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Prepared April 30, 2021 for May 14, 2021 Hearing

To: Commissioners and Interested Persons

From: Susan Craig, Central Coast District Manager
Kevin Kahn, Central Coast District Supervisor

Subject: City of Santa Cruz LCP Amendment Number LCP-3-STC-20-0017-1-Part C (Small-Cell Wireless Telecommunications Facilities)

SUMMARY OF STAFF RECOMMENDATION

The City of Santa Cruz proposes to amend its Local Coastal Program (LCP) by updating its Implementation Plan (IP) standards to add a definition for small-cell wireless telecommunication facilities (“small-cell wireless”). The amendment also proposes to exempt small-cell wireless facilities that are located in the public right-of-way from the development standards of the existing LCP’s wireless ordinance and instead proposes to locate standards for such facilities in a new Municipal Code section that is not part of the LCP. For coastal development permit (CDP) purposes, the standard of review would thus be the LCP’s general and broader policies requiring protection and enhancement of coastal resources. The City’s intent with the proposed amendment is to eliminate certain requirements for small-cell wireless facilities located in the public right-of-way in order to more quickly process permit applications pursuant to recent federal legislation (i.e., the Middle Class Tax Relief and Job Creation Act of 2012, otherwise known as the “Spectrum Act,” and its associated implementing regulations promulgated by the Federal Communication Commission (FCC)). The Spectrum Act sets certain requirements regarding the time period for review and action on such applications. Most relevant here, the Spectrum Act imposes a time period (or “shot clock”) by which a local jurisdiction has to act on permit applications for small-cell wireless facilities. This shot clock is 60 days (from the date of deeming an application filed) for co-located small-cell wireless facilities and 90 days from filing for small-cell wireless facilities on new structures.

While the LUP does include a robust policy framework to protect and enhance coastal resources (and these policies would remain unchanged and continue to govern small-cell wireless proposals), those policies are also appropriately augmented by the IP’s existing wireless ordinance. The existing wireless ordinance provides detailed standards specific to these unique types of facilities and addresses their particular issues. For example, it includes specific application requirements regarding siting and design, co-location analysis, visual screening, and a hierarchy of where such facilities are and are

not allowed to be located. The existing wireless ordinance also includes technical requirements, including third-party technical review to justify any deviation from required standards, to ensure that these standards can be met and do not run afoul of federal law. As proposed, none of these standards would apply to small-cell facilities located in the public right-of-way.

The City indicates that the reason for this proposed change is to respond to the above-referenced recent FCC directives, particularly regarding permit processing time, by exempting most small-cell wireless facilities located in the public right-of-way from the current applicable standards, and thus offering a streamlined review approach. However, by exempting these facilities from all existing IP standards in the coastal zone,¹ the amendment as proposed cannot be found consistent with and adequate to carry out applicable LUP policies. It is also unclear whether the City's proposal would result in less processing time. In fact, it could conceivably result in a *longer* permitting process due to the potential for appeals and other controversies that could be avoided with more clear and specific standards that help guide such facilities to locations that will have the fewest or no impacts on coastal resources. A more surgical approach to achieve a balance between implementing all of the existing wireless requirements and streamlining opportunities is thus needed.

As such, Commission staff worked with City staff to strike an appropriate balance between meeting the City's (and FCC's) stated objectives of streamlining permit processes for small-cell wireless facilities in the public right-of-way with the LUP's requirements that ensure such facilities protect and enhance coastal resources. The result of this collaboration was the identification of specific sections of the existing wireless ordinance which should continue to apply to small-cell wireless facilities located in the public right-of-way, including with respect to application submittal requirements, location standards and allowed/disallowed zoning districts, and siting and design techniques. **Suggested Modification 1** makes clear that these sections of the existing wireless ordinance will continue to govern small-cell facilities. **Suggested Modifications 2 and 3** make clear that the City's proposed construct of regulating small-cell facilities outside of the wireless ordinance is only applicable for those projects located outside the coastal zone. As modified, the proposed amendment will include a more specific set of standards governing small-cell wireless facilities in the coastal zone that are located in the public right-of-way. And, when combined with other existing LCP streamlining tools, the proposed amendment, as modified, should help meet both the LCP's coastal resource protection goals and City/FCC streamlining objectives.

Commission and City staff have worked cooperatively on this amendment to understand concerns, issues, and objectives. City staff indicates they are in agreement with the suggested modification language, and thus staff recommends that the Commission

¹ And, by definition, these facilities would be located in highly visible places in the public right-of-way along the City's streets and sidewalks, including in areas near the shoreline and other places that raise visual and other coastal resource concerns. It is therefore important to have specific tools to address potential issues for these types of proposed wireless facilities.

approve the amendment with those suggested modifications. The required motions and resolutions are found on page 5.

Staff Note: LCP Amendment Action Deadline

This proposed LCP amendment was filed as complete on August 21, 2020. The proposed amendment affects the LCP's Implementation Plan (IP) only, and the 60-working-day action deadline was November 17, 2020. At its November 6, 2020 hearing, the Commission extended the deadline for acting on the proposed LCP amendment by one year. Thus, the deadline for the Commission to take final action on this LCP amendment is November 17, 2021.

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EXHIBITS

Exhibit 1: Proposed IP Amendment

1. MOTIONS AND RESOLUTIONS

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

A. Deny the IP Amendment as submitted

Staff recommends a **YES** vote on the motion below. Passage of this motion will result in rejection of IP amendment as submitted and the adoption of the following resolution and findings in this staff report. The motion to reject passes only by an affirmative vote of a majority of the Commissioners present.

Motion: *I move that the Commission reject the LCP Amendment Number LCP-3-STC-20-0017-1-Part C as submitted by the City of Santa Cruz, and I recommend a yes vote.*

Resolution to Deny: *The Commission hereby denies certification of LCP Amendment Number LCP-3-STC-20-0017-1-Part C as submitted by the City of Santa Cruz and adopts the findings set forth below on grounds that the amendment as submitted does not conform with, and is inadequate to carry out, the provisions of the certified Land Use Plan. Certification of the amendment would not meet the requirements of the California Environmental Quality Act as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the amendment as submitted.*

B. Certify the IP Amendment with Suggested Modifications

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

Motion: *I move that the Commission certify LCP Amendment Number LCP-3-STC-20-0017-1-Part C as submitted by the City of Santa Cruz if it is modified as suggested in this staff report.*

Resolution to Certify: *The Commission hereby certifies LCP Amendment Number LCP-3-STC-20-0017-1-Part C, if modified as suggested, and adopts the findings set forth below on grounds that the amendment with the suggested modifications conforms with, and is adequate to carry out, the provisions of the certified Land Use Plan. Certification of the amendment if modified as suggested complies with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the plan on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.*

2. SUGGESTED MODIFICATIONS

The Commission hereby suggests the following modifications to the proposed LCP amendment, which are necessary to make the requisite Land Use Plan consistency findings. If the City of Santa Cruz accepts the suggested modifications within six months of Commission action (i.e., by November 14, 2021), by formal resolution of the City Council, the modified amendment will become effective upon Commission concurrence with the Executive Director's finding that this acceptance has been properly accomplished. Where applicable, text in underline format denotes proposed text to be added by the City. Text in ~~double cross-out~~ and double underline denotes text to be deleted/added by the Commission.

1. Modify LCP IP Section 24.12.1410(A) (Applicability) as follows:

These regulations shall apply to all property owned by private persons, firms, corporations, or organizations, and property owned by the city, and property owned by any agencies of the city, or by any local, state, or federal government agency or political subdivision thereof required to comply with local regulations or by written agreement. Small Cell Facilities located within the public right-of-way in the coastal zone that do not qualify for a coastal exclusion or exemption shall require a coastal development permit subject to all LCP requirements, including those associated with Sections 24.08.200 et seq., 24.12.1400, 24.12.1405, 24.12.1420, 24.12.1425, 24.12.1430, and 24.12.1435.

2. Modify LCP IP Section 24.12.1410(B)(7) (Applicability) as follows:

Small Cell Facilities located in the public right-of-way outside the coastal zone which are subject to the requirements of Chapter 15.38 of the Municipal Code and the adopted Standards and Guidelines policy for small-cell facilities in the public right-of-way.

3. Modify LCP IP Section 24.12.1425(B) (Location Standards) as follows:

...Small Cell Facilities may be located in the public right-of-way of prohibited districts outside the coastal zone subject to the requirements of Chapter 15.38. ...

3. FINDINGS AND DECLARATIONS

A. Description of Proposed LCP Amendment

The proposed amendment would modify the Implementation Plan's (IP's) existing wireless telecommunications ordinance (IP Sections 24.12.1400 et seq.) by adding a definition for small-cell wireless telecommunications facilities² and by specifying that

² The proposed amendment defines "small-cell wireless facilities" as: "...any facilities that meet each of the following conditions: 1. The facilities: a. Antennas mounted on structures fifty feet or less in height including their antennas as defined above; or b. Antennas mounted on structures no more than ten percent taller than other adjacent structures; or c. Antennas that do not extend the height of existing structures more than ten percent or fifty feet, whichever is greater; 2. Each antenna associated with the deployment, excluding associated antenna equipment (as defined in the definition of antenna), is no more than three cubic feet in volume; 3. All other wireless equipment associated with the structure, including the wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than twenty-eight cubic feet in volume; 4. The facilities do not require antenna structure registration by the FCC; 5. The facilities are not located on tribal lands, as defined under 36

such small-cell facilities are not subject to the IP's provisions and instead are subject to a new part of the Municipal Code that is outside of the LCP. The amendment would also eliminate the existing prohibition on siting wireless facilities within 1,000 feet of a public elementary school. The impetus for the City's proposed amendment is the enactment of the Middle Class Tax Relief and Job Creation Act of 2012, otherwise known as the "Spectrum Act," and its associated implementing regulations promulgated by the Federal Communications Commission (FCC). The Spectrum Act seeks to implement national guidelines for how, among other things, federal, state, and local governments may regulate forthcoming small-cell wireless (also referred to as "5G") networks nationwide.³ These new federal guidelines impose restrictions on state and local governments on how they may regulate wireless telecommunication providers' small-cell network installations, perhaps most importantly in terms of establishing time limits on permit processing, often referred to as "shot clocks". Most relevant here, the Spectrum Act imposes a time period (or "shot clock") by which a local jurisdiction has to act on permit applications for small-cell wireless facilities. This shot clock is 60 days from filing for co-located small wireless facilities and 90 days for small wireless facilities on new structures.

The LCP's existing wireless telecommunications ordinance requires all such facilities to meet stringent siting and design requirements to protect visual and other coastal resources. The overall objective of the ordinance is to ensure that wireless facilities "minimize adverse visual impact" and protect "the aesthetic quality of the city" (IP Section 24.12.1400) and requires a stringent review process to meet this objective. This includes requiring co-location on existing facilities (IP Section 24.12.1420), visual screening and being located outside of public view (IP Section 24.12.1420), and by prohibiting such facilities in certain resource-sensitive locations, such as along the immediate shoreline and in agricultural areas (with certain exceptions pursuant to federal law as specified in IP Section 24.12.1425).

The proposed amendment, in response to the new FCC requirements meant to streamline permit processing times, would exempt small-cell wireless facilities within the public right-of-way from the existing LCP wireless ordinance's provisions. Instead, the specific requirements regulating such facilities would be moved to the City's Streets and Sidewalks Municipal Code in Chapter 15.38, which is not part of the LCP. Pursuant to that non-LCP chapter, proposed small-cell wireless telecommunications facilities would require a Small Cell Wireless Facilities Permit. The standard of review for issuance of said permit would be conformance with a required "Standards and Guidelines Policy for Small Cell Facilities in the Public Right-of-Way" document (which will be prepared and adopted by the City Council), as well as any other required permits or authorizations, including a coastal development permit (CDP) for facilities proposed in the coastal zone. For small-cell wireless facilities located in the public right-of-way for which a CDP is required, the standard of review would be the LCP's more general provisions that

CFR 800.16(x); and 6. The facilities do not result in human exposure to radio frequency radiation in excess of the applicable safety standards specified by the FCC."

³ See FCC Declaratory Ruling and Report Order (FCC 18-133) released September 27, 2018.

protect coastal resources, but not the provisions specific to wireless facilities (i.e., IP Sections 24.12.1400 et seq.) because under the proposed amendment those IP provisions would not apply to small-cell wireless facilities located in the public right-of-way.⁴

In sum, the proposed amendment adds a definition of small-cell wireless facilities to the IP and also seeks to exempt small-cell wireless telecommunications facilities located in the public right-of-way from the standards of IP Sections 24.12.1400 et seq. and instead requires such facilities to be governed by standards contained in a new Municipal Code section that is not part of the LCP. For those small-cell wireless facilities proposed in the public right-of-way in the coastal zone for which CDPs would be required, the applicable standards would be the LCP's broader policies addressing development and coastal resource requirements in general, including protection of visual resources, sensitive habitats, and agricultural lands.

See Exhibit 1 for the proposed IP amendment text.

B. Evaluation of Proposed LCP Amendment

Standard of Review

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

Applicable Land Use Plan Policies

The City of Santa Cruz's LUP contains a myriad of policies protecting coastal resources, including visual resources of scenic landscapes and ocean views, but also natural resources such as creeks, wetlands, and other sensitive habitats. With respect to visual resources, mirroring Coastal Act requirements, the LUP seeks to protect views, minimize visual clutter and restore visually degraded areas, and ensure that development blends in and is compatible with the character of the particular area in question. Specifically, the LUP states:

Community Design Element Policy 1.4. *Where development abuts open space land uses, utilize careful site planning to emphasize the natural topography and vegetation and maintain visual and physical access to open space areas.*

Natural Setting and Scenic Resources Element Policy 2.1. *Preserve natural features providing visual definition to an area of the City.*

Natural Setting and Scenic Resources Element Policy 2.2.1. *Develop siting, scale, landscaping, and other design guidelines to protect visually sensitive areas and ensure development is compatible with the character of the area.*

⁴ However, small-cell wireless facilities not located in the public right-of-way – and all other wireless facilities – would remain subject to the requirements of IP Sections 24.12.1400 et seq.

Natural Setting and Scenic Resources Element Policy 3.4. *Develop and maintain physical and visual linkages between key areas of the city.*

Land Use Element Policy 1.4. *Minimize, when practical, obstruction of important views and viewsheds by new development. In the coastal zone, development shall be sited and designed to and along the ocean and scenic areas to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and to restore visual quality in visually degraded areas.*

Land Use Element Policy 3.3. *Require development adjacent to natural areas and agricultural/grazing lands to be compatible with adjacent lands in terms of land use, visual transition, and siting.*

Consistency Analysis

As described before, the proposed amendment seeks to add a definition for small-cell wireless facilities to the LCP, while exempting such facilities located in the public right-of-way (e.g., along City streets) from review under the IP's specific wireless telecommunications ordinance. The standards specific to such facilities would instead be housed outside of the LCP, and thus not be part of the legal standard of review for CDP review purposes. Instead, the LCP's more general policies, including those specified above, would be the standards applied to review CDP applications for small-cell facilities.

While the LUP does include a robust policy framework to protect and enhance coastal resources, those policies are more general in nature. To augment these more general policies, the IP's wireless ordinance provides detailed standards specific to these unique types of facilities that address the particular issues raised by such development. For example, the IP's certified wireless ordinance includes specific application requirements regarding siting and design, co-location analysis, visual screening, and a hierarchy of where such facilities are and are not allowed to be located.⁵ The existing ordinance also includes technical requirements, including documentation from third-party expert review, to ensure that these standards can be met (and to justify any deviations when they cannot) and do not conflict with federal law. All of this is to ensure that the particular needs and issues wireless facilities engender will be appropriately addressed in the LCP. As proposed, none of these more specific policies for small-cell facilities located in the public right-of-way would apply during the CDP process.

The City indicates that the reason for this proposed change is to respond to the recent FCC directives related to the Spectrum Act, particularly regarding permit processing time and the "shot clock" which sets a deadline by when a local jurisdiction has to act on

⁵ For example, wireless telecommunications facilities are prohibited in the LCP's Ocean Front Recreation zoning district, which applies to the immediate shoreline and along the City's iconic West Cliff Drive promenade. Conversely, the LCP's Industrial zoning district is listed as a type of zone where such facilities are to be steered.

permit applications for small-cell wireless facilities.⁶ The City proposes to meet this shot clock time limit by eliminating most of the current applicable standards and offering a streamlined review approach for small-cell wireless facilities located in the public right-of-way. However, even if such facilities were exempt from review under the IP's specific wireless ordinance (as the City is proposing), that would not negate the fact that CDPs are still required in the coastal zone for such proposed development, unless that development is otherwise exempt or excluded. Staff believes that under City's proposed construct, such CDPs may actually take *longer* to process, or be subject to additional appeals or other controversies, without the specific standards that help guide them to locations that will have the fewest (or nonexistent) impacts on coastal resources. In short, the City's proposal would offer less specific coastal resource protections, while applying more general policies that are more likely to result in delays, thus negating the presumptive benefit of the proposed amendment. The amendment as proposed cannot be found consistent with and adequate to carry out the above-cited LUP policies that require protection of visual and other coastal resources.

Fortunately, these issues can be addressed via suggested modifications that seek to strike an appropriate balance between meeting the City's (and FCC's) stated objectives of streamlining permit processes for small-cell wireless facilities in the public right-of-way and the LUP's requirements to ensure that such facilities protect coastal resources. First, it is important to note that the City already has certain streamlining tools at its discretion, including directing wireless facilities to locations outside of the coastal zone where no CDP would be required. For those projects in the coastal zone, the LCP (mirroring the Coastal Act and its implementing regulations) includes exemptions for certain improvements and repairs. The City also has a categorical exclusion order⁷ that allows certain projects that otherwise would require a CDP to be excluded from CDP requirements provided they are not located in certain coastal resource-sensitive locations. Again, these important tools are already at the City's disposal to help direct these facilities to areas that do not raise coastal resource concerns. But for any proposed small-cell wireless projects located in the public right-of-way in non-excludable areas of the coastal zone, it is important to retain key existing requirements of the IP's wireless ordinance.⁸ Commission and City staff worked together to identify the IP wireless ordinance's sections that are most germane to coastal resource protections. These sections will remain as part of the applicable standard of review for

⁶ This shot clock is 60 days (from deeming an application complete) for co-located small-cell wireless facilities and 90 days from filing for small-cell wireless facilities on new structures. If the relevant shot clock is exceeded, the applicant is eligible for expedited relief in court.

⁷ Pursuant to Coastal Act Section 30610(e), the City's categorical exclusion order excludes certain types and locations of development from CDP requirements. However, the exclusions do not apply (i.e., CDPs are required for development proposed in) in areas that contain sensitive coastal resources, such as on lots fronting the ocean/shoreline, or in areas that are appealable to the Coastal Commission (e.g., between the sea and the first public road, within 100 feet of a wetland or stream, within 300 feet of a bluff, etc.).

⁸ These facilities, by definition, would be located in highly visible areas along City streets and sidewalks, including in areas near the shoreline. It is thus important to have specific tools to address potential visual and other coastal resource issues.

CDPs for small-cell wireless facilities located in the public right-of-way via suggested modifications. The result of this collaboration was the identification of specific sections of the existing wireless ordinance which should continue to apply to small-cell wireless facilities located in the public right-of-way. These sections specify the objectives and the overall purpose of the wireless ordinance (IP Section 24.12.1400), applicable definitions (IP Section 24.12.1405), application submittal requirements (IP Section 24.12.1420), location standards and allowed/disallowed zoning districts (IP Section 24.12.1425), siting and design techniques (IP Section 24.12.1430), overall requirements (IP Section 24.12.1435), and permit procedures for coastal permits (IP Section 24.08.200).

Suggested Modification 1 makes clear that these six sections of the existing wireless ordinance, along with IP Section 24.08.200 (describing CDP procedures and findings), will continue to govern small-cell wireless facilities located in the public right-of-way in the coastal zone, while **Suggested Modifications 2 and 3** make clear that the City's proposed construct regarding review requirements for small-cell wireless facilities located in the public right-of-way (i.e., reviewed not against the wireless ordinance but rather the new chapter 15.38) will apply only to those facilities located outside of the coastal zone.

As modified, the ordinance would make clear that certain key existing requirements, including in terms of wireless facility siting and design, will be retained, while also making clear that those parts of the existing ordinance not associated with coastal resource protection requirements (including standards addressing requirements for permits other than CDPs) are not so retained. The result is a more directive set of standards governing small-cell wireless facilities in the coastal zone. And, when combined with other existing LCP streamlining tools, such standards should help meet both coastal resource protection and City/FCC objectives.

C. California Environmental Quality Act (CEQA)

CEQA Section 21080.5(d)(2)(A) prohibits a proposed LCP or LCP amendment from being approved if there are feasible alternatives and/or feasible mitigation measures available that would substantially lessen any significant adverse effect that the LCP or LCP amendment may have on the environment. Although local governments are not required to satisfy CEQA in terms of local preparation and adoption of LCPs and LCP amendments, many local governments use the CEQA process to develop information about proposed LCPs and LCP amendments, including to help facilitate Coastal Act review.

The Coastal Commission is not exempt from satisfying CEQA requirements with respect to LCPs and LCP amendments, but the Commission's LCP/LCP amendment review, approval, and certification process has been certified by the Secretary of the Natural Resources Agency as being the functional equivalent of the environmental review required by CEQA (CCR Section 15251(f)). Accordingly, in fulfilling that review, this report has discussed the relevant coastal resource issues with the proposal, and has concluded that the proposed LCP amendment is expected to result in significant environmental effects, including as those terms are understood in CEQA, if it is not modified to address the coastal resource issues identified herein. Accordingly, it is

necessary for the Commission to suggest modifications to the proposed LCP amendment to ensure that it does not result in significant adverse environmental effects. Thus, the proposed LCP amendment as modified will not result in any significant adverse environmental effects for which feasible mitigation measures have not been employed, consistent with CEQA Section 21080.5(d)(2)(A).