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Prepared August 21, 2020 for September 11, 2020 Hearing

To: Commissioners and Interested Parties

From: Susan Craig, Central Coast District Manager
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Subject: De Minimis Amendment Determination for Proposed City of Capitola LCP Amendment Number LCP-3-CAP-20-0029-1-Part A (ADUs)

Proposed LCP Amendment

The City of Capitola is proposing to modify the Implementation Plan (IP) component of the Local Coastal Program (LCP) to amend existing regulations and refine accessory dwelling unit (ADU) provisions to comply with recent changes to state housing law (including changes established by Assembly Bills 68, 587, and 881, and Senate Bill 13, which all took effect on January 1, 2020). The primary proposed LCP changes provide for streamlined ADU review and permit processing, fee waivers for affordable units, more lenient ADU development standards (e.g., for requirements related to setbacks, floor area ratio (FAR), and private open space standards), new definitions and standards for different types of ADUs (including attached and detached ADUs, two-story attached and detached ADUs, junior ADUs (JADUs)¹, and multi-family ADUs), owner occupancy requirements for JADUs, parking standards including generally requiring onsite parking for ADUs in the coastal zone except for the Cliffwood Heights neighborhood, and a prohibition on renting ADUs as vacation rentals. See **Exhibit 1** for the text of the proposed LCP changes in ~~strike through~~/underline format.

De Minimis LCP Amendment Determination

Pursuant to Coastal Act Section 30514(d), the Executive Director may determine that a proposed LCP amendment is “de minimis” if the amendment meets the following three criteria:

1. The proposed amendment would have no impact, either individually or cumulatively, on coastal resources, and it is consistent with Coastal Act Chapter 3.

¹ A junior ADU is defined as an accessory dwelling unit that is no more than 500 square feet in size and is contained entirely within a single-family residence (see proposed IP Section 17.99.020(D) in Exhibit 1).

2. The proposed amendment does not propose any change in use of land or water or allowable use of property.
3. The proposed amendment was properly noticed by the local government at least 21 days prior to submittal to the Commission (i.e., by posting notice onsite and offsite in the affected area, publishing notice in the local newspaper, and/or mailing notice to owners and occupants of affected and contiguous properties).

If the Executive Director determines that an amendment is de minimis, then that determination must be reported to the Commission. If three or more Commissioners object to the Executive Director's de minimis LCP amendment determination at that time, then the amendment is set for a future public hearing as a regular LCP amendment. If not, then the amendment is deemed approved and it becomes a certified part of the LCP ten days after the date it is reported to the Commission (in this case, it would be certified on September 21, 2020).

The purpose of this notice is to advise interested parties of the Executive Director's determination that the proposed LCP amendment is de minimis.

De Minimis LCP Amendment Analysis

Each of the de minimis criteria is discussed briefly below.

1. No impact to coastal resources and consistency with Coastal Act Chapter 3

The proposed amendment would refine LCP ADU provisions consistent with recent changes to state housing law. Specifically, the following changes are proposed:²

- Allow ADUs in any zoning district where single-family or multi-family uses are permitted and on any parcel with any existing or proposed single-family dwelling or multi-family dwellings.
- Provide a "Guaranteed Allowance" that specifies that maximum building coverage, FAR, and private space standards shall not prohibit an ADU that is up to 800 square feet of floor area, up to 16 feet in height, and with at least four-foot side and rear setbacks, provided the ADU complies with the other standards set forth in the ordinance (e.g., to minimize privacy impacts, to accommodate entrance orientation for detached ADUs, to ensure adequate sewer service, to provide compatibility with the primary dwelling, etc.).
- Modify the existing parking requirements including:³

² See Exhibit 1 for the proposed amendment text.

³ In the coastal zone except for the Cliffwood Heights neighborhood, one parking space is required for any type of ADU.

- Eliminate off-street parking requirements for JADUs, internal ADUs, and new attached ADUs where a new house is also being proposed within the Cliffwood Heights neighborhood.⁴
- Eliminate off-street parking requirements for any ADUs in the Cliffwood Heights neighborhood if the ADU is located within one-half mile of public transit, is within a National Register Historic District, when on-street parking permits exist but permits are not offered to the occupant of the ADU, and when there is a car share location within one block of the ADU.⁵
- Eliminate off-street replacement parking requirements when a garage, carport, or covered parking structure is demolished in conjunction with the construction of an ADU or converted into an ADU in the Cliffwood Heights neighborhood.
- Allow any required onsite ADU parking to be provided via tandem parking and within the minimum required front, side, and rear setbacks.
- Generally limit ADUs to no more than one per parcel except as allowed for multi-family parcels (in non-livable space and/or as detached units) and detached ADUs of 800 square feet or less, which are also allowed to have a JADU.
- Provide fee waivers for affordable ADUs, including waivers of development fees for ADUs that will be rented at levels affordable to low- or very-low-income households, and require deed restrictions for those units ensuring that the ADUs are rented at rates affordable to low- or very-low-income levels.
- Specify that ADUs cannot be sold separately from the primary dwelling, including by requiring recordation of a deed restriction for each ADU stating that it may not be sold separately from the primary dwelling.
- Prohibit vacation rentals within ADUs, including by requiring recordation of deed restriction for each ADU stating that the ADU may not be used as a vacation rental.
- Allow for exceptions to design and development standards for ADUs on properties that contain a historic resource.
- For JADUs, require recordation of a deed restriction that includes the applicable restrictions on size and owner occupancy (i.e., that the owner must occupy either the primary residence or the JADU).

⁴ The Cliffwood Heights neighborhood comprises nearly 300 parcels (with some of the largest parcels in the City's limits) and is located entirely within the City's coastal zone boundary.

⁵ At this time there is no parking program in the Cliffwood Heights neighborhood, nor is there a car share program. In the event either of these programs come to fruition, applicable ADUs within the Cliffwood Heights neighborhood would also not require parking.

- Ensure that new construction ADUs are sited and designed to be compatible with the primary residence on the site

As the Commission is aware, the state has a housing crisis, and in particular an affordable housing crisis. These issues are only more acute in the state's coastal zone. To address this critical need, the state legislature has enacted a number of housing laws in the last several years that are designed to eliminate barriers to providing housing, and to help foster additional housing units—particularly critically needed affordable units—where they can be appropriately accommodated by adequate public services and where, in the coastal zone, they will not adversely affect coastal resources.

Toward this end, last year's legislative session included a series of changes to state housing law designed to facilitate the construction of more ADUs and affordable housing units. These laws have triggered local governments in the coastal zone to update their LCPs to address the new requirements around ADUs. Importantly, the changes to state law continue to explicitly require that Coastal Act (and by extension LCP) coastal resource protections are not suspended in the construction of ADUs. Thus, updated local government ADU provisions must continue to protect coastal resources.

In short, local governments with certified LCPs must update their LCPs to seamlessly synthesize the state ADU housing law changes with the Coastal Act in a way that continues to protect coastal resources while also reducing and eliminating barriers to the construction of ADUs. The City of Capitola's ADU ordinance represents the culmination of the City's efforts following coordination with the public, Commission staff, and the California Department of Housing and Community Development (HCD), to update the City's ADU ordinance to reflect the recent changes in state law and to help streamline and facilitate the permitting and construction of more ADUs within City limits. Accordingly, HCD has also found that the proposed LCP amendment complies with state law.⁶

Specifically, a significant portion of the City consists of already developed residential areas with adequate public services that are appropriate for ADU development, both inside and outside of the coastal zone. Within the coastal zone, there is also substantial area where ADUs can be developed without any significant coastal resource constraints. Thus, at a broad level, the proposed amendments should help achieve the objectives of the ADU legislation. In areas where there are potential coastal resource issues, there are tools readily available to help foster ADUs, while simultaneously appropriately protecting those resources. In the City of Capitola's case, areas with potential coastal resource concerns are generally limited to areas directly adjacent to

⁶ A major change in state housing law that took effect in 2020 is that HCD now has an oversight and approval role to ensure that local ADU ordinances are consistent with state law, similar to the Commission's review of LCPs. In this case, the City coordinated with HCD staff to develop the proposed LCP language, and HCD indicates that the proposed LCP amendment is consistent with state housing law, including with the new 2020 ADU provisions.

prime shoreline visitor destinations (e.g., the Village, the Jewel Box, Depot Hill, the Upper Village, and the eastern portion of Cliffwood Heights) where there is a limited supply of, and high demand for, on-street parking for coastal visitors and residents alike.⁷ The City of Capitola is a magnet for coastal visitors from the greater San Francisco Bay Area, as well as from more inland areas, and its coastal zone strains to accommodate the volume of visitors, particularly with respect to parking.

In terms of public access parking near these prime shoreline visitor destinations, it is important to ensure that there is adequate on-street public parking as a means of meeting Coastal Act and LCP public access provisions, particularly in terms of ensuring that no-cost and lower-cost public access opportunities are both adequately provided for and ultimately maximized. This is particularly key given that most coastal visitors are not fortunate enough to live right by the coast, requiring them to drive and park near the coast in order to enjoy this public resource. In the City of Capitola in particular, although there are two City-owned parking lots and metered parking spaces within and leading into the Village, there is also relatively limited free beach access parking in adjoining neighborhoods. Thus, in order to ensure that public access is not reduced, particularly for coastal visitors who must drive in and find parking in order to access the coast, and to avoid disproportionately impacting inland communities and their rights to coastal access and those who cannot afford to pay between \$0.50 to \$1.50/hour and/or do not wish to be subject to the Village's very dense and oftentimes gridlocked summer beach traffic, the City Council found it necessary, and the Commission agrees it is appropriate, to require off-street parking for ADUs within certain coastal zone areas. Although state housing law generally seeks to preclude local ordinances from requiring off-street parking to serve ADUs, it also explicitly requires compliance with the Coastal Act, and thus it is appropriate in cases like this to seek a balance between the two state law objectives. The City Council found that the proposed ordinance must ensure that it does not lead to a reduction in already limited on-street parking, including for visitors to Capitola's shoreline and beach areas.⁸

The City of Capitola's LCP, like most LCPs, includes requirements that residential properties account for their parking needs on their own properties. These are often referred to as "off-street" parking requirements (e.g., typically in garages, carports, covered parking, etc.). When an ADU is added to a residentially developed site, it

⁷ The City of Capitola is unique in that some of the neighborhoods that serve Capitola Village and Capitola Beach (the City's primary visitor focal points) also have very small, constrained lots that presently do not adequately accommodate off-street parking demand for the developed residential units, including in the Jewel Box and Upper Village neighborhoods. The two existing Planned Unit Development sites in the coastal zone (which contain some of the more affordable and higher density units in the City's coastal zone [one of which is located in Jewel Box, which also serves as parking for Capitola and Hooper beaches, and the other of which is located adjacent to New Brighton State Beach, a heavily visited state park and beach]) also experience similar issues with high parking demand and limited supply issues.

⁸ The City Council also agreed to re-evaluate the off-street parking requirements for the City's coastal zone neighborhoods in the event that the proposed ordinance does not adequately facilitate ADU construction as intended by the state legislature's recent amendments to state housing law.

typically brings with it additional off-street parking needs, and when existing garages or carports are converted into ADUs, there is a potential to reduce the availability of on-street parking for visitors if the parking for the ADU and the primary dwelling cannot be provided for onsite. This is particularly the case in older neighborhoods where development may not even meet current off-street parking requirements (e.g., the Jewel Box, the Village, and the Riverview areas of Capitola). The recent changes in state housing law restricted the circumstances for when local governments can require that parking demand associated with ADU projects be accommodated onsite, including when it converts a space already used to accommodate onsite parking needs (e.g., garage conversion). In doing so, the legislature clearly signaled that the creation of ADUs is an important public objective, and thus use of public streets to accommodate some, or all, of their private parking needs is appropriate. At the same time, although such additional private parking needs can often be accommodated on-street in inland areas not near prime visitor destinations, allowing all ADU parking on-street in prime coastal visitor-serving destinations can significantly reduce public visitor access at those prime coastal visitor-serving destinations. This is especially at issue in the City of Capitola, which is very small while serving a very large number of annual visitors, including particularly summertime coastal visitors.

To address these issues, the proposed amendment relaxes parking requirements by generally eliminating such requirements in the City's Cliffwood Heights neighborhood. Cliffwood Heights is a neighborhood consisting of nearly 300 residentially zoned parcels with very large lots well suited to accommodate ADU development. Most of the neighborhood (with the exception of the streets nearest to New Brighton State Park) does not serve coastal visitors, unlike the City's other coastal zone neighborhoods. In the dense visitor-serving neighborhoods where the City Council deemed it appropriate to require ADUs to provide onsite parking, the ordinance allows those parking requirements to be met via tandem parking and within any otherwise required setbacks. These measures thereby provide flexibility in how off-street parking requirements must be provided in the City's coastal zone, and appropriately reflect its unique visitor parking context while simultaneously minimizing some of the factors that can prevent ADU development, including cost and limited land area. In other words, the flexibility in where and how to provide required parking is an important piece of the proposed amendment that is designed to encourage more ADU development while balancing public access parking needs. In summary, parking restrictions are generally relaxed except in prime visitor destinations along and near Capitola's shoreline where elimination of such restrictions could have a significant deleterious effect on coastal visitor parking. The amendment strikes a balance by accommodating ADUs while still protecting public parking resources in the City's unique coastal zone.

The proposed amendments also provide for relaxed ADU development standards consistent with state law (e.g., reduced setbacks, increased FAR, and streamlined permitting for ADUs). The City's ordinance also includes a required finding (for ADUs that require a Design Permit) to ensure that views to and along the coast are protected, that visual qualities of degraded areas are enhanced, and that ADUs be designed to be

compatible with their primary dwellings. Again, these changes reflect the importance of character and public views in the areas nearest significant public viewsheds and facilitate ADU development in a way that protects these important coastal resources consistent with the way state housing law has been structured in relation to the Coastal Act.

In summary, the proposed amendment updates the LCP's ADU provisions consistent with recent changes in state ADU law, while simultaneously protecting important coastal resources, particularly as it relates to public recreational access, consistent with the Coastal Act, the LCP's Land Use Plan, and state ADU law. State ADU law allows local governments to tailor their ADU ordinances as necessary to protect coastal resources, and the proposed ordinance represents the City's efforts to tailor its proposed amendment while still adhering to ADU law and facilitating the construction of ADUs as directed by the legislature. Commission staff worked closely with City staff, and the City similarly worked closely with HCD. The proposed changes should help to increase ADU stock in the City's coastal zone, including in important coastal resource areas where a more thoughtful approach is required and articulated to avoid coastal resource problems. Thus, the proposed amendment will not adversely affect coastal resources, is consistent with Coastal Act Chapter 3, and meets the first de minimis LCP amendment criterion.

And finally, the rest of the LCP would continue to apply to ADUs, including policies ensuring that ADUs are not constructed that require shoreline protective devices, in environmentally sensitive habitat areas, wetlands, or in areas where the ADU's structural stability may be compromised by bluff erosion, flooding, or wave uprush over their lifetime. As such, the LCP includes appropriate tools to ensure ADUs are constructed in a manner that protects coastal resources while also providing for important housing opportunities.

2. No change in use of land or allowable use of property

The proposed amendment only refines the manner in which ADUs are allowed in the City's coastal zone under the LCP but does not change any LCP-allowed uses of land or LCP-allowed uses of property. It thus meets the second de minimis LCP amendment criterion.

3. Provision of public notice

The City provided public notice, via newspaper notice and email notice to all interested persons in advance of the Planning Commission hearings (held on January 16, 2020 and February 6, 2020) and the City Council hearings (held on March 12, 2020, March 26, 2020, and April 23, 2020),⁹ and the City Council approved the amendment on April 23, 2020. In addition, as part of both Planning Commission and City Council hearing processes, the proposed amendment text was made available to the Planning

⁹ The proposed amendment was noticed via a newspaper notice on January 27, 2020, prior to the February 6, 2020 Planning Commission hearing, and on April 13, 2020, prior to the April 23, 2020 City Council hearing.

Commission's mailing list and the City Council's agenda packet distribution list prior to its consideration at each hearing, and the text was also available for public inspection on the City's website in advance of the hearings. The proposed amendment was subsequently received by the Commission on June 30, 2020, and filed as complete on July 8, 2020, roughly two-and-a-half months after it was noticed locally for the third City Council hearing. Therefore, the 21-day noticing requirement has been satisfied, and the proposed amendment meets the third and final de minimis LCP amendment criterion.

California Environmental Quality Act (CEQA)

CEQA Section 21080.5(d)(2)(A) prohibits a proposed LCP or LCP amendment from being approved if there are feasible alternatives and/or feasible mitigation measures available that would substantially lessen any significant adverse effect that the LCP or LCP amendment may have on the environment. Although local governments are *not* required to satisfy CEQA in terms of local preparation and adoption of LCPs and LCP amendments, many local governments use the CEQA process to develop information about proposed LCPs and LCP amendments, including to help facilitate Coastal Act review. In this case, the City exempted the proposed amendment from environmental review (citing Public Resources Code Section 21080.17 (Application of Division to Ordinances Implementing Law Relating to Construction of Dwelling Units and Second Units), since the proposed changes are consistent with the adopted state law.

The Coastal Commission is not exempt from satisfying CEQA requirements with respect to LCPs and LCP amendments, but the Commission's LCP/LCP amendment review, approval, and certification process has been certified by the Secretary of the Natural Resources Agency as being the functional equivalent of the environmental review required by CEQA (CCR Section 15251(f)). Accordingly, in fulfilling that review, this report has discussed the relevant coastal resource issues with the proposal and has concluded that approval of the proposed amendment is not expected to result in any significant environmental effects, including as those terms are understood in CEQA. Accordingly, it is unnecessary for the Commission to suggest modifications (including through alternatives and/or mitigation measures) as there are no significant adverse environmental effects that approval of the proposed amendment would necessitate. Thus, the proposed amendment will not result in any significant adverse environmental effects for which feasible mitigation measures have not been employed, consistent with CEQA Section 21080.5(d)(2)(A).

Coastal Commission Concurrence

The Executive Director will report this de minimis LCP amendment determination, and any comments received on it, to the Coastal Commission at its September 11, 2020 online meeting. If you have any questions or need additional information regarding the proposed amendment or the method under which it is being processed, please contact Rainey Graeven at the Coastal Commission's Central Coast District Office by email at Rainey.Graeven@coastal.ca.gov. If you wish to comment on the proposed amendment and/or object to the proposed de minimis LCP amendment determination, please do so

via regular mail (directed to the Central Coast District Office) or email (by emailing centralcoast@coastal.ca.gov) by 5pm on Friday, September 4, 2020.

Procedural Note - LCP Amendment Action Deadline

This proposed LCP amendment was filed as complete on July 8, 2020. It amends only the IP component of the LCP. The 60-working-day action deadline is October 1, 2020. Thus, unless the Commission extends the action deadline (it may be extended by up to one year), the Commission has until October 1, 2020 to take a final action on this LCP amendment.

Exhibits

Exhibit 1: Proposed LCP IP ADU amendment in strikethrough and underline