved by the San Diego Regional Coastal Commission on March 13, 1981. Subsequently, on May 21, 1981, the State Commission certified the LUP with suggested modifications. After three resubmittals, the Commission certified the LUP on August 23, 1984. On September 26, 1984, the Commission certified, with suggested modifications, the Implementation Plan portion of the County's LCP. The County then resubmitted for Commission review the Implementation Plan incorporating the Commission's previously suggested modifications, with the exception of that portion of the plan dealing with coastal bluff areas. On November 22, 1985, the Commission voted to certify the Implementation Plan for the County, except for coastal bluff lots affected by the Coastal Development Area Regulations, where certification was deferred.

On July 1, 1986 and October 1, 1986, the Cities of Solana Beach and Encinitas incorporated, reducing the remaining incorporated area of the County within the coastal zone from 11,000 acres to the current remaining 1,050 acres. Because of those incorporations, the County indicated that, at that time, it did not plan to assume coastal permit-issuing authority for the remaining acreage, and the County LCP was never effective.

In May 2015, the County received a Coastal Commission grant to complete a certified LCP for its coastal zone area. The grant term was extended through February 28, 2018, and later extended again through April 30, 2019. The grant contract includes project goals, such as producing an LCP that reflects current circumstances and new scientific information, including new understanding and concerns for the effects of climate change, wildfires, and sea level rise. The final product would result in a comprehensively updated LCP submittal that, after effective certification by the Commission, would allow the County of San Diego to assume permitting authority.

On May 11, 2017, the Commission approved the County's LUP (LCP-6-SDC-17-0015-1), with suggested modifications. On November 9, 2017, the Commission granted a one-year time extension for the County to consider acceptance of the Commission's action. The County Board of Supervisors acknowledged and accepted all of the Commission's suggested modifications on September 12, 2018. At the Commission's December 2018 hearing, the Commission concurred with the Executive Director's determination that the actions by the County Board of Supervisors was legally adequate, certifying the County LUP.

Some tasks related to the development of the IP were moved outside of the grant term to allow County and Commission staff more time to provide feedback on the IP and work through any outstanding issues. County staff started preparing the subject IP in 2016, coordinating with Commission staff and other stakeholders to identify and draft implementation measures that would support the goals and policies of the County LUP.

Over the past four years, Commission staff has provided feedback on several draft plans that the County has incorporated into the final IP currently before the Commission. A one-

year time extension was granted in July 2020; therefore, the Commission must finalize action on the implementation plan by September 2021.

B. STANDARD OF REVIEW

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

C. PUBLIC PARTICIPATION

Section 30503 of the Coastal Act requires local governments to provide the public with maximum opportunities to participate in the development of any LCP component. On April 15, 2019, County staff attended a San Diego Trail Alliance meeting to go over the IP generally and the trail regulations contained within. On May 9, 2019, the San Dieguito Community Planning Group held a public workshop on the IP. In both meetings, no concerns were raised or public testimony received.

On May 31, 2019, the County Planning Commission held a public hearing in which it decided to recommend approval of the IP to the County Board of Supervisors. A notice for the Planning Commission hearing was circulated on May 20, 2019. Hearing notices for the Planning Commission hearing were distributed, including to several Native American tribes that are affiliated with the County Coastal Zone and sought consultation with the County during the review of the LUP. No concerns were raised or public testimony received.

On June 26, 2019, the County Board of Supervisors approved the IP. A notice for the Board of Supervisors hearing was circulated on June 14, 2019. No concerns were raised or public testimony received. According to the County, notices for all public hearings related to the IP were circulated to all property owners in, and within 300 feet of, the County Coastal Zone, and to federal and state agencies, incorporated cities, tribal representatives and other stakeholders. These notifications included a link to the project website, located on the Planning & Development Services website.

II. MOTION AND 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.

1. MOTION:

I move that the Commission reject the Implementation Program LCP-6-SDC-20-0031-1 for the County of San Diego 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 submitted for the County of San Diego 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.

2. MOTION:

I move that the Commission **certify** the Implementation Program LCP-6-SDC-20-0031-1 for the County of San Diego 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 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 WITH SUGGESTED MODIFICATIONS:

The Commission hereby certifies the Implementation Program for the County of San Diego if modified as suggested and adopts the findings set forth below on grounds that the Implementation Program, with the suggested modifications, conforms with and is adequate to carry out the certified Land Use Plan. Certification of the Implementation Program 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 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.

III. SUGGESTED MODIFICATIONS

The Commission finds and suggests that the following changes (i.e., “suggested modifications”) to the submitted County of San Diego Implementation Plan (IP) are necessary to ensure that the IP is consistent with and adequate to carry out the

Commission-approved LUP. If the County accepts these suggested modifications on the IP within six months of Commission action, by formal resolution of the County Board of Supervisors, the County's Implementation Plan will become effective upon Commission concurrence with the Executive Director finding that the County's action and the coastal permit procedures are legally adequate to satisfy specific requirements set forth in the Commission's certification order.

Suggested modifications to the standards of the proposed Implementation Plan are shown in [Exhibit #2](#) (changes shown in ~~strike-out~~ are to be deleted, and changes shown in underline are to be added) section by section.

IV. FINDINGS FOR REJECTION OF THE COUNTY OF SAN DIEGO IMPLEMENTATION PLAN, AS SUBMITTED

A. IMPLEMENTATION PLAN DESCRIPTION

The County of San Diego Local Coastal Program (LCP) Implementation Plan will be incorporated into the County Zoning Ordinance as a new section titled "Coastal Zone Regulations." The proposed IP is divided into six parts:

- General Provisions
- Coastal Zone Use Regulations and Requirements
- Coastal Zone Site Development Standards
- Coastal Zone Special Area Regulations
- Coastal Permits
- Definitions

The proposed IP ([Exhibit #1](#)) establishes development regulations implementing the County of San Diego LUP, which the Commission fully certified in December 2018. The IP includes ordinances that address and implement the policies contained in the certified LUP. Specifically, there are special area regulations that establish requirements for development near sensitive resources (e.g. ESHA, wetlands, riparian habitat) and that provide robust requirements for protecting and improving water quality. The special area regulations also provide provisions that regulate development in the 100-year floodplain and requires submittal of coastal hazards reports based on the best available science and SLR projections. Additionally, due to the semi-rural nature of the County Coastal Zone, regulations addressing fire hazard management are also included in the special area regulations. Finally, there is an ordinance that provides procedures for the processing of coastal permits by the County of San Diego. This ordinance establishes application requirements and review procedures, including noticing, hearing and appeal processes, and includes a list of developments that may be exempted consistent with the Commission's regulations.

B. SUMMARY FINDINGS FOR REJECTION

The County Coastal Zone is approximately 1,050 acres in size and is primarily built-out with residential development. The County's unincorporated lands within the coastal zone lie between Encinitas and the City of San Diego, extending along the inland boundaries of Encinitas and Solana Beach. Commercial uses are allowed along a small sliver of the southern border of the County Coastal Zone (adjacent to Via de la Valle). Also located within the County Coastal Zone is the San Dieguito County Park, an approximately 125-acre park containing public amenities such as nature trails, picnic areas, and lookout platforms that provide scenic views. The County Coastal Zone is primarily landlocked, with the only shoreline located along the eastern extent of San Elijo Lagoon. The County Coastal Zone also contains two creeks: the Escondido Creek and La Orilla Creek.

The County of San Diego has worked for many years to develop their proposed implementation plan and a great deal of time and effort has gone into both the drafting of the ordinance language and the extensive public review process conducted by the County. Where feasible, the County used the policy language of its certified LUP to draft complementary IP provisions that contain roughly the same language to ensure full consistency and the ability to carry out the LUP. However, in other provisions, such as the coastal permit ordinance and other procedures, the County relied heavily on existing procedures taken from the County Zoning Ordinance to draft the IP provisions. This has resulted in inconsistencies, some confusions, and problems where provisions in the ordinance track the noticing and hearing procedures of the County Zoning Ordinance more closely than the noticing and hearing procedures of the Coastal Act and its implementing regulations.

The Coastal Act includes a clear declaration that the "public has a right to fully participate in decisions affecting coastal planning, conservation and development" and that "implementation of programs for coastal conservation and development should include the widest opportunity for public participation" (Coastal Act Section 30006). Section 30320 of the Coastal Act states:

"the duties, responsibilities, and quasi-judicial actions of the commission are sensitive and extremely important for the well-being of current and future generations and that the public interest and principles of fundamental fairness and due process of law require that the commission conduct its affairs in an open, objective, and impartial manner free of undue influence and the abuse of power and authority."

Upon certification of the IP, the LCP will be complete, and the Executive Director will delegate authority for the County to issue its own coastal development permits and related permits. (Cal. Code of Regs., § 13544.) However, that delegation of authority includes the responsibility of upholding the broad principles of due process as stated in the Coastal Act and that are carried out by the Coastal Act's implementing regulations. Changes to the proposed coastal permit ordinance are needed to ensure public hearings for projects in areas appealable to the Commission are not waived, with carefully-considered exceptions for minor developments. Changes are also needed to ensure that a local appeal process is incorporated into the IP for County-initiated projects, giving aggrieved individuals the ability to voice their concerns directly to the County for these public projects. Several other

provisions in the proposed coastal permit ordinance also require modification to ensure due process concerns relating to several notice and hearing provisions are addressed.

Outside of the coastal permit ordinance, minor modifications and clarifications are needed to ensure that the special use regulations governing biological resource protection, water quality, and scenic resources are not only consistent with the certified LUP, but also adequate to carry out the LUP policies. Additionally, a proposed table depicting the use types permitted in the County Coastal Zone will also require modification to remove land uses inconsistent with the County's open space zone as defined in the LUP.

C. SPECIFIC FINDINGS FOR REJECTIONS

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.

COASTAL PERMITS

Purpose and Intent of the Ordinance.

This ordinance establishes the process for review of new development to assure consistency with the certified LCP and the California Coastal Act.

Major Provisions of the Ordinance.

The ordinance includes the following provisions:

- Application requirements and fees for the two coastal permits to be issued by the County for development in the County Coastal Zone: Coastal Administrative Permits (CAPs) and Coastal Development Permits (CDPs);
- Description of the review authority proposed among four County departments following the exact same procedures for the processing and review of CAPs and CDPs;
- Permit review procedures, including hearing and noticing requirements;
- Required findings for coastal permits;
- Permit exemptions; and
- Appeal procedures.

Adequacy of the Ordinance to Implement the Certified LUP.

The coastal permit ordinance is divided among the following sections in the proposed IP: 9400 (Coastal Permit Requirements), 9404 (Exemptions), 9410 (Determination of Permit Requirement), 9412 (Revocation), 9414 (Expiration of Coastal Permits), 9416 (Coastal Permit Amendments), 9418 (Denial of Coastal Permit Applications), 9420 (Coastal Permit Application Requirements and Fees), and 9422 (Coastal Permit Appeals). These sections establish procedures under

which the County will review and issue coastal permits, once the authority to do so has been delegated to the County. As provided in the LUP, the County will administer coastal permits through two main processes: Coastal Administrative Permits (CAPs) and Coastal Development Permits (CDPs). To create the necessary procedures and processes for the coastal permit ordinance, the County attempted to supplement many of its existing zoning ordinance procedures that govern its noticing and hearing procedures for other public hearings. Because County departments exercise some level of autonomy from each other, the County did not want to centralize the authority to review and issue coastal permits to only its Planning & Development Services (PDS) Department. Instead the authority to review and issue coastal permits is proposed to be divided among only the following four County departments: PDS, Department of Parks and Recreation (DPR), Department of Public Works (DPS), and Department of General Services (DGS). All four County departments must follow the same procedures set by the coastal permit ordinance in order to be consistent with the Coastal Act and certified LUP.

The coastal permit ordinance includes a majority of the appropriate procedures and processes needed for the County to adequately carry out the LUP and successfully issue coastal permits. However, several provisions in the proposed IP that relate to hearing and noticing procedures for various processes throughout the coastal permit ordinance (e.g. permit extensions/amendments and appeals) are missing key provisions that are reflected in both the Coastal Act and its implementing regulations. These issues raise serious due process concerns that some of the hearing and noticing procedures in the proposed IP will not provide the “widest opportunity for public participation,” a mandate that is deeply entrenched in the Coastal Act (see Section 30320) and that is carried out liberally through the Coastal Act’s implementing regulations (e.g. Sections 13054, 13565, 13566, 13567, 13569 13571). Thus, as proposed, the ordinance must be rejected as submitted.

There are three critical deficiencies in the proposed regulatory framework. First, the proposed IP allows the County to waive the public hearing requirement on CAPs for development appealable to the Coastal Commission, streamlining the CAP decision-making process. However, for development located in areas subject to appeal to the Coastal Commission, the County cannot waive the requirements for a local public hearing, unless a project satisfies all the requirements listed for “minor development,” proper notice of the project is distributed, and no request for a public hearing is received within 15 working days from the date of sending the notice (see Coastal Act Section 30624.9). For CAPs that do not satisfy the requirements for “minor development,” at least one public hearing must be held on an application for appealable development to allow appellants the opportunity to appear at a hearing and inform the local government of the nature of their concerns regarding a project (see Section 13566 of the Commission’s regulations). The Commission’s appeal authority extends to areas within proximity of sensitive coastal resources, where development warrants a greater level of scrutiny to ensure that the risk of impacts from proposed development are avoided or mitigated. The type of developments appealable to the Coastal Commission are located in areas that could impact coastal resources, and thus CAPs approved in an appealable area will likely raise significant issues concerning the protection of County coastal resources. The County should have the first opportunity to hear and address these local concerns,

which could lead to a local resolution and avoid an appeal to the Commission. For these reasons, the ordinance must be rejected as submitted.

A second concern relates to the County's proposed decision-making process for CDPs, which provides a more vigorous review process for privately-initiated developments while applying a less vigorous process for County-initiated projects. As proposed, a CDP application for a privately-initiated development would be processed and reviewed by PDS for a preliminary recommendation. The Planning Commission, the designated decision-maker for CDPs processed by PDS, will either approve or deny the proposed project. The decision of the Planning Commission could then be appealed locally to the County Board of Supervisors; and, if the development is located in an area appealable to the Coastal Commission, then potentially appealed to the Coastal Commission.

Alternatively, a County-initiated development would be processed and reviewed by either DPR, DPW, or DGS for a preliminary recommendation. The Board of Supervisors, the designated decision-maker for the CDPs processed by DPR, DPW, or DGS, would then hold a public hearing to either approve or deny the proposed project. However, unlike the process above for CDPs processed by PDS, there is no process allowing local appeals of the County Board of Supervisors' decision on County-initiated projects requiring a CDP. The only recourse an aggrieved individual would have is to appeal to the Coastal Commission if the project is located in an area appealable to the Commission. For County-initiated projects located in non-appealable areas, aggrieved individuals have no further administrative recourse after the Board of Supervisors makes its decision on County-initiated project requiring a CDP. As proposed, the regulatory framework for more intensive and complicated public projects would have limited opportunities for public oversight and the ordinance must be rejected as submitted.

The last concern relates to the appeals process and the public's ability to bring LCP consistency concerns to the Commission. The proposed IP includes a process for appealing County decisions to the Commission; however, a clarification regarding the appealability of the identified principal permitted use (PPU) for each County use regulation zone is needed in order to adequately carry out the policies of the certified LUP. Section 30603(a)(4) of the Coastal Act provides that local approval of any development in an unincorporated area of a coastal county that is not designated as the PPU results in an action that is appealable to the Commission. Commission and County staff worked to identify "one" PPU for each of the seven use regulation zones located in the County Coastal Zone. The proposed PPU for each zone is as follows:

- RS – Single Family Residential: PPU = Family Residential (i.e. SFR);
- RR – Rural Residential: PPU = Family Residential (i.e. SFR);
- RV – Variable Family Residential: PPU = Family Residential (i.e. SFR);
- C30 – Office-Professional: PPU = Administrative and Professional Services;
- A70 – Limited Agriculture: PPU = Horticulture (Cultivation)
- S80 – Open Space: PPU = County Park (Public Park/Playground/Recreation & Public Passive Park/Recreational); and
- S86 – Parking: PPU = Parking Services.

While Coastal Act Section 30603(a)(4) provides that the designated PPU for each zone cannot be appealed to the Commission, this section is not the only basis for appeal. If a development involving a PPU is subject to appeal based on another ground for appeal as listed in Coastal Act Section 30603(a), the development is still appealable to the Commission (e.g. a PPU located within 100 feet of a wetland). The proposed IP includes provisions that state that the designated PPU is not appealable to the Commission, without clarifying that a PPU could be subject to appeal based on another ground for appeal as listed in Coastal Act Section 30603(a). Thus, for the above reasons, the ordinance is not consistent with the Coastal Act and its implementing regulations and the Commission finds it must be rejected as submitted.

NEW DEVELOPMENT – BIOLOGICAL INVENTORY AND ENVIRONMENTALLY SENSITIVE HABITAT AREA (ESHA)

Purpose and Intent of the Ordinance.

This ordinance implements the certified LUP's biological resource protection standards, necessitates the submission of biological reports with coastal permit submittals for projects in or near sensitive areas.

Major Provisions of the Ordinance.

The ordinance includes the following provisions:

- Procedure mandating submission of a site-specific biological inventory, prepared by a qualified biologist, where appropriate;
- Minimum requirements for biological studies, including identification and evaluation of buffers or setbacks from sensitive habitats;
- Minimum buffer width from ESHA;
- Mitigation ratios;
- Identification of resource dependent uses;
- Prohibitions on use of insecticides, herbicides, rodenticides within or adjacent to ESHA; and
- Procedure for modifying the LUP ESHA map.

Adequacy of the Ordinance to Implement the Certified LUP.

The majority of the proposed ordinance is consistent with the certified LUP, which includes detailed policies addressing development in or near sensitive habitat areas. For example, both the LUP and proposed IP contain the same mitigation measures for limited scenarios where impacts to ESHA are permitted. Both the LUP and proposed IP also require that new development shall be sited so that fuel management avoids impacts to native vegetation and sensitive habitats, the

provisions of the proposed IP going even further by requiring development, including but not limited to subdivisions and lot line adjustments, to be sited so that no brush management activities encroach into ESHA.

Buffers from sensitive habitats are also required in both the LUP and proposed IP; however, the proposed IP does not include the minimum buffer widths for wetlands and riparian areas. Furthermore, the proposed IP lacks some specific requirements that are included in the LUP regarding when and how a habitat buffer width can be reduced. Specifically, Policy 3.35 of the County's certified LUP provides that in addition to providing a 100-foot wide buffer from ESHA, a minimum 100-foot buffer shall be provided from all wetlands and a minimum 50-foot buffer shall be provided around riparian areas. Policy 3.35 also states that a smaller buffer width may be approved by County Planning & Development Services and the Fire Marshal "in consultation with the CDFW, USFWS, and CCC when conditions of the site as demonstrated in a site-specific biological survey, the nature of the proposed development, etc. show that a smaller buffer would provide adequate protection." Policy 3.35 continues further to state that "[i]n such cases, the CDFW must be consulted and agree that a reduced buffer is appropriate and the County, or Coastal Commission, must find that the development could not be feasibly constructed without a reduced buffer." If a habitat buffer is reduced, it cannot be reduced to less than 50 feet and that excludes fuel modification zones. Policy 3.35 also clarifies that any required fuel modification shall occur outside not only ESHA but also ESHA buffers, unless otherwise ordered by the County Fire Authority after "consultation with the Resource Agencies (CDFW, USFWS, and CCC)."

The proposed IP includes the minimum buffer width from ESHA, but neglects to include the minimum buffer widths from wetlands and riparian areas. Additionally, the proposed IP provides provisions allowing for a buffer reduction by the County Planning & Development Services and the Fire Marshal but without including the resource agency consultation prerequisite, inconsistent with the LUP. The proposed IP provides that in no case can a buffer be reduced to less than 50 feet, but does not exclude fuel modification zones from the measurement of the reduced 50-foot minimum buffer. The proposed IP does prohibit any type of fuel modification or planting of non-native/invasive vegetation in ESHA or park buffer areas, but does not extend the same prohibitions to ESHA buffers. Also, the IP does not include the resource agency consultation prerequisite that would potentially allow an exception to the general prohibitions regarding fuel modification zones overlapping with ESHA buffers. Thus, this particular ordinance is not consistent with the County's certified LUP.

In addition to being consistent with the County's certified LUP, the proposed IP must also be adequate to carry out the policies of the certified LUP. To carry out the County LUP policies that call for the protection of sensitive habitats, areas currently identified as of ESHA must be identified. The County LUP includes an ESHA map created by County staff using various resources, including but not limited to the CDFW Natural Communities List and vegetation communities mapped within the County of San Diego SanGIS database. The proposed IP does not identify the sensitive habitat areas depicted in the LUP. By not identifying sensitive habitats in the proposed IP, many of the proposed IP ordinances that rely on knowing the

location of sensitive resources (e.g. the submittal of a biological inventory depends on the possible presence of native plant and animal species and native ecological communities) will not be able to adequately protect those resources as called out in the LUP policies.

The LUP ESHA exhibit provides a disclaimer that states that the exhibit is not intended to be an exhaustive compilation of the habitat areas that meet the definition of ESHA. The disclaimer also states that site-specific biological evaluations and field observations that are required to identify ESHA may not have been included in the preliminary materials reviewed by the County to create this exhibit. Because ground conditions are ever changing and new observations could be made in the future regarding sensitive habitats, the County is required to review and update its LUP ESHA exhibit through an LCP amendment at a minimum every ten years (LUP Policy 3.5). Therefore, the IP should contain processes for identifying (1) mapped ESHA that no longer meets the definition of ESHA and (2) unmapped sensitive habitats identified through a site-specific biological study that may meet the definition of ESHA. The proposed IP includes a process for the former but not the latter, which is needed to adequately update the LUP ESHA exhibit. Thus, for the above reasons, the ordinance is not adequate to carry out all the provisions of the certified LUP and the Commission finds it must be rejected as submitted.

ALLOWED LAND USES AND PERMIT REQUIREMENTS FOR COASTAL ZONE USE REGULATIONS

Purpose and Intent of the Ordinance.

This ordinance illustrates the use regulations and permit requirements for land uses within the County Coastal Zone through six tables.

Major Provisions of the Ordinance.

The ordinance includes the following provisions:

- List of allowable land uses; and
- Coastal permit review process required for each use.

Adequacy of the Ordinance to Implement the Certified LUP.

The County Coastal Zone contains seven use regulation zones: RS – Single Family Residential, RR – Rural Residential, RV – Variable Family Residential, C30 – Office-Professional, A70 – Limited Agriculture, S80 – Open Space, and S86 – Parking. Tables 9-2a through 9-2f in this section depict the use types permitted in each use regulation zone and the permit requirements for each use. In the certified LUP, the S80 (Open Space) use regulation zone is described as “[I]and generally unsuitable for intensive development that is applied to hazard or resource areas, public lands, recreation areas, or lands subject to open space easement or similar restrictions.” The LUP also states that the uses allowed in S80 include those that have a minimum impact on the natural environment. Table 9-2a of the proposed IP

allows several use types to occur in the S80 (Open Space) use regulation zone (e.g. Small Schools and Major Impact Services and Utilities) that could potentially result in intensive development, inconsistent with the LUP. Additionally, development involving suitable use types for the S80 (Open Space) use regulation zone, such as electrical and gas distribution substations (Minor Impact Utilities) and fire stations (Fire Protection Services), should be required to obtain a Coastal Development Permit instead of a Coastal Administrative Permit under the County's coastal permit framework.

The Coastal Administrative Permit process is intended only for development that has no adverse effect either individually or cumulatively on coastal resources. Figure 9-1 of the proposed IP depicts parcels that are subject to the S80 (Open Space) use regulation zone along the Escondido Creek that serves as a freshwater connector between the San Elijo Lagoon and the Carlsbad watershed. The parcels underlying the County's San Dieguito Park, which contain large contiguous areas identified as Environmentally Sensitive Habitat Areas (ESHA), are also subject to the S80 (Open Space) use regulation zone. Construction of electrical and gas distribution substations and fire stations in the S80 (Open Space) use regulation zone will likely have adverse effects on coastal resources that will need to be mitigated or avoided through the CDP process. Thus, the ordinance is not consistent with or adequate to carry out the provisions of the certified LUP and the Commission finds it must be rejected as submitted.

SCENIC RESOURCES/SITE DEVELOPMENT STANDARDS BY SUBAREA AND SIGN REQUIREMENTS

Purpose and Intent of the Ordinance.

This ordinance identifies development standards and restrictions intended to protect scenic resources in the County Coastal Zone.

Major Provisions of the Ordinance.

The ordinance includes the following provisions:

- Building setbacks;
- Height restrictions;
- Additional restrictions on development within a critical viewshed;
- Building type designators; and
- Commercial sign restrictions.

Adequacy of the Ordinance to Implement the Certified LUP.

The County Coastal Zone contains several public viewing areas including but not limited to the San Dieguito County Park and the La Orilla Trailhead that connects to the trail networks within the San Elijo Ecological Reserve. The certified LUP seeks

to preserve the scenic and visual qualities of the County's County Zone and requires that existing public view points be maintained, and where necessary, upgraded. Figure 14 of the LUP depicts a critical viewshed that extends radially for 2,000 feet from several identified vista points in the County Coastal Zone.

To protect public views from these and other areas, the proposed IP includes provisions restricting both the height of structures and the siting of certain building types with large bulk and scale near scenic resources. Additionally, development located within the critical viewshed that encompasses the San Dieguito Park is subject to additional requirements in the proposed IP (e.g. restricting the height of landscaping and screening undesirable views) to protect the integrity of the vista points within the viewshed. Where preempted by federal law, the proposed IP allows certain structures (e.g. radio/television receiving antennas) to exceed the maximum height limits specified in the IP; however, some of the structures listed as exceptions to the identified maximum height limit are not preempted by federal law and should be removed to avoid impacts to public views. As an example, the drafted IP allows for signage over 400 ft. in height and provides for height exceptions for freeway-oriented signs where there are no properties likely visible from any freeway. For structures that are preempted by federal law, the height of such structures should not exceed the minimum height allowed by federal law.

Some provisions of the proposed IP also provide exceptions to the maximum height limit for signs, including commercial freestanding signs. The proposed IP limits commercial freestanding signs to a height of eight feet measured from the ground, but some provisions of the IP also allow these signs to reach a height of twenty feet in areas subject to scenic area regulations, which will impact public views in area identified by the LUP as contain scenic resources. In addition, under the Scenic Area Regulations, the drafted plan included provisions that would automatically exclude single-family residences from site plan review. Given that the bulk of the unincorporated area is committed to residential developments and there are numerous times when the Commission has adopted mitigation measures for building materials, siting, coloration and landscaping to address visual impacts, this exemption is unacceptable. Thus, the ordinance is not consistent with or adequate to carry out the provisions of the certified LUP and the Commission finds it must be rejected as submitted.

WATER QUALITY AND WATERSHED PROTECTION

Purpose and Intent of the Ordinance.

This ordinance implements the certified LUP's water quality protection policies, including use of various types of Best Management Practices (BMPs), and for certain projects, preparation of water quality technical reports prepared by qualified licensed professionals.

Major Provisions of the Ordinance.

The ordinance includes the following provisions:

- List of Priority Development Projects that will be subject to additional requirements;
- List of various types of BMPs;
- List of specific measures that shall be implemented to prevent erosion at stormwater outlets; and
- Content of water quality technical reports prepared by a qualified licensed professional.

Adequacy of the Ordinance to Implement the Certified LUP.

This proposed ordinance is consistent with water quality policies in the County LUP with the exception of one requirement. LUP Policy 4.17 requires new development to include submittal of construction phase erosion control and polluted runoff control plans. The policy goes on to require that both plans specify BMPs that will be implemented to minimize erosion and sedimentation, among other things. Water quality protection is covered extensively in this section of the proposed IP; however, there is no provision mandating the submittal of a Construction Pollution Prevention Plan (CPPP) or a Post Development Runoff Plan (PDRP) as required by the LUP. Without these provisions, the ordinance must be rejected as submitted.

V. FINDINGS FOR APPROVAL OF THE COUNTY OF SAN DIEGO IMPLEMENTATION PLAN AMENDMENT, IF MODIFIED

COASTAL PERMITS

The Coastal Act defines the activities that constitute development, requires a coastal development permit that is consistent with the Coastal Act or the local government's Commission-certified LCP for the activities that meet the definition of development, and then lists the different types of coastal development permits. The Coastal Act's implementing regulations then offer detailed provisions that specify permitting procedures, including required noticing, hearing dates, and appeals procedures. The certified County LUP does not contain detailed policies regarding coastal development permit processing or procedures. The implementation and processing of CDPs for all development (with the exception of development that is exempt or excluded from the CDP requirement) is one of the most critical means of implementing the coastal resource protection policies of the LUP.

While the coastal permit ordinance of the County IP includes the majority of the necessary procedures and processes needed for the County to successfully issue coastal permits, there are several areas where the proposed regulations need to be corrected or augmented to be fully consistent with the requirements of the Coastal Act and certified LUP. The majority of the changes to the coastal permit ordinance involve modifications to address due process concerns relating to the hearing and noticing procedures throughout

the proposed IP. Without modifications to the coastal permit ordinance, the proposed IP will not provide the widest opportunity for public participation, inconsistent with the Coastal Act and its implementing regulations.

The proposed IP broadly allows the County to waive public hearings for CAPs. While waivers of public hearings for CAPs consistent with the requirements for “minor development” are permissible even in areas appealable to the Coastal Commission, applications in appealable areas that are not “minor developments” must have at least one public hearing. Without modification to the CAP hearing procedures, the proposed IP is inconsistent with Section 13566 of the Commission’s regulations that requires at least one public hearing be held on each application for an appealable development. Suggested modifications #30, #31, #32, and #80 add language to clarify that a hearing is required, and thus cannot be waived, when the site of a CAP for other than a “minor development” lies within or partially within an appealable area.

The proposed IP also limits public participation in County-initiated projects requiring a CDP. The proposed IP does not currently provide procedures to allow for the local appeal of County-initiated project requiring a CDP. Without a modification to the CDP decision-making process for County-initiated projects, an aggrieved individual would only have the option to appeal to the Coastal Commission if the project is located in an appealable area. For County-initiated projects located in non-appealable areas, aggrieved individuals have no further administrative recourse after the Board of Supervisors makes its decision. In order to provide local appeal procedures for County-initiated projects requiring CDPs, suggested modification #46 designates the Board of Supervisors as the Appeal Authority and designates the Directors of DPR, DPW, and DGS as the CDP Decisionmakers for their departments.

Suggested modifications have also been proposed for other provisions throughout the coastal permit ordinance containing noticing and hearing procedures to ensure the IP provides the widest opportunity for public participation. For example, suggested modification #28 provides a citation to Section 13571 of the Commission’s regulations and clarifies that a notice of final action should be sent to the local office of the Coastal Commission. Suggested modification #48 provides provisions for noticing CDP applications that mirror the Commission’s notice requirements pursuant to Section 13054 of the Commission’s regulations. Suggested modifications #41 and #57 reformat the appeal hearing procedures for CAPs and CDPs, respectively, to Section 9422 of the County IP and clarify the process and procedures for a local appeal public hearing.

The coastal permit ordinance also provides procedures to allow for appeals of County decisions to the Coastal Commission. As a coastal county, the County of San Diego identified “one” PPU for each of the seven use regulation zones located in the County Coastal Zone, consistent with Section 30603(a)(4) of the Coastal Act. Unfortunately, the proposed IP states that the designated PPU for each zone cannot be appealed to the Commission, which is not true if the PPU is appealable based on another ground for appeal as listed in Coastal Act Section 30603(a). Suggested modification #77 adds language to clarify that the designated PPU for each zone could be appealable the Commission if another ground for appeal to the Commission exists. As modified herein, the County’s permitting procedures will conform to, and be adequate to carry out, the certified LUP.

NEW DEVELOPMENT – BIOLOGICAL INVENTORY AND ENVIRONMENTALLY SENSITIVE HABITAT AREA (ESHA)

This ordinance is fully consistent with certified County LUP with exception to the LUP policy on habitat buffers from sensitive resources. The proposed IP does not include a provision requiring a 100-foot buffer from wetlands or a 50-foot buffer from riparian areas as specified in the County LUP. The proposed IP also does not require the County Planning & Development Services and the Fire Marshal to consult with the resource agencies or to consider whether the conditions of site and nature of the proposed development show that smaller buffer would still provide adequate protection of sensitive resources. The proposed IP does prohibit any type of fuel modification or planting of non-native/invasive vegetation in ESHA or park buffer areas, but does not extend the same prohibitions to ESHA buffers. Also, the IP does not include the resource agency consultation prerequisite that would potentially allow an exception to the general prohibitions regarding fuel modification zones overlapping with ESHA buffers. While the IP provides that a buffer cannot be reduced to less than 50 feet, it does not exclude overlapping fuel modification zones. Suggested modification #15 adds language from LUP Policy 3.35 that is was not included in the proposed IP.

The proposed IP does not identify areas that have been classified as ESHA or provide a process for adding unmapped sensitive habitats to the LUP ESHA exhibit. Suggested modifications #12 and #13 require the proposed IP to incorporate the LUP ESHA exhibit through reference. Suggested modification #16 adds a process that requires the Director of the lead department to review site-specific information to determine if an area should be considered ESHA if a site-specific biological study contains substantial evidence that an area not previously mapped as ESHA meets the definition of ESHA. As modified, the Commission finds that the subject ordinance is consistent with, and adequate to carry out, the certified LUP.

ALLOWED LAND USES AND PERMIT REQUIREMENTS FOR COASTAL ZONE USE REGULATIONS

The proposed IP allows land uses in the S80 (Open Space) use regulation zone that are inconsistent with definition of the zone in the certified LUP. Land uses including Small Schools and Major Impact Services must be removed from the S80 (Open Space) use regulation zone to ensure intensive development does not occur in this zone which would be inconsistent with the LUP. Suggested modification #2 removes both the Small Schools and Major Impact Services use types from the S80 (Open Space) use regulation zone.

Additionally, approval of certain use types (e.g. Minor Impact Utilities and Fire Protection Services) through a Coastal Administrative Permit (CAP) in the S80 (Open Space) use regulation zone would not be appropriate because parcels subject to the S80 (Open Space) zone contain or are adjacent to sensitive habitats. The CAP process is only intended for development that has no adverse effect either individually or cumulatively on coastal resources. Development consisting of electrical and gas distribution substations and fire stations parcels subject to the S80 (Open Space) zone will likely result in impacts to coastal resources that must be mitigated or avoided through the CDP process. Suggested Modification #2 also suggests that for both Minor Impact Utilities and Fire Protection Services use types listed under the S80 (Open Space) use regulation, the “S”

designator, which identifies that a CAP is needed for the subject use, be replaced with the “M” designator, identifying that a CDP is needed. As modified, the Commission finds that the subject ordinance is consistent with, and adequate to carry out, the certified LUP.

SCENIC RESOURCES, SITE DEVELOPMENT STANDARDS BY SUBAREA AND SIGN REQUIREMENTS

The proposed IP includes a section with provisions designed to protect scenic resources, including maximum height limits across the County Coastal Zone; however, the proposed IP also allows structures such as radio/television receiving antennas, transmitting antennas used by licensed amateur (ham) or citizens band radio operators, and Meteorological Testing (MET) facilities to reach a maximum height of 200 feet or the height designated within the Federal Code of Regulations for the particular structure. Structures such as radio/television receiving antennas are regulated by federal laws that control the height of such structures and thus preempt state and local regulations that may otherwise impose general height restrictions. However, to preserve the scenic and visual qualities of the County Coastal Zone, the proposed IP should clarify that structures shall be the minimum height allowed by federal law in order to minimize the impact that these structures could have on public views. Suggested modification #5 will clarify that these structures will be the minimum height allowed by federal law.

The proposed IP limits commercial signs to a height of eight feet measured from the ground. Several provisions in the IP also allow the height of signs to exceed the eight-foot height limit, including a provision that allows signs to reach a height of twenty feet in areas subject to scenic area regulations, including critical viewsheds as identified in the certified LUP. Suggested modifications #5, #10 remove provisions that would allow exceptions to the eight-foot height limit on commercial freestanding signs that could impact the County Coastal Zone scenic resources. The proposed IP includes provisions that would automatically exclude single-family residences from site plan review. Given that the bulk of the unincorporated area is committed to residential developments and there are numerous times when the Commission has adopted mitigation measures for building materials, siting, coloration and landscaping to address visual impacts, this exemption is unacceptable. Suggested modification #20 removes provisions that would automatically exclude single-family residences from site plan review. As modified, the Commission finds that the subject ordinance consistent with, and adequate to carry out, the certified LUP.

WATER QUALITY AND WATERSHED PROTECTION

This proposed ordinance is consistent with water quality policies in the County LUP with the exception of the LUP policy requiring the submission of a construction phase erosion control and polluted runoff control plans for new development. While the proposed IP contains a substantial number of provisions addressing water quality protection, it does not require the submission of a Construction Pollution Prevention Plan (CPPP) or a Post Development Runoff Plan (PDRP). Suggested modification #18, adds the missing requirement to the IP and specifies the minimum content required for each plan. As modified, the Commission finds that the subject ordinance consistent with, and adequate to carry out, the certified LUP.

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

On June 26, 2019, the County Board of Supervisors adopted Resolution No. POD 13-009, approving the County LCP Implementation Plan. As part of its action, the County Board of Supervisors found that pursuant to Section 15265 of the CEQA guidelines, the LCP Implementation Plan is exempt from CEQA requirements.

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.

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. In this case, the proposed implementation plan raises concerns that it would not adequately carry out land use plan policies addressing, procedural due process, biological resource protection, water quality, and scenic resources. There were also concerns regarding the County's proposed coastal development permit process. All of these have been adequately addressed through suggested modifications. In addition, future developments resulting from implementation of the County's LCP will still be subject to individual environmental review and no adverse impacts to coastal resources are anticipated. Therefore, with the modifications suggested herein, the Commission finds the subject LCP implementation plan does conform with CEQA provisions.