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# Th18a

**Prepared June 25, 2021 for July 8, 2021 Hearing**

**To:** Commissioners and Interested Persons

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

**Subject: San Luis Obispo County LCP Amendment Number LCP-3-SLO-21-0025-1-Part D (Density Bonus Regulations)**

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## SUMMARY OF STAFF RECOMMENDATION

San Luis Obispo County proposes to amend its Local Coastal Program (LCP) by updating its Implementation Plan (IP) standards addressing density bonuses and other potential special accommodations for projects that include certain levels of affordable housing. The proposed amendment would modify the IP's existing density bonus ordinance (IP Section 23.04.090 et seq.), which itself implements the State's Density Bonus Law (DBL), as found in Government Code Section 65915, by allowing for an increase in otherwise allowable maximum unit density for projects that provide a certain level of affordable housing. The amount of the increased unit density above normal maximum standards depends on the amount and level of affordable housing provided (either on-site or off-site).<sup>1</sup> In addition to potential unit increases, under the DBL an applicant can also be allowed certain waivers, incentives, and concessions that can further deviate from otherwise applicable development standards (including, potentially, standards required by the LCP) in order to make a project feasible (e.g., reduced parking, extra height, reduced setbacks, extra floor area ratio, etc.). In other words, the DBL is structured to allow larger and more dense projects that would not normally be allowed in exchange for affordable housing construction.<sup>2</sup>

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<sup>1</sup> For example, a 35% increase in density is permissible if 10% of the proposed units on-site are reserved for very-low-income residents making no more than 50% of median income.

<sup>2</sup> Many local jurisdictions, including San Luis Obispo County, have what are often referred to as 'inclusionary housing' requirements that independently and separately require that certain amounts of affordable housing (and/or equivalent in-lieu fees) be provided in residential projects of certain sizes. State DBL, at least as it has been adjudicated in the courts, essentially supersedes these requirements because a local jurisdiction is not allowed to require both inclusionary housing through local inclusionary housing ordinances *and* additional affordable units through the DBL when the DBL is applied to a project. As a result, oftentimes DBL projects actually result in less affordable housing units, but more units overall, than would be required under most inclusionary housing ordinances, including in the coastal zone. At the

The proposed LCP amendment largely maintains this overall construct by mirroring the DBL with a few changes, most notably to truncate the ordinance by mostly cross-referencing the DBL in Government Code 65915. Thus, instead of listing the detailed standards and requirements for affordability, and the allowed deviations from LCP standards, in the LCP, the ordinance mostly refers to Government Code 65915 and its detailed provisions. The reason the County is not including all the DBL standards in the proposed LCP amendment is because the State DBL is modified and updated frequently, and cross-referencing the DBL will avoid the need for the County to make frequent and recurring additional ordinance changes (and LCP amendments) to accommodate ongoing changes to State DBL.

While cross-referencing the DBL does not raise any substantive coastal resource concerns (and in fact Coastal Act Section 30604(f) cross-references the DBL as well), the amendment provides an opportunity to better harmonize the Coastal Act/LCP with the DBL. While straightforward conceptually, the DBL raises a series of complicated questions regarding how it works in relation to Coastal Act/LCP requirements, particularly given that, in the coastal zone, the DBL explicitly does not override the Coastal Act (or by extension LCPs, which derive their authority from the Act).<sup>3</sup> And this can create certain CDP dilemmas inasmuch as the LCPs provide a framework of coastal resource protection standards, including through maximum allowable size, scale, and density requirements, whereas the DBL allows for deviations of such standards when certain levels of affordable housing are provided. In other words, the DBL is intended to allow deviations to LCP standards to allow for larger development than would normally be allowed by LCPs. And not only is that not LCP consistent, but it has the potential for significant coastal resource impacts in certain circumstances. The key to navigating that conflict is understanding when and where a deviation can be accommodated without significant coastal resource impacts.

Thus, it is important that LCPs include clear language identifying the process for considering CDP applications for projects in the coastal zone to which the DBL might be applied. It is vital to understand what Coastal Act/LCP standards are being deviated from and why, and what coastal resource impacts may result from such deviations. It is also key for decision makers to understand what tradeoffs are being made, and the affordable housing benefits to be realized. As such, staff recommends that suggested modifications be applied to the proposed LCP amendment that more clearly identifies the process that needs to be undertaken for a CDP application that applies the DBL, including critically comparing the Coastal Act/LCP consistent project to a project to which size, scale, density and other bonuses have been applied via the DBL. Ultimately, to approve a CDP in such a case, such projects must encourage housing opportunities for persons of low and moderate income with the least amount of Coastal Act and LCP deviations feasible and without any significant adverse coastal resource impacts.

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same time, because local inclusionary housing requirements are oftentimes satisfied through payment of in lieu mitigation fees, projects to which the DBL is applied can result in more actual 'on the ground' units.

<sup>3</sup> See the DBL's Coastal Act 'savings clause' in Government Code Section 65915(m).

The suggested language is intended to facilitate affordable housing while respecting Coastal Act/LCP coastal resource constraints, consistent with Coastal Act Section 30604. It provides applicants, decisionmakers, and the public a clear process for identifying issues, costs, and benefits for proposed projects using the DBL, all with the goal of providing as much affordable housing in a particular project without coastal resource impacts—both of which are critical statewide objectives. As modified, the proposed LCP amendment can be found consistent with and adequate to carry out the certified Land Use Plan (LUP). Commission and County staff have worked cooperatively on this amendment to understand concerns, issues, and objectives, and County staff indicates they are in agreement with the suggested modification language. Staff recommends that the Commission 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 June 22, 2021. The proposed amendment affects the LCP's Implementation Plan (IP) only, and the 60-working-day action deadline is September 16, 2021. Thus, unless the Commission extends the time limit (it may do so up to one year), the deadline for the Commission to take final action on this LCP amendment is September 16, 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 LCP Amendment Number LCP-3-SLO-21-0025-1-Part D as submitted by San Luis Obispo County, and I recommend a yes vote.*

**Resolution to Deny:** *The Commission hereby denies certification of LCP Amendment Number LCP-3-SLO-21-0025-1-Part D as submitted by San Luis Obispo County 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-SLO-21-0025-1-Part D as submitted by San Luis Obispo County if it is modified as suggested in this staff report.*

**Resolution to Certify:** *The Commission hereby certifies LCP Amendment Number LCP-3-SLO-21-0025-1-Part D, 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 San Luis Obispo County accepts the suggested modifications within six months of Commission action (i.e., by January 8, 2022), by formal resolution of the Board of Supervisors, the modified amendment will become effective upon Commission concurrence with the Executive Director's finding that this acceptance has been properly accomplished.

### 1. Add the following definition to IP Section 23.11:

**Coastal Resources:** A general term used to refer to the coastal resources addressed in Chapter 3 of the California Coastal Act, including the ocean, beaches, wetlands, agricultural lands, and other coastal habitats; certain types of coastal development; public access and recreation opportunities; cultural, archaeological, and paleontological resources; and scenic and visual resources. Coastal resources also include, but are not limited to, public access and public access facilities and opportunities, recreation areas and recreational facilities and opportunities (including for recreational water-oriented activities), lower cost visitor serving facilities (including lower cost accommodations), coastal-dependent and coastal-related uses, public views, natural landforms, marine resources, watercourses (rivers, streams, creeks, etc.) and their related corridors, water bodies (wetlands, estuaries, lakes, etc.) and their related upland areas, groundwater resources, biological resources, environmentally sensitive habitat areas, agricultural lands, and archeological and paleontological resources.

### 2. Add the following to IP Section 23.04.090 as Section 23.04.090(f):

Projects proposing to utilize the provisions of State Density Bonus Law are subject to the following:

- 1) **Coastal resource protection required.** State Density Bonus Law does not supersede or in any way alter or lessen the effect or application of the Coastal Act and the LCP. Any incentives, concessions, waivers, and/or density bonuses applied to proposed projects via application of State Density Bonus Law shall only be allowed if coastal resources are protected as required by the Coastal Act and the LCP.
- 2) **Define the Coastal Act and LCP-consistent project for the site ("LCP Consistent Project").** The first step for any proposed project that may potentially use incentives, concessions, waivers, and/or density bonuses via State Density Bonus Law to deviate from Coastal Act and/or LCP requirements is to identify the Coastal Act and LCP-consistent project for the site (the "LCP Consistent Project"; referred to in State Density Bonus Law as the "base density" project), defined as the maximum size, scale, density, and intensity of development that can be accommodated on a proposed project site consistent with all Coastal Act and LCP requirements, and without applying any State Density Bonus Law incentives, concessions, waivers, and/or density bonuses.

- a. Evaluate and apply constraints.** Such evaluation shall be based on first avoiding all resource constraints associated with potential development on the project site (including, but not limited to, sensitive habitat areas and their buffers, steep slopes, coastal hazards and their setbacks, significant public views, public accessways, etc.), and then applying all required site development standards (including, but not limited to, required setbacks, heights, stories, coverage, floor area ratio, open space, parking, landscaping, articulation, roofs, etc.) to identify the LCP Consistent Project. In this analysis, minimum/maximum requirements (i.e., minimum front yard setback, maximum height, etc.) are not entitlements, but rather provide a starting point for evaluation. The LCP Consistent Project may require increased/decreased site development standards to meet coastal resource protection requirements (e.g., increased setbacks and/or decreased heights to adequately protect a significant public view consistent with Coastal Act and LCP requirements pertaining thereto).
- b. Residential units.** As part of defining the LCP Consistent Project, the number of residential units that could be accommodated on the project site consistent with the Coastal Act and the LCP and site constraints must also be calculated. This includes also meeting any requirements that might affect the allowed number of such units (e.g., required outdoor space and parking per unit, etc.). The calculation for the number of residential units shall be based on meeting all LCP standards for such units (e.g., in terms of size, amenities, configuration, open space, parking, etc.). In that analysis, it is not a simple mathematical calculation (e.g., where the maximum development envelope is 10,000 square feet and each residential unit is 500 square feet, thus yielding 20 such units); rather, all applicable requirements must also be accommodated within any maximum development envelope and constraints associated with the project site as a whole. In this analysis, all fractional numbers of units shall be rounded up or down pursuant to Section 23.01.041(b). In addition, all affordable housing requirements pertaining to a project of this size (see Sections 23.04.092 through 23.04.097) must be identified and accommodated: (1) within the maximum development envelope and the project site as well, including the required number of affordable units (where all fractional numbers of affordable units shall be rounded up) and their required levels of affordability; or (2) via off-site unit development, in-lieu fee, land dedication, or other alternative method; or (3) via a combination of all of the above.
- c. Mixed use projects.** For mixed use projects (i.e., residential along with another allowed use or uses), the maximum development envelope and maximum allowable development otherwise must take into account all Coastal Act and LCP requirements pertaining to the non-residential uses as well. Such projects cannot simply apply residential standards (or vice versa, non-residential use standards) in defining the maximum development envelope and maximum allowable development otherwise. If there are any questions in interpretation over which standards apply to any specific project site, project component, and/or maximum development envelope/allowable development, then the standards that are more restrictive (e.g., a 12-foot setback is more restrictive than a 10-foot setback, a 20-

foot height is more restrictive than a 30-foot height, etc.) and more protective of coastal resources shall apply.

The LCP Consistent Project shall be identified in both narrative form and plan form (e.g., site plans, elevations, etc.), and shall clearly describe all associated elements (e.g., square footage, floor area ratios, coverage, unit numbers and types, etc.).

- 3) Potential State Density Bonus Law deviations (“DBL Project”).** The “DBL Project” is the LCP Consistent Project for the site to which all proposed incentives, concessions, waivers, and/or density bonuses associated with State Density Bonus law have been applied, and the DBL Project shall also be clearly identified and described (e.g., in plan sets, lists of deviations proposed, narrative description, etc.), including via clear comparison to the LCP Consistent Project materials (and presented in a similar form). Any potential DBL Project that may lead to increased massing compared to the LCP Consistent Project shall include visual simulations and story pole analysis comparing the two. If there are multiple DBL Project alternatives, each shall be identified and contrasted with the LCP Consistent Project as described above.
- 4) Housing benefits analysis.** An analysis of the housing affordability benefits of the DBL Project (and any alternatives), including as compared to the LCP Consistent Project, shall be provided. Such analysis shall at a minimum include identification of the number of proposed affordable housing units and the level of affordability of such housing units for both the LCP Consistent Project and the DBL Project(s).
- 5) Coastal resource impact analysis.** An analysis of coastal resource impacts associated with both the LCP Consistent Project and the DBL Project (and any alternatives) shall be provided. Such analysis shall quantitatively and qualitatively identify, compare, and contrast expected coastal resource impacts between the LCP Consistent Project and the DBL Project(s). Such analysis shall also include an analysis of measures that could be applied to the DBL Project(s) to ensure that they do not result in any significant adverse coastal resource impacts (e.g., measures necessary to ensure consistency with all applicable Coastal Act and LCP provisions addressing wetlands, streams, environmentally sensitive habitats, coastal hazards, public recreational access, etc.).
- 6) Required approval findings.** In order to approve a project that deviates from the LCP Consistent Project for the site, the approving authority must conclude, based on substantial evidence, that: (a) the approved project encourages housing opportunities for persons of low and moderate income with the least amount of Coastal Act and LCP deviation; and (b) there will be no significant adverse coastal resource impacts due to the approved project.

## 2. FINDINGS AND DECLARATIONS

### A. Description of Proposed LCP Amendment

The proposed amendment would modify the Implementation Plan’s (IP’s) existing density bonus ordinance (IP Section 23.04.090 et seq.), which itself implements the State’s Density Bonus Law (DBL), found in Government Code Section 65915, by allowing for an increase in otherwise allowable maximum unit density for projects

proposed in the Residential Single-Family and Residential Multi-Family land use designations in exchange for providing a certain level of affordable housing. The amount of the increased unit density above normal maximum standards depends on the amount and level of affordable housing provided (either on-site or off-site).<sup>4</sup> In addition to potential unit increases, under the DBL an applicant can also be allowed certain waivers, incentives, and concessions. Generally speaking, incentives and concessions are meant to reduce projects costs and may include things such as monetary assistance (e.g., affordable housing grants/bonds, land dedications, etc.) and reduced permitting fees, while waivers are deviations from otherwise required physical development standards in order to make a project feasible (e.g., reduced parking, extra height, reduced setbacks, increased floor area ratio, etc.). As stated in the ordinance: “The purpose of this section is to make the provision of affordable housing more attractive to the private developer while retaining good design and neighborhood character” (proposed IP Section 23.04.090). In practice, the DBL is structured to allow larger and more dense projects that would not normally be allowed in exchange for affordable housing construction.<sup>5</sup>

The proposed LCP amendment largely maintains this overall construct by mirroring the DBL with a few changes. The first is to allow the density bonus provisions to apply to all land use designations that allow residential uses as opposed to just the Residential Single-Family and Residential Multi-Family designations. And the second change is to truncate the ordinance by mostly cross-referencing the DBL in Government Code 65915. Instead of listing the detailed standards and requirements for affordability and the allowed deviations from LCP standards, the ordinance mostly refers to Government Code 65915 and its detailed provisions. The reason the County is not including all the DBL standards in the proposed LCP amendment is because the State DBL is modified and updated frequently, and cross-referencing to it will avoid the need for the County to make frequent and recurring additional ordinance changes (and LCP amendments) to accommodate ongoing changes to State DBL.

See **Exhibit 1** for the proposed IP amendment text.

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<sup>4</sup> For example, a 35% increase in the maximum number of units is allowed if 10% of the proposed units on-site are reserved for very low-income residents making no more than 50% of median income.

<sup>5</sup> Many local jurisdictions, including San Luis Obispo County, have what are often referred to as ‘inclusionary housing’ requirements that independently and separately require that certain amounts of affordable housing (and/or equivalent in-lieu fees) be provided in residential projects of certain sizes. State DBL, at least as it has been adjudicated in the courts, essentially supersedes these requirements because a local jurisdiction is not allowed to require both inclusionary housing through local inclusionary housing ordinances *and* additional affordable units through the DBL when the DBL is applied to a project. As a result, oftentimes DBL projects actually result in less affordable housing units, but more units overall, than would be required under most inclusionary housing ordinances, including in the coastal zone. At the same time, because local inclusionary housing requirements are oftentimes satisfied through payment of in lieu mitigation fees, projects to which the DBL is applied can result in more actual ‘on the ground’ units.

## **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 provisions of the certified LCP LUP.

### ***Applicable Land Use Plan Policies***

Mirroring the Coastal Act, the San Luis Obispo County LUP contains a myriad of policies protecting coastal resources, including visual resources associated with scenic landscapes and ocean views, as well as natural resources such as creeks, wetlands, and other sensitive habitats. The LUP also protects public recreational access and requires new development to avoid the use of shoreline protective devices. Specifically, the LUP states (in relevant part):

***LUP Coastal Plan Shoreline Access Policy 1: Protection of Existing Access.*** *Public prescriptive rights may exist in certain areas of the county. Development shall not interfere with the public's right of access to the sea where acquired through historic use or legislative authorization....*

***LUP Coastal Plan Shoreline Access Policy 2: New Development.*** *Maximum public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development. Exceptions may occur where (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources; (2) adequate access exists nearby, or; (3) agriculture would be adversely affected....*

***LUP Coastal Plan Environmentally Sensitive Habitats Policy 1: Land Uses Within or Adjacent to Environmentally Sensitive Habitats.*** *New development within or adjacent to locations of environmentally sensitive habitats (within 100 feet unless sites further removed would significantly disrupt the habitat) shall not significantly disrupt the resource. Within an existing resource, only those uses dependent on such resources shall be allowed within the area.*

***LUP Coastal Plan Visual and Scenic Resources Policy 1: Protection of Visual and Scenic Resources.*** *Unique and attractive features of the landscape, including but not limited to unusual landforms, scenic vistas, and sensitive habitats are to be preserved, protected, and in visually degraded areas restored where feasible.*

***LUP Coastal Plan Visual and Scenic Resources Policy 2: Site Selection for New Development:*** *Permitted development shall be sited and so as to protect views to and along the ocean and scenic coastal areas. Wherever possible, site selection for new development is to emphasize locations not visible from major public view corridors....*

***LUP Coastal Plan Hazards Policy 4: Limitations on the Construction of Shoreline Structures.*** *Construction of structures that would substantially alter*

*existing landforms shall be limited to projects necessary for: a) protection of existing development (new development must ensure stability without depending upon shoreline protection devices)...*

**LUP Coastal Plan Hazards Policy 6: Bluff Setbacks.** *New development or expansion of existing uses on bluffs shall be designed and set back adequately to assure stability and structural integrity and to withstand bluff erosion and wave action for a period of 75 years without construction of shoreline protection structures...*

**LUP Coastal Plan Environmentally Sensitive Habitats Policy 17: Wetland Buffer.** *In new development, a buffer strip shall be required and maintained in natural condition along the periphery of all wetlands...*

**LUP Coastal Plan Environmentally Sensitive Habitats Policy 21: Development in or Adjacent to a Coastal Stream.** *Development adjacent to or within the watershed (that portion within the coastal zone) shall be sited and designed to prevent impacts which would significantly degrade the coastal habitat and shall be compatible with the continuance of such habitat areas...*

### **Consistency Analysis**

As described above, the proposed amendment largely seeks to retain the DBL provisions (in terms of the amount of increase in unit density and the number of deviations in relation to the amount and type of affordable housing provided). It does so by cross-referencing Government Code 65915 (which describes these same allowances/requirements) as opposed to listing these detailed provisions directly in the ordinance. The intent is to have the ordinance be “living and breathing” in a sense by ensuring that it keeps up with the ongoing changes to the DBL by the State legislature, and avoiding the time and resources needed to regularly update the LCP in this regard. This is a similar construct to many LCPs, and indeed Coastal Act Section 30604(f) also cross-references the DBL. As such, this aspect of the proposal does not raise any substantive coastal resource concerns.

However, the amendment provides an opportunity to better harmonize the DBL with Coastal Act/LCP requirements to ensure the protection of coastal resources. In fact, while straightforward conceptually, the DBL raises a series of complicated questions regarding how it works in conjunction with Coastal Act/LCP requirements, particularly given that, in the coastal zone, the DBL explicitly does not override the Coastal Act (or by extension LCPs, which derive their authority from the Act). In fact, the DBL explicitly states the opposite<sup>6</sup> in Government Code Section 65915(m):

*[The DBL] does not supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code). Any density bonus, concessions,*

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<sup>6</sup> As also affirmed by the Second District Court of Appeals in *Kalnel Gardens v. City of Los Angeles* (2016) 3 Cal.App.5th 927.

*incentives, waivers or reductions of development standards, and parking ratios to which the applicant is entitled under this section shall be permitted in a manner that is consistent with this section and Division 20 (commencing with Section 30000) of the Public Resources Code.*

Accordingly, the interplay of these two State laws can create certain CDP dilemmas inasmuch as LCPs provide a framework of coastal resource protection standards, including through maximum allowable size, scale and density requirements, whereas the DBL allows for deviations of such standards when certain levels of affordable housing are provided. To add complexity, the DBL is very accommodating in terms of providing project flexibility and deviations to applicable development standards. For example, the law provides for unlimited waivers, meaning that a qualifying project can seek exceptions to an unlimited number of local requirements.<sup>7</sup> In other words, once there is a qualified project, there is no limit to the number of waivers to otherwise required standards that can be applied to that project.

In short, the DBL is intended to allow deviations to LCP standards to allow for larger development than would normally be allowed by LCPs. And not only is that not LCP consistent, but it has the potential for significant coastal resource impacts in certain circumstances. The key to navigating that conflict is understanding when and where a deviation can be accommodated without significant coastal resource impacts. Thus, it is important that LCPs include clear language identifying the process for considering CDP applications for projects in the coastal zone to which the DBL might be applied, including in terms of what Coastal Act/LCP standards the project is seeking deviations from and why, and what coastal resource impacts may result from such deviations. The proposed amendment, however, lacks such details and specificity, and the outcome could be unintended and prohibited coastal resource degradation due to its implementation, inconsistent with the LUP. Fortunately, there are ready solutions to help provide better implementation and decision-making clarity.

First, the LCP lacks a definition of coastal resources. This is not critically problematic in and of itself inasmuch as these resources are generally well understood, and their protection is generally prioritized in CDP decisions in the County. At the same time, however, when the premise of DBL application to projects is deviations to otherwise applicable LCP standards, it becomes more important that the various resources that could be implicated are more explicitly defined to ensure that their protection is explicitly taken into account. Thus, **Suggested Modification 1** adds a definition of 'coastal

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<sup>7</sup> And on this point it is noted that the original concept inherent in the law of allowing up to three concessions and/or incentives to a project (e.g., allowing an additional 10 feet of height above the otherwise required maximum to accommodate the project), is contradicted by the law's waiver provisions that allow unlimited exceptions to be applied. In other words, the law is internally inconsistent on this point, and its waiver provisions can be construed to essentially allow any number of exceptions to local requirements.

resources' to the LCP's definitions section, where this definition generally tracks similar definitions adopted in other LCPs statewide by the Commission.<sup>8</sup>

And second, **Suggested Modification 2** provides a series of provisions describing the process that needs to be undertaken for CDP applications to which the DBL is applied, including critically comparing the Coastal Act/LCP consistent project to a project to which size, scale, density and other bonuses have been applied via the DBL. That process includes: describing what a Coastal Act and LCP consistent project that did not utilize the DBL would look like, including in terms of site development (e.g., height, density, setbacks, floor area ratio, parking spaces, etc.) but also in terms of the number of affordable housing units that would be required pursuant to other legal requirements;<sup>9</sup> comparing the non-DBL project with the proposed DBL project, including in terms of clearly identifying what LCP standards are being deviated from and what the resultant coastal resource impacts and affordable housing benefits are between the LCP-Consistent Project and the DBL Project; identifying ways to avoid, and to mitigate where unavoidable, any coastal resource impacts; and a required finding that any projects utilizing the DBL do so in a manner that encourages housing opportunities for persons of low and moderate income (as described in Section 30604(h) of the Coastal Act) with the fewest Coastal Act and LCP deviations and without any significant adverse coastal resource impacts.

The suggested language is intended to facilitate affordable housing while respecting coastal resources and acknowledging Coastal Act/LCP constraints. It allows applicants, decisionmakers, and the public a clear process for identifying issues, costs, and benefits for proposed projects using the DBL, all with a goal of providing as much affordable housing in a particular project without coastal resource impacts—both of which are critical statewide objectives. Importantly, the suggested modifications provide enhanced implementation clarity that should be able to appropriately protect coastal resources as is required by the LUP, the standard of review here. As modified, the proposed IP amendment can be found consistent with and adequate to carry out the LUP.

### **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. In this case, the County exempted the LCP amendment from CEQA review

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<sup>8</sup> See, for example, the Pismo Beach, Grover Beach, and Capitola LCPs.

<sup>9</sup> Such as the County's Inclusionary Housing Ordinance specified in IP Section 23.04.096, which requires the provision of affordable housing or the payment of an in-lieu fee for many types of proposed housing projects, with certain exceptions.

pursuant to CEQA Section 15061(b)(3), finding that there is no possibility that there will be a significant effect on the environment as a result of the proposed amendment.

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).