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Date: October 12, 2020

To: **COMMISSIONERS AND INTERESTED PERSONS**

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Subject: **STAFF RECOMMENDATION ON CITY OF SAN DIEGO MAJOR LCP
AMENDMENT NO. LCP-6-SAN-20-0026-1 (12th Update to Land
Development Code) for Commission Meeting of November 4-6, 2020**

SYNOPSIS

On April 10, 2020, the City of San Diego (City) submitted its first major LCP amendment package for the 2020 calendar year to the San Diego District office, consisting solely of the 12th Update to the Land Development Code. At the June 2020 hearing, the Commission granted a one-year time extension, and combined with the Governor's Executive Order N-52-20 tolling regulatory deadlines, the latest that this item can be heard by the Commission is the August 2021 hearing.

SUMMARY OF AMENDMENT REQUEST

The proposed 12th Update to the Land Development Code contains thirty-nine separate changes to the Land Development Code (LDC), which serves as the certified Implementation Plan (IP) to the City's certified Local Coastal Program (LCP). The City periodically reviews the LDC and proposes corrections, clarifications, and modifications to make the document easier to understand, enforce, and apply for the public, as well as comply with changes in state and federal law. The proposed changes are organized into four categories based on the regulations they are amending: general zoning, cannabis regulations, additional development on sites with existing entitlements, and special flood hazard areas. The 12th Update also adds a new Appendix S to the Land Development Manual, a supplementary document to the LDC that is also part of the certified IP and incorporated by reference into the LDC.

SUMMARY OF STAFF RECOMMENDATION

Staff is recommending the Coastal Commission first reject the proposed amendment as submitted and then approve the proposed amendment with three suggested modifications. The issues to be resolved through suggested modification involve reversing the City's accidental deletion of a footnote in the industrial zone use regulation table prohibiting

“Funeral & Mortuary Services” within the floodplain in the coastal overlay zone, clarifying that new limits on the applicability of the Environmentally Sensitive Lands (ESL) regulations on premises that do not contain ESL apply only outside of the coastal zone, and clarifying that amendments to the special flood hazard area regulations incorporating the new Appendix S in the Land Development Manual (LDM) does not supersede other applicable development standards and definitions, but rather applies concurrently with them.

Currently, Table 131-06B in Section 131.0622 of the LDC lists the use regulations for the City’s various industrial zones, detailing what uses are allowed where and what authorizations, if any, they require to operate in those zones. Footnote 19 of Table 131-06B prohibits “Funeral and Mortuary Services” within the floodplain in the City’s coastal overlay zone, in line with several certified LUP policies limiting development within floodplains to avoid public risk from flood hazard and adverse impacts to coastal hydrology, wetlands, and water quality. While processing the 12th Update at the local level, the deletion of Footnote 19 was among the changes approved by the City Council. When the deletion was identified by Commission staff during review of this subsequent LCP amendment application, the City stated it was previously unaware of the deletion, that it was never planned as part of the 12th Update, and that they would support its reinsertion through a suggested modification, which Commission staff is now recommending.

Regarding the second issue, in the LDC, the regulations regarding development standards for sites containing or adjacent to ESL are contained in Article 3, Division 1, Section 143.0101 et seq. The 12th Update is amending Section 143.0110 regarding when ESL regulations apply so as to state that ESL regulations would not apply to premises that do not contain ESL, except that such premises that are adjacent to premises containing ESL are subject to adjacency requirements of the City’s Multiple Species Conservation Program (MSCP) and the Vernal Pool Habitat Conservation Plan (VPHCP). Because neither the MSCP nor the VPHCP are part of the certified LCP, a suggested modification to Section 143.0110 will make it clear that the proposed amendment will only apply to premises outside the coastal zone. The existing pattern of development within the City’s coastal zone has given rise to situations where ESL can be found on abutting premises next to developed parcels. Many of the City’s ESL regulations relate to buffer requirements around wetlands and environmentally sensitive habitat area (ESHA), regardless of whether they are located on the development site, and it is important to ensure that such protections remain in place, which the suggested modification will achieve.

Finally, as part of its preparation of the 12th Update, the City coordinated with the Federal Emergency Management Agency (FEMA) to update its floodplain regulations to bring them in greater conformity with federal standards. The certified IP consists not just of the LDC, which contains the City’s regulations for the development and use of property and provides information on zoning, grading, and other related land use activities, but also contains the Land Development Manual (LDM), a supplementary document designed to aid in the interpretation and implementation of the requirements of the LDC. The 12th Update proposes a new Appendix S to the LDM consisting of FEMA’s definitions for certain development terminology, and includes amendments to Section 143.0145 and Section 143.0146 of the LDC to incorporate Appendix S into the floodplain regulations and supersede any other conflicting definitions contained elsewhere in the LDC.

Upon review of Appendix S and related changes to the LDC, potential issues arose from conflicts between the FEMA definitions and existing certified definitions of redevelopment. In October 2016, the Commission certified LCP Amendment No. LCP-6-SAN-16-0043-3, an amendment to the LDC addressing previously conforming structures and uses. The LCP amendment contained provisions regarding previously conforming structures on blufftop sites or sites abutting coastal beaches. In addition to setting strict limits on the scope of improvements that could be made to such structures, LCP Amendment No. LCP-6-SAN-16-0043-3 established thresholds for determining when work or improvements to a previously conforming structure was deemed to constitute redevelopment and thus lose its previously conforming status, specifically when such a structure demolished more than fifty percent of its exterior walls or load bearing systems.

However, among the defined terms in Appendix S are “substantial damage” and “substantial improvement,” which are defined as damages or improvements to a structure in the floodplain with a cost greater than fifty percent of the market value of the subject structure prior to the damage or improvement. These definitions, among the others in Appendix S, would be incorporated into the LDC’s floodplain regulations by reference and would be used to determine whether a structure in the floodplain has lost its previously conforming status with respect to floodplain development requirements. Furthermore, the 12th Update amends the certified floodplain regulations to state that in cases where the definition of Appendix S conflicts with another definition within the LDC, that Appendix S would supersede other provisions.

This superseding of certified definitions for determining when previously conforming bluff top and beach front structures in the floodplain lose their previously conforming status would substantially conflict with the protections and intent of the October 2016 LCP amendment, and make it more likely that a previously conforming structure in the floodplain would be able to undertake significant improvements without being required to bring the entire structure in conformance with the LCP’s current requirements. Market value, by its very nature, can be volatile and is open to interpretation based on what party is conducting the assessment, whereas the structural components contained in the previously conforming regulations are tied to physical parameters that are easier to track and quantify.

Thus, as proposed, the Appendix S definitions will not carry out the intent of the certified LUP’s policies to reduce flood hazard risk and adverse impacts to coastal hydrology, wetlands, and water quality. However, in recognition that the definitions are derived from the federal agency charged with mapping and regulating flood zones nationwide, and wishing to address the identified issue in as narrow a manner as possible, staff is recommending a suggested modification that would still allow Appendix S to be added to the LDM and incorporated into the LDC, but with language added to the LDC making it clear that in cases of conflict, the definitions of Appendix S do not supersede, but rather, are applied separately and concurrently with all other applicable definitions and standards elsewhere in the LCP. Consequently, should any of the applicable definitions or thresholds be triggered by a particular development, such as thresholds for the loss of previously conforming status, then all applicable current development standards would need to be satisfied by the development, regardless of whether it was the definitions in Appendix S or elsewhere in the LCP that were triggered. This change will not interfere with the City’s goal of conforming to federal standards, but rather supplement them.

The remaining amendments contained in the 12th Update regarding topics such as redefining attic and gross floor area, easing food truck regulations, expanding the allowable zones for continuing care facilities, modifying the calculation of distance requirements between cannabis facilities and residences, and elimination of the tandem parking overlay zone, among other changes, are not likely to cause substantial adverse impacts to coastal resources or public access. These changes are therefore adequate to carry out the intent and policies of the certified Land Use Plans.

The appropriate resolutions and motions begin on Page 5. The suggested modifications begin on Page 7. The findings for denial of the Implementation Plan Amendment as submitted begin on Page 8. The findings for approval of the plan, if modified, begin on Page 16.

BACKGROUND

The City's first IP was certified in 1988, and the City then assumed permit authority. The IP consisted of portions of the City's Municipal Code, along with some Planned District Ordinances (PDO's) and Council Policies. In 1999, the Commission certified the City's LDC that primarily includes Chapters 11 through 15 of the municipal code. It replaced the first IP and took effect in the coastal zone on January 1, 2000. The Commission has certified several IP amendments since 2000.

ADDITIONAL INFORMATION

Further information on the City of San Diego LCP Amendment No. LCP-6-SAN-20-0026-1 may be obtained from Alexander Llerandi, Coastal Planner, at (619) 767-2370.

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I. OVERVIEW

A. LCP HISTORY

The City of San Diego has a long history of involvement with the community planning process, and in 1977, requested that the Coastal Commission permit segmentation of its Land Use Plan (LUP) into twelve parts in order to conform, to the maximum extent feasible, with the City's various community plan boundaries. In the intervening years, the City has intermittently submitted all of its LUP segments, which are presently certified, in whole or in part.

When the Commission approved segmentation of the LUP, it found that the implementation phase of the City's LCP would represent a single unifying element. This was achieved in January 1988, and the City of San Diego assumed permit authority on October 17, 1988, for the majority of its coastal zone. Several isolated areas of deferred certification remained at that time, but some have since been certified as LCP amendments. Other areas of deferred certification still remain today and will be acted on by the Coastal Commission in the future.

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 the maximum opportunities to participate in the development of the LCP amendment prior to 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.

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 Amendment No. LCP-6-SAN-20-0026-1 for the City of San Diego certified LCP, 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 AMENDMENT AS SUBMITTED:

The Commission hereby denies certification of the Implementation Program Amendment submitted for the City 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(s). 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 Amendment No. LCP-6-SAN-20-0026-1 for the City 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 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 San Diego 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(s). 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.

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. Revise Section 131.0622 Table 131-06B of the Land Development Code to undo the deletion of Footnote 19 and restore it in full to read as follows:

§131.0622 Use Regulations Table for Industrial Zones

[...]

Footnotes for Table 131-06B

19. Funeral & Mortuary Services are not permitted within floodplains located in the Coastal Overlay Zone.

2. Revise Section 143.0110 of the Land Development Code to read as follows:

§143.0110 When Environmentally Sensitive Land Regulations Apply

This Division applies to all proposed development on a premises where environmentally sensitive lands are present. Outside of the Coastal Overlay Zone, ~~Development~~ development on a premises that does not contain environmentally sensitive lands but is located adjacent to a premises that contains environmentally sensitive lands is not subject to this Division, except that the development shall comply with Section 143.0110(d).

[...]

3. Revise Section 143.0145(e) of the Land Development Code to read as follows:

§143.0145 Development Regulations for Special Flood Hazard Areas

[...]

(e) The Floodplain Management FEMA Definitions in the Land Development Manual Appendix S apply to the provisions of this section 143.0145 and section 143.0146.

For purposes of this section 143.0145 and section 143.0146, if there is a conflict between the definitions in Appendix S and any other definitions in the San Diego Municipal Code, all definitions shall apply separately and concurrently, including the standards and definitions contained in Section 127.0101 et seq. ~~the definitions in Appendix S shall apply.~~

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

A. AMENDMENT DESCRIPTION

The proposed 12th Update to the Land Development code contains thirty-nine separate changes to the Land Development Code (LDC), which serves as the certified Implementation Plan (IP) to the City’s certified Local Coastal Program (LCP). The City periodically reviews the LDC and proposes corrections, clarifications, and modifications to make the document easier to understand, enforce, and apply for the public, as well as comply with changes in state and federal law. The proposed changes are organized into four categories: general zoning, cannabis regulations, development with a utilized development permit, and special flood hazard areas. The 12th Update also adds a new Appendix S to the Land Development Manual (LDM), a supplementary document to the LDC that is also part of the certified IP.

The City of San Diego has developed community planning areas based on its established neighborhoods and future urbanizing area. Predicated on those community planning areas, the City utilized the geographic segmentation provisions of the LCP regulations and developed its land use plan component covering twelve different communities (i.e. North City, La Jolla, Pacific Beach, Mission Beach, Ocean Beach, Peninsula, Otay-Mesa Nestor). These community plans or LCP Land Use Plans contain policies that seek to reduce risk from coastal hazards and protect, and where possible enhance, public access and public views. The Commission’s review of the proposed changes to the Land Development Code must assure that development is approved only when consistent with the certified LCP.

While the majority of the proposed amendment is acceptable, there are three provisions that raise Coastal Act concerns and cannot be found consistent with the certified LUPs, requiring that the 12th Update be rejected as submitted.

B. SUMMARY FINDINGS FOR REJECTION

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

As proposed, the 12th Update deletes a prohibition on Funeral and Mortuary Services in the floodplain in the Coastal Overlay Zone, revises development standards on premises that do not contain Environmentally Sensitive Lands (ESL) but are adjacent to premises that do, and adds a new “Appendix S: FEMA Definitions” to the LDM and modifies the floodplain regulations of the LDC to incorporate Appendix S by reference.

As proposed to be amended, Section 131.0622 Table 131-06B states:

§131.0622 Use Regulations Table for Industrial Zones

[...]

Footnotes for Table 131-06B

~~19. Funeral & Mortuary Services are not permitted within floodplains located in the Coastal Overlay Zone.~~

As proposed to be amended, Section 143.0110 states:

§143.0110 When Environmentally Sensitive Land Regulations Apply

This Division applies to all proposed development ~~when on a premises where~~ environmentally sensitive lands are present ~~on the premises~~. Development on a premises that does not contain environmentally sensitive lands but is located adjacent to a premises that contains environmentally sensitive lands is not subject to this Division, except that the development shall comply with Section 143.0110(d).

[...]

(d) Outside the Coastal Overlay Zone, development on a premises that does not contain environmentally sensitive lands but is located adjacent to a premises that contains environmentally sensitive lands shall comply with Land Use Adjacency Guidelines in MSCP Subarea Plan Section 1.4.3 and the Avoidance and Minimization Measures in the VPHCP Section 5.2.1. The Land Use Adjacency Guidelines in the MSCP Subarea Plan Section 1.4.3 and the Avoidance and Minimization measures in the VPHCP Section 5.2.1 shall be listed on the construction documents. Compliance notes or conditions, or both, shall be included on the construction plans, as appropriate.

As proposed to be amended, Section 143.0145(e) states:

§143.0145 Development Regulations for Special Flood Hazard Areas

[...]

(e) The Floodplain Management FEMA Definitions in the Land Development Manual Appendix S apply to the provisions of this section 143.0145 and section 143.0146. For purposes of this section 143.0145 and section 143.0146, if there is a conflict between the definitions in Appendix S and any other definitions in the San Diego Municipal Code, the definitions in Appendix S shall apply.

As proposed, Appendix S consists entirely of definitions of certain development terminology, two of which are for the terms “Substantial Damage” and “Substantial Improvement” and which are defined as:

Substantial Damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial Improvement means any reconstruction, rehabilitation, addition or other proposed new development of a structure, or other improvement of a structure, the cost of which equals or exceed 50 percent of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

- (1) Any project for improvement of a structure to correct existing violations or state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions; or
- (2) Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

The proposed amendments create a potential conflict with coastal resource protection and public safety policies of the certified LUPs, specifically regarding protection of the floodplain within the City's coastal zone, which in many cases is abutted by or encroached into by development. Listed below are relevant policies contained in the certified Land Use Plan segments in the City's Coastal Zone.

Torrey Pines Community Plan

- Protect, preserve, and enhance the variety of natural features within the San Dieguito River Valley including the floodplain, the open waters of the lagoon and river, wetlands, marshlands, and uplands.
- Land uses adjacent to environmentally sensitive habitats shall not negatively impact those areas.

Mission Beach Precise Plan

- Watershed management and floodplain regulation should provide for the natural sand flow to beaches. The impact of all public and private alterations of cliffs and shorelines should be carefully studied with the goal of minimizing erosion.

Mira Mesa Community Plan

- No encroachment shall be permitted into wetlands, including vernal pools. [...]

Ocean Beach Community Plan

- [Quoting and incorporating Coastal Act Section 30253] (a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

Otay-Mesa Nestor Community Plan

- Maintain the natural floodplain; prohibit channelization of the floodplain
- Designate flood prone areas as open space or public facility.

C. SPECIFIC FINDINGS FOR REJECTION

The standard of review for LCP implementation 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 and intent of the overall LDC is to provide the regulatory framework and land use administration for development with the City's jurisdiction. The purpose of the ESL regulations is to protect, preserve, and, where damaged, restore the environmentally sensitive lands of San Diego and the viability of the species supported by those lands. The regulations are intended to assure that development including, but not limited to, coastal development in the Coastal Overlay Zone, occurs in a manner that protects the overall quality of the resources and the natural and topographic character of the area and, among other criteria, reduces hazards due to flooding in specific areas while minimizing the need for construction of flood control facilities.

b) Adequacy of the Ordinance to Implement the Certified LUP Segments.

Due to the risk inherent in developing with the flood zone (called the Special Flood Hazard Area in the LDC), the LCP contains strict measures regarding what development is allowed within the flood zone and how it may be designed and carried out. The City's certified LUP's contain several policies discouraging development within the floodplain and protecting the habitat and hydrology therein. To that end, the Special Flood Hazard Area is defined as one of the categories of ESL in the LDC, and Section 143.0145(g)(7) of the LDC states:

§143.0145 Development Regulations for Special Flood Hazard Area

[...]

(g) Floodways

[...]

(7) Within the Coastal Overlay Zone, no structure or portion thereof shall be erected, constructed, converted, established, altered, or enlarged, or no landform alteration grading, placement, or removal of vegetation, except that

related to a pre-FIRM [Federal Insurance Rate Map] historic and ongoing agricultural operation, or land division shall be permitted, provided:

(A) Parking lots, new roadways and roadway expansions shall be allowed only where indicated on an adopted Local Coastal Program land use plan.

(B) Floodway encroachments for utility and transportation crossing shall be offset by improvements or modifications to enable the passage of the base flood, in accordance with the FEMA standards and regulations provided in Section 143.0146.

The 12th Update's deletion of Footnote 19 to the industrial use regulations in Table 131-06B prohibiting "Funeral & Mortuary Services" within the floodplain in the coastal overlay zone would allow a new use in the floodplain that would adversely impact coastal resources and increase risk to public safety from flood hazards. Development within the floodplain often results in altering the natural hydrology of the area, possible wetland encroachment, and increases the risk of introducing pollutants into riparian systems and downstream coastal waters. Funeral and Mortuary Services involve development that is often visited by the public and is an industry that utilizes multiple chemicals in its facilities. Should a flood event occur in such a development, members of the public would be placed at risk from flood hazard, and chemical pollutants used by such services could enter the water. Thus, the deletion of Footnote 19 to Table 131-06B weakens the floodplain protections in the LCP and is not in conformance with the floodplain regulations and policies of the certified LUP and must be denied unless modified.

As drafted by the City, the 12th Update's changes to Section 143.0110 place new limits on the applicability of the Environmentally Sensitive Lands (ESL) regulations to premises that do not contain ESL. Based on discussion with the City, it was the City's intent to only modify the current regulations for sites outside the coastal zone. However, the new Section 143.0110(d) that the City proposes to address such properties clearly states that it applies only outside the coastal zone. In addition, the cross-reference relates to application of the City's Multiple Species Conservation Program (MSCP) and Vernal Pool Habitat Conservation Plan (VHHCP), neither of which are certified for application in the coastal zone. The intent and application of the ESL regulations, especially within the coastal zone, has always been to recognize and protect where sensitive resources are found and such resource protection measures do not recognize property boundaries. So, even if a wetland or ESHA boundary is immediately at a property line, the need to buffer such resources from development on the abutting property is still warranted. Therefore, the related ordinance language in the preamble of Section 143.0110 referencing the new subsection (d) is written in such a manner that it could be interpreted to mean that the ESL regs do not apply to premises in the coastal zone that do not contain ESL but are adjacent to premises that do. Because such an interpretation would contradict the requirements of the certified ESL regulations and potentially create confusion, it is not adequate to carry out the environmentally sensitive habitat protection policies of the certified LUPs.

Finally, the floodplain, called the special flood hazard area in the LCP, is one of the categories of environmentally sensitive lands regulated by the City's ESL regulations. As part of its preparation of the 12th Update, the City coordinated with the Federal Emergency

Management Agency (FEMA) to update its floodplain regulations to bring them in greater conformity with federal standards. To achieve this, the 12th Update incorporates federally based definitions of relevant development terminology into the LDC. The certified IP consists not just of the LDC, which contains the City's regulations for the development and use of property, but also contains the Land Development Manual (LDM), a supplementary document designed to aid in the interpretation and implementation of the requirements of the LDC. The 12th Update proposes a new Appendix S to the LDM consisting of FEMA's definitions for certain development terminology, and includes amendments to Section 143.0145 and Section 143.0146 of the ESL regulations in LDC to incorporate Appendix S into the floodplain regulations and supersede any other conflicting definitions contained elsewhere in the LDC.

Upon review of Appendix S and related changes to the LDC, an issue was identified arising from conflicts between some of the FEMA definitions and existing certified definitions of redevelopment elsewhere in the IP. In October 2016, the Commission certified LCP Amendment No. LCP-6-SAN-16-0043-3, an amendment to the LDC addressing previously conforming structures and uses. The LCP amendment contained provisions regarding previously conforming structures on bluffs or adjacent to coastal beaches. In addition to setting strict limits on the scope of improvements that could be made to such structures, LCP Amendment No. LCP-6-SAN-16-0043-3 established thresholds for determining when a previously conforming structure was deemed to constitute redevelopment and consequently lost its previously conforming status. Specifically, Section 127.0106(d) of the LCP states that previously conforming status is lost when such a structure demolishes more than fifty percent of its exterior walls or load bearing systems.

However, among the defined terms in Appendix S are "substantial damage" and "substantial improvement," which are defined as damages or improvements to a structure in the floodplain with a cost greater than fifty percent of the market value of the subject structure prior to the damage or improvement, respectively. These definitions, among the others in Appendix S, would be incorporated into the LDC's floodplain regulations by reference and would be used to determine whether a structure in the floodplain has lost its previously conforming status with respect to floodplain development requirements. Additionally, the 12th Update amends Section 143.0145 of the certified floodplain regulations to state that in cases where the definition of Appendix S conflicts with another definition within the LDC, that Appendix S would supersede other provisions.

This superseding by Appendix S of certified definitions for determining when previously conforming bluff top and beach front structures in the floodplain lose their previously conforming status would substantially conflict with the protections and intent of the October 2016 LCP amendment, and make it more likely that a previously conforming structure in the floodplain would be able to undertake significant improvements without being required to bring the entire structure in conformance with the LCP's current requirements. Market value, by its very nature, is not static and can be volatile and is open to interpretation based on what party is conducting the assessment, whereas the structural components contained in the previously conforming regulations are tied to physical parameters that are easier to track and quantify.

In response to the concerns related to Appendix S and its superseding of other certified definitions and standards, City staff has argued that the floodplain regulations and the proposed Appendix S will be applied separately and concurrently with the other provisions of the LDC. As explained by the City, the definitions and standards of Appendix S and the floodplain regulations as a whole apply only to whether a structure is previously conforming with regard to floodplain requirements, and whether the previously conforming status is lost only regarding those requirements. The previously conforming status of a structure vis-à-vis the remainder of the LDC's requirements (e.g. setbacks, heights, parking, etc.) would be determined by the other regulations of the LDC, separate from the floodplain. The City bases this argument in that the floodplain regulations are modeled after federal regulations and that the floodplain regulations in the ESL regulations do not cross reference other standards elsewhere in the LCP. The City further points to the absence of any cross references between the floodplain regulations and other previously conforming standards elsewhere in the LCP.

The City's reading of the LCP lacks basis in the language of the LCP or in the intent of its regulations and policies. This segmentation of the analysis of the previously conforming status of a structure is not a practice the Commission is aware of the City using in the past and does not conform either to common practice or the language of its own LCP. Section 113.0103 of the LDC contains most of the certified definitions of the City's LCP, and defines the term "previously conforming" as:

Previously conforming means the circumstance where a use, structure, or premises complied with all applicable state and local laws when it was first built or came into existence, but because of a subsequent change in zone or development regulations, is not in conformance with the current zone or all development regulations applicable to that zone.

It is important to note that the certified definition of "previously conforming" makes no distinction as to how a particular use of structure is out of conformance with current regulations. Rather, the simple act of being out of conformity with any applicable development regulation is adequate for the designation to be applied.

Section 127.0106(d) of the LDC addresses development of previously conforming structures and states in relevant part:

§ 127.0106 Expansion or Enlargement of Previously Conforming Structures or of Structures on a Premises with Previously Conforming Density

[...]

(d) In the Coastal Overlay Zone, the previously conforming status for a structure located on a premises that contains or abuts a coastal beach or a coastal bluff edge shall terminate upon:

(1) Destruction, demolition, or removal of 50 percent or more of the structure's exterior walls, on a cumulative basis, which is any destruction, demolition, ore removal that has occurred on or after October 13, 2016, which shall be measured in accordance with Section 127.0111, and for which the applicant

shall provide sufficient evidence of the nature and extent of the cumulative changes at the time of the application for any construction permit to rebut a presumption that the development is not entitled to previously conforming status, or

(2) Upon destruction, demolition or removal of 50 percent or more the capacity of the lateral or vertical load resisting system of the previously conforming structure, as determined by the Building Official.

Upon termination, the development standards applicable to new structures shall then apply to the entire structure.

Section 127.0106 applies the certified definition for “previously conforming” that is contained in Section 113.0103, which as discussed above, makes no distinction as to the manner in which a structure may be previously conforming; it either conforms to all currently applicable standards, or it does not. Furthermore, Section 127.0106 clearly states that, upon termination of the previously conforming status pursuant to the exterior wall or load resisting demolition thresholds, “the development standards applicable to new structures shall then apply to the entire structure.” No distinction is made as to the standards to which the structure must conform; rather, all standards must be applied and any development must comply. To do otherwise would have the paradoxical result of a previously conforming structure being only partially brought into current conformance.

Thus, as proposed, the 12th Update to the LDC contains several issues that would lessen or contravene the policies of the certified LUPs. The deletion of Footnote 19 would allow a new use in the floodplain, the amendment to the applicability of the ESL regulations could engender arguments over whether or not the ESL regulations apply to properties in the coastal zone that only abut sites with environmentally sensitive lands, and the prioritization of the Appendix S definitions will not carry out the intent of the certified LUPs’ policies to reduce flood hazard risk and adverse impacts to coastal hydrology, wetland preservation, and water quality. These amendments would contravene the public safety, habitat protection, and flood hazard policies of the certified LUPs and must be denied, as proposed.

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

The standard of review for LCP implementation submittals or amendments is their consistency with and ability to carry out the provisions of the certified LUP. For the 12th Update to be found in conformance with the policies of the certified LUPs, they must be modified as suggested above. Besides the three specific issues discussed above for modification, the remainder of the 12th Update does not raise substantial issues and is in conformance with the certified LUPs.

The suggested modification reversing the deletion of Footnote 19 in the industrial use Table 131-06B prohibiting Funeral and Mortuary Services within the floodplain in the

coastal zone and restoring it to the LDC will maintain the existing level of floodplain protection currently in the LCP. Additionally, because the deletion was never intended by the City, they support the suggested modification. Likewise, the suggested modification to Section 143.0110 will ensure that the ESL regulations still apply as certified to premises in the coastal zone. Specifically, the suggested modification ensures that sites within the coastal zone that do not contain environmentally sensitive lands, but abut properties that do contain such resources, must be evaluated under the ESL regulations to ensure that indirect effects and buffering needs are addressed. Because the suggested modification further clarifies the City's intent behind the amendment to the ESL regulation, it is also supported by them.

Regarding the amendment to the floodplain regulations in the ESL regulations to incorporate Appendix S and its definitions into the LDC, the suggested modification will allow the City to meet its goal of bringing their code into closer conformity with federal guidelines while still allowing the coastal protections of the LCP to apply. The Commission recognizes that Appendix S' definitions are derived from the federal agency charged with mapping and regulating flood zones nationwide and that market rate thresholds are used elsewhere in other coastal jurisdictions in conjunction with physical structure parameters. In order to address the issue in a narrow manner, the suggested modification to Section 143.0145 inserts language making it clear that all applicable definitions, whether in Appendix S or elsewhere in the LCP, apply concurrently with, and not in place of, existing thresholds and definitions, and should any of the applicable definitions or thresholds be triggered by a particular development, its related requirements would apply. Because Appendix S will address the important issue of determining a structure's previously conforming status, the suggested modification includes a cross reference to the LDC's previously conforming regulations contained in Section 127.0101 et seq. to avoid future confusion or oversight when applying the applicable definitions and thresholds to future development.

Related to its amendments to its floodplain regulations, the City is also updating the maps identifying the special flood hazard area in which the LCPs floodplain regulations apply. Section 143.0145(b) of the ESL regulations establishes the special flood hazard area in accordance with the June 16, 1999 report entitled "Flood Insurance Study, San Diego County, California" and the accompanying Flood Insurance Rate Maps (FIRM) published by FEMA, and include any supplements, amendments, and revisions promulgated by FEMA. The FIRM are periodically updated by FEMA on regional scales, with updated maps for the City becoming effective in December 2019. These maps look at past flooding and coastal hazard information in updating the boundaries of the floodplain, but do not look forward to future risk, such as sea level rise, that may further change the floodplain in coming years.

Much of the City's coastline consists of coastal bluffs or elevated plateaus that due to their topography are not mapped as floodplain. The City's low-lying areas in the coastal zone are concentrated in the San Dieguito River Valley, Sorrento Mesa, Mission Bay Park, portions of San Diego Bay shoreline, and the Tijuana River Valley. Most of the aforementioned areas have already been mapped as floodplain by FEMA and the City in past surveys. However, in the most recent update to the FIRM for the City, almost half of the community of Mission Beach (primarily concentrated east of Mission Boulevard) was added to the floodplain, as well as the coastal adjacent portions of northern Ocean Beach.

Thus, thousands of coastal properties have come under the ambit of the LCP's floodplain ESL regulations for future development. This substantial expansion makes the suggested modification to the amendment to the floodplain regulations all the more important to ensure that the 12th Update conforms to the public safety, habitat protection, and water quality policies of the certified LUPs.

The remaining amendments contained in the 12th Update are consistent with the policies and goals of the certified LUPs. Among the changes, the 12th Update will allow electronic service of public notices, streamlining public noticing when such communication would improve public outreach. The calculation of gross floor area of a structure will be amended to delete the specific calculation of attic space to instead have it incorporated into the general square footage calculations. The 12th Update is deleting the Residential High Occupancy Permit (123.0501 et. al), which provides for annual review of high occupancy single dwelling units, defined as having six or more adult residents, from the LDC to remove regulatory hurdles to high-occupancy housing. The 12th Update also amends Section 126.0707 regarding the decision process for a coastal development permit to clarify that applications for capital improvement projects and public projects will be reviewed through a Process Two (staff level decision appealable to the City Council) in the areas of the coastal zone not appealable to the Coastal Commission, and reviewed through a Process Five (City Council decision) in areas that are appealable to the Coastal Commission.

Among the more substantive changes in the 12th Update, the industrial use tables in Section 131.0622 are being amended to allow a larger variety of typically non-industrial uses to serve the existing development in a manner that still preserves the industrial nature of those zones. New uses being allowed include aquaculture, horticulture, food and grocery stores, instructional studios, and entertainment uses and religious assembly. These changes are in recognition of the evolving, mixed nature of industrial developments and the public's use of them, including tasting rooms, live-work facilities, and physical fitness and instruction facilities. The 12th Update places size limits of typically thirty-five percent of the gross floor of the premises on the new uses so as to preserve the industrial character of the zone.

The 12th Update will also delete the Residential Tandem Parking Overlay Zone. This overlay zone identifies the areas of the City where development may rely on tandem parking configurations, which have smaller dimension requirements, to meet their parking need. The deletion will expand the allowable use of tandem parking city wide, which, due to the aforementioned space savings, the City is hoping will ease the development of residential dwellings. Because the deletion will not modify parking requirements, it will not have an adverse impact on public access.

The City is also introducing a new Section 126.0113 to streamline the review process for development on a premises with a utilized development permit. Under the City's terminology, these revisions address when additional development can be proposed on sites with existing entitlements. With the proposed amendment, development that is not included within the scope of the existing entitlement, or the "utilized development permit," may be approved without an amendment to the development permit if the improvements comply with the regulations of the applicable base or overlay zone. While the construction of additional development without further permit review as required under the LCP is

problematic given coastal development permitting requirements and the risk of non-conforming development being implemented, Section 126.0113(a) lists the requirements that the additional development would need to meet in order to qualify for the regulatory relief, the third of which is that the proposed improvements would not require additional development permits. The City has confirmed that the proposed Section 126.0133 will not alter the coastal development permitting requirements currently in the certified LCP. Thus, any additional development proposed on a lot with a utilized development permit in the coastal zone would still be required to obtain a coastal development permit if it does not meet current exemption criteria, and thus the proposed permit streamlining will not eliminate any coastal permit review currently required under the LCP.

The 12th Update will also amend the manner in which Continuing Care Retirement Communities (CCRC) are reviewed in light of zoning and parking requirements. CCRCs are a hybrid of residential facilities and nursing facilities, with a range of residential options designed to care for senior citizens in different settings as their needs change over time. Due to their hybrid nature, the changes in the 12th Update are intended to clarify regulatory confusion and encourage their construction in anticipation of growth in the senior population. The manner in which existing regulations are framed regarding CCRC is that the independent living facilities count toward density while the supportive facilities do not, resulting in a cumbersome permit review process. The proposed amendment will not view CCRCs as simply a sum of the separate, multiple uses present in the facility when determining compliance, but rather as a distinct residential use. The density limitation will be removed because the number of such independent living facilities is limited by state licensing and contractual requirements to be able to provide for all residents living in the facility. To this end, the 12th Update will also delete the existing vehicle trip calculation methodology on the basis that residents of such facilities are less likely to own vehicles and instead have their needs met by the facility or utilize the facility's transportation services. Due to the mixed-nature of CCRCs and their limited occurrence within the coastal zone, along with the small inventory of land within the coastal zone suitable for such facilities, the reduction in development requirements of such facilities is unlikely to cause adverse impacts to coastal resources or public access.

Section 143.0141 of the City's ESL regulations address development regulations for sensitive biological resources. Among its requirements, the section lists the various mitigation measures that may be suitable to address impacts arising from a development. The 12th Update will amend the list of suitable mitigation to include the preservation of existing habitat. However, because the preservation of existing habitat is not an adequate mitigation measure to address impacts to habitat resources in the coastal zone, the amendment will only apply to development outside of the coastal zone, and thus will not lessen the habitat protections contained in the certified LCP.

The 12th Update will also lower barriers for assembly and entertainment uses, including places of religious assembly, to construct residential dwelling units on their premises by extending the zero-space parking space requirement for multi-family dwellings approved under the City's Transit Priority Area (TPA) ordinances (LCP-6-SAN-19-0063-1) to such residential uses within one half-mile of a major transit stop, though the parking reduction will not be extended to the primary assembly or entertainment use. The City hopes this will encourage such organizations to construct low-to-moderate income and senior housing on their property. While reductions in parking requirements for uses in the coastal zone

increases the risk that parking demand will extend into the public street and displace public visitors, the Commission, in approving the TPA ordinances, has already deemed that such reduction for multi-family structures in the coastal zone is in conformance with the certified LCP and furthers the Coastal Act goals of reducing vehicle miles traveled and promotion of alternate transit. Furthermore, the number of religious assembly uses in the coastal zone that have adequate land, means, or the goal to construct residential housing is limited.

In summary, the remainder of the 12th Update to the LDC address the details of project development and review in a manner that does not lessen the protections or permitting requirements of the LCP for development in the coastal zone, and the suggested modifications to the three identified amendments shall maintain the existing protections and requirements of the certified LCP. Thus, as modified, the amendments do not conflict with the policies or standards of the individual certified LUP segments; and therefore, the 12th Update to LDC, as modified, is consistent with and adequate to carry out the certified LUPs.

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.

An EIR (No/ 96-0333) was prepared and certified by the City on October 28, 1997, for the original project – the adoption of the Land Development Code. The proposed amendments to the LDC as part of the 12th Update were reviewed by the City's Environmental Analysis Section. City staff determined, in accordance with CEQA Guidelines Section 15162(a), that no subsequent EIR or other environmental document is needed for the adoption of the 12th Updated, as all impacts were adequately addressed and disclosed in EIR No. 96-0333.

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 particular case, as modified to retain the prohibition on funeral and mortuary services within coastal zone floodplains, confirm the continued application of ESL regulations within the coastal zone, and allow existing definitions of redevelopment to apply concurrently with proposed definitions in the flood hazard overlay zone, the LCP amendment as modified will not have any significant adverse effect on the environment, and there are no feasible alternatives or feasible mitigation measures available with would substantially lessen any significant adverse impact on the environment. Therefore, the Commission finds the subject LCP implementation plan, as amended, conforms to CEQA provisions.