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Date: October 26, 2021

To: **COMMISSIONERS AND INTERESTED PERSONS**

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Subject: **STAFF RECOMMENDATION ON CITY OF SAN DIEGO MAJOR
AMENDMENT NO. LCP-6-SAN-21-0005-5 (2019 Housing Legislation) for
Commission Meeting of November 19, 2021**

SYNOPSIS

On December 29, 2020, the City of San Diego submitted its third major Local Coastal Program (LCP) amendment package for the 2020 calendar year to the San Diego District office. The third submittal was a batch submittal consisting of three housing items: LCP-6-SAN-21-0005-5 (2019 Housing Legislation), LCP-6-SAN-21-0006-5 (Moveable Tiny Houses), and LCP-6-SAN-21-0007-5 (Moderate Income Housing Program). The submittal for this LCPA was filed as complete on December 29, 2020. Each of these pending housing amendments received a one-year time extension in March 2021 and must be acted upon by the Commission no later than the March 2022 hearing.

SUMMARY OF AMENDMENT REQUEST

The California legislature passed a number of land use and housing laws in 2019 that became effective January 1, 2020, primarily addressing accessory dwelling units, affordable housing, supportive housing for the homeless, and displacement protection for affordable housing and its tenants. The purpose of the City's 2019 Housing Legislation LCP amendment is to implement the provisions of the state laws and revise the portions of the certified LCP that are no longer in conformance. The housing legislation is grouped into four issue areas: housing for homeless, affordable housing regulations, accessory dwelling and junior dwelling units, and miscellaneous housing items.

SUMMARY OF STAFF RECOMMENDATION

Staff is recommending that the Coastal Commission deny the proposed IP amendment as submitted, and approve the amendment as modified in this staff report.

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, as well as other types of affordable housing. Importantly, state law continues to explicitly require that Coastal Act (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, JADUs, and other forms of affordable housing is to harmonize state 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 affordable housing.

The majority of the provisions of the proposed amendment are consistent with the certified LCP and Coastal Act. However, as proposed, the amendment contains several procedural and substantive issues related to the provision of accessory dwelling units that do not conform to the certified LCP and require suggested modifications to correct.

The first concern is procedural in nature. As currently certified, Section 126.0702 of the Land Development Code states when a coastal development permit is required, and Section 126.0704 lists the types of development that are exempt from the requirement to obtain a coastal development permit. Section 126.0704(a) states that improvements to existing structures are exempt unless they involve, among other things, “a companion unit as described in Section 141.0302” (“companion unit” is the term the City used to refer to accessory dwelling units and junior accessory dwelling units in the past). In this amendment, the City proposes to exempt attached ADUs and JADUs from needing to obtain a coastal development permit. Because ADUs and JADUs are commonly created through the addition to or the conversion of existing structures, the result of this amendment as proposed would exempt the majority of accessory dwelling units and junior accessory dwelling units from the coastal development permit process.

However, the distinction between “attached” and “detached” ADUs and JADUs is inapt and does not carry out the intent of Section 30610 of the Coastal Act, which is to only exempt improvements to an existing SFR, rather than the creation of new residential units. The purpose of Commission regulation Section 13250, which implements Section 30610 of the Coastal Act, is to describe certain classes of development that involve a risk of adverse environmental effects and therefore require a permit. But exempting ADUs that are attached to a SFR, but not ones that are detached, is not based on a distinction in terms of the impacts on coastal resources that the structures would have. Both attached and detached ADUs could be equally subject to coastal hazards and could have equal impacts on views, habitat, and other resources.

The Commission’s 2020 ADU guidance states that LCPs must ensure that new accessory dwelling units 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 proposed, the subject amendment does not remove any of the existing LCP protections for these resources, but development of accessory dwelling units must still be reviewed for compliance with these standards and all LCP policies, and where appropriate, the public access and recreation policies of the Coastal Act. This review can be streamlined, 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 coastal development permit. Thus, suggested modification no. 1 narrows the exemption for ADUs and JADUs from coastal permits to just those in the primary structure that involve no increase to habitable area or conversion of non-habitable area to habitable area. For the remainder of ADUs and JADUs, Commission staff has coordinated with the City to draft suggested modifications nos. 2 and 3 that allows for approval of ADUs and JADUs to be streamlined to reduce the time and cost burdens for applicants while still ensuring that the necessary findings regarding conformance with the LCP are made.

The second issues relates to conversion of existing non-conforming structures to ADUs and JADUs. While as noted, the proposed amendment would not modify the certified regulations addressing development requirements on premises containing or abutting environmentally sensitive lands, which include areas such as wetlands, coastal bluffs, beaches, and flood plains, it would amend Section 141.0302 to grant “setback allowances” with regards to the conversion of existing structures to an accessory dwelling unit or junior accessory dwelling unit. Specifically, Section 141.0302(D)(i) as proposed would allow conversion of an existing dwelling unit or accessory structure to an accessory dwelling unit or junior accessory dwelling unit if it is constructed in the same location and to the same dimensions as the existing structure without bringing the structure into conformance with required setbacks. Instead, the converted structure would be allowed to observe the same setback.

In most instances allowing reduced setbacks for accessory dwelling units would have little or no substantial impact on coastal resources, as they are relatively small and reduced setbacks are unlikely to significantly affect community character. However, the construction of a new accessory dwelling unit, or the conversion of a nonconforming structure into one, would have impacts if the structure were to be located in a sensitive resource area, such as on a bluff within the geologic setback, within a public view corridor, or within the setback from a sensitive wetland or upland habitat. Conversion of an existing non-primary structure into a new accessory dwelling unit or junior accessory dwelling unit that encroaches into a scenic view corridor, a sensitive habitat buffer, or a geologic setback, would extend the life expectancy and economic value of the nonconforming structure, exacerbating the degree of nonconformity. Thus, as proposed, the amendment could result in impacts to coastal resources protected by the policies of the LUP, and to address this, suggested modification no. 4 prohibits the conversion of structures that are non-conforming with regards to environmentally sensitive land regulations or public view requirements of the LCP.

The third issue relates to proposed changes to parking requirements. Under the certified LCP, an accessory dwelling unit is currently required to provide one off-street parking space unless it is 500 square feet or less, within a transit priority area, within a designated historical resource, already part of the existing single dwelling unit, within a residential

permit parking district, within one block of a car share station, or within one block of a bike share station. No parking is required at all for junior accessory dwelling units. With regards to the primary residence and the conversion of its off-street parking into an accessory dwelling unit, the certified LCP currently requires the replacement of parking provided on a premises when an existing garage is converted to a companion unit or demolished in conjunction with the construction of a companion unit. As proposed, the amendment would remove the parking requirement for all accessory dwelling units, in line with the current requirements for junior accessory dwelling units. Furthermore, the proposed amendment would remove the requirement that converted off-street parking be replaced.

However, the certified LCP long ago identified and mapped a Parking Impact Overlay Zone, the purpose of which Section 132.0801 describes as identifying the specific coastal beach and campus areas of the City that have parking impacts and to increase the off-street parking requirements accordingly. The aforementioned coastal beach area of the Parking Impact Overlay Zone is identified in the LCP as the “Beach Impact Area” (BIA) and generally conforms to the two-to-three blocks in closest proximity to the coast.

Because this amendment would create an allowance for a residential property to have an accessory dwelling unit, junior accessory dwelling unit, and a moveable tiny house (which would also not have a parking requirement) on a single lot – not withstanding floor area ratio limits – it represents a potential substantial intensification of residential development in the coastal zone without a commensurate increase in off-street parking. Coupled with the removal of the requirement that existing off-street parking be replaced if converted to an accessory dwelling unit, the amendment could result in a substantial increase in demand for parking on residential lots. In the Beach Impact Area, an increase in parking demand could result in residents of the accessory uses, the primary residence, or both, occupying public parking that would otherwise be used by coastal visitors, increasing the burden of accessing the coast and deterring coastal recreation.

To minimize impacts to public access in the most impacted parts of the coastal zone while recognizing the City’s goal of promoting housing and alternate transit use, suggested modification no. 4 only requires one off-street parking space for ADUs and JADUs located in the BIA but outside of the Transit Priority Area (TPA), defined as those lands within one-half mile of a major transit stop. Similarly, because moveable tiny houses are akin to JADUs and are a rarer form of accessory housing, suggested modification no. 5 only requires one off-street parking space in the BIA but outside the TPA, and only when there is another accessory dwelling unit on the premises. This will allow the City to reduce the financial and space burden of providing accessory dwelling units while still allowing for parking to be required in the most parking impacts areas of the coast that are not served by a major transit stop.

The fourth issue relates to the densification of residential uses in areas of the City vulnerable to sea level rise. A potential hazard relevant to accessory dwelling units and junior accessory dwelling units is that creation of additional housing units within areas vulnerable to flooding and sea level rise presents an intensification of use in a hazardous area. Their design in conjunction with City’s intent to increase the supply of affordable housing, moveable tiny houses are more likely to be occupied by a lower-income member of the public. Thus, the increase of affordable housing in the portions of the City currently

or anticipated to be in the floodplain could give rise to environmental justice impacts should they not be sited and designed in a manner to withstand flood hazards.

While accessory dwelling units and junior accessory dwelling units would not be exempted from the certified floodplain regulations applied to development within the defined Special Flood Hazard Area (SFHA), there is expected to be densification in areas of the City that, while not currently within the SFHA, have been identified as vulnerable to sea level rise and future flooding in the City's Sea Level Rise Vulnerability Assessment (2019). As these sites are not located in the SFHA, the City does not require the development regulations, such as flood-resistant design, that are currently required within the SFHA. Furthermore, any densification of development could extend the economic life of non-conforming or vulnerable structures or create expectations that new development should be allowed to be protected by shoreline protective devices, which have numerous, well-documented impacts on public access, public recreations, and other coastal resources.

To address the anticipated densification of accessory dwelling units in area of the City outside of the SFHA but mapped as vulnerable to sea level rise, suggested modifications nos. 4 and 5 address how ADUs, JADUs, and moveable tiny houses in such areas should be developed and appropriate agreements by property owners. Suggested modification no. 4 explicitly prohibits shoreline armoring to protect ADUs and JADUs from future coastal hazards, and applies the same flood-resistant construction and base elevation requirements as the nearest SFHA in proximity. ADU and JADU owners will also have to enter into agreement with the City and give notice to tenants acknowledging the risk of coastal hazards, migration of public tide lands, future non-delivery of services, waiver of shoreline protection, and potential for removal of the accessory units. Suggested modification no. 5 addresses moveable tiny houses and similarly prohibits shoreline protection and requires entering into an agreement with the City regarding hazards. However, because moveable tiny houses must be registered with the Department of Motor Vehicles and transportable by highway, the City will be treating them under its existing certified recreational vehicle and manufactured home flood regulations, which coupled with the inherently moveable nature of the houses makes them more adaptable to future coastal hazards.

The remainder of the City's amendment constitutes several amendments incorporating both state and local housing ordinances meant to promote more affordable housing, resource facilities for the homeless, and dwelling unit protections for low-income households.

In order to expand services to homeless and low-income segments of the public, the amendment will create new resource uses and expand the allowable zones of existing resources in the City. The amendment creates Low Barrier Navigation Centers (LBNC), temporary living facilities with case managers to connect homeless individuals to housing and other benefits, as a new separately regulated residential use and permit them by-right in most commercial and multi-family zones. Emergency shelters for the homeless, an existing use in the LCP, would likewise be expanded to be permitted by-right in community commercial zones. Transitional Housing and Permanent Supportive Housing would be permitted in all multi-family zones.

The amendment will also introduce or modify several density bonus programs aimed at developments incorporating affordable housing. Developments that construct at least 100% of pre-density bonus units as affordable to very low and low-income households will receive a density bonus of 80% outside of the TPA and an unlimited bonus within the TPA, and will also receive up to 5 development incentives (relaxed or waived development requirements), and an additional 33 feet or three stories in height, though this will not supersede the 30-foot height limit in the coastal zone. This amendment will also grant a density bonus of 35% to developments that have at least 20% of pre-density bonus units as affordable to low-income students, defined in the amendment. The amendment will also make it easier for development incorporating micro-units (none more than 800 square feet in size and averaging 600 square feet development-wide) to obtain density bonuses and clarify how density bonuses are calculated in the portions of the City that use floor area ratio-based density (e.g., Downtown).

The amendment will also incorporate state law by allowing employee housing for 6 or fewer employees to be permitted by-right in all single family zones, though such housing would still be subject to the same requirements, such as the environmentally sensitive land regulations, as other structures.

The amendment will also introduce a time-limited dwelling unit protection regulatory regime that will ensure that the number of dwelling units present on a site is not reduced due to new construction. Furthermore, the amendment will require that dwelling units affordable to very low income and low income households (whether deed restricted as affordable or simply occupied by such members of the public) be replaced with deed-restricted units affordable to very low income and low income households. The provisions also grant relocation assistance and right of first refusal by the displaced household on the replacement affordable units, which must be comparable in size and design as market rate units in the development. In line with state law, this regulatory regime would sunset on January 1, 2025.

These provisions do not raise coastal issues nor are likely to result in substantial adverse impact to coastal resources or public access and are not being modified. However, due to the non-conformance with the LCP from the proposed amendments regarding ADUs, JADUs, and moveable tiny houses, the amendment should be denied and submitted, and approved as modified with the suggested modifications to the provisions addressing the review and design of ADUs, JADUs, and moveable tiny houses.

The appropriate motions and resolutions begin on Page 9. The suggested modifications begin on page 11. The findings for denial of the Implementation Plan Amendment as submitted and approval of the plan, if modified, begin on Page 17.

BACKGROUND

The City's first IP was certified in 1988, and the City then assumed permit authority. The IP consisted of portions of the City's Municipal Code, along with some Planned District Ordinances (PDOs) and Council Policies. In 1999, the Commission certified the City's LDC, which primarily includes Chapters 11 through 15 of the municipal code. The LDC

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replaced the first IP and took effect in the coastal zone on January 1, 2000. The Commission has certified many IP amendments since 2000.

ADDITIONAL INFORMATION

Further information on the City of San Diego LCP Amendment No. LCP-6-SAN-21-0005-5 may be obtained from Alexander Llerandi, Coastal Planner, at (619) 767-2370 or SanDiegoCoast@coastal.ca.gov.

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EXHIBITS

- Exhibit 1 – Strikeout/underline ordinance
- Exhibit 2 – BIA/TPA map

I. OVERVIEW

A. LCP HISTORY

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

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

Since effective certification of the City's LCP, there have been numerous major and minor amendments processed by the Commission. These have included everything from land use revisions in several segments, to the rezoning of single properties, to modifications of citywide ordinances. In November 1999, the Commission certified the City's Land Development Code (LDC), and associated documents, as the City's IP, replacing the original IP adopted in 1988. The LDC became effective in January 2000.

B. STANDARD OF REVIEW

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

C. PUBLIC PARTICIPATION

Section 30503 of the Coastal Act requires local governments to provide the public with the maximum opportunity to participate in the development of the LCP amendment prior to submittal to the Commission for review. The City has held Planning Commission and City Council meetings with regard to the subject amendment request. All of those local hearings were duly noticed to the public. Notice of the subject amendment has been distributed to all known interested parties.

II. 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 No. LCP-6-SAN-21-0005-5 for the City of San Diego certified LCP, as submitted.

STAFF RECOMMENDATION OF REJECTION:

Staff recommends a **YES** vote. Passage of this motion will result in rejection of Implementation Program and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DENY CERTIFICATION OF THE IMPLEMENTATION PROGRAM AMENDMENT AS SUBMITTED:

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

2. MOTION:

I move that the Commission certify the Implementation Program Amendment No. LCP-6-SAN-21-0005-5 for the City of San Diego if it is modified pursuant to the staff recommendation.

STAFF RECOMMENDATION:

Staff recommends a **YES** vote. Passage of this motion will result in certification of the Implementation Program Amendment with suggested modifications and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO CERTIFY THE IMPLEMENTATION PROGRAM AMENDMENT WITH SUGGESTED MODIFICATIONS:

The Commission hereby certifies the Implementation Program Amendment for the City of San Diego if modified as suggested and adopts the findings set forth below on grounds that the Implementation Program Amendment, with the suggested modifications, conforms with and is adequate to carry out the certified Land Use Plans. 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. Section 126.0704 Exemptions from a Coastal Development Permit

The following coastal development is exempt from the requirement to obtain a Coastal Development Permit:

(a) Improvements to existing structures, ~~including the construction of attached Accessory Dwelling Units and Junior Accessory Dwelling Units in accordance with Section 141.0302~~ are exempt, except if the improvements involve any of the following:

(1) through (8) [No change in text]

(9) Accessory dwelling units and junior accessory dwelling units that are not wholly contained in the existing primary structure or include increases in habitable area or include conversion of non-habitable space. For purposes of Section 127.0704, such improvements also change the intensity of use and are considered development, and therefore require a coastal development permit.

2. Section 126.0707 Decision Process for a Coastal Development Permit

(a) A decision on an application for a City-issued Coastal Development Permit in the non-appealable area of the Coastal Overlay Zone shall be made in accordance with Process Two, which may be appealed to the Planning Commission in accordance with Section 112.0504, except that a decision on an application for a capital improvement program project or public project in the non-appealable area of the Coastal Overlay Zone shall be made in accordance with Section 126.0707(c), and a decision on an application for an Accessory Dwelling Unit or Junior Accessory Dwelling Unit in the non-appealable area of the Coastal Overlay Zone shall be made in accordance with Section 126.0707(g). ~~The decision may be appealed to the Planning Commission in accordance with Section 112.0504.~~

(b) through (c) [No change in text]

(d) Conditions Except for Coastal Development Permits issued in accordance with Section 126.0707(g), conditions may be imposed by the decision maker when approving a Coastal Development Permit to carry out the purpose and the requirements of this division. The conditions may include a provision for public access, open space, or conservation easements or the relocation or redesign of proposed site improvements. In any subdivision or other land division, such conditions shall be imposed at the time of the subdivision or other land division, rather than through subsequent development permits. When conditions pertaining to public access, open space, or conservation easements are imposed, the City Manager shall notify the Executive Director of the Coastal Commission as set forth in Section 126.0719.

(e) through (f) [No change in text]

(g) A decision on an application for a City-issued Coastal Development Permit for an Accessory Dwelling Unit or Junior Accessory Dwelling Unit in the non-appealable area of the Coastal Overlay Zone shall be made as follows:

(1) The Coastal Development Permit shall be issued as a Building Permit in accordance with Process One as specified in Section 112.0502 and Chapter 12, Article 9, Division 2.

A. Sections 126.0711, 126.0712, 126.0713, 126.0715, and 126.0716 related to recordation, issuance, initial utilization, time extension, and modification or amendment of a Coastal Development Permit shall not apply.

(2) If the proposed coastal development involves any of the activities in Section 126.0704(a)(1)-(2) or Section 126.0704(a)(4)-(8), a Coastal Development Permit shall be required in accordance with a Process Two as specified in Section 126.0707(a).

3. Section 126.0708 Findings for Coastal Development Permit Approval

~~An~~ Except for Coastal Development Permits issued in accordance with Section 126.0707(g), an application for a Coastal Development Permit may be approved or conditionally approved only if the decision maker makes all of the findings in Section 126.0708(a) and the supplemental findings in Section 126.0708(b) that are applicable to the proposed development. Coastal Development Permits issued in accordance with Section 126.0707(g) shall be approved if the administrative findings in Section 126.0708(c), and if applicable, the supplemental findings in Section 126.0708(b) are satisfied.

(a) Through (b) [No change in text]

(c) Administrative findings for Coastal Development Permits for Accessory Dwelling Units and Junior Accessory Dwelling Units in accordance with Section 126.0707(g):

(1) The proposed coastal development will not encroach upon any existing physical accessway that is legally used by the public or any proposed public accessway identified in a Local Coastal Program land use plan.

(2) The proposed coastal development permit will preserve existing public views to and along the ocean and other scenic coastal areas as specified in the Local Coastal Program land use plan and Chapter 13, Article 2, Division 4.

(3) The proposed coastal development complies with the Environmentally Sensitive Lands Regulations in Chapter 14, Article 3, Division 1.

(4) The proposed coastal development does not involve any of the activities in Section 126.0704(a)(1)-(2) or Section 126.0704(a)(4)-(8)

(5) The proposed coastal development is in conformity with the Local Coastal Program.

4. Section 141.0302 Accessory Dwelling Units and Junior Accessory Dwelling Units

[...]

(a) The following regulations are applicable to both ADUs and JADUs:

[...]

(2) Development Regulations

[...]

(D) The following setback allowances are applicable:

- (i) Conversion of existing structure to an ADU or JADU. No setback is required for an existing dwelling unit or accessory structure that is converted to an ADU or JADU, or to a portion of an ADU or JADU. An ADU or JADU that is constructed in the same location and to the same dimensions as an existing structure may continue to observe the same setbacks as the structure it replaced. An existing structure may not be converted to or reconstructed as an ADU or JADU if the

structure does not conform to the Environmentally Sensitive Lands Regulations in Chapter 14, Article 3, Division 1, or the public view regulations of Chapter 13, Article 2, Division 4.

(E) [No change in text]

(G) Within the Coastal Overlay Zone, the following regulations apply to ADUs or JADUs constructed outside of Special Flood Hazard Areas and within an area of future sea level rise (with a 75-year horizon) as determined by the City Manager based on the best available science adopted by the California Coastal Commission, as it applies to residential development:

- (i) The ADU or JADU shall comply with the regulations in Section 143.0146(c) and if applicable, Section 143.0146(g). The base flood elevation utilized, and the applicability of Section 143.0146(g), shall be based on the FIRM Zone of the Special Flood Hazard Area in closest proximity to the premises on which the ADU or JADU is proposed. The permit requirements of 143.0110(b) of Chapter 14, Article 3, Division 1 do not apply.
- (ii) Hard shoreline armoring shall not be constructed to protect an ADU or JADU from the effects of coastal hazards, including but not limited to sea level rise.
- (iii) The record owner of the ADU or JADU shall enter into an acknowledgement agreement with the City in a form that is approved by the City Attorney. The agreement shall include the following acknowledgements and provisions: 1) that the ADU or JADU is located in an area of future sea level rise 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 or JADU; and 6) that the structure may be required to be removed or relocated and the site restored if it becomes unsafe.
- (iv) The record owner of the ADU or JADU shall provide notice to all occupants of the ADU or JADU of the acknowledgements and provisions specified in Section 141.0302(a)(2)(G)(ii) and (iii).

(3) Parking Regulations

(A) No on-street parking spaces or off-street parking spaces are required for ADUs and JADUs except as specified in Section 141.0302(a)(3)(B). ~~If the applicant chooses to provide off-street parking spaces for ADUs and/or JADUs located on the premises, those spaces shall comply with the following:~~

- ~~(i) Off-street parking spaces may be located in any configuration, may be within the setback areas, and may include tandem spaced or mechanical lifts.~~
- ~~(ii) Off-street parking spaces shall be located within hardscape areas and shall comply with the minimum standards and guidelines to provide safe and efficient means of vehicular access to the lot.~~

(B) When an ADU or JADU is proposed on a premises located both within the Beach Impact Area of the Parking Impact Overlay Zone and outside of a Transit Priority Area, one off-street parking space located consistent with Section 141.0302(a)(3)(D) shall be required per ADU and/or JADU, unless any of the following apply:

- (i) The ADU or JADU is 500 square feet or less;
- (ii) The premises is located within a historical district that is a designated historical resource;
- (iii) The ADU or JADU is attached to the proposed or existing primary dwelling unit or accessory structure;
- (iv) The premises is located within a residential permit parking district;
- (v) There is a car share vehicle located within one block of the premises.

(C) When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an ADU or JADU, or converted to an ADU or JADU, replacement of those off-street parking spaces is not required unless the premises is located both within the Beach Impact Area of the Parking Impact Overlay Zone and outside of a Transit Priority Area, in which case the parking shall be replaced in a location consistent with Section 141.0302(a)(3)(D).

(D) If off-street parking spaces are required in accordance with Section 141.0302(a)(3)(B) or 141.0302(a)(3)(C), or if the applicant chooses to provide off-street parking spaces for an ADUs or JADU located on the premises, those spaces shall comply with the following:

- (i) Off-street parking spaces may be located in any configuration, may be with the setback areas, and may include tandem spaces or mechanical lifts.
- (ii) Off-street parking spaces shall be located within hardscape areas and shall comply with the minimum standards and guidelines to provide a safe and efficient means for vehicular access to the lot.

5. Section 141.0318 Moveable Tiny Houses

[...]

(a) Development Regulations

(1) A moveable tiny house shall be:

[...]

(B) exempt from parking regulations unless the moveable tiny house is located in the Beach Impact Area of the Parking Overlay Zone but outside of the Transit Priority Area, in which case one off-street parking space shall be required if there is already an accessory residential unit present on the same premises.

[...]

(12) Within the Coastal Overlay Zone, the following regulations apply to moveable tiny houses constructed outside of the Special Flood Hazard Areas and within an area of future sea level rise (within a 75-year horizon) as determined by the City Manager based on the best available science adopted by the California Coastal Commission, as it applies to residential development:

- (i) Hard shoreline armoring shall not be constructed to protect a moveable tiny house from the effects of coastal hazards, including but not limited to sea level rise.
- (ii) The record owner of the moveable tiny house shall enter into an acknowledgement agreement with the City in a form that is approved by the City Attorney. The agreement shall include the following acknowledgements and provisions: 1) that the moveable tiny house is located in an area of future sea level rise 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 right under Coastal Act Section 30235 and related LCP policies to hard shoreline armoring to protect the moveable tiny house; and 6) that the structure may be required to be removed or relocated and the site restored if it becomes unsafe.

(iii) The record owner of the moveable tiny house shall provide notice to all occupants of the moveable tiny house of the acknowledgements and provisions specified in Section 141.0318(a)(12)(A) and (B).

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

A. AMENDMENT DESCRIPTION

The subject amendment is to the City of San Diego's Land Development Code (LDC), which serves in large part as the certified Implementation Plan (IP) of the City's LCP. The 2019 Housing Legislation amendment package is designed to simultaneously incorporate several different state housing legislation ordinances passed by the state in 2019 into the certified LCP. The amendment is grouped into four issue areas: housing for the homeless, affordable housing regulations, accessory dwelling units and junior accessory dwelling units, and miscellaneous housing items.

Regarding housing for the homeless, the amendment addresses the following items:

- **Low Barrier Navigation Centers:** Assembly Bill 101 requires local jurisdictions to permit Low Barrier Navigation Centers (LBNC) that connect individuals experiencing homelessness with transitional housing by-right in mixed-use and commercial zones that permit multi-family uses. LBNC would be added as a new separately regulated residential use.
- **Emergency Shelters:** Senate Bill 2 requires local jurisdictions to identify a zone or zones where emergency shelters are allowed by-right without a conditional use or other discretionary permit. These identified zones are located primarily in the Midway-Pacific Highway Community, which was recently rezoned as part of a comprehensive community plan update, so this amendment amends the community commercial base zone tables to permit emergency shelters by-right in all such zones.
- **Transitional Housing and Permanent Supportive Housing:** Assembly Bill 2 requires local jurisdictions to permit Transitional Housing Facilities (THF) and Permanent Supportive Housing (PSH) by-right in all zones that permit multi-family development. The City previously implemented this in the 12th Update to the Land Development Code, but subsequently realized that they inadvertently omitted several eligible zones. Thus, this amendment amends the base use tables for multi-

family zones to add the RM-1-5 zone, the base use tables for industrial uses to add the IP-3-1 zone, and the mixed-use base zone use table to permit THF and PSH by-right.

Regarding affordable housing, the amendment addresses the following items:

- **Density Bonus for 100% Affordable Projects (Pre-Density Bonus):** Assembly Bill 1763 requires local jurisdictions to provide a new density bonus program that grants a density bonus of 80% outside of the Transit Priority Areas (TPAs) and an unlimited bonus within TPAs to projects that construct at least 100% of the pre-density bonus as affordable to very low income and low-income households, except that 20% may be reserved for moderate income households. Eligible projects are also required to receive four development incentives and within the TPAs, three additional stories or thirty-three feet in height, though not in the coastal height limit overlay zone. Waivers of development regulations are not permitted with this program. This amendment would amend the City's affordable housing regulations to provide this required incentive, with a local adaptation to allow five incentives as opposed to four.
- **Density Bonus for 100% Affordable Projects (Project Total):** While not mandated by state law, this amendment is intended to provide a similar bonus to projects within TPAs that are fully affordable to very low, low, and moderate income households. This amendment would amend the City's affordable housing regulations to provide an unlimited density bonus, five development incentives, and an additional three stories or thirty-three feet in height to projects within TPAs, but outside of the coastal height overlay zone, that provide 100% of the total pre-density bonus and post-density bonus units as affordable to very low, low, and moderate income households in any combination.
- **Density Bonus for Lower Income Students:** Senate Bill 1227 requires local jurisdictions to provide a density bonus of 35% to projects that provide 20% of the pre-density bonus units as affordable to lower income students, as defined as students who have a household income and asset level that does not exceed the level for Cal Grant A or Cal Grant B award recipients. The amendment would amend the City's affordable housing regulations to provide this incentive, as well as allow two incentives where none are provided by state law.
- **Micro Unit Density Bonus:** While not mandated by state law, this amendment provides regulatory relief for an existing City density bonus program for micro units, which must average no more than 600 square feet with no dwelling unit exceeding 800 square feet. This amendment would amend the City's affordable housing regulations to eliminate the requirement that micro unit density bonus projects comply with height and setback requirements, and would allow use of the program within the Downtown Community Planning Area once other bonuses and incentive programs specific to Downtown are utilized.
- **Density Bonus on FAR-Based Density Sites:** While not mandated by state law, this amendment is a correction to the City's regulations to clarify how density bonuses

are calculated within zones where the density is controlled by floor area ratio (FAR), including Downtown and mixed-use base zones. This amendment would amend the City's affordable housing regulations to clarify the method by which density bonuses are calculated for FAR-based density zones where the adopted land use plan includes an allowable density range in dwelling units per acre (i.e., mixed-use zones) and those that include only a maximum FAR (i.e., downtown). Additionally, the amendments will clarify that incentives cannot be used to increase FAR in such zones, which would result in an additional density bonus.

- **Miscellaneous AHR Clean-Up Items:** This amendment will also amend the City's affordable housing regulations to provide minor clean-up and corrections.

None of the above changes would amend or supersede the coastal resource protection policies of the certified LCP, namely those addressing environmentally sensitive lands. Development under these revisions would still be subject to the public access and coastal protection policies of the certified LCP, such as policies governing protection of public view corridors and the environmentally sensitive lands regulations.

Regarding accessory dwelling units and junior accessory dwelling units, this housing amendment addresses the following items:

- **Replacement of the Companion Unit, Junior Companion Unit, and Moveable Tiny Homes Regulations with New Accessory Dwelling Unit (ADU) and Junior Accessory Dwelling Unit (JADU) Regulations in Order to Implement New State ADU and JADU Legislation:** Pursuant to Assembly Bills 68, 587, and 881, and Senate Bill 13, this amendment will strike the existing "Companion Unit, Junior Unit, and Moveable Tiny Houses" regulations in Section 141.0302 in their entirety and replace them with new "Accessory Dwelling Unit and Junior Accessory Dwelling Unit Regulations" that comply or exceed state law. Starting with replacing the term "companion unit" and "junior unit" with "accessory dwelling unit" and "junior accessory dwelling unit," respectively, this amendment provides increased allowances for ADUs in conjunction with multiple dwelling unit development, prohibits the requirement of replacement parking when garages or carports are converted to ADUs or JADUS, and allows at least one ADU on a premises regardless of maximum lot coverage, maximum floor area ratio, or minimum space requirements. ADUs will also be allowed to encroach up the side property lines (but not front yard or street yard property lines), except where inconsistent with the coastal resources protection of the environmentally sensitive lands regulations and the public view corridor requirements. Moveable Tiny Houses, which do not fall under the state ADU laws, will be separated out into their own section.
- **Affordable ADU Incentives:** Assembly Bill 671 requires local jurisdictions to incentivize the construction of deed-restricted affordable ADUs, without specific parameters or direction as to what those incentives should be. This amendment would include in the new ADU and JADU regulations a new affordable ADU incentive that would allow the construction of one additional ADU for every ADU deed-restricted to very low, low, and moderate income households for a period of 15 years. Outside of TPAs, the number of bonus ADUs is limited to one, and within TPAs, there is no limit on the number of bonus ADUs permitted.

- ADU and JADU Parking: Government Code Section 65852.2(d), prohibits the City from requiring parking for ADUs in any of the following circumstances:
 - Within one-half-mile walking distance to public transit (TPA)
 - Within a designated historic district
 - When the ADU is part of the proposed or existing primary residence or an accessory structure (i.e. if it is attached to an existing structure)
 - When on-street parking permits are required but not offered to the occupant of the ADU;
 - When there is a car share vehicle within one block of the ADU.

When the above does not apply, state law allows the City to require parking that does not exceed one space per ADU or per bedroom, whichever is less. In this amendment, the City has proposed to drop parking requirements for ADUs and JADUs entirely.

Regarding miscellaneous housing items, this housing amendment addresses the following items:

- Employee Housing (6 or fewer): California Health and Safety Code Section 17021.5(b) requires employee Housing for 6 or fewer employees to be permitted by-right in all zones that permit single-family. This amendment would allow Employee Housing (6 or fewer) by-right as a limited use in all zones that permit single dwelling units.
- Residential Development Consistent with the Land Use Plan: While not mandated by state law, this amendment would amend the General Rules for Base Zones to allow residential mixed-use development that exceeds the allowable density of the base zone but complies with the density identified in the Land Use Plan to be permitted by-right with a construction permit, rather than through a Planned Development Permit. No changes would be made to coastal development permit requirements.
- Dwelling Unit Protection Regulations: Senate Bill 330 requires local jurisdictions to ensure that the number of dwelling units present on a site is not reduced in quantity as a result of a new single family, multi-family, residential mixed-use (at least 2/3 residential), transitional housing, or permanent supportive housing project. It further requires that protected dwelling units affordable to very low income and low income households (including both deed-restricted units and units occupied by such households without a deed restriction in place) be replaced with deed-restricted units affordable to very low income and low income households. Additionally, the state legislation includes provisions for relocation assistance and right of first refusal in limited circumstances. This amendment would create a new division in chapter 14, article 3 entitled “Dwelling Unit Protection Regulations” to implement this state law, and would sunset on January 1, 2025.

Regarding moveable tiny houses, it should be noted that their introduction as a new separately regulated residential use and related development regulations is being processed in the related LCP amendment no. LCP-6-SAN-21-0006-5, also being presented at the December 2021 hearing. However, this subject amendment will slightly modify the development regulations for moveable tiny houses by breaking them out into their own separate section, with no other changes proposed. Thus, this action will contain the same suggested modification as contained in LCP-6-SAN-21-0006-5 regarding certain development regulations so as to be consistent in language and intent.

B. CONFORMANCE WITH THE CERTIFIED LAND USE PLANS

The standard of review for LCP implementation submittals or amendments is their consistency with and ability to carry out the provisions of the certified Land Use Plan(s).

In the case of the City of San Diego, the City's LUPs are comprised of community planning areas based on its established neighborhoods and future urbanizing areas. Predicated on those community planning areas, the City utilized the geographic segmentation provisions of the LCP regulations and developed its land use plan component covering twelve different communities (i.e., North City, La Jolla, Pacific Beach, Mission Beach, Ocean Beach, Peninsula, Otay-Mesa Nestor, and others). Each community plan or LCP Land Use Plan contains policies that protect public views, scenic resources, public access, recreational opportunities and sensitive coastal resources including, but not limited to, beaches, bluffs, slopes, hillsides and environmentally sensitive lands in that community. The Commission's review of the proposed amendment to the Land Development Code must ensure that development is approved only when consistent with the certified LUPs.

Listed below are representative policy excerpts contained in the certified Land Use Plan segments in the Coastal Overlay Zone for the City of San Diego.

Torrey Pines Community Plan

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

La Jolla LCP Land Use Plan

- Introduce opportunities for the production of more affordable housing within La Jolla to meet the housing needs of all income levels.
- Maintain a diversified, yet balanced land use pattern which includes providing adequate levels of commercial retail services, residential development, and cultural opportunities within existing commercial areas, while limiting additional office use within commercially designated districts.

- Revitalize commercial retail areas to strengthen, reinforce, and unify existing retail districts within La Jolla.
- Provide an adequate circulation system to serve the La Jolla community that promotes the use of bicycles and public transit and shuttle service as alternative forms of transportation for residents and visitors to La Jolla.
- The City should ensure that proposed development and redevelopment projects adhere to the City's Storm Water Runoff and Drainage Regulations and Storm Water Standards Manual in order to limit impacts to water resources (including coastal waters), minimize disruption of the area's natural hydrologic regime, minimize flooding hazards while minimizing the need for flood control facilities, reduce impacts to environmentally sensitive lands, and implement federal and state regulations.

Mission Beach Precise Plan and Local Coastal Program Addendum

- The encouragement of all types of individuals and family sizes to live in Mission Beach.
- The promotion of an economically balanced community through the investigation of individual and community rehabilitation efforts, changes in taxing and assessment procedures, and the use of subsidy funds where applicable.
- The accommodation of commercial facilities necessary to serve the needs of tourists attracted to the community by the beaches.
- The provision of increased parking in order to reduce the serious deficit that presently exists.
- Watershed management and floodplain regulation should provide for the natural sand flow to beaches. The impact of all public and private alterations of cliffs and shorelines should be carefully studied with the goal of minimizing erosion.

Mira Mesa Community Plan

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

Ocean Beach Community Plan and Local Coastal Program

- Reduce vehicular traffic demand placed on the street network by encouraging the use of alternative modes of transportation, including public transit, bicycles, and walking.
- Efficiently manage on-street parking to better serve the beach and commercial areas.

- Support transitional housing uses in Ocean Beach.
- Provide housing for all economic levels.
- Enforce the Coastal Zone Affordable Housing Replacement Program to facilitate replacement of existing affordable housing units and the retention of existing affordable units. Required replacement housing should be constructed in Ocean Beach.
- 2.1.4 Support existing and new transitional housing projects in Ocean Beach.
- 2.1.5 Retain and expand the number of affordable housing units in Ocean Beach.
- 2.2.4 Develop commercially designated properties in accordance with the land use designations of the plan. The commercially designated properties fronting Newport Avenue and Niagara Avenue are prime locations for high-priority commercial recreation and visitor serving uses to meet the demands of goods and services required by the tourist and local populations. Priority uses include overnight accommodations, dining, retail, and recreational facilities, as well as mixed-use development with ground-floor commercial uses, and such uses will be encouraged over general commercial uses in these areas.
- 7.4.6 Allow new construction within floodplain areas only in accordance with adopted development regulations and proper setbacks and buffer areas from wetland areas as applicable.
- 7.6.6 Monitor sea level rise impacts and adjust adaptation strategies as needed over time.

[...]

c. When designing projects, consider the additional benefit of localized attenuation of sea level rise impacts through implementation of the hydromodification measures designed to reduce and slow the amount of water runoff and flood risk management efforts required by the Municipal Storm Water Permit.

Pacific Beach Community Plan

- Sufficient parking is not available in some areas of Pacific Beach, particularly in the summer and on weekend evenings. Because Pacific Beach also lacks sufficient garage space and off-street parking, streets are also impacted by the on-street parking of recreation vehicles and boats. Recent development has, however, provided adequate parking.
- Enhance existing public access to the beach, bay, and park areas along the shoreline to benefit community residents and visitors.

- Incorporate parking facilities jointly with Mission Bay Park, and reduce the impact of visitor parking in areas closest to the beach and bay through a program of incentives, such as peripheral parking centers and improved transit.
- The City shall consider changes to the Municipal Code that will permit a reduction in parking requirements for mixed use projects which utilize transit-oriented development standards (identified in the commercial element of this plan) and incorporate transportation demand management programs. These changes to the Code will not be pursued where there would be adverse effect on surrounding neighborhoods or within the beach impact area.
- Enhance existing public access to the beach, bay, and park areas along the shoreline to benefit community residents and visitors.
- Affordable housing opportunities (e.g., studios, one bedroom) have been reduced (both in absolute numbers and as a percentage of housing stock) because of soaring land costs and a decrease in allowable residential densities.
- New development shall be designed to promote transit, bicycle, and pedestrian use.

Otay-Mesa Nestor Community Plan

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

1. FINDINGS FOR DENIAL

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, as well as other types of affordable housing. Importantly, state law continues to explicitly require that Coastal Act (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, JADUs, and other forms of affordable housing is to harmonize state 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 affordable housing.

Much of the City of San Diego's coastal zone consists of already-developed residential areas with adequate public services that may be appropriate for in-fill affordable housing

development, both inside and outside of the coastal zone. Within the coastal zone, there are also substantial areas within the City where ADUs and other types of affordable housing 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. As described below, there also concerns that as proposed, the amendment would not fully protect some specific coastal resources, including public access in the City's most parking impacted shoreline areas, and the avoidance of hazards.

CDP Requirements

The first concern is procedural in nature. As currently certified, Section 126.0702 of the Land Development Code states when a coastal development permit is required, and Section 126.0704 lists the types of development that are exempt from the requirement to obtain a coastal development permit. Section 126.0704(a) states that improvements to existing structures are exempt unless they involve one of nine enumerated characteristics, including being located on a beach, wetland, within 50 feet of the edge of a coastal bluff; an increase in size or height of more than 10 percent. The ninth item on the list of exclusions from exemptions "a companion unit as described in Section 141.0302" ("companion unit" is the term the City used to refer to accessory dwelling units and junior accessory dwelling units in the past). Thus, as currently certified, development of an accessory dwelling unit or junior accessory dwelling unit (i.e., companion unit) currently requires the issuance of a coastal development permit.

In this amendment, the City proposes to delete item number nine from the non-exempt development list of Section 126.0704(a) and instead amend the preamble of that section to state that improvements to existing structures, "including the construction of attached accessory dwelling units and junior accessory dwelling units in accordance with Section 141.0302," which is the section containing the development regulations for accessory dwelling units and junior accessory dwelling units, would be exempt from needing to obtain a coastal development permit unless the work involved one of the remaining eight items on the non-exempt development list of subsection (a). The City has stated that *detached* accessory dwelling units would not be covered by the proposed exemption and would still require a coastal development permit, and that its rationale was largely taken from guidance issued by Coastal Commission staff.¹

The result of this proposal would exempt the majority of accessory dwelling units and junior accessory dwelling units from the coastal development permit process. Accessory dwelling units are commonly constructed atop or adjacent to existing structures, whereas junior accessory dwelling units by their definition are constructed within existing structures. Thus, this most common type of ADU would be exempted from CDP review. In addition, because the City's definition of a "structure" required only that the structure be connected by some physical construction such as a wall or fence, even ADUs that would typically be considered "detached" could easily be designed to be attached to avoid the need for a coastal development permit. Finally, while projects that result in an "intensification of use" would not be exempt, the section defines intensification of use to mean a change in use

¹ 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>

that required additional off-street parking. Because the City proposes to exempt all accessory dwelling units and junior accessory dwelling units from parking requirements, they would not be viewed by the City as an intensification of use despite the fact that the number of residential units and inhabitants on a premises would be increasing.

Coastal Act Section 30610(a) states that improvements to existing single-family residences (SFR) are exempt from Coastal Act permitting requirements unless they are of a type that the Commission's regulations identify as involving a risk of adverse environmental effects. Section 13250 of the Commission's regulations provide greater detail on what is allowed as exempt improvements to SFRs. Relevant here, Section 13250(a) clarifies what is considered to be a part of an existing SFR and can therefore be improved without the need for a coastal development permit. Section 13250(a)(2) specifically excludes guest houses and self-contained residential units from the list of structures on the property that are normally associated with a SFR and that may be approved pursuant to an exemption determination. However, Section 13250(a)(1) states that all fixtures and other structures directly attached to a residence are also considered to be a part of the SFR, but does not refer to, or exclude, guest houses or self-contained residential units from the list of structures associated with a SFR and allowed to be improved without a permit. For this reason, the Commission has in the past advised that ADUs that are attached to a SFR may be exempt but that detached ADUs may not be exempt.

Upon further consideration, the Commission finds that this distinction is inapt and does not carry out the intent of Section 30610 of the Coastal Act, which is to only exempt improvements to an existing SFR, rather than the creation of new residential units. The purpose of Commission regulation Section 13250 (Cal. Code of Regs., tit. 14) is to describe certain classes of development that involve a risk of adverse environmental effects and therefore require a permit. But exempting ADUs that are attached to a SFR, but not ones that are detached, is not based on a distinction in terms of the impacts on coastal resources that the structures would have. Both attached and detached ADUs could be equally subject to coastal hazards and could have equal impacts on views, habitat, and other resources. Accordingly, the provision should be interpreted in a protective manner and in a way that is most consistent with Section 30610(a) of the Coastal Act, which only exempts improvements to existing SFRs, rather than the creation of new residences, even if they happen to be attached to an existing SFR. For these reasons, the Commission finds that the creation of a self-contained living unit, in the form of an ADU, is not an "improvement" to an existing SFR. Rather, it is the creation of a new residence. This is true regardless of whether the new ADU is attached to the existing SFR or is in a detached structure on the same property. The Commission therefore rejects the proposed LCPA's creation of CDP exemptions for certain classes of ADUs.

While for purposes of exempting review under the Coastal Act, an ADU is the creation of a new residence, the Commission notes that an ADU is not an identical type of development to a primary residential unit. An ADU is just that; an *accessory* unit, smaller in size than the primary unit, and thus there may be circumstances where accessory units could be considered significantly different in character and scale compared to the surrounding community, and may not necessarily provide an equivalent level of housing density compared to a primary residential dwelling.

The Commission's 2020 ADU guidance states that LCPs must ensure that new accessory dwelling units 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 accessory dwelling units and junior accessory dwelling unit provisions have been designed to ensure that development avoids impacts to all coastal resources; however, this does require that such development be reviewed for compliance with these standards and all LCP policies, and where appropriate, the public access and recreation policies of the Coastal Act. This review can be streamlined, 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 coastal development permit. The City has suggested that this review could be done outside of the coastal development process, but to fully ensure that the review involves specifically determining the consistency with the resource protection policies of the Coastal Act, a CDP should be required as part of the review process, even if streamlined, for all accessory dwelling units and junior accessory dwelling units.

Nonconformities Regarding Setbacks and Views

While as proposed, the amendment would not modify the certified regulations addressing development requirements on premises containing or abutting environmentally sensitive lands, which include areas such as wetlands, coastal bluffs, beaches, and flood plains, it would amend Section 141.0302 to grant "setback allowances" with regards to the conversion of existing structures to an accessory dwelling unit or junior accessory dwelling unit. Specifically, Section 141.0302(D)(i) as proposed would allow conversion of an existing dwelling unit or accessory structure to an accessory dwelling unit or junior accessory dwelling unit if it is constructed in the same location and to the same dimensions as the existing structure without bringing the structure into conformance with required setbacks. Instead, the converted structure would be allowed to observe the same setback.

In most instances allowing reduced setbacks for accessory dwelling units would have little or no substantial impact on coastal resources, as they are relatively small and reduced setbacks are unlikely to significantly affect community character. However, the construction of a new accessory dwelling unit, or the conversion of a nonconforming structure into one, would have impacts if the structure were to be located in a sensitive resource area, such as on a bluff within the geologic setback, within a public view corridor, or within the setback from a sensitive wetland or upland habitat. Conversion of an existing non-primary structure into a new accessory dwelling unit or junior accessory dwelling unit that encroaches into a scenic view corridor, a sensitive habitat buffer, or a geologic setback, would extend the life expectancy and economic value of the nonconforming structure, exacerbating the degree of nonconformity. Thus, as proposed, the amendment could result in impacts to coastal resources protected by the policies of the LUP, and the accessory dwelling unit, regardless if it is new or a conversion of an existing structure, should instead conform to required setbacks that protect coastal resources. Thus, as proposed, the LCPA could result in impacts to coastal resources protected by the policies of the LUP.

Parking Requirements for Accessory Units and Primary Structures

With regard to the proposed changes to parking requirements, the certified LCP includes requirements that residential properties account for their parking needs on their own properties, referred to as “off-street” parking requirements (e.g., typically in garages, carports, covered parking, driveways, etc.). Under the certified LCP, an accessory dwelling unit is currently required to provide one off-street parking space unless it is 500 square feet or less, within a transit priority area, within a designated historical resource, already part of the existing single dwelling unit, within a residential permit parking district, within one block of a car share station, or within one block of a bike share station. No parking is required at all for junior accessory dwelling units. With regards to the primary residence and the conversion of its off-street parking into an accessory dwelling unit, the certified LCP currently requires the replacement of parking provided on a premises when an existing garage is converted to a companion unit or demolished in conjunction with the construction of a companion unit.

As proposed, the amendment would remove the parking requirement for all accessory dwelling units, in line with the current requirements for junior accessory dwelling units. Furthermore, the proposed amendment would remove the requirement that converted off-street parking be replaced.

Because the City’s coastal zone is a highly visited year-round destination containing several popular commercial, natural, and entertainment destinations, it has long experienced higher-than-average parking constraints and related public access impacts. In recognition of this, the certified LCP long ago identified and mapped a Parking Impact Overlay Zone, the purpose of which Section 132.0801 describes as identifying the specific coastal beach and campus areas of the City that have parking impacts and to increase the off-street parking requirements accordingly. The aforementioned coastal beach area of the Parking Impact Overlay Zone is identified in the LCP as the “Beach Impact Area” and generally conforms to the two-to-three blocks in closest proximity to the coast.

Because this amendment would create an allowance for a residential property to have an accessory dwelling unit, junior accessory dwelling unit, and a moveable tiny house (which would also not have a parking requirement) on a single lot – not withstanding floor area ratio limits – it represents a potential substantial intensification of residential development in the coastal zone without a commensurate increase in off-street parking. Coupled with the removal of the requirement that existing off-street parking be replaced if converted to an accessory dwelling unit, the amendment could result in a substantial increase in demand for parking on residential lots. In the Beach Impact Area, an increase in parking demand could result in residents of the accessory uses, the primary residence, or both, occupying public parking that would otherwise be used by coastal visitors, increasing the burden of accessing the coast and deterring coastal recreation.

Thus, as proposed, the LCPA could result in impacts to the public access and cannot be found in conformance with the policies of the LUP.

Floodplain

A potential hazard relevant to accessory dwelling units and junior accessory dwelling units is that creation of additional housing units within areas vulnerable to flooding and sea level

rise presents an intensification of use in a hazardous area. Their design in conjunction with City's intent to increase the supply of affordable housing, moveable tiny houses are more likely to be occupied by a lower-income member of the public. Thus, the increase of affordable housing in the portions of the City currently or anticipated to be in the floodplain could give rise to environmental justice impacts should they not be sited and designed in a manner to withstand flood hazards.

While accessory dwelling units and junior accessory dwelling units would not be exempted from the certified floodplain regulations applied to development within the defined Special Flood Hazard Area (SFHA), there is expected to be densification in areas of the City that, while not currently within the SFHA, have been identified as vulnerable to sea level rise and future flooding in the City's Sea Level Rise Vulnerability Assessment (2019). This determination was made by applying the current best available science, such as the Coastal Storm Modeling System (CoSMoS) maintained by the United States Geological Survey. These areas vulnerable to sea level rise but not yet within the mapped SFHA, and include portions of La Jolla Shores, Mission Beach, Pacific Beach, Ocean Beach, and Peninsula, among others. Throughout the City, but in these areas 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. As these sites are not located in the SFHA, the City does not require the development regulations, such as flood-resistant design, that are currently required within the SFHA. Furthermore, any densification of development could extend the economic life of non-conforming or vulnerable structures or create expectations that new development should be allowed to be protected by shoreline protective devices, which have numerous, well-documented impacts on public access, public recreations, and other coastal resources. Thus, because as submitted, the proposed amendment would allow accessory dwelling units and junior accessory dwelling units in identified hazardous areas without providing any notification to property owners of the risk, or requiring that such homes be designed to accommodate additional elevation or other adaptation strategies in the future, or ensuring that shoreline protection will not be constructed to protect the homes, the amendment cannot be found consistent with the certified Land Use Plan.

2. FINDINGS FOR APPROVAL

CDP Requirements

As defined by the Coastal Act, development refers to both "the placement or erection of any solid material or structure" on land as well as any "change[s] in the density or intensity of use of land[.]" (Pub. Res. Code § 30106.) Many ADUs and JADUs may constitute development if they include, for example, new construction of a detached ADU, new construction of an attached ADU or JADU, or conversion of an existing, uninhabitable, attached or detached space to an ADU or JADU (such as a garage, storage area, basement, or mechanical room). The construction of new structures constitutes the "placement or erection of solid material," and the conversion of existing uninhabitable space would generally constitute a "change in the density or intensity of use." Therefore, these activities would generally constitute development in the coastal zone that requires a CDP or other authorization. (Pub. Res. Code § 30600.)

Unlike new construction, the conversion of an existing, legally established habitable space to a ADU or JADU within an existing residence, without removal or replacement of major structural components (e.g., roofs, exterior walls, foundations, etc.), and which does not change the intensity of use of the structure, may not constitute development within the definition in the Coastal Act. An example of a repurposed, habitable space that may not constitute new development is the conversion of an existing bedroom within a primary structure.

Thus, in order to streamline the approval of the above described ADUs and JADUs that have the least likelihood to create adverse impacts to coastal resources while ensuring continued coastal permitting review of the remaining majority of ADU and JADU types, suggested modification no. 1 allows ADUs and JADUs that are located within the existing primary structure and do not increase the existing habitable area of the structure or convert non-habitable area to be exempted from obtaining a coastal development permit, while ADUs and JADUs that do not meet all of that criteria will still be required to obtain a coastal development permit. Such wholly internal units do not pose much risk of adverse impacts and constitute a minority of accessory unit design, as the size and configuration of many properties in the coastal zone require that some alteration or conversion of existing structures in order to accommodate a new attached accessory dwelling unit.

With regards as to manner in which the remaining majority of accessory units that do not meet the above exemption criteria would obtain a coastal development permit, the City and Commission coordinated closely in devising a manner of permit review that would fit into the City's existing permit processing procedures while emulating the more streamlined waivers that the Commission uses for developments that are not anticipated to create substantial adverse impacts and warrant a more administrative review.

After meetings with the City, they are no longer proposing to wholly exempt all ADUs and JADUS city-wide from coastal permitting requirements, no longer wishing to amend the coastal development permit requirements for ADUs and JADUs located in the portions of the City's coastal zone that are appealable to the Commission, as those properties represent the minority of the coastal zone but contain the properties with the highest potential to adversely impact public access, public views, and sensitive habitat. Instead, the City wishes to only streamline coastal permitting review of ADUs and JADUs located in the portions of the coastal zone not appealable to the Commission. For ADUs and JADUs in the non-appealable area of the coastal zone, the City has worked with the Commission to draft Suggested modification nos. 2 and 3. Suggested modification no. 2 will allow ADUs & JADUs to streamline the coastal permit decision process. Coastal development permit applications for ADUs and JADUs in the City's coastal zone areas not appealable to the Commission would be reviewed under Process One, the City's lowest, staff-level permitting process. This coastal permitting process would be akin to a building permit administrative review, and the sections of the LCP that require recordation of the coastal development permit, place an expiration date on the permit, allow time extensions on the permit, and allow amendments of the permit would not apply to this new ADU-specific permit. In this way, this new permit would function much like the Commission's own permit waivers, as both are a form of approval for projects that do not have the potential for impacts to coastal resources, and as a streamlined approval, do not have expiration dates, and do not allow for future amendments.

Because this Process One ADU-specific permit would still be a coastal development permit, it will still require that necessary findings be made in order to approve and issue the permit. The LCP already contains in Section 126.0708 the necessary findings for coastal development permits, and in coordination with the City, suggested modification no. 3 adds a new subsection (c) listing the required administrative findings for this newly created ADU-specific coastal permit type. The new ADU-specific coastal development permit will need to find that the proposed development will not encroach upon any existing or proposed public accessway identified in the certified land use plan, that the development will preserve existing or provide required public views to and along the ocean listed in the land use plan and the Land Development Code, the development will comply with the environmentally sensitive land regulations, the development does not involve the aforementioned non-exempt features for coastal development permit in Section 126.0704, and that the development is in conformance with the certified LCP.

With the above suggested modifications, only a minority of ADUs and JADUs will be exempted from coastal permit review, and the remainder will meet the City's goal of streamlining the financial and time burdens of coastal development permits in order to encourage construction of ADUs and JADUs while still obtaining a coastal development permit and its related review to ensure conformance with the requirements of the LCP.

Nonconformities Regarding Setbacks and Views

Because many ADUs and JADUs involve the conversion of existing structures, some of which may be non-conforming with regards to development requirements of the certified LCP, it is important to ensure that any future conversions for ADUs and JADUs do not exacerbate an existing non-conformity with regards to setbacks from habitats, coastal bluffs, or public view corridors. Suggested modification no. 4 prohibits the conversion of a structure into an ADU or JADU if it does not conform with the environmentally sensitive land regulations or public view regulations of the LCP. This will ensure that coastal resources are protected while allowing the majority of property owners who do not have such non-conforming structures to convert existing structures to ADUs and JADUs.

Parking Requirements for Accessory Units and Primary Structures

Protecting street parking is particularly important in the "Beach Impact Area" (BIA) of the City's Parking Impact Overlay Zone, a delineated area along the coast where the demand for parking is particularly high, and thus all development is required to adhere to a higher-than-normal off-street parking requirement due to the outsized impact that parking spillover could have on public access to the shoreline.

The certified LCP currently exempts JADUs from providing an off-street parking space but requires ADUs outside of the TPA to provide an off-street space, unless they qualify for a listed exemption such as being in a historical resource district or in a residential permit parking district. Because as proposed the amendment would remove the parking requirement for ADUs city-wide, regardless of whether they are located in the BIA or not, there is the potential for the increase in ADUs under the proposal to exacerbate chronic parking shortages in the more heavily visited coastal areas of the City. However, the Commission also recognizes that the goals of the state to promote smaller, more

affordable housing is fulfilled by increasing density in proximity to alternate transit infrastructure, such as bus and trolley lines, which do overlap portions of the coastal zone. Thus, in order to promote lower cost housing in proximity to alternate transit by reducing cost and space requirements while protecting access in areas of the coastal zone that may not be in proximity to alternate transit, suggested modification no. 4 requires one off-street parking space for an ADU or JADU located in the BIA but outside of the TPA, unless it qualifies for one of the listed exemptions previously mentioned. While currently most of the City's BIA is overlapped by the TPA, and thus this parking requirement is not expected to be implemented often under current conditions, the suggested modification ensures that if the TPA's boundaries or definition – the area within one-half mile of a major transit stop – are ever changed, those areas of the coast experiencing highest parking demand are protected for public access.

Relatedly, an individual moveable tiny house will likely result in a fairly low parking demand. But when combined with multiple other accessory residential units, spillover parking demand could be significant. Thus, suggested modification no. 5 requires that for moveable tiny houses within the BIA, an off-street parking space is required if there is already one or more accessory residential unit on the premises². Given Floor Area Ratio (FAR) limits and setback requirements applicable to accessory residential uses and the primary dwelling units, it is unlikely that many lots in high density areas will be able to accommodate multiple dwellings, and thus, the limitation of the parking requirement to premises with multiple accessory dwelling structures is not expected to be frequent or an impediment to the City's goal of promoting the erection of additional, more affordable housing. Thus, as modified, the amendment will not have a significant adverse impact on public access in shoreline areas.

Floodplain

After discussion and coordination with the City, it was noted that while the certified environmentally sensitive land regulations regarding development in the Special Flood Hazard Area (SHA) would apply to ADUs and JADUs developed on the currently mapped floodplain, that such units developed in areas not currently in the mapped floodplain but identified as vulnerable to future sea level rise would not be subject to those regulations. To address this impact, suggested modification no. 4 requires that ADUs and JADUs identified as being located outside of the SFHA but in an area identified as vulnerable to sea level rise based on current best available science comply with the same construction standards of the LCP's SFHA regulations as structures within the SFHA. Furthermore, because the base flood elevation for areas vulnerable to sea level rise but outside of the SFHA is not currently known, it will be based on the base elevation of the SFHA closest to the development. Finally, shoreline protection for ADUs and JADUs in the sea level rise vulnerability area will be prohibited, and because ADUs and JADUs are projected to have a 75-year economic life, the property owner will be required to enter into an agreement with the City and give notice to tenants acknowledging the risk of coastal hazards, the resultant impact on future services, a waiver of shoreline protection, and potential requirement to remove or relocate the ADU.

² This is the same suggested modification as contained in the related LCP Amendment No. LCP-6-SAN-21-0006-5 (Moveable Tiny Houses).

While moveable tiny houses are similar to JADUs, due to their detached, mobile design, the amendment as modified will treat them slightly differently with regards to future sea level rise vulnerability. While suggested modification no. 5 also prohibits shoreline armoring to protect tiny moveable houses and requires that the property owner enter into an agreement with the City accepting coastal hazard risk, waiving future shoreline protection, and acknowledging the potential for future relocation when outside the SFHA but within an area vulnerable to future sea level rise, the construction requirements of the LCP's floodplain regs would not be applied to moveable tiny houses as they would be to ADUs and JADUs. Instead, because moveable tiny houses are akin to recreation vehicles, the City will instead regulate them under the provisions of the SFHA regulations addressing recreational vehicles and manufactured homes, which have their own elevation and anchoring requirements. This, coupled with the inherently mobile nature of moveable tiny houses and the proposed amendment's prohibition on the removal of their wheels when installed, will allow for their tiny houses' development to meet the City's goal of increased housing while lessening the risk of further entrenching development in areas of the city that currently or will experience coastal flooding.

Other Measures of the LCP Amendment

In addition to ADUs, JADUs, and Moveable Tiny Houses, this amendment incorporates several other housing-focused amendments to the LCP to both incorporate state mandates as well as implement local initiatives aimed at affordable housing and lower-income segments of the population.

In order to expand services to homeless and low-income segments of the public, the amendment will create new resource uses and expand the allowable zones of existing resources in the City. The amendment creates Low Barrier Navigation Centers (LBNC), temporary living facilities with case managers to connect homeless individuals to housing and other benefits, as a new separately regulated residential use and permit them by-right in most commercial and multi-family zones. Emergency shelters for the homeless, an existing use in the LCP, would likewise be expanded to be permitted by-right in community commercial zones. Transitional Housing and Permanent Supportive Housing would be permitted in all multi-family zones.

The amendment will also introduce or modify several density bonus programs aimed at developments incorporating affordable housing. Developments that construct at least 100% of pre-density bonus units as affordable to very low and low-income households will receive a density bonus of 80% outside of the TPA and an unlimited bonus within the TPA, and will also receive up to 5 development incentives (relaxed or waived development requirements), and an additional 33 feet or three stories in height, though this will not supersede the 30-foot height limit in the coastal zone. This amendment will also grant a density bonus of 35% to developments that have at least 20% of pre-density bonus units as affordable to low-income students, defined in the amendment. The amendment will also make it easier for development incorporating micro-units (none more than 800 square feet in size and averaging 600 square feet development-wide) to obtain density bonuses and clarify how density bonuses are calculated in the portions of the City that use floor area ratio-based density (e.g., Downtown).

The amendment will also incorporate state law by allowing employee housing for 6 or fewer employees to be permitted by-right in all single family zones, though such housing would still be subject to the same requirements, such as the environmentally sensitive land regulations, as other structures.

The amendment will also introduce a time-limited dwelling unit protection regulatory regime that will ensure that the number of dwelling units present on a site is not reduced due to new construction. Furthermore, the amendment will require that dwelling units affordable to very low income and low income households (whether deed restricted as affordable or simply occupied by such members of the public) be replaced with deed-restricted units affordable to very low income and low income households. The provisions also grant relocation assistance and right of first refusal by the displaced household on the replacement affordable units, which must be comparable in size and design as market rate units in the development. In line with state law, this regulatory regime would sunset on January 1, 2025.

The above amendments would create or expand existing incentive programs to promote affordable housing while still being subject to the resource protection and public access policies of the LCP.

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. Instead, the Coastal Commission acts as lead agency for the purposes of fulfilling CEQA. 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.

For the City's action, an environmental impact report (EIR No. 96-0333) was completed for the original adoption of the Land Development Code, and a Program EIR (No. 104495) was prepared and certified for the General Plan Update. The City has previously utilized these documents for CEQA compliance in association with other code amendments. For this amendment, the City determined that it does not constitute a project under CEQA Guidelines Section 15378.

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 to CEQA provisions. In this particular case, the LCP amendment will not have any significant adverse effect on coastal resources, and there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact on the environment. In summary, no adverse impacts to coastal resources are anticipated and approval of the proposed amendment is consistent with CEQA.