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# W19c

**Date:** September 30, 2021

**To:** COMMISSIONERS AND INTERESTED PERSONS

**From:** KARL SCHWING, DEPUTY DIRECTOR, SAN DIEGO COAST DISTRICT  
DIANA LILLY, DISTRICT MANAGER, SAN DIEGO COAST DISTRICT  
STEPHANIE LEACH, COASTAL PLANNER, SD COAST DISTRICT

**Subject:** STAFF RECOMMENDATION ON CITY OF DEL MAR MAJOR  
AMENDMENT NO. LCP-6-DMR-20-0044-2 (ADU and JrADU Update) for  
Commission Meeting of October 13-15, 2021)

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## SYNOPSIS

The subject LCP implementation plan amendment was submitted and filed as complete on August 24, 2020. The date by which the Commission must take action, absent an extension of the time limits by the Commission, was November 18, 2020. A one-year time extension was granted on November 5, 2020. As such, the last date for Commission action on this item is November 17, 2021.

## SUMMARY OF AMENDMENT REQUEST

The City is proposing to amend its certified LCP Implementation Plan (IP) to modify the regulations and requirements for accessory dwelling units (ADUs) and junior accessory dwelling units (JrADUs) consistent with recent changes in state law.

The proposed amendment would allow ADUs and JrADUs as permitted uses within all areas zoned for single-family or multi-family residential as a primary use, including on lots with either an existing or proposed dwelling unit. It would allow for a more streamlined review of ADUs and JrADUs within a 60-day timeframe as ministerial approvals. The amendment would also clarify the total number of JrADUs and ADUs allowed on a lot, as well as their configuration and location.

The proposed amendment would update and revise design standards for both ADUs and JrADUs, including maximum size, height, entryway requirements, and setback limitations. It would eliminate the requirement to replace existing parking required for the primary residence when parking is removed or converted to an ADU. The amendment would also update owner requirements and rental terms of an ADU and JrADU.

Finally, the proposed amendment would add a new section to the IP that details the regulations for ADUs on lots with multiple dwelling units. This would include provisions on where and to what extent ADUs can be located within an existing structure with multiple dwelling units, or as detached units on the same lot.

## **SUMMARY OF STAFF RECOMMENDATION**

Staff recommends that, following a public hearing, the Commission deny the proposed City of Del Mar Implementation Plan as submitted, and then approve the amendment subject to the suggested modifications listed below.

The primary LCP changes proposed provide for streamlined ADU/JrADU review and permit processing, and more lenient ADU/JrADU development standards in order to comply with new housing law designed 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. State law continues to explicitly require that Coastal Act (and by extension LCP) coastal resource protections are not suspended when considering ADUs, and thus updated local government ADU provisions must continue to ensure coastal resource protections.

In the City of Del Mar, a significant portion of the City consists of already-developed residential areas with adequate public services that may be appropriate for ADU development. However, the City also contains a variety of resources that need to be preserved and protected, including sensitive biological resources, steep slopes, bluffs, public views, and public shoreline parking spaces. In addition, there are various hazards in the City which need to be assessed and acknowledged in conjunction with any new development, particularly geotechnical hazards and flooding risk, both of which are expected to become more acute in the future with sea level rise.

Therefore, suggested modifications require that ADUs and JrADUs comply with the City's Bluff, Slope, and Canyon Overlay Zone setbacks, and wetland and habitat setbacks. Regarding view protection, as proposed, the amendment would allow ADUs to encroach into street yard setbacks except on properties located between the ocean and the first public roadway, where public views would have to be protected. However, many of the City's street ends, for example, provide public views from locations further inland than between the ocean and the first public roadway. Thus, suggested modifications require all new ADUs, and JrADUs created through the conversion of non-habitable space, to comply with setbacks of the applicable zone where necessary to protect public scenic views to the ocean.

As proposed, the amendment would eliminate the existing LCP requirement that ADUs undergo engineering review, if the ADU would be located within an existing primary dwelling unit or existing accessory structure. Staff is recommending suggested modifications that maintain engineering review as a requirement for new ADUs and JrADUs located within the Coastal Bluff Overlay Zone that are created through the

conversion of a non-habitable space (for example, a garage, storage shed, etc.) to habitable space. While the City only has limited residential area subject to the Coastal Bluff Overlay Zone, should ADUs be proposed in this Overlay Zone, it is important that the geologic risk be assessed to ensure they are sited safely and in conformance with the geotechnical reporting requirements of the Coastal Bluff Regulations in the certified Land Use Plan (LUP).

With regard to parking, the proposed amendment would remove the requirement that existing required off-street parking for the primary dwelling unit be replaced when removed or converted to construct an ADU. (Parking requirements for ADUs and JrADUs themselves are not being revised). This policy change is not likely to have substantial adverse effects to coastal resources in the residential areas in the majority of the City. However, west of Camino del Mar—and in the northern portion of the City, west of the railroad tracks—residential streets are used for public parking to access the beach and the coastal overlooks. In these areas, spillover parking demand from private residential uses onto residential streets would directly impact public access. The City has limited public shoreline parking lots, and visitors rely on public street parking to access Del Mar’s shoreline and recreational opportunities during the busy summer months. To address these concerns, suggested modifications require replacement off-street parking to be provided within an overlay area generally consisting of residential sites west of Coast Highway 101. This will ensure that all of the circulation, recreation, and access protection policies contained in the certified LUP are adhered to.

In reviewing the proposed amendment, staff identified two significant concerns within the City’s existing ADU provisions that were approved by the Commission in 2018 (LCP-6-DMR-17-0062-2). The first is that if the City determines there is no potential impact to coastal resources, all ADUs contained entirely within or directly attached to an existing dwelling unit are exempt from Coastal Development Permit (CDP) requirements. Administrative CDPs are required only for ADUs located between the first public road and the sea or within 300 feet of the mean high tide line that increase the height or floor area by more than 10 percent, or where a CDP was required by a previous permit condition. While the City has indicated that these regulations were adopted in conformance with guidance issued by the Commission, upon further analysis and evaluation, staff believes that the Coastal Act does not allow for ADUs to be completely exempted from coastal permit requirements. Rather, for ADUs which can be found in conformance with the certified LCP policies, an expedited process is appropriate and encouraged, but that initial analysis of conformance with the LCP, and where applicable, the public access and recreation policies of the Coastal Act, must be made through the coastal development permit process. The City’s existing “administrative” CDP process provides such an expedited process. Therefore, suggested modifications require an administrative CDP for all ADUs and JrADUs in order to ensure that development is found in conformance with the certified LUP and the public access and recreation policies of the Coastal Act, in addition to the noticing requirements and potential appeals process.

The second concern identified with the existing LCP is that ADUs are exempted from the requirement for a Floodplain Development Permit where located in the Floodplain Overlay Zone and the ADU will be located entirely within the walls of an existing structure, or be located in a structure that includes various design measures such as locating the lowest floor at or above the base flood elevation, anchoring the structure, and using construction material resistant flood damage. The proposed amendment would modify the first part of this existing exemption slightly to clarify that the ADU must be located entirely within the walls of an existing *habitable* structure or within existing non-habitable space located at or above the base flood elevation that is converted to habitable space for the ADU.

While these measures are important, they are insufficient to ensure consistency with the hazard policies of the LUP, a goal of which is to minimize risks to life and property associated with flooding and flood waters. Development within the City of Del Mar is vulnerable to the effects of sea level rise and the increased flooding that will result. In this way, not only do ADUs and JrADUs within the floodplain intensify development in a hazardous area, but they also could potentially impede safe coastal access over time. For ADUs and JrADUs to be sited appropriately in flood hazard areas, owners should be required to take precautions that ensure they are designed to a level sufficient for the safety of occupants and the public over the lifetime of the structure. Therefore, Suggested Modifications are proposed to include a new section for both ADUs and JrADUs. ADUs and JrADUs converted from non-habitable space that are sited within the hazardous areas identified on the 2019 FEMA FIRM (Flood Insurance Rate Map) must include additional design modifications for sea level rise based on the best available science, as well as notifications for occupants that the site is in a hazardous area. The suggested modification would also waive the owner's right to hard shoreline protective device for the ADU and require acknowledgement that the development may need to be abandoned if the site becomes hazardous.

Finally, the City has requested several modifications be made to the proposed amendment to address guidance the City received from the California Department of Housing and Community Development (HCD) regarding the proposed amendment. These include details regarding the specific number and configuration of ADUs and JrADUs that are allowable on a lot and several other minor changes. Suggested Modifications #15-17 are the City-suggested modifications. Commission staff has not identified any LUP inconsistencies with these three requested suggested modifications.

Only with the incorporation of these suggested modifications can the IP amendment be found consistent with the stated goals and policies of the certified LCP while still allowing for the number and types of housing units that constitute an effective land use plan.

The appropriate motions and resolutions begin on page 8. The suggested modifications begin on page 10. The findings for denial of the Implementation Plan Amendment as submitted begin on page 23. The findings for approval of the plan, if modified, begin on page 29.

## **BACKGROUND**

On November 1, 2017, the City of Del Mar submitted an IP amendment (LCP-6-DMR-17-0062-2) revising the City's Municipal Code and adding a new Chapter 30.91 to make its regulation of ADUs and JrADUs consistent with then-recent changes to state law that took effect on January 1, 2017. Those changes were intended to facilitate and encourage the creation of accessory dwelling units in residential zones to help address a shortage of affordable housing throughout the state. The 2017 ADU law changes also added a number of criteria to be included in a local ordinance for ADUs, including those related to maximum size, setbacks, the number, location and configuration of required parking and exceptions to parking requirements, growth limits, and density requirements. Except for barring any requirement by a local government to hold a public hearing on coastal development permits for ADUs, AB 2299 (Bloom, 2016) did not change the effect or application of the Coastal Act. (See Gov. Code § 65852.2(l).)

Specifically, under the 2017 IP amendment, the City replaced all references to "second dwelling unit" with "accessory dwelling unit," expanded the zones where accessory dwelling units are permitted, and required that applications for ADUs that comply with local regulations be approved ministerially within 120 days of submittal and not be subject to public hearings. No changes were proposed to the City's coastal resource protection standards and ADUs were required to be consistent with all LCP policies related to the protection of sensitive habitat, including steep slopes and lagoons; and public access, visual resources, and requirements to ensure safe development in hazard areas. With regard to the approval process, unless located within the appeals area, ADUs that were found to comply with all relevant development standards would be exempt from coastal development permit requirements. At the February 8, 2018 meeting, the Commission certified the IP Amendment as submitted per staff recommendation.

Since that initial certification, several changes have been made to state ADU laws. (See Gov. Code, §§ 65852.2 and 65852.22, as amended). These amendments include updated standards by which ADUs may be ministerially approved at the local level without the need for discretionary review, in order to increase the inventory of affordable housing throughout the state. The City of Del Mar adopted Ordinance 966 on June 1, 2020, enabling the City to provide for a more streamlined review of ADU proposals and increasing opportunities to meet Regional Housing Needs Assessment (RHNA) goals as part of the overall housing program strategy currently being processed in the 6<sup>th</sup> Cycle Housing Element update. State law continues to explicitly require that Coastal Act (and by extension LCP) coastal resource protections are not suspended when considering ADUs, and thus updated local government ADU provisions must continue to ensure coastal resource protections.

**ADDITIONAL INFORMATION**

Further information on the City of Del Mar LCP amendment No. LCP-6-DMR-20-0044-2 may be obtained from Stephanie Leach, Coastal Planner, at (619) 767-2370 or [SanDiegoCoast@coastal.ca.gov](mailto:SanDiegoCoast@coastal.ca.gov).

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## EXHIBITS

[Exhibit 1 – Ordinance 966](#)

[Exhibit 2 – Proposed Text Changes in Strikeout/Underline](#)

[Exhibit 3 – Suggested Modifications in Strikeout/Underline](#)

[Exhibit 4 – ADU/JrADU Replacement Parking Overlay Zone](#)

[Exhibit 5 – 2019 FEMA FIRMS](#)

## **I. OVERVIEW**

### **A. LCP HISTORY**

In May 1991, the City of Del Mar submitted its Land Use Plan (LUP) for Commission action. The Commission denied the LUP as submitted, but approved it with suggested modifications in September 1991. The City did not accept the suggested modifications within six months; so, the City resubmitted the same documents and the Commission again approved the LUP with suggested modifications in June 1992. The City Council adopted the modifications within the prescribed time and the Commission effectively certified the LUP in March 1993. The Implementation Plan (IP) was approved with suggested modifications on March 13, 2001. On September 11, 2001, the Commission concurred with the Executive Director's determination to effectively certify the City of Del Mar Local Coastal Program (LCP). The Commission has certified many amendments to the City's LCP since the LUP/IP certifications.

### **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**

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. MOTIONS 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 for the City of Del Mar 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 Del Mar certified LCP and adopts the findings set forth below on grounds that the Implementation Program as submitted does not conform with, and is inadequate to carry out, the provisions of the certified Land Use Plan. Certification of the Implementation Program would not meet the requirements of the California Environmental Quality Act as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Implementation Program as submitted.

**2. MOTION:**

I move that the Commission certify the Implementation Program Amendment for the City of Del Mar certified LCP 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 Del Mar certified LCP if modified as suggested and adopts the findings set forth below on grounds that the Implementation Program Amendment, with the suggested modifications, conforms with and is adequate to carry out the certified Land Use Plan. Certification of the Implementation Program Amendment if modified as suggested complies with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Program Amendment on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.

### 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 30.91.030(A)(1)(a)(iii) as follows:

Engineering review is not required if the ADU would be located within an existing primary dwelling unit or existing accessory structure; unless the site is located in the Coastal Bluff Overlay Zone, in which case, a new ADU or ADU created through the conversion of any non-habitable space to habitable space shall comply with the geotechnical reporting requirements of 30.55.90(B).

2. Add Section 30.91.030(A)(2)(c) as follows:

A JrADU created through the conversion of non-habitable space to habitable space on a site located in the Coastal Bluff Overlay Zone shall comply with the geotechnical reporting requirements of 30.55.90(B).

3. Revise Section 30.91.030(C):

Notwithstanding the provisions of the Del Mar Municipal Code, development of a JrADU designed in accordance with Section 30.91.050 shall be exempt from the requirement to obtain a discretionary permit in all cases except for the requirement for a coastal development permit. A request for an ADU designed in compliance with Section 30.91.040 shall be exempt from discretionary review as follows:

[...]

4. Revise Section 30.91.030(C)(5) as follows:

- a. [...]

- b. ~~The following are exempt from a Coastal Development Permit, except where a permit is otherwise required pursuant to Section 30.91.030(D)(5)(c):~~

- i. ~~The ADU will be contained entirely within or directly attached to an existing single dwelling unit.~~

~~ii. Minor changes to an existing residential structure are proposed to construct an ADU consistent with Section 30.91.040 that will not involve the removal or replacement of major structural components (e.g. roofs, exterior walls, or foundations) and will have no potential to adversely impact coastal resources pursuant to the Chapter 3 policies of the certified LCP.~~

e.b. An administrative Coastal Development Permit in accordance with Section 30.75.080(E) shall be obtained for an ADU, where:

~~i. A previously issued Coastal Development Permit requires a new Coastal Development Permit or an amendment be processed for any changes to the approved development or for future development or uses of the site as a condition of approval.~~

~~ii. The ADU will be located between the first public road and the sea or within 300 feet of a beach or the mean high tide line and will increase the interior floor area by 10 percent or more or increase the height by more than 10 percent.~~

d.c. A Coastal Development Permit required by Section 30.91.030(C)(5)(eb) shall be processed in accordance with the following procedures:

[...]

5. Revise Section 30.91.040(K)(1) as follows:

The ADU shall be limited to the first story or basement level unless the ADU would be located within an existing structure with existing access above the first story level; or construction of a second story is required to maintain existing required parking for the primary structure and the ADU will not block public scenic views.

6. Revise Section 30.91.040(N) as follows:

A setback of 4 feet shall be required for a new ADU structure, except as follows:

1. [...]

2. [...]
3. In all cases, the ADU shall comply with the required coastal bluff setback in the Coastal Bluff Overlay Zone and the required Beach Preservation Initiative setback in the Beach Overlay Zone, as well as the Bluff, Slope, and Canyon Overlay Zone, and wetland and habitat setbacks, as applicable.
4. ~~On properties located between the ocean and the first public roadway, t~~ The ADU shall comply with the ~~street yard~~ setback(s) of the applicable zone where necessary to protect public scenic views to the ocean
7. Revise Section 30.91.040(O) as follows:

Where an existing required parking garage, carport, or covered parking is demolished or converted to an ADU, no replacement off-street parking shall be required unless the ADU is located in the ADU/JrADU Replacement Parking Overlay as depicted in Figure 1. The overlay is generally described as the shoreline area west of Camino Del Mar. Between the San Dieguito River mouth south to 15<sup>th</sup> Street, the overlay encompasses only those streets west of the railroad tracks, as all of these streets are used for public beach parking. Within the Overlay, the required off-street parking for the primary dwelling unit shall be maintained or replaced. The required off-street parking shall be provided on the premises and may be located in setbacks (excluding wetland buffers or structures located in the Bluff, Slope, and Canyon Overlay Zone), or driveways, and may be covered or uncovered, and may be tandem or accessible by mechanical lift (if the mechanical lift is designed within a garage).
8. A new ADU/JrADU Replacement Parking Overlay Figure (Figure 1) shall be added into the certified Implementation Plan component of the Local Coastal Program. The boundaries of the proposed ADU/JrADU Replacement Parking Area are depicted on Exhibit 4 to this staff report.
9. Revise Section 30.91.040(V) as follows:

ADUs shall not be located on a beach, in a wetland, seaward of the mean high tideline, in an environmentally sensitive habitat area, within a required coastal bluff setback, in a wetland buffer or habitat buffer, or in an area designated as highly scenic in the certified Local Coastal Program; and shall not involve significant alteration of landforms per Coastal Act section 13250 or the expansion or construction of water wells or septic systems.

10. Add new Section 30.91.040(Z) as follows:

A new ADU, or an ADU that includes the conversion of non-habitable space into habitable space, located on a parcel that falls entirely or partially within the flood hazard areas identified on the 2019 FEMA Flood Insurance Rate Map (FIRM) shall comply with the following:

1. The ADU shall be sited and designed, including elevation and floodproofing, to ensure safety from the impacts of sea level rise over the anticipated lifetime of the proposed structure using the best available science on sea level projections (such as the California State Sea Level Rise Guidance (OPC 2018) and the table for La Jolla in Appendix G of the Coastal Commission's 2018 Sea Level Rise Policy Guidance); and
2. The owner of the ADU shall record a notice on the property and notice all occupants that: 1) the ADU is located in the 2019 FEMA FIRM and as such is located in a hazardous area or an area that may become hazardous in the future; 2) that sea level rise could render it difficult or impossible to provide services to the site; 3) that the boundary between public land (tidelands) and private land may shift with rising seas and the development approval does not permit encroachment onto public trust land; 4) that additional adaptation strategies may be required in the future to address sea level rise consistent with the Coastal Act and certified LCP; 5) that the owner waives any rights under Coastal Act Section 30235 and related LCP policies to hard shoreline armoring to protect the ADU; and
3. The owner shall acknowledge that the structure may be required to be removed or relocated and the site restored if it becomes unsafe.

11. Revise Section 30.91.050(B) as follows:

A JrADU that is designed to meet all of the requirements in Section 30.91.050 shall be issued a permit in accordance with Section 30.91.030. The City is preempted by State Law from requiring any type of discretionary review, except for a coastal development permit, or public hearing prior to approval.

12. Add new Section 30.91.050(O) as follows:

A JrADU created through the conversion of non-habitable space into habitable space shall comply with the required coastal bluff setback in the

Coastal Bluff Overlay Zone, the required Beach Preservation Initiative setback in the Beach Overlay Zone, the Bluff, Slope, and Canyon Overlay Zone setback, wetland and habitat setbacks, and setbacks of the applicable zone where necessary to protect public scenic views to the ocean.

13. Add new Section 30.91.050(P) as follows:

Where existing required parking is demolished or converted to a JrADU, replacement off-street parking shall be required if the JrADU is located in the ADU/JrADU Replacement Parking Overlay in accordance with Section 30.91.040(O).

14. Add new Section 30.91.050(Q) as follows:

A JrADU located on a parcel entirely or partially within the flood hazard areas identified on the 2019 FEMA FIRMs shall comply with the requirements of Section 30.91.040(Z) unless the JrADU:

1. Is created through conversion of existing habitable space; and
2. Such space is located above the base flood elevation.

City-suggested Modifications:

15. Revise Section 30.91.040(B) as follows:

A lot with an existing or proposed single dwelling unit is permitted to develop a combination of attached and detached ADUs maximum of one JrADU (in compliance with Section 30.91.050) and one ADU (in compliance with Section 30.91.040) on the lot. The ADU may be created through either conversion of, or addition to, a primary single dwelling unit, or within a structure that is detached from the primary single dwelling unit in compliance with one of the following:

1. A maximum of one ADU, or one JrADU in compliance with Section 30.91.050, is permitted within the walls of a proposed or existing primary single dwelling unit; and. If one ADU is developed under this scenario, then no additional ADUs shall be permitted on the lot. A maximum of one JrADU is also permitted to be developed within the walls of a proposed or existing primary single dwelling unit. If solely a JrADU is developed within the walls of the primary single dwelling unit, then a maximum of one detached ADU (one converted accessory structure or new ADU structure) shall also be permitted on the lot in addition to the JrADU.

2. A maximum of one detached, new construction ADU, or one ADU within the space of an existing detached accessory structure shall be permitted per lot. Conversion of the existing accessory structure can include an addition of up to 150 square feet as necessary to accommodate ingress or egress for the ADU. No additional ADUs shall be permitted on the lot, except that one JrADU shall be permitted within the walls of the primary single dwelling unit. A JrADU is not permitted within a detached structure.
  3. ~~The ADU or JrADU described under Section 30.91.040(B)(1) shall be located within the primary dwelling unit structure and not within a detached accessory structure. A maximum of one ADU shall be permitted as an attached unit that is created within an addition to an existing structure. An attached ADU involves the addition of square footage to a primary single dwelling unit. The attached ADU shall be constructed as part of the overall primary single dwelling unit and shall share a common wall with the primary single dwelling unit. If one ADU is developed under this scenario, then no additional ADUs shall be permitted on the lot, except that one JrADU shall be permitted within the walls of the primary single dwelling unit.~~
16. Revise Section 30.91.050(A) as follows:

A Junior Accessory Dwelling Unit (JrADU) is a small dwelling unit that is no more than 500 square feet in size and contained entirely within, and accessory to, an existing habitable, primary Single Dwelling Unit pursuant to the regulations in Section 30.91.050 and California Government Code section 65852.22.

17. Revise Section 30.91.050(D) as follows:

A JrADU shall be constructed entirely within the existing walls of a primary single dwelling unit and shall include the following:

[...]

## **IV. FINDINGS FOR REJECTION OF THE CITY OF DEL MAR IMPLEMENTATION PLAN AMENDMENT AS SUBMITTED, AND APPROVAL IF MODIFIED**

### **A. AMENDMENT DESCRIPTION**

The City of Del Mar proposes to modify the Implementation Plan (IP) component of its Local Coastal Program (LCP), specifically Chapters 30.19, 30.21, and 30.91 of Title 30 (Zoning) to amend existing regulations and refine ADU provisions to comply with recent

changes to state housing law. (See Gov. Code, §§ 65852.2 and 65852.22, as amended). The proposal provides for streamlined review and permit processing of Accessory Dwelling Units/Junior Accessory Dwelling Units (ADUs/JrADUs); allows ADUs as permitted uses in all areas zoned for single-family or multi-family residential use as a primary use, including on lots with either an existing or proposed dwelling unit; details the location and configuration of ADUs and JrADUs on a lot; relaxes the standard for size, height, and setbacks by which ADUs must comply; eliminates the requirement that off-street parking spaces be replaced when a garage, carport, or covered parking structure is demolished in conjunction with the construction of an ADU, or when an existing garage or off-street parking structure is converted into an ADU; and adds a new section for the siting of ADUs on lots with multiple dwelling units.

In terms of requirements for coastal development permits, the proposed language will largely stay the same as the 2018 certified language other than an updated reference to the certified LCP rather than the Coastal Act. To summarize, this existing section of the LCP exempts ADUs from CDP requirements where the ADU is either contained directly within or directly attached to an existing single dwelling unit or is comprised of only minor changes to an existing structure. Similarly, an administrative CDP is only required under two scenarios: 1) where a previously issued CDP requires a new CDP or an amendment for future work on the site, or 2) where the ADU will be located between the first public road and the sea or within 300 feet of a beach or the mean high tide line and will increase the interior flood area or height by 10 percent or more.

Specifically, the proposed amendment would:

- Change the allowable “Accessory Uses” in the Medium Density Mixed Residential South (RM-South) Zone to include ADUs as permissible if they are in accordance with Chapter 30.91.
- Eliminate a specification that ADUs are allowed uses on lots with only existing single dwelling units in the RC Zone.
- Change the allowable “Accessory Uses” in the Residential-Commercial (RC) Zone to include Accessory Dwelling Units in accordance with Chapter 30.91.
- Modify the areas where ADUs and JrADUs are permissible. The development of ADUs subject to the development regulations of Sections 30.91.040 and 30.91.060 would be allowed on any lot zoned to allow single dwelling unit or multiple dwelling unit use. JrADUs subject to the development regulations of Sections 30.91.050 would be allowed in proposed residences (formerly only allowed in existing residences). JrADUs would continue to be permitted as 1 per lot in single dwelling units (R1-40, R1-14, R1-10, R1-10B, R1-5, R1-5B, CVPP), and only within the primary dwelling unit.
- Modify the process of approval for ADUs and JrADUs, including submittal requirements and criteria for exemption from discretionary permit reviews such



as a Floodplain Development Permit. Applications would be reviewed in a ministerial and administrative manner alone within 60 days of submittal, and would be reviewed for consistency with the objective standards stated in Sections 30.91.040, 30.91.050, and 30.91.060 as applicable.

- Modify the requirements for ADU submittals; in particular, not requiring engineering review if an ADU would be located within an existing primary dwelling unit or existing accessory structure.
- Modify the ADU development regulations, including allowable combinations of attached and detached ADUs on a given lot, specifying rental terms of greater than 30 days unless the ADU would be located in a commercial zone, a maximum size of 850 square feet (or 1,000 if there is more than one bedroom), and maximum height of 16 feet (14 feet if located in the Bluff Slope and Canyon Overlay Zone).
- Modify requirements for setbacks that specify 4-feet shall be provided for a new ADU structure on all sides except for the front-yard setback, which must be adhered to by zone. Currently, an ADU must comply with all setbacks of the applicable zone.
- Add a requirement that ADUs must adhere to the required setback of the Beach Overlay Zone in all cases. The existing LCP already requires ADUs to comply with the required coastal bluff setback found in the Coastal Bluff Overlay Zone of the LCP.
- Add a new requirement that for properties located between the ocean and the first public roadway, the ADU must comply with the street yard setback of the applicable zone to protect public scenic views to the ocean.
- Eliminate the requirement that when a garage, carport, or covered parking structure is demolished in conjunction with the construction of an ADU or converted to an ADU, that those off-street parking spaces for the primary dwelling unit be replaced.
- Add a new provision that the development pad for a new ADU structure be located at a grade elevation with a slope that is no greater than 4 to 1.
- Modify the existing JrADU development regulations, including clarify that JrADUs are only permitted within the primary dwelling unit and are not permitted on a lot with multiple dwelling unit developments or in an accessory structure.
- Add a new Section (30.91.060) to the Chapter to clarify development regulations for ADUs on lots with multiple dwelling units, including limits on how many ADUs are permitted according to the number of dwelling units on site, their maximum

size and height, and that any existing space converted to an ADU will not be located within or solely owned or controlled by an individual dwelling unit.

- Other ADU streamlining measures.

[Exhibit 1](#) contains the proposed IP amendment text, [Exhibit 2](#) shows the proposed amendment in strike-out/underline, and [Exhibit 3](#) shows the proposed strike-out/underline of the amendment in addition to staff's proposed modifications. The City's suggested modifications on the number and configuration of ADUs on a given lot are highlighted in gray, and all other staff recommendations are highlighted in yellow.

## **B. CONFORMANCE WITH THE CERTIFIED LAND USE PLAN**

The standard of review for LCP implementation plan submittals or amendments is their consistency with and ability to carry out the provisions of the certified LUP. The certified LUP has a number of goals and policies relevant to the proposed amendment; the most applicable LUP standards are as follows:

### **B. Land Use Development Goals and Policies – General**

**Policy II-2:** Insure that future development, whether commercial or residential, retains the aesthetic quality of the community by protecting and preserving public views to the ocean and other significant natural resources; and by minimizing the disturbance of natural topography and vegetation.

### **III.B. Shoreline Hazards – Goals and Policies**

**Policy III-7 (Beach Overlay Zone Regulations) (13. New Construction or Reconstruction):** No reconstruction or remodeling of a structure when 50% or more of the lot's permitted floor area is involved and no new construction shall be located within 15 feet east of the Shoreline Protection Area line...

### **III.C. Coastal Bluffs**

**Goal III-B:** Preserve Del Mar's fragile coastal bluffs as a visual resource and avoid the risks to life and property associated with bluff failure and shoreline erosion.

**Policy III-9(Coastal Bluff Regulations)(a):** A minimum setback of 40 feet from the edge of the coastal bluff top shall be provided in the construction of all principal structures and all accessory structures, such as, but not limited to: pools, spas, storage sheds, gazebos and above grade decks or patios. All new additions to existing structures shall maintain the minimum 40-foot coastal bluff top setback required herein. This requirement shall also apply to the construction

or installation of new supporting foundations or other structural supports for existing structures.

[...]

No grading shall be allowed within a minimum setback of 40 feet from the top edge of the coastal bluff top.

**Policy III-9(Coastal Bluff Regulations)(c):** All applications for projects involving new construction on coastal bluff top properties shall be accompanied by a geotechnical report addressing: 1) existing conditions; 2) the suitability of the site for the proposed construction; and 3) the potential of the proposed development to affect bluff stability over a 70-year life span of the project. The report shall also include recommended mitigation measures as they relate to avoidance of risks and preservation of fragile bluff systems. In the event that a submitted report recommends a bluff top setback of a greater distance than otherwise minimally required in this Land Use Plan, the greater distance shall be provided.

### III.E. Flood Hazards

**Policy III-12:** Ensure that the development of real property which is subject to floodwaters will not obstruct flood flow; will not create a hazard to life, health, safety, or the general welfare; will reduce the need for the construction of flood control facilities that would be required if unregulated development occurs; and will minimize the cost of flood insurance to Del Mar residents. The following Floodplain (FP) Overlay Zone policies shall be applied to all applications for a Floodplain Development Permit.

[...]

Applications for Floodplain Development Permits shall be reviewed for consistency with the following requirements to be assured that new development will:

- a. Be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
- b. Be constructed with materials and utility equipment resistant to flood damage;
- c. Use methods and practices that minimize flood damage;
- d. Have the lowest floor (including basement) of any residential structure elevated to or above the base flood elevation;
- e. Have the lowest floor (including basement) of any nonresidential structure elevated to or above the base flood level or, together with attendant utility and sanitary facilities, be flood-proofed below the base flood level to the extent that the structure is watertight with walls substantially impermeable to the passage of water and with structure components have the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy, as certified by a registered professional engineer or architect;

- f. When located in an area of shallow flooding (Zones AO and VO on the community's FIRM), have the lowest floor (including basement) elevated to or above the depth number indicated on the most current FIRM; or if there is no depth number indicated on the most current FIRM, be elevated at least two feet above the highest adjacent grade. As an alternative, nonresidential structures, together with attendant utility and sanitary facilities, may be flood-proofed to that level as specified in subsection "e" above;
- g. [...]

#### **IV.B. Coastal Access**

**Goal IV-A:** Provide physical and visual access to coastal recreation areas for all segments of the population without creating a public safety concern, overburdening the City's public improvements, degrading the City's natural resources, or causing substantial adverse impacts to adjacent private properties.

**Policy IV-3:** Lateral and vertical access ways to and along the shoreline shall be located where they can safely accommodate public use, and shall be distributed throughout the City as much as possible to prevent overcrowding or degradation of resources, minimize parking and traffic congestion, and the misuse of coastal resources...

**Goal IV-C:** Preserve existing views and view corridors from public vantage points to the maximum extent possible without preventing reasonable use of private property.

**Policy IV-24:** Preserve views of the Pacific Ocean from Camino del Mar through the application of scenic view easements and related view preservation restrictions for development proposals located along the west side of this roadway. In order to preserve such views from Camino del Mar, structures on properties fronting the west side of this roadway within the Central Commercial, Professional Commercial or Visitor Commercial designations shall not exceed a height of 14 feet above the adjacent curb level of Camino del Mar.

**Policy IV-25:** Preserve views of the Los Peñasquitos Lagoon and Pacific Ocean from Carmel Valley Road through the application of scenic view easements and related view preservation restrictions for any development proposals located along the south side of the roadway within scenic view corridors.

**Policy IV-26:** Retain and enhance the views of San Dieguito Lagoon along Jimmy Durante Boulevard and San Dieguito Drive through the application of scenic view easements and related view preservation restrictions for any development proposals located along the sides of such roadways within scenic view corridors.

**Goal IV-D:** Maximize the opportunity for access to beach areas by minimizing competition for public on-street parking spaces.

## **VI.B. Steep Slope Preservation – Goals and Policies**

### **Policy VI-1(Bluff, Slope and Canyon Overlay Zone Regulations)(E.**

**Development Review):** Within the BSC Overlay Zone, no building improvement, structure, or portion thereof shall be erected, constructed, converted, established, altered, or enlarged, nor shall any lot or premises be excavated or graded for any purpose, including not limited to in-ground structures such as swimming pools or spas, or cleared of vegetation, unless in accordance with this Land Use Plan and the following:

1. In order to preserve viewsheds and the open space appearance of the area from a distance, no structure shall exceed a height of 14 feet as measured pursuant to the provisions of the Del Mar Municipal Code unless it is found that scenic viewsheds and the open space appearance of the area will be less affected by structures of a greater height.

[...]

3. Construction, grading or other encroachments of any kind on substantial slopes exceeding twenty-five percent grade, or within twenty feet of the top and ten feet of the bottom of substantial slopes exceeding twenty-five percent grade or the construction of structures which overhang such slopes or slope setbacks, shall be prohibited, except when specific encroachments are allowed in according with the following policies. For purposes of this section, “substantial slopes” shall mean: Any areas of slopes with a gradient of 25% or greater on a site where the total elevation differential within such slope areas themselves is 20 feet or more, or where such slopes on site adjoin contiguous slopes of 25% or greater on adjoining property and together involve an elevation differential of 20 feet or more. “Substantial slopes” shall include smaller, isolated pockets of area with less than 25% grade when surrounded by contiguous “substantial slopes” located either entirely or partially on site.

## **VI.D. Wetlands Preservation – Goals and Policies**

**Policy VI-3:** Ensure the protection of the wetlands of the Los Peñasquitos Lagoon and San Dieguito Lagoon and their sensitive upland habitat by requiring that all development activities taking place in lagoon and uplands areas, designated on the Lagoon Overlay Zone Map (Figure VI-B), conform to the wetland preservation regulations of this chapter. In addition, the City shall implement the Bluff, Slope, and Canyon Overlay Zone regulations of this Land Use Plan to protect sensitive wetland habitat from the impacts of upland development which lies outside of the Lagoon Overlay Zone but within the watershed of San Dieguito and Los Peñasquitos Lagoon.

### Wetland Preservation Regulations

[...]

1. Permitted Uses in Wetlands. Permitted uses in wetland areas shall be limited to the following uses and activities, provided that the implementation of such uses or activities does not involve grading, filling, construction or placement of structures within the boundaries of wetland areas as determined pursuant to the policies of this chapter.
  - a. Aquaculture, provided that it is carried out in such a manner so as to avoid any adverse impacts to the water quality or the biological productivity of the wetlands.
  - b. Scientific research, educational or recreational uses, provided that they do not involve adverse impacts to the natural ecosystem.
  - c. Wetland restoration projects where the primary function is restoration of wetland habitat.
2. Permitted Uses in Wetland Buffer Areas. Permitted uses in wetland buffer areas shall be limited to:
  - a. Passive recreational access paths and viewpoints within the upland half of the buffer, only when designed to assure no adverse impacts to adjacent wetland areas. An exception to allow access paths or viewpoints within the lower half of the buffer may be permitted where there is an elevation difference between the buffer and wetland resources of at least ten feet, or where an existing accessway/viewpoint present will be formalized. Any such permitted new access trail or viewpoint shall be setback at least ten feet from the edge of the bluff/slope. No armoring or reinforcing to either construct or maintain such a trail or viewpoint shall be permitted.
  - b. The placement of improvements necessary to provide protection, preservation or enhancement of adjacent wetland areas. Such improvements shall be located within the upland half of the buffer only, and may include, but are not limited to fencing, creation of landscape berms and placement of signage related to scientific, educational or recreational uses.
  - c. All uses permitted in wetland areas.

[...]

Additionally, the certified IP contains the following relevant policies in Chapter 30.55 (Coastal Bluff Overlay Zone):

**30.55.090(B):** All applications for projects involving new construction on properties containing coastal bluffs shall be accompanied by a geotechnical report addressing: 1) existing conditions; 2) the suitability of the site for the proposed construction; and 3) the potential of the proposed development to affect bluff stability over a 70-year life span of the project; 4) the potential future need for shoreline protection during an expected 70-year life span of the project; 5) an analysis of bluff retreat and coastal stability for the project site, according to accepted professional standards; 6) an analysis of the potential effects on bluff stability of rising sea levels, using latest scientific information; 7) an analysis of

the potential effects of past and projected El Nino events on bluff stability; and 8) an analysis of whether the affected section of coastline is under a process of retreat. The report shall also include recommended mitigation measures as they relate to avoidance of risks and preservation of fragile bluff systems. In the event that a submitted report recommends a coastal bluff top setback of a greater distance than otherwise minimally required in this Chapter, the greater distance shall be provided. In addition, for new development, the applicant shall acknowledge a waiver of all rights to future protective devices for the new development through recordation of a deed restriction as a condition for permit approval.

The Commission is aware that the state has an affordable housing crisis, and this issue is 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 designed to eliminate barriers to the provision of 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, the 2019-2020 legislative session included a series of changes to state housing law designed to facilitate more ADUs and affordable housing units. Those changes have triggered the need for jurisdictions in the coastal zone to update their LCPs to address requirements affecting the development of ADUs. Importantly, state law continues to explicitly require that the Coastal Act's (and by extension LCPs') coastal resource protections be incorporated into the process when considering ADUs, and thus, updated local government ADU provisions must continue to ensure coastal resource protections. In short, the goal of updating LCPs related to ADUs and JrADUs is to harmonize the state ADU/JrADU housing law changes with the Coastal Act in a way that continues to protect coastal resources while also reducing and eliminating barriers to the development of ADUs.

Much of the City of Del Mar's coastal zone consists of already-developed residential areas with adequate public services that may be appropriate for in-fill ADU development, both inside and outside of the coastal zone. Within the coastal zone, there are also substantial areas within the City where ADUs could likely be developed with no impacts to coastal resources. Thus, at a broad level, the proposed IP amendment should help achieve the streamlining objectives of the state ADU and housing legislation while helping further the City's own housing goals as specified in the LCP.

## **1. Findings for Denial**

### Engineering Review

As proposed, the amendment removes the requirement for engineering review when an ADU will be located within an existing primary dwelling unit or existing accessory structure. While it is unlikely that the absence of an engineering review for the siting of an ADU in an existing primary dwelling unit or existing accessory structure will impact coastal resources in the vast majority of cases, engineering review is an important and consequential step in siting development on coastal bluff tops, as documented in the

City's certified LCP. In both the LUP and IP, specific policies are in place to which coastal blufftop development must adhere. In the City's LUP, these are found in the Coastal Bluff Regulations, which, among other restrictions, requires a minimum setback of 40 feet from the edge of the coastal bluff for all principal and accessory structures, including additions to existing structures and their structural supports. Critically, the Coastal Bluff Regulations also state that all new construction on coastal bluff top properties shall be accompanied by a geotechnical report addressing the existing conditions and general site suitability, an evaluation of the project's potential effects to the bluff over a 70-year period, any mitigation measures, and that if a greater setback is recommended than the minimum 40 feet required, that the greater distance should be provided for the structure.

The City's proposed amendment states that in all cases an ADU will be required to comply with the coastal bluff setback of the Coastal Bluff Overlay Zone. Accordingly, the minimum setback of 40 feet would apply in all cases, but the engineering report component would *not* be required under the proposed revisions to Section 30.91.030(A)(1)(a) despite its integral part in determining the safest and most protective setback for the specific site and the structure in question. New structures would have to comply with the geotechnical/engineering requirements of the Coastal Bluff Regulations, but the conversion of non-habitable space in existing structures and dwelling units into habitable space presents an intensification of use of the area that could result in a potential impact to fragile coastal bluff systems. Thus, maintaining this requirement to analyze site conditions both in the present and the future through a technical report is warranted.

### Setbacks and Views

As proposed, the amendment would revise the required setbacks for ADUs to allow for a 4-foot setback on all sides besides the front yard (which must comply with the applicable zone), and require the ADU to comply in all cases with the required Beach Preservation Initiative setback of the Beach Overlay Zone, and the coastal bluff setback. For properties located between the ocean and the first public roadway, the ADU must comply with the street yard setback of the applicable zone where necessary to protect public scenic views to the ocean. (Because JrADUs are located within the walls of an existing single dwelling unit, no provision for setbacks is made in the proposed amendment).

In most instances allowing reduced setbacks for ADUs would have little or no substantial impact on coastal resources. ADUs are relatively small and reduced setbacks are unlikely to significantly affect community character. However, the construction of a new ADU, or the conversion of a nonconforming structure into an ADU would have impacts if the structure were to be located in a sensitive resource area, such as on a bluff within the geologic setback, on a coastal lot within the Beach Overlay Zone, within a public view corridor, or within the setback from a sensitive wetland or upland habitat. Thus, in those cases, the ADU should conform to required setbacks that protect coastal resources.



The City has already partially accounted for this necessary conformance by stating that ADUs must comply with the beach and coastal bluff setbacks in all cases, as well as public view protection for properties between the first roadway and the sea. However, as proposed, ADUs would not have to comply with the City's Bluff, Slope, and Canyon Overlay Zone setback, wetland and habitat setbacks, or view corridors if not located between the first roadway and the sea. Thus, as proposed, the LCPA could result in impacts to coastal resources protected by the policies of the LUP.

### Parking Required for Primary Structures

The City of Del Mar is bounded by the City of San Diego and Los Peñasquitos Lagoon on the south, the City of Solana Beach and San Dieguito Lagoon to the north, and extends approximately three-quarters of a mile inland of the coast adjacent to the City of San Diego. The City has approximately two miles of shoreline, which is accessed regionally by the north/south Interstate 5 corridor, and locally by Camino Del Mar (Highway 101) and Jimmy Durante Boulevard. Major east–west connectors to the shoreline are Carmel Valley Road, Del Mar Heights Road, and Via De La Valle.

Existing land uses in the City are predominantly residential, and the majority of the development within 1,000 feet of the shoreline in Del Mar consists of residential uses except for immediately adjacent to Camino Del Mar, and the railroad right-of-way. Two coastal parks, Powerhouse and Seagrove Parks, are located just above the 15<sup>th</sup> street surf break on the southern end of the City, and North Beach (also called Dog Beach) is located north of 29<sup>th</sup> Street and stretches north to the border of Solana Beach. The City's certified LCP identifies the north and central beaches as more accessible than the southern area, which is bounded by steep coastal bluffs as well as the railroad tracks and has a number of informal but well-used accessways as well as viewpoints from street ends. In the central and southern portions, pedestrian access to the beach is available at the westerly terminus of all streets between 17<sup>th</sup> street and 29<sup>th</sup> street. There is more public parking available in the northern section of the City than elsewhere, and the LCP identifies parking and drop-off areas for handicapped access at 15<sup>th</sup>, 17<sup>th</sup>, 20<sup>th</sup>, and 25<sup>th</sup> Streets.

With regard to the proposed changes to parking requirements, the City of Del Mar's existing certified LCP, like most LCPs, includes requirements that residential properties account for their parking needs on their own properties, often referred to as "off-street" parking requirements (e.g., typically in garages, carports, covered parking, driveways, etc.). Under the City's existing certified LCP, no parking is required for ADUs where located: within an existing primary dwelling unit or an existing accessory building, within a half mile of public transit, in a designated historic district or area, or within one block of a designated car share parking location. Only slight changes regarding the specific categories of designated historic districts and areas are proposed to the parking requirements for ADUs in the current LCPA. No parking is required for JrADUs in the certified LCP and no changes are proposed in the current amendment. However, as proposed, the amendment would remove the requirement that off-street parking spaces

for the primary dwelling be replaced when a garage, carport, or covered parking structure is demolished in conjunction with the construction of an ADU, or when an existing garage or off-street parking structure is converted into an ADU. For the construction of JrADUs, the proposed amendment is silent on the need for required replacement parking if parking areas associated with the primary dwelling unit are converted into habitable space. This policy change is not likely to have substantial adverse effects to coastal resources in the residential areas in the majority of the City. However, west of Camino Del Mar, spillover parking demand from private residential uses would impact the ability of visitors to access Del Mar's shoreline and recreational opportunities.

Relatedly, Section 30.91.040 (K)(1) of the existing ADU regulations (certified in 2018) includes a provision that an ADU is limited to the first story or basement level unless it will be located in an existing structure with previously existing access above the first story level. While on the face of it, this provision seems to prohibit second story ADUs, City staff have explained that a second story ADU could be permitted if an applicant were to first to get approval for and construct a second story addition, then apply for conversion of that second story to an ADU. This raises several potential concerns. First, requiring a new second story ADU that does not impact any coastal resources (such as public views) to go through this additional processing does not streamline or encourage the construction of ADUs. Second, the proposed change to the amendment that would not require placement off-street parking gives this section new significance. By limiting the ADU to a first story or basement without going through this two-step process, applicants may be incentivized to demolish or convert ground level parking areas, potentially exacerbating spillover parking demand described above.

Thus, as proposed, the LCPA could result in impacts to coastal resources and access protected by the policies of the LUP.

#### Wetland and Habitat Buffers

As proposed, the amendment would not allow for the siting of an ADU on a beach, in a wetland, seaward of the mean high tideline, in an environmentally sensitive habitat area, within a required coastal bluff setback, or in area designated as highly scenic. The proposed language is effective and definitive with the exception that wetland and habitat buffers are missing from this provision. According to the policies of the certified LCP, the only permitted uses in a wetland buffer are passive recreational access paths and viewpoints within the upland half of the buffer only (exceptions permitted in special circumstances), improvements necessary to provide protection, preservation or enhancement of adjacent wetland areas in the upper half of the buffer only, and uses permitted in a wetland (i.e. aquaculture, scientific research, educational or recreational uses, and restoration projects). Other LCP Policies protect native vegetation in sensitive areas such as the Bluff, Slope, and Canyon Overlay Zone, and should accordingly be recognized as protected areas in the proposed LCPA. Similar to the potential issues discussed above in regard to setbacks, the LCP should not allow, without review, existing structures to be converted to dwelling units if they are located in a sensitive

resource area such as a wetland or habitat buffer. Thus, as proposed, the LCPA could result in impacts to coastal resources protected by the policies of the LUP.

### Number and Configuration of ADU/JrADUs On a Lot

In addition to the potential coastal resource protection issues identified above, the City requested modifications based on recent clarifying guidance from HCD concerning the number and configuration of ADUs and JrADUs on a lot. These particular issues do not present coastal resource protection issues and are integral changes to be made in order to achieve the streamlining objectives of the state ADU and housing legislation while helping further the City's own housing goals, consistent with the goals of the LCP.

### Floodplain

During review of the subject amendment, two significant concerns within the City's existing ADU provisions (approved by the Commission in 2018 as LCP-6-DMR-17-0062-2) were identified. The first of these relates to the City's floodplain requirements.

The existing LCP exempts ADUs from the requirement for a Floodplain Development Permit when located in the Floodplain Overlay Zone and when the ADU meets several criteria, including that the ADU is either: 1) located entirely within the walls of an existing habitable structure or within existing non-habitable space that is located at or above the base flood elevation, or 2) meets certain floodproofing design measures and will be elevated to or above the base flood elevation. JrADUs are assumed exempt from all discretionary permit reviews as long as they are designed in accordance with Section 30.91.050. The proposed amendment would modify the first part of this existing exemption slightly to clarify that the ADU must be located entirely within the walls of an existing habitable structure or within existing non-habitable space located at or above the base flood elevation that is converted to habitable space for the ADU.

While the Commission acknowledges the need for a more streamlined review in order to increase housing supply within the City and meet housing goals, Del Mar is one of the most vulnerable areas in San Diego County when taking into account flooding and sea level rise. The standards of the City's existing ADU requirements (Sections 30.91.040 and 30.91.050) do not include adequate design or noticing requirements to ensure that new ADUs, and ADUs/JrADUs that are created from non-habitable space, located in hazardous areas are appropriately sited and designed. Additional provisions for the development of ADUs and JrADUs in hazardous areas are necessary, not only to inform the applicant/owner of safest physical design of the structure over its lifetime, but also to make sure that the occupants are aware of the risks of building and residing in an area that is hazardous or may become hazardous due to flooding and sea level rise.

The North Beach area of Del Mar is especially vulnerable to the effects of both flooding and sea level rise. An analysis of sea level rise risk using Our Coast, Our Future<sup>1</sup>, a mapping tool developed by Point Blue Conservation Science and USGS Pacific Coastal

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<sup>1</sup> <https://ourcoastourfuture.org/hazard-map/>

and Marine Science Center, reveals that parts of this area are already vulnerable to flooding if faced with a 100-year storm event – which is also reflected in the FEMA Flood Insurance Rate Maps (FIRM) for the area. In addition, sunny day flooding may potentially affect the area as early as 2095 (assuming sea levels rise at the rate associated with medium-high risk aversion in state sea level rise guidance documents<sup>2</sup>). Groundwater is also expected to rise as sea levels rise, potentially beginning to emerge from the ground and pond in parts of North Beach with about 2.5 feet or more of sea level rise. These projections have important implications not only for residential development in the City but also for coastal access. Throughout the City, but in the North Beach especially, rising sea levels and emergent groundwater will impact the public beach areas and cause the migration of the mean high tide line further inland, affecting or prohibiting the public's ability to utilize the coast in addition to causing residential flooding.

The creation of an ADU or JrADU within areas vulnerable to flooding and sea level rise presents an intensification of use in a hazardous area, and the extension of the useful life of a structure when conversion of non-habitable space to habitable space occurs. Accordingly, additional measures are required to both protect coastal resources, including coastal waters, sensitive habitats, coastal access, as well as to safeguard human life and development.

### CDP Requirements

The second concern identified with the City's existing ADU provision relates to the City's CDP requirements for ADUs.

As proposed, the amendment would largely retain the language concerning CDP exemptions and requirements from the 2018 certified ADU Amendment. A change is proposed to the exemption language, consisting of a reference to the certified LCP rather than the Chapter 3 policies of the Coastal Act, but otherwise the provisions remain the same. Under the ADU provisions of the existing LCP, if the City determines there is no potential impact to coastal resources, all ADUs contained entirely within or directly attached to an existing dwelling unit are exempt from Coastal Development Permit (CDP) requirements. Furthermore, administrative CDPs would only be required for ADUs located between the first public road and the sea or within 300 feet of the mean high tide line that increase the height or floor area by more than 10 percent, or where a CDP was required by a previous permit condition. Thus, outside of the appeals area, most ADUs would be exempt from coastal development permit requirements. This language was approved without modification in the 2018 certified amendment and the

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<sup>2</sup> Because there is scientific uncertainty about how fast sea levels will rise in the future, state guidance documents provide several different sea level rise rates that are plausible according to the current best available research. To sufficiently protect coastal resources and site development safely, the Commission uses the medium-high risk scenario to analyze residential and commercial development.

City states that its rationale was largely taken from guidance issued by Coastal Commission staff.<sup>3</sup>

However, the Commission's 2020 ADU guidance also states that LCPs must ensure that new ADUs are not constructed in locations where they would require the construction of shoreline protective devices, be in environmentally sensitive habitat areas, wetlands, or where the ADUs structural stability may be compromised by bluff erosion, flooding, or wave uprush over their lifetime. As discussed below, suggested modifications to the City's streamlined ADU and JrADU provisions (as laid out in Sections 30.91.040 and 30.91.050, respectively) have been designed to ensure that development avoids impacts to all coastal resources; however, this does require that the ADU be reviewed for compliance with these standards and all LCP policies, and where required, the public access and recreation policies of the Coastal Act. This review can be streamlined, such as the City's Administrative CDP process is designed to do, but the review must still occur to ensure compliance with the Land Use Plan, and the coastal development permit is the appropriate process for this review, along with the noticing requirements and potential appeals process of a CDP. To fully protect coastal resources, an administrative CDP should be required as part of the streamlined review process for all ADUs and JrADUs.

## **2. Findings for Approval**

Harmonizing the state ADU/JrADU housing law changes with the Coastal Act through review and certification of an LCP amendment is a complex process that must be tailored to the unique situation of each jurisdiction, including that of Del Mar. There are approximately 2,611 housing units in Del Mar as reported by the San Diego Association of Governments (SANDAG) on January 1, 2015<sup>4</sup>, and according to the City's 2013-2021 Housing Element, the majority (70%) of the City's housing stock consists of single-family units, with the remainder comprised of multi-family homes of varying sizes. As described in the Housing Element, the City is largely built out with a few vacant parcels that are physically constrained by steep slopes, floodplains, etc. Not only is there extremely limited land available for building, but the lots themselves generally exceed \$1 million and the median price for an existing single-family home was slightly over \$1 million in 2010. Previously developed residential areas with adequate public services may be appropriate for in-fill ADU development. There are also substantial areas within the City where ADUs could likely be developed with no impacts to coastal resources. Thus, at a broad level, the proposed IP amendment should help achieve the streamlining objectives of the state ADU and housing legislation while helping further the City's own housing goals and potentially encourage the provision of a substantial amount of new lower-cost residential units, consistent with the goals of the LCP.

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<sup>3</sup> See Commission memo "Implementation of New ADU Laws" dated April 21, 2020, available at (<https://documents.coastal.ca.gov/assets/rflg/California%20Coastal%20Commission%20ADU%20Memo%20dated%20042120.pdf>)

<sup>4</sup> [https://www.sandag.org/uploads/publicationid/publicationid\\_2001\\_20213.pdf](https://www.sandag.org/uploads/publicationid/publicationid_2001_20213.pdf)

Harmonizing the housing needs of the City with the policies of its certified LCP presents an opportunity to ensure that growth coincides with resource protection. As detailed above, potential conflicts between these two goals exist within the proposed LCPA. To address these issues, the Commission has included several suggested modifications to the proposed amendment.

### Engineering Review

As described above, not requiring an engineering review for the conversion of non-habitable space in existing structures on coastal bluffs risks impacts to this fragile area. While the proposed amendment requires that ADUs adhere to the Coastal Bluff setback and be set back at least 40 feet from the top of the coastal bluff, the engineering reporting requirements of the Coastal Bluff Regulations are critical in understanding site conditions, site suitability over the lifetime of the project, and recommended mitigation measures, including the necessity of greater setbacks.

In light of these concerns, Suggested Modifications #1 and #2 would require that where non-habitable space located in the Coastal Bluff Overlay Zone is proposed to be converted into either an ADU or a JrADU, the requirement for engineering review in accordance with Section 30.55.090(B) of the certified IP be maintained. By requiring an engineering review, the City can assure that the additional development will be sited safely, and any impacts associated with ADU/JrADU development will be ameliorated through incorporation of its findings concerning site suitability for the development, its potential effects to the bluff, any mitigation measures to be included, and determination of the setback from the bluff edge that is most appropriate for the site if not the minimum 40 feet. More generally, the engineering report will analyze bluff retreat and stability, evaluate if shoreline protection is needed, and consider the effects of bluff stability on sea level rise, which are critical components of understanding if and for how long a structure may be considered suitable for residential use. Thus, if the proposed amendment incorporates the modified suggestions as detailed above, it will conform to the certified Land Use Plan, and the proposed ordinance can be found in conformance with and adequate to implement the certified LUP.

An important note to this topic is that the only residential lots located within the City's Coastal Bluff Overlay are in the North Bluff District of the City, north of the mouth of the San Dieguito River. Only one of the lots in this area is currently developed, and the others are vacant. Despite the limited application of any potential suggested modifications at present, continued development in the district is possible. Existing LCP policies, including those for geotechnical reporting, are among the safeguards in place to protect fragile coastal bluffs, and the description of the North Bluff District in the LUP speaks to this:

Much of the residential area described above lies atop coastal bluffs which are protected under Chapter III of this Land Use Plan entitled "Hazard Control." Development activity in this district shall be consistent with all policies of this Land Use Plan including those policies cited in Chapters III, IV and VI regarding

minimizing of hazards, the provision of public access opportunities; and the protection and enhancement of sensitive resources (13).

With the incorporation of the above Suggested Modification, the proposed LCP amendment can be found consistent with the resource protection and hazards policies of the LUP, as well as with the coastal resource protection policies of the IP.

### Setbacks and Views

As described above, potential impacts to coastal resources could occur in the instance that a newly constructed ADU, or a legal non-conforming, non-habitable structure or space that is converted to an ADU/JrADU, does not conform to the setbacks required for sensitive areas. In this circumstance, there would be an intensification of use on the lot that is not in conformance with the LCP.

The City has already partially accounted for this need for conformance by requiring that ADU structures must comply with the coastal bluff setback and Beach Preservation Initiative setback in all cases. However, there are also other sensitive resource protection policies in the certified LCP; namely, those related to the Bluff, Slope and Canyon Overlay Zone and the Lagoon Overlay Zone. The Bluff, Slope and Canyon Overlay Zone applies to the area of the city adjacent to San Dieguito Lagoon and Crest Canyon, as well as the southernmost portion of the city adjacent to Torrey Pines Preserve and Los Peñasquitos Lagoon. The hillsides surrounding the lagoons contain large areas of coastal sage scrub and related native chaparral habitat. In order to protect sensitive bluff areas, native vegetation, and downstream resources, Policy VI-1(E)(3) of the LCP establishes that any construction, grading or other encroachments of any kind on substantial slopes exceeding twenty-five percent grade, or within twenty feet of the top and ten feet of the bottom of substantial slopes exceeding twenty-five percent grade or the construction of structures which overhang such slopes or slope setbacks, shall be prohibited. The City has already partially adjusted for these provisions by including Section 30.91.040(Y) of the new Ordinance, which states that the development pad for a new ADU structure shall be located at a grade elevation with a slope that is no greater than 4 to 1 (thus avoiding any exceedance of 25% grade) and promoting safe siting by exempting an ADU from a Conditional Use Permit in 30.91.030(C)(4), where the ADU is located in the Bluff, Slope, and Canyon Overlay Zone and is set back at least 20 feet from the top of the steep slope and at least 10 feet from of the bottom of the slope. Suggested Modification #6 would memorialize this same sentiment in Section 30.91.040(N) to ensure that this setback will be adhered to in all cases.

Similarly, the Lagoon Overlay Zone protects sensitive wetland habitats within the City. There are three areas of wetlands identified in the Del Mar LUP: a relatively small area of wetland and upland adjacent to Los Peñasquitos Lagoon, the much larger area along the San Dieguito Lagoon and River Channel, including the river mouth area, and a section paralleling the railroad tracks on the west, where an existing drainage channel supports wetland vegetation. This last area is unique, as it is contained within a nearly built-out area of fairly dense residential development, much of which predates the

emergence of the wetland itself, and for this reason, separate policies address this area. Development in proximity to the two lagoons is far more restricted in the LUP. Uses within wetlands themselves are limited to aquaculture, research and restoration. In the designated 100-foot buffer areas, improvements such as access paths, view points, and fences are allowed only in the upper half of the buffer. Therefore, the existing provisions of the Lagoon Overlay Zone would not permit an ADU in either a wetland or a wetland buffer. Suggested Modification #6 would require that these wetland buffers be treated similar to requirements for the Coastal Bluff Overlay Zone and the Beach Overlay Zone.

In terms of public view protection, Suggested Modification #6 would eliminate the restriction for view protection on only those lots between the ocean and first public roadway as well as only street yard setbacks. Instead, public view protection will be broadened to include any ADU within the Coastal Zone that requires adherence to the applicable zone setback in order to protect public views to the ocean.

Finally, a new subsection (Section 30.91.050(O)) is proposed to be added under Suggested Modification #12 so that where any non-habitable space is converted into habitable space in order to create a JrADU, the same adherence to those setbacks required for ADUs will be extended to JrADUs.

Only with the incorporation of this suggested modification would the amendment be in conformance with the scenic view protection policies of the LUP (such as Goal IV-A, Goal IV-C, and Policies IV-24 to IV-26). The proposed amendment, if modified as suggested, conforms to the certified Land Use Plan, and the proposed ordinance can be found in conformance with and adequate to implement the certified LUP.

#### Parking Required for Primary Structures

As described above, not requiring replacement parking when an off-street parking structure is demolished or converted in conjunction with the construction of an ADU or JrADU is unlikely to impact public access in the majority of the City. However, in the area of the shoreline where the public streets are used for beach parking, spillover parking resulting from eliminating parking associated with existing structures has the potential to significantly adversely impact public access. Therefore, Suggested Modifications #7 and #13 establishes that replacement parking is required for projects that remove the required off-street parking for a primary dwelling unit in conjunction with the construction of an ADU or JrADU when the site is located within the ADU Replacement Parking Overlay Zone. This area is generally described as the shoreline area west of Camino Del Mar, with the area specifically between the San Dieguito River mouth south to 15<sup>th</sup> Street encompassing only those streets west of the railroad tracks, as those streets are used for public beach parking. These Suggested Modifications allow for the replacement parking spaces to be located in any configuration on the site, including but not limited to uncovered spaces, tandem spaces, driveways, or within setback areas, as long as the spaces comply with applicable buffers for wetlands and are not located in a structure within the setback for the Bluff, Slope, and Canyon



Overlay Zone. Suggested Modification #8 adds a new ADU/JrADU Replacement Parking Overlay figure into the LCP (see [Exhibit 4](#) to this staff report) to illustrate the boundaries of this new area for future reference.

Thus, even within the proposed ADU/JrADU replacement parking area where replacement parking is required, limits on the ability to construct accessory units will be minimized. As long as the required parking will be provided somewhere on the site consistent with LCP inland bluff setbacks and wetland buffers that protect coastal resources, demolition or conversion of parking structures into ADUs or JrADUs will not have any adverse impact on public access or coastal resources.

As was also discussed, an existing subsection of the IP that specifies ADUs are limited to the first story or basement unless existing access goes above the first story could potentially incentivize applicants to demolish or convert their existing ground-level parking areas rather than build a second story, and thus contribute to potential spillover parking demand once the required off-street spaces are eliminated. To prevent this, Suggested Modification #5 would specify that an ADU may be located on a second story in order to maintain the existing required parking for the primary structure, as long as the second story ADU will not block public scenic views to the ocean.

With the Suggested Modifications, the proposed LCP amendment is consistent with the public access and recreation policies of the LUP, as well as with the coastal resource protection policies of the IP and the Coastal Act. The proposed amendment, if modified as suggested, conforms to the certified Land Use Plan, and the proposed ordinance can be found in conformance with and adequate to implement the certified LUP.

#### Wetland and Habitat Buffers

As described above, the proposed amendment does not include wetland buffers and habitat buffers as areas where ADUs are prohibited. Suggested Modification #9 would add these two sensitive resource areas to Section 30.91.040(V) in order to ensure that existing non-conforming structures that may possibly fall within these buffer areas cannot be converted into an ADU without review and therefore extend the economic life of the structure in a protected area. This modification will also harmonize with the protected areas described in Section 30.91.040(N), which will be similarly modified to include wetland and habitat setbacks for new ADU structures. In this way, required setbacks for both resource areas will be adhered to in conformance with the certified LCP.

#### Number and Configuration of ADU/JrADUs On a Lot

As noted above, suggested modifications were requested by the City in order to rectify inconsistencies between the currently proposed LCPA and changes needed by the City in order to harmonize this proposed language with guidance received from HCD after the LCPA was submitted. Suggested Modification #15 would allow for a maximum of one JrADU and one ADU on a lot with an existing or proposed single dwelling unit,

along with details regarding creation of ADUs within existing structures. These clarifications were at the direction of HCD, and raise no LCP issues.

Suggested Modifications #16 and #17 clarify two provisions of Subsection 30.91.050 that a JrADU may only be located within the walls of an existing primary single dwelling unit. These clarifications were at the direction of HCD, and achieve the streamlining objectives of the state ADU and housing legislation while helping further the City's own housing goals, consistent with the goals of the LCP.

The existing LCP includes language that prohibits an ADU or JrADU from being sold or conveyed separately from the primary dwelling unit on the property. The proposed LCPA clarifies that the City or qualified non-profit corporation may sell a deed restricted ADU to an eligible low-income owner. Thus, the existing and proposed ADU provisions would not allow the site be subdivided to create a separate lot for the ADU with additional development potential. Recent legislation that would allow property owners to split a single-family lot into two lots, add a second home to their lot or split their lot into two and place duplexes on each will require an LCPA to incorporate this type of subdivision. At that time, the potential impacts of such subdivisions on coastal resources will be reviewed for Coastal Act consistency.

### Floodplain

As detailed above, the Commission has identified several provisions of the existing LCP that raise concerns regarding the protection of coastal resources. The first of these is that the LCP allows ADUs and JrADUs in hazardous areas that are vulnerable to flooding and sea level rise without including additional provisions.

It is important to first discuss if and when ADUs and JrADUs could be found allowable in hazardous areas at all. Many jurisdiction place strict limits on development in the floodplain, other than uses and structures that can accommodate periodic flooding, such as stables, parks, golf courses, etc. However, Del Mar has many structures already located in the floodplain. Thus, the Commission is tasked with determining whether or not additional structures (ADUs), and presumably additional residents, should be located in areas known to be at risk.

Current guidance states that development should plan for sea level rise scenarios up to and including approximately 7 feet (projected to approx. 2100), given that residences fall under the Medium-High Risk Aversion category of the Commission's Sea Level Rise Policy Guidance, and that residential development is expected to have a lifetime of 75 years (see Table G-11 of the California Coastal Commission Sea Level Rise Policy Guidance, adopted November 7, 2018). The medium high-risk scenario is differentiated from the low risk aversion and extreme risk aversion scenarios by basing its sea level projections on a 0.5% probability that sea level rise will exceed them (versus approx. 17% for the low risk scenario and no probability for the extreme risk scenario). Put another way, there is a 99.5% chance that sea level rise will be lower according to the global climate models that were used to generate the probabilities of the Sea Level Rise Policy Guidance. These probabilities will need to be updated as new research emerges,

and it may be the case that 7 feet becomes a more likely scenario as time goes on and the science is published. However, as it currently stands, planning for 7 feet of sea level rise is a sufficiently cautious approach, and there is a considerable amount of time before the brunt of this amount of sea level rise will be experienced by many coastal areas. In the case of ADUs, allowing development of these structures at this time will provide much-needed affordable housing for several decades before the structures are expected to be at serious risks.

As described above, parts of North Beach may begin to see flooding from emergent groundwater beginning with roughly 2.5 feet of sea level rise. According to medium-high risk aversion scenario, 2.5 feet of sea level rise may occur as early as 2060, but again, there is a 99.5% chance it will occur sometime later than that according to the current best available science. For example, according to the low risk aversion scenario, 2.5 feet could occur by the year 2080. Thus, in the case of ADUs, allowing development of these structures at this time will provide much-needed affordable housing for several decades before the structures are most likely to be at serious risks.

However, the sea level rise scenarios that are deemed relatively unlikely cannot be ignored in an area we know now to be hazardous and will likely only become increasingly so. The conversion or construction of ADUs and JrADUs will only be acceptable if they are designed to withstand the effects of flooding within their economic lifetime and protect human lives. Additional measures must be taken to ensure that any ADU or JrADU sited in areas vulnerable to flooding and sea level rise will be adequately designed, and that proper notice is given to current and future owners and residents so that the risks associated with the development are safeguarded against and clearly acknowledged.

The City of Del Mar has acknowledged the threats posed by sea level rise and increased flooding by publishing a Coastal Hazards, Vulnerability, and Risk Assessment report, most recently updated in August 2018. The City submitted an LCP amendment in order to incorporate some of its key findings, but this proposal was withdrawn before the Commission could hear the matter. However, during its review of that submittal, Commission staff suggested the incorporation of the December 2019 FEMA FIRM maps to replace the City's original certified Floodplain Overlay Zone map ([Exhibit 5](#)). While these maps do not depict the floodplain associated with today's extreme flood event nor the extreme flood events that can be expected in the future due to sea level rise, they largely overlap with areas vulnerable to sea level rise, such as the North Beach area, identified in the City's coastal hazards study as well as those identified on maps from the site "Our Coast, Our Future."

Suggested modifications would add new sections to the ADU regulations (both 30.91.040 and 30.91.050) so that a new ADU, or an ADU/JrADU that is created from the conversion of non-habitable space in habitable space, will be reviewed for several standards when sited on a parcel that falls entirely or partially within the flood hazard areas identified on the 2019 FEMA FIRMs. With the incorporation of Suggested Modifications #10 and #14, design and noticing requirements will be applied to the development of an ADU/JrADU as described above. Specifically, Modification #10

states that an ADU must include elevation, floodproofing, and/or other measures sufficient to safeguard it from the impacts of sea level rise over the anticipated lifetime of the proposed structure using the best available science. These suggested modifications would also require owners of ADUs in this area to record a notice on their property and notice all occupants that the ADU is located in the FEMA FIRM and is in a hazardous area or an area that may become hazardous; that sea level rise could make it difficult or impossible to provide services to the site; that the boundary between tidelands and private land may shift with rising seas and the development approval does not permit encroachment onto public trust land, and that additional adaptation strategies may be required in the future to address sea level rise consistent with the Coastal Act and certified LCP. Finally, the Suggested Modifications would also require that the owner waive any right under Coastal Act Section 30235 and related LCP policies to hard shoreline armoring to protect the ADU, and owner acknowledgement that the structure may need to be removed or relocated if the site becomes unsafe due to flooding and sea level rise. Modification #14 makes the same requirements for JrADUs where similarly located on the 2019 FEMA FIRM, with an exception granted for a JrADU that is located above the base flood elevation and created through conversion of habitable space.

#### CDP Requirements

As described above, the existing/proposed language exempts most accessory dwelling units from CDP requirements, and require an administrative CDP for an ADU in only a very select set of circumstances. Suggested Modifications #3, #4, and #11 would clarify that all ADUs and JrADUs require an administrative CDP. While previous guidance from the Commission does indeed describe likely scenarios where an ADU/JrADU may be found exempt, the same guidance notes that:

Conversion of an existing legally established room(s) to create a JADU or ADU within an existing residence, without removal or replacement of major structural components (i.e. roofs, exterior walls, foundations, etc.) and that do not change the size or intensity of use of the structure may not qualify as development within the meaning of the Coastal Act, or may qualify as development that is either exempt from coastal permit requirements and/or eligible for streamlined processing (Pub Res. Code §§30106 and 30610).

While it is appreciated that the City adhered to previous guidance from the Commission, the Commission's current position on ADUs and JrADUs is they need administrative review in the vast majority of circumstances and should not be automatically exempted. The City's administrative process is a relatively streamlined process that will allow for a review of the project and ensure conformance to the LCP, as well as allow for the noticing and potential appeals process consistent with the certified LCP.

With the Suggested Modifications, the proposed LCP amendment is consistent with the public access and recreation policies of the LUP, as well as with the coastal resource protection policies of the IP and the Coastal Act. The proposed amendment, if modified

as suggested, conforms to the certified Land Use Plan, and the proposed ordinance can be found in conformance with and adequate to implement the certified LUP.

## **V. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

Section 21080.9 of the California Environmental Quality Act (CEQA) exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its local coastal program. The Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under CEQA Section 21080.5, the Commission is relieved of the responsibility to prepare an EIR for each LCP submission.

The City found that this Ordinance is exempt under a variety of CEQA provisions. (Pub. Resources Code, § 21080.17 [Adoption of ordinances that implement ADU provisions]; Cal. Code of Regs., tit. 14, §§ 15282(h) [Adoption of ordinances regarding second units], 15301 [Existing Facilities], 15302 [Replacement or Reconstruction], and 15303 [Small Structures]).

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, 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 that 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.