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W16b

Prepared December 18, 2020 for January 13, 2021 Hearing

To: Commissioners and Interested Persons

From: Susan Craig, Central Coast District Manager
Rainey Graeven, Coastal Planner

Subject: Santa Cruz County LCP Amendment Number LCP-3-SCO-20-0064-2
(Vacation Rentals)

SUMMARY OF STAFF RECOMMENDATION

Santa Cruz County proposes to amend its Local Coastal Program (LCP) to update its Vacation Rental Ordinance, a component of its Implementation Plan (IP). The proposed amendment primarily serves to change the existing caps on vacation rentals for three designated areas within the Coastal Zone, including the Davenport/Swanton Designated Area (DASDA), the Live Oak Designated Area (LODA), and the Seacliff/Aptos/La Selva Beach Designated Area (SALSDA) from percentage caps (i.e., no more than 15% of the all parcels that allow residential use in LODA and SALSDA and no more than 10% in DASDA can provide vacation rentals) to freezing the number of vacation rental permits issued in these specific designated coastal areas at current levels. The County found that the proposed amendment balances the need for vacation rentals as an important type of visitor accommodation with the need to respect residential neighborhoods, both of which are key LCP objectives. Commission staff concurs with this assessment. Data shows the number of new vacation rental permits has leveled off, suggesting that the market has dictated there is an adequate supply, such that the new caps should not prohibit anticipated vacation rental growth/demand.

In addition, the County currently has a large number of vacation rental permits already available (and thus codified in this proposed amendment), which shows that vacation rentals are being appropriately provided in the community. And finally, the proposed caps would be limited to the three designated areas, while other areas of the County would continue to allow an unlimited number of vacation rental permits. The proposed modification (**Modification 1**) is simply intended to accurately reflect the actual number of existing vacation rental permits in these three districts. Other components of the amendment include updated enforcement provisions and a clarification that residences subject to affordable housing covenants and/or are income restricted are not eligible for a vacation rental permit. Collectively, these components will help to continue to provide for a robust and well-managed vacation rental program that recognizes that vacation rentals are a valuable means of providing overnight coastal access.

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In sum, the proposed amendment as modified would continue to ensure the availability of vacation rentals as overnight visitor accommodations, which is a Coastal Act and LCP priority use and a valuable component in preserving coastal access. As modified, the proposed amendment is consistent with and adequate to carry out the Land Use Plan (LUP), the standard of review for this IP amendment, and the County has indicated it is in agreement with the staff recommendation. Therefore, staff recommends that the Commission approve the amendment with the suggested modification. The required motions and resolutions are found on page 4 below.

Staff Note: LCP Amendment Action Deadline

This proposed LCP amendment was filed as complete on December 8, 2020. The proposed amendment affects LCP's IP, and the 60-working-day action deadline is March 8, 2021. Thus, unless the Commission extends the action deadline (it may be extended by up to one year), the Commission has until March 8, 2021 to take a final action on this LCP amendment.

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EXHIBITS

Exhibit 1: Proposed IP Amendment

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1. MOTIONS AND RESOLUTIONS

Staff recommends that the Commission, after public hearing, approve the proposed LCP amendment with suggested modifications. The Commission needs to make two motions on the IP amendment in order to act on this recommendation.

A. Deny the IP Amendment as submitted

Staff recommends a **YES** vote on the motion below. 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.

***Motion:** I move that the Commission reject the Implementation Plan Amendment LCP-3-SCO-20-0064-2 as submitted by Santa Cruz County.*

***Resolution to Deny:** The Commission hereby denies certification of LCP Amendment Number LCP-3-SCO-20-0064-2 as submitted by Santa Cruz County and adopts the findings set forth below on grounds that the Implementation Plan Amendment as submitted does not conform with, and is inadequate to carry out, the provisions of the certified Land Use Plan. Certification of the Implementation Plan Amendment 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 Plan Amendment as submitted.*

B. Certify the IP Amendment with Suggested Modifications

Staff recommends a **YES** vote on the motion below. Passage of this motion will result in certification of the Implementation Plan Amendment with suggested modifications and the adoption of the following resolution and the findings in this staff report. The motion to certify with suggested modifications passes only by an affirmative vote of a majority of the Commissioners present:

***Motion:** I move that the Commission certify LCP Amendment Number LCP-3-SCO-20-0064-2 as submitted by Santa Cruz County if it is modified as suggested in this staff report.*

***Resolution to Certify:** The Commission hereby certifies LCP Amendment Number LCP-3-SCO-20-0064-2, if modified as suggested, and adopts the findings set forth below on grounds that the Implementation Plan Amendment with the suggested modifications conforms with, and is adequate to carry out, the provisions of the certified Land Use Plan. Certification of the Implementation Plan 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 plan 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.*

2. SUGGESTED MODIFICATION

The Commission hereby suggests the following modification¹ to the proposed Implementation Plan amendment, which is necessary to make the requisite Land Use Plan consistency findings. If Santa Cruz County accepts the suggested modification within six months of Commission action (i.e., by July 13, 2021), by formal resolution of the Board of Supervisors, the modified amendment will become effective upon Commission concurrence with the Executive Director's finding that this acceptance has been properly accomplished. Where applicable, text in underline format denotes proposed text to be deleted/added by the County. Text in ~~double cross-out~~ and double underline denotes text to be deleted/added by the Commission.

1. Modify IP Section 13.10.694(D)(2)(a) as follows:

(a) Designated Area Caps. Within the LODA, no more than ~~220-262~~ vacation rental permits shall be issued, and no more than 18 hosted rental permits shall be issued, for a total of ~~238~~ 280 vacation rentals and hosted rentals in the LODA. Within the SALSDA, no more than 241 vacation rental permits shall be issued, and no more than 45 hosted rental permits shall be issued, for a total of 286 vacation rentals and hosted rentals in the SALSDA. Within the DASDA, no more than 3 vacation rental permits shall be issued, and no more than 4 hosted rental permits shall be issued, for a total of 7 vacation rentals and hosted rentals in the DASDA.

3. FINDINGS AND DECLARATIONS

A. Description of Proposed LCP amendment

The proposed amendment primarily serves to change the way that the maximum number of allowed vacation rentals in the LCP's three designated special areas² (i.e., the Davenport/Swanton Designated Area (DASDA), the Live Oak Designated Area (LODA), and the Seacliff/Aptos/La Selva³ Beach Designated Area (SALSDA)) are calculated. The existing LCP includes percentage caps for these areas (i.e., no more than 15% of all the parcels that allow residential use in the LODA and the SALSDA may

¹ The proposed modification is simply intended to correct the actual number of vacation rental permits that exist within each designated district. The numerical caps approved by the Board of Supervisors unintentionally did not reflect the existing number of vacation rentals, including because not all vacation rental permit holders were aware that when the County last modified its Vacation Rental Ordinance in 2016 it began requiring that vacation rental permits be renewed every 5 years. County staff and Commission staff are in agreement that the proposed numerical cap changes are based on existing vacation rental permit levels.

² These three designated areas within the Coastal Zone were areas found by the County to be distinct residential communities where there was the greatest potential to transform the residential communities into areas more catered to vacation rentals. These areas, particularly LODA and SALSDA, also saw the greatest rise in vacation rental permits since the inception of the LCP's Vacation Rental Ordinance in 2011, compared to areas like southern Pajaro Dunes and Beach Drive, which already primarily served as vacation rentals prior to the inception of the County's program.

³ The proposed amendment would also change one of the designated areas from the Seacliff/Aptos Designated Area (SADA) to the Seacliff/Aptos/La Selva Beach Designated Area (SALSDA). In other words, the SADA district would be expanded to include the unincorporated area of La Selva Beach.

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be used as vacation rentals, and no more than 10% in the DASDA). The proposed amendment would eliminate these percentage caps in favor of a numeric cap, which reflects the current number of issued vacation rental permits (i.e., freezing the number of vacation rental permits issued in these districts at current numerical levels). A primary impetus for the proposed amendment is that Santa Cruz County, like many other coastal cities and counties, now faces an unprecedented housing shortage, and thus the County seeks to prevent any potential conversion of single-family residences (which serve as a critical piece of the housing stock) to vacation rentals.⁴ Relatedly, the proposed amendment would also:

- institute a waiting list for anyone seeking a new vacation rental permit in one of the three designated areas in excess of the identified limits
- adopt an official block map as a land use layer in the County's GIS System for each of the three designated areas in order to identify the blocks where a block cap on vacation rentals and hosted rentals applies⁵
- require that all new vacation rentals must meet onsite parking requirements⁶
- change vacation rental permits (including new and renewal) from a Level 2P to a Level 4⁷ in all the zoning districts where vacation rentals are allowed (i.e., all agricultural zoning districts, all single-family and multi-family residential zoning

⁴ Santa Cruz County has also undertaken numerous other LCP amendments intended to help preserve existing housing and encourage and incentivize new additional housing including, but not limited to, its updated ADU ordinance (LCP-3-20-0020-1), which streamlined the ADU permitting process and requires that ADUs be deed restricted to prohibit them from being used as temporary overnight accommodations, consistent with state law; and the Agricultural and School Employee Housing LCP amendment (LCP-3-SCO-19-0200-3), which is intended to facilitate the production of affordable housing units for both agricultural and school employees. And thus, the vacation rental caps proposed in this amendment, which are tailored to key coastal areas, is another method of addressing the complex and multi-faceted housing supply shortage in the County while protecting existing vacation rental uses.

⁵ The existing Vacation Rental Ordinance also contains block caps (i.e., no more than 20% of a block within the designated areas can be vacation rentals), which this amendment is not modifying; however, there was confusion about what constituted a block, including with respect to corner lots and winding streets/neighborhoods in unincorporated Aptos.

⁶ The parking requirements for vacation rentals are as follows: the number of vehicles a guest is allowed to park on-site and off-site (specific to the neighborhood), shall not exceed the number of existing, required, or permitted parking spaces. The onsite parking spaces, plus requirements for new vacation rental permits shall be a minimum of one onsite space for one- and two-bedroom units, and a minimum of two onsite spaces for three- or more bedroom units. In addition, guests will be allowed to park one additional vehicle offsite. The guest must use on-street parking for the offsite vehicle in the vicinity of the vacation rental, but the guest will not have any exclusive or assigned use of on-street parking.

⁷ A level 2P permit requires a planning review and an administrative action based on plans and a description of the project, meanwhile the "P" denotes it as a Principally Permitted Use. A level 4 permit requires a public notice prior to an administrative action in the form of posting the property on the County's Planning Department website, a notice to each member of the Board of Supervisors, and mailed notices to the owners and occupants of the subject and surrounding properties.

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districts, the Parks, Recreation and Open Space District, and the Timber Production district)

- specify that only new four-bedroom vacation rentals are required to obtain a Level 5 permit⁸ (whereas renewals are subject to the level 4 permit described above) for a one-year provisional time limit prior to granting the remaining four years of the five-year permit
- clarify that residences subject to affordable housing covenants and/or that are income restricted are not eligible for a vacation rental permit
- require that vacation rental permits expire when properties are transferred (if that transfer triggers a new assessment) in the designated areas except for La Selva Beach
- updated enforcement provisions

Please see **Exhibit 1** for the proposed IP amendment text.

B. Evaluation of Proposed LCP Amendment

Standard of Review

The proposed amendment affects the LCP's IP, and the standard of review for IP amendments is that they must be consistent with and adequate to carry out the policies of the certified LUP.

Applicable Land Use Plan Policies

The County's LUP contains objectives and policies designed to protect and provide for visitor-serving uses, including in terms of a range of overnight accommodation options, in order to maximize coastal public access. This includes appropriate upland support facilities, such as vacation rentals, that are directed toward coastal zone visitors. In order to harmonize the protection of coastal zone resources with the social and economic needs of the County, the LUP also seeks to balance provision of temporary visitor serving residential uses with protecting residential communities. To do so, it contains a policy that explicitly allows for small scale visitor accommodations in residential zones combined with reasonable measures to ensure that they do not unduly burden the neighborhood. These policies include:

LUP Policy 2.16.4: Allowed Visitor Accommodations in Urban Residential Areas. Allow small scale Visitor Accommodations such as inns or bed and breakfast accommodations in urban residential areas and within the Rural Services Line where the use would be compatible with neighborhood character, surrounding densities, and adjacent land uses.

⁸ A level 5 permit requires the same noticing as a level 4 permit, and a Zoning Administrator public hearing following required noticing.

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LUP Policy 2.22.1: Priority of Uses within the Coastal Zone. Maintain a hierarchy of land use priorities within the Coastal Zone:

First Priority: Agriculture and coastal-dependent industry

Second Priority: Recreation, including public parks; visitor-serving commercial uses; and coastal recreation facilities.

Third Priority: Private residential, general industrial, and general commercial uses.

LUP Objective 2.23: Conservation of Coastal Land Resources. To ensure orderly, balanced utilization and conservation of Coastal Zone resources, taking into account the social and economic needs of the people of Santa Cruz County

LUP Objective 7.7a: Coastal Recreation. To maximize public use and enjoyment of coastal recreation resources for all people, including those with disabilities, while protecting those resources from the adverse impacts of overuse.

Consistency Analysis

Taken together, these LUP objectives and policies seek to protect, provide for, and enhance coastal access and recreational opportunities for the public by prioritizing visitor-serving uses and maximizing public access and coastal recreational opportunities, while also preserving the unique environment that attracts visitors to the County and protecting residential communities. The proposed amendment is primarily intended to freeze vacation rental permits issued in the three designated areas (i.e., DASDA, LODA, and SALSDA) at existing numbers. The LCP will still continue to allow for an unlimited number of vacation rental permits in other areas of the County's Coastal Zone, including along Potbelly Beach Road, Las Olas Drive, Beach Drive, and Pajaro Dunes.⁹ Caps in the three designated areas already exist; however, the existing caps are codified as percentage caps. More specifically, the current ordinance allows up to 15% of all parcels that allow a residential use in SALSDA and LODA and 10% in DASDA¹⁰ to be used as vacation rentals in addition to the existing block caps. The proposed amended ordinance would freeze the existing number of permits issued in these three designated areas (areas that have historically catered more to visitors and have seen the greatest increase in the number of vacation rental permits since inception of the LCP's Vacation Rental Ordinance in 2011, compared to those areas where caps

⁹ Other areas where there are no caps (either percentage, numerical, or block caps) include the residentially zoned parcels in the Rio Del Mar flats consisting of parcels fronting on Stephen Road, Marina Avenue, and Venetian Road between its intersection with the Esplanade and Aptos Beach Drive to its intersection with Lake Court and Stephen Road; those parcels fronting on or gaining access from Cliff Court or fronting on or gaining access from Rio Del Mar Boulevard between its intersection with Aptos Beach Drive and Beach Drive to its intersection with Kingsbury Drive, Cliff Drive, and Beach Villa Lane; and Via Gaviota.

¹⁰ The current number of vacation rentals represents 12% of eligible properties in LODA, 5.5% in SALSDA, and 3% in DASDA.

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have not and are not currently proposed) at current levels (i.e., not allow for additional expansion in the three designated coastal areas).

The County and the Commission initially approved the Vacation Rental Ordinance in 2011 to regulate vacation rentals in a manner that both facilitates vacation rentals (including their contribution to meeting LCP and Coastal Act requirements related to public access, recreation, and provision of overnight accommodations), while simultaneously protecting residential neighborhoods and housing stock. The ordinance has been amended several times since its initial adoption in the hopes of further meeting these objectives. The proposed amendment similarly strives to maintain the balance between residential neighborhoods/the preservation of housing stock while continuing to provide for vacation rentals, a key visitor-serving use.

As context, and as stated above, the number of vacation rentals in Santa Cruz County has gradually increased since the program's inception. Three hundred sixteen permits were issued in 2011 (when the Vacation Rental Ordinance was first certified). Now there are 848 vacation rentals County-wide (including 493 in the three designated coastal areas subject to this amendment and 93 elsewhere in the Coastal Zone where caps of any kind are not currently imposed or proposed). There are also an additional 250 hosted¹¹ rental permits County-wide. County staff has indicated that the growth in new vacation rental permits has drastically slowed over the last few years. This shows that the number of vacation rentals is reaching a level of homeostasis (i.e., the supply is appropriate to accommodate demand and persons wishing to operate vacation rentals have largely already applied for and have been granted a vacation rental permit).

While vacation rentals have been increasing in recent years, transit occupancy tax (TOT) data from the County's Treasurer-Tax Collector indicates that motel/hotel occupancy rates in Santa Cruz County have levelled off and even decreased in the last five years. Taken together, the levelling off/slight downward trend of hotel/motel occupancy and the slowing of new vacation rental permit applications may indicate that there is an adequate number of overnight visitor accommodations available in Santa Cruz County. To the extent that this is incorrect or that demand for short term rentals begins to grow again, many other neighborhoods in the Coastal Zone remain uncapped and can accommodate that potential growth.

It is also worth noting that the County did consider other more restrictive measures to address potential housing supply impacts, including reducing the number of vacation rental permits issued and expanding the caps to the entire County (i.e., not just in the three designated areas within the Coastal Zone but applying such caps to vacation rentals in the entire Coastal Zone countywide). The County ultimately settled on freezing the number of permits issued in the DASDA, LODA, and SALSDA alone, because the County recognizes the importance of vacation rentals as a type of

¹¹ A hosted rental refers to a dwelling unit, where a long-term resident acting as host occupies one bedroom in a dwelling unit while one or two legal bedrooms are rented for the purpose of overnight lodging for a period of less than 30 days.

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overnight visitor accommodation that is vital to meeting the public access/recreation requirements of the Coastal Act and LCP.

As noted above, **Suggested Modification 1** is needed to accurately reflect the existing number of vacation rental permits issued in the designated areas because the numerical caps included in the County's LCP amendment submittal inadvertently did not include those vacation rental owners who did not renew their vacation rental permits in a timely manner. Therefore, as modified, the proposed amendment, including the proposed caps and the creation of a waiting list for new vacation rental permits within the designated areas, represents a robust vacation rental program that both recognizes vacation rentals as a valuable visitor-serving resource and a coastal priority use. It also acknowledges the critical role that overnight accommodations play in providing consistency with the above-cited LUP's provisions related to maximizing public access and recreational opportunities (specifically LUP Policies 2.16.4, 2.22.1, and LUP Objective 7.7a), but it does so while simultaneously balancing the provision of visitor accommodations in residential neighborhoods with respect for neighborhood character and the social and economic needs of the County, including helping to preserve the existing single-family dwelling housing supply (LUP Objective 2.23).

Finally, the other proposed amendments identified above will collectively help the vacation rental program meet these same LCP objectives (e.g., by requiring onsite parking for vacation rentals, which will allow valuable street parking to be used by other coastal visitors)

Accordingly, the IP amendment with the suggested modification can be found consistent with the certified LUP.

C. California Environmental Quality Act (CEQA)

Section 21080.9 of the California Public Resources Code—within the California Environmental Quality Act (CEQA)—exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its activities and approvals necessary for the preparation and adoption of LCPs and LCP amendments. Instead, the CEQA responsibilities are assigned to the Coastal Commission; however, 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 or LCP amendment action.

Nevertheless, the Commission is required, in approving an LCP or LCP amendment submittal, to find that the approval of the proposed LCP, as amended, does conform with CEQA provisions, including the requirement in CEQA section 21080.5(d)(2)(A) that the amended LCP will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment (see California Code of Regulations Title 14 Sections 13540(f) and 13555(b)).

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The County's LCP amendment consists of an IP amendment. As discussed above, the IP amendment as originally submitted does not conform with, and is not adequate to carry out, the policies of the LUP. The Commission has, therefore, suggested modifications to the proposed IP to include all feasible measures to ensure that potentially significant environmental impacts of new development are minimized to the maximum extent feasible consistent with the requirements of the Coastal Act. These modifications represent the Commission's analysis and thoughtful consideration of all significant environmental issues raised in public comments received, including with regard to potential direct and cumulative impacts of the proposed IP amendment, as well as potential alternatives to the proposed amendment. As discussed in the preceding sections, the Commission's suggested modifications represent the most environmentally protective alternative to bring the proposed IP amendment into conformity with the LUP consistent with the requirements of the Coastal Act.

Therefore, the Commission finds that there are no other feasible alternatives or mitigation measures under the meaning of CEQA which would further reduce the potential for significant adverse environmental impacts, and the proposed IP amendment, as modified, conforms with CEQA.