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Date: July 30, 2021

To: **COMMISSIONERS AND INTERESTED PERSONS**

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Subject: **STAFF RECOMMENDATION ON CITY OF ENCINITAS MAJOR
AMENDMENT NO. LCP-6-ENC-21-0002-2 (ADU and JADU Update) for
Commission Meeting of August 11-13, 2021)**

SYNOPSIS

On December 22, 2020, the City of Encinitas Local Coastal Program (LCP) Amendment No. LCP-6-ENC-21-0002-2 was filed in the San Diego District office. The proposed amendment is one part of a batched submittal from the City that will affect the certified LCP implementation plan only. Due to the unforeseen and unusual circumstances related to the current public health crisis, in addition to the LCP amendment having been submitted during the winter holiday season, the subject LCP amendment was not officially recorded in the Commission's database until January 4, 2021. Thus, while the amendment's record number reflects the City's second submittal of the 2021 calendar year, this item is being considered as the City's second submittal of the 2020 calendar year. Thus, the City of Encinitas still has three major LCP amendment submittals remaining for the 2021 calendar year.

A one-year time extension was granted on March 10, 2021. As such, the last date for Commission action on this item is March 21, 2022.

SUMMARY OF AMENDMENT REQUEST

The City is proposing to amend its certified LCP Implementation Plan to modify the regulations and requirements for accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs) consistent with recent changes in state law. The amendment would update and revise existing definitions for accessory dwelling units and junior accessory dwelling units and clarify development standards for accessory units including size, height, and setback limits.

The proposed modifications would allow ADUs and JADUs as permitted uses within all areas zoned for single-family or multi-family residential uses. As proposed, the amendment would allow the demolition or conversion of garages, carports, or covered parking structures in conjunction with the construction of an ADU or JADU, without replacing the parking required for the existing primary structure. (Parking requirements for ADUs and JADUs themselves are not being revised). The proposed amendment removes the requirement for the correction of legal nonconforming zoning conditions as a condition for ministerial approval of a permit application for an ADU or JADU.

The amendment also clarifies when the development of ADUs and JADUs is considered an increase in density or intensity of use of a site.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that, following a public hearing, the Commission deny the proposed City of Encinitas Implementation Plan as submitted, and then approve the amendment subject to the suggested modifications listed below. As proposed, the amendment would not require replacement off-street parking when a garage, carport, or covered parking structure is demolished in conjunction with the construction of an ADU or JADU, or when a garage, carport, or covered parking structure is converted into an ADU or JADU. This policy change is not likely to have substantial adverse effects to coastal resources in the residential areas in the vast majority of the City. However, west of Coast Highway 101, spillover parking demand from private residential uses would directly impact the ability of visitors to access Encinitas' shoreline and recreational opportunities. The public shoreline parking lots are insufficient to support the demand for parking; during the busy summer months, most of the existing public street parking west of Coast Highway is occupied by beach visitors. As such, the amendment could result in adverse impacts to public access and recreation. To address these concerns, suggested modifications require replacement off-street parking to be provided for residential sites west of Coast Highway 101, which will ensure that all of the circulation, recreation, and access protection policies contained in the certified LUP are adhered to.

As proposed, the City would not require new ADUs or JADUs proposed at sites that contain legal nonconforming zoning conditions, to correct those nonconforming conditions. Most nonconformities have little or no substantial impact on coastal resources. However, nonconformities located within a geologic setback, or within a public view corridor, or within the setback from a sensitive wetland or upland habitat would impact coastal resources by blocking views, impairing biological resources, or threatening geologic stability. Thus, suggested modifications require that in those specific situations, creation or conversion to an ADU would be considered an intensification or creation of a nonconformity that must be brought into conformance with the LCP.

As proposed, to accommodate and maximize opportunities for ADUs, the amendment eliminates or reduces many of the existing setback requirements, except as required by the Local Coastal Program. While the City's attentiveness to the LCP is appreciated, in this case, strict adherence to all of the setback requirements in the LCP may limit the

ability to construct new accessory units beyond what is necessary to protect coastal resources. Therefore, suggested modifications allow for reduced setbacks, except for those associated with coastal bluff and inland hillsides, sensitive habitat, and visual resources protection policies. In this way, the maximum flexibility for the siting of ADUs and JADUs will be allowed while protecting coastal resources and without unnecessarily restricting the construction of ADUs in the city.

It is staff's understanding that City staff is in agreement with all of the suggested modifications.

The appropriate resolutions and motions begin on Page 5. The suggested modifications begin on Page 6. The findings for denial of the Implementation Plan Amendment as submitted, and approval if modified begin on Page 11.

ADDITIONAL INFORMATION

Further information on the City of Encinitas LCP amendment No. LCP-6-ENC-21-0002-2 may be obtained from Cort Hitchens, Coastal Planner, at (619) 767-2370.

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EXHIBITS

[Exhibit 1 – Ordinance No. 2020-10](#)

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

[Exhibit 3 – Recommended Figure 1](#)

I. OVERVIEW

A. LCP HISTORY

On November 17, 1994, the Commission approved, with suggested modifications, the City of Encinitas' LCP (both LUP and implementing ordinances). The City accepted the suggested modifications; and, on May 15, 1995, began issuing CDPs for those areas of the City within the Coastal Zone. The Commission has certified many amendments to the City's LCP since 1995.

B. STANDARD OF REVIEW

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

C. PUBLIC PARTICIPATION

The City has held Planning Commission and City Council meetings with regard to the subject amendment request. All of those local hearings were duly noticed to the public. Notice of the subject amendment has been distributed to all known interested parties.

II. MOTION AND RESOLUTIONS

Following a public hearing, staff recommends the Commission adopt the following resolutions and findings. The appropriate motion to introduce the resolution and a staff recommendation are provided just prior to each resolution.

1. MOTION:

I move that the Commission reject the Implementation Program Amendment for the City of Encinitas 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 Encinitas certified LCP and adopts the

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

2. MOTION:

I move that the Commission certify the Implementation Program Amendment for the City of Encinitas certified LCP if it is modified as suggested in this staff report.

STAFF RECOMMENDATION:

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

RESOLUTION TO CERTIFY THE IMPLEMENTATION PROGRAM AMENDMENT WITH SUGGESTED MODIFICATIONS:

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

III. SUGGESTED MODIFICATIONS

Staff recommends the following suggested revisions to the proposed Implementation Plan be adopted. The underlined sections represent language that the Commission suggests be added, and the ~~struck-out~~ sections represent language which the Commission suggests be deleted from the language as originally submitted.

1. Revise Section 30.48.040(T)(15)(b) as follows:

T. Accessory Dwelling Units, General

b. Notwithstanding any other provision of this Section 30.48.040(T), accessory dwelling units shall comply with the setbacks established in Chapter 30.34 (Special Purpose Overlay Zones) and the sensitive habitat protection policies of the Municipal Code and Local Coastal Program where required ~~by~~ to comply with the coastal bluff and inland hillside, sensitive habitat, or scenic views and visual resource protection policies of the Local Coastal Program.

2. Revise Section 30.48.040(T)(15)(c)(iii) as follows:

c. Accessory dwelling units may be located within a required street side, interior side, or rear yard setback area provided that such structure is located no closer than four feet to a side or rear lot line unless any of the following are true:

[...]

iii. No setback shall be required if the accessory dwelling unit consists of the conversion of existing space wholly within an existing primary residence, or wholly within an existing accessory structure, or is a structure constructed in the same location and to the same dimensions as an existing structure, unless the coastal bluff and inland hillside, sensitive habitat, or scenic views and visual resource protection policies of the Local Coastal Program requires a greater setback.

3. Revise Section 30.48.040(T)(15)(c)(iv) as follows:

[...]

iv. Side and rear setbacks sufficient for fire and safety conditions and regulations shall be required for an accessory dwelling unit constructed within the existing space of an accessory structure except for an expansion of up to 150 square feet to accommodate ingress and egress only, unless the coastal bluff and inland hillside, sensitive habitat, or scenic views and visual resource protection policies of the Local Coastal Program require a greater setback.

4. Revise Section 30.48.040(T)(15)(c)(v) as follows:

[...]

v. Accessory dwelling units constructed on properties directly adjacent to a coastal bluff shall comply with the setbacks established by the coastal bluff and inland hillside, sensitive habitat, or scenic views and visual resource protection policies of the Local Coastal Program.

5. Revise Section 30.48.040(T)(18)(c) as follows:

18. Parking.

[...]

c. When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the city shall not require that those off-street parking spaces be replaced, unless the site is located west of Coast Highway 101 from La Costa Avenue to Swami's Beach, including the residences just south along the bluff as depicted in Figure 1, where the required off-street parking spaces shall be replaced.

6. Revise Section 30.48.040(T)(18) to restore existing subdivision c. (proposed to be removed) as subdivision d., and revise as follows:

~~c. Any required parking spaces removed in conjunction with the construction of an accessory dwelling unit shall be replaced on the same lot as the accessory dwelling unit.~~

~~i. The replacement parking spaces may be located in any configuration on the lot, including, but not limited to, as covered spaces, or by the use of mechanical automobile parking lifts.~~

~~ii. Uncovered replacement parking spaces may be located within the building setback areas.~~

~~iii. Structures for covered parking spaces shall be required to comply with applicable setbacks.~~

d. Any required parking spaces removed in conjunction with the construction of an accessory dwelling unit on all lots located west of Coast Highway 101 as depicted in Figure 1 shall be replaced on the same lot as the accessory dwelling unit.

i. The replacement parking spaces may be located in any configuration on the lot, including, but not limited to, as covered spaces, or tandem spaces, or by the use of mechanical automobile parking lifts.

ii. Uncovered replacement parking spaces may be located within building setback areas.

iii. Structures for covered parking spaces shall be required to comply with applicable setbacks.

7. A new Figure #1 shall be added into the certified Implementation Plan component of the Local Coastal Program. The boundaries of the proposed ADU Replacement Parking Area are depicted on [Exhibit 3](#) to this staff report and generally consist of the area west of Highway 101.

8. Section 30.48.040(T)(18)(d) shall be re-lettered as follows:

~~de.~~ Notwithstanding the above or any other law, no parking standards shall be imposed for an accessory dwelling unit in any of the following instances

[...]

9. Revise Section 30.48.040(T)(23) as follows:

23. Nonconforming.

The city shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of legal nonconforming zoning conditions, except as provided for nonconforming detached accessory structures under Municipal Code Section 30.76.120 (A)(1)(d).

10. Revise Section 30.76.120(A)(1)(d) as follows:

[...]

1. An increase to the “intensity” of a nonconforming structure/use would refer to:

[...]

d. Conversion of a nonconforming detached accessory structure from an unhabitable use type (for example, storage building or garage) to a habitable structure type (for example, a portion of the primary dwelling) shall be considered an intensification or creation of a nonconformity. However, conversion of such uninhabitable structures to accessory dwelling units permitted under Municipal Code Section 30.48.040(T) shall not be considered an intensification, unless the structure does not conform with the coastal bluff and inland hillside, sensitive habitat, or scenic views and visual resource protection policies of the Local Coastal Program.

11. Revise Section 30.76.120(A)(3)(d) as follows:

New construction, a conforming addition to an existing dwelling, or the conversion of existing structures in order to create an accessory dwelling unit or junior accessory dwelling unit in accordance with 30.48.040(T) and

30.48.040(U) shall not be considered an increase in density or intensity for purposes of this section, unless the reconstructed structure does not conform with the coastal bluff and inland hillside, sensitive habitat, or scenic views and visual resource protection policies of the Local Coastal Program.

IV. FINDINGS FOR DENIAL OF THE CITY OF ENCINITAS IMPLEMENTATION PLAN AMENDMENT AS SUBMITTED, AND APPROVAL IF MODIFIED

A. AMENDMENT DESCRIPTION

The City of Encinitas proposes to modify the Implementation Plan (IP) component of its Local Coastal Program (LCP), specifically, Title 30 (Zoning) to amend existing regulations and refine ADU provisions to comply with recent changes to state housing law (including changes established by Assembly Bills 68, 587, 881, and 3182, and Senate Bill 13). The primary proposed LCP changes provide for streamlined ADU/JADU (Accessory Dwelling Units/Junior Accessory Dwelling Units) review and permit processing, allow ADUs and JADUs as permitted uses in all areas zoned to allow single-family or multi-family residential use, eliminate the requirement that off-street parking spaces be replaced when a garage, carport, or covered parking structure is demolished in conjunction with the construction of an ADU or JADU, or when an existing garage or off-street parking structure is converted into an ADU or JADU, and establish that the creation of an accessory dwelling unit or a junior accessory dwelling unit does not require the correction of legal nonconforming zoning conditions as a condition for ministerial approval of a permit application.

Specifically, the proposed amendment would:

- Eliminate the requirement of discretionary review and public hearings for new ADUs and JADUs.
- Allow JADUs to be permitted in conjunction with a proposed single-family residence.
- Clarify that the city shall not require, as a condition of ministerial approval of a permit application for the creation of an ADU or a JADU, the correction of legal nonconforming zoning conditions.
- Allow ADUs as a permitted use in all areas zoned to allow single-family or multi-family residential use.
- Allow an attached or detached ADU with a living area of up to 800 sq. ft., a maximum height of 16-feet, and four-foot side and rear setbacks, is permitted regardless of the living area of the primary dwelling unit.

- Eliminate most setback requirements for ADUs except for those established in Chapter 30.34 (Special Purpose Overlay Zones) of the Municipal Code where required by the Local Coastal Program.
- Waives most zoning limits and open space requirements for ADUs unless the open space is within a recorded easement or protected by the Local Coastal Plan.
- Eliminate the requirement that when a garage, carport, or covered parking structure is demolished in conjunction with the construction of an ADU or converted to an ADU, that those off-street parking spaces be replaced.
- Allow ADUS within existing non habitable space (such as storage rooms, garages, attics, crawl spaces, basements, etc.) within multi-family dwelling structures.
- Other ADU streamlining measures.

[Exhibit 1](#) contains the proposed IP amendment text, [Exhibit 2](#) shows the proposed amendment in strike-out/underline, and [Exhibit 3](#) shows suggested Figure 1, for the area where lost parking must be replaced.

B. CONFORMANCE WITH THE CERTIFIED LAND USE PLAN

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

Land Use Element

Section – Maintaining Balanced Land Uses in the City: The residents of the City feel that a balance must be achieved not only among the various land uses, but between urban development and the natural environment. There are a number of areas of the City that are presently undeveloped or underdeveloped that can accommodate additional homes or businesses.

Goal 8: Environmentally and topographically sensitive and constrained areas within the City shall be preserved to the greatest extent possible to minimize the risks associated with development in these areas.

Policy 8.5: The Special Study Overlay designation shall be applied to lands which, due to their sensitive nature, should only be developed with consideration of specific constraints and features related to drainage courses, bluffs, slopes, geology and soils, biotic habitat, viewsheds and vistas, and cultural resources. Development within the overlay area shall be reviewed and approved in

accordance with criteria and standards which protect coastal and inland resources.

Circulation Element

Goal 6: The City will make every effort to provide public access and circulation to the shoreline, through private dedications, easements or other methods, and public transportation or other facilities.

Resource Management Element

Goal 3: The City will make every effort possible to preserve significant mature trees, vegetation and wildlife habitat within the Planning Area.

Goal 4: The City, with the assistance of the State, Federal and Regional Agencies, shall provide the maximum visual access to coastal and inland views through the acquisition and development of a system of coastal and inland vista points.

Goal 8: The City will undertake programs to ensure that the Coastal Areas are maintained and remain safe and scenic for both residents and wildlife.

Goal 10: The City will preserve the integrity, function, productivity, and long term viability of environmentally sensitive habitats throughout the City, including kelp-beds, ocean recreational areas, coastal water, beaches, lagoons and their uplands, riparian areas, coastal strand areas, coastal sage scrub and coastal mixed chaparral habitats.

Additionally, the certified IP contains the following relevant policies in Chapter 30.34 (Special Purpose Overlay Zones):

30.34.020(B)(1): With the following exceptions, no principal structure, accessory structure, facility or improvement shall be constructed, placed or installed within 40 feet of the top edge of the coastal bluff... Principal and accessory structures closer than 40 feet but not closer than 25 feet from the top edge of the coastal bluff... This exception to allow a minimum setback of no less than 25 feet shall be limited to additions or expansions to existing principal structures which are already located seaward of the 40-foot coastal blufftop setback, provided the proposed addition or expansion is located no further seaward than the existing principal structure, is set back a minimum of 25 feet from the coastal blufftop edge and the applicant agrees to remove the proposed addition or expansion, either in part or entirely, should it become threatened in the future. Any new construction shall be specifically designed and constructed such that it could be removed in the event of endangerment and the property owner shall agree to participate in any comprehensive plan adopted by the City to address coastal bluff recession and shoreline erosion problems in the City.

30.34.020(B)(7): Buildings and other structures shall be sited, designed and constructed so as not to obstruct views to and along the ocean and other scenic coastal areas from public vantage points.

30.34.040(B)(8): The design and exterior appearance of buildings and other structures visible from public vantage points shall be compatible with the scale and character of the surrounding development and protective of the natural scenic qualities of the bluffs.

30.34.080: The Scenic/Visual Corridor Overlay Zone regulations shall apply to all properties within the scenic view corridor along scenic highways and adjacent to significant viewsheds and vista points... When development is proposed on any properties within the Scenic View Corridor Overlay Zone, consideration will be given to the overall visual impact of the proposed project and conditions or limitations on project bulk, mass, height, architectural design, grading, and other visual factors may be applied to design review approval and shall be applied to coastal development permit approval.

The Commission is aware that the state has an affordable housing crisis, and this issue is only more acute in the state's coastal zone. To address this critical need, the state legislature has enacted a number of housing laws in the last several years designed to eliminate barriers to the provision of housing, and to help foster additional housing units—particularly critically needed affordable units—where they can be appropriately accommodated by adequate public services and where, in the coastal zone, they will not adversely affect coastal resources. Toward this end, the 2019-2020 legislative session included a series of changes to state housing law designed to facilitate more ADUs and affordable housing units. Those changes have triggered the need for jurisdictions in the coastal zone to update their LCPs to address requirements affecting the development of ADUs. Importantly, the changes in state law continue to explicitly require that the Coastal Act's (and by extension LCPs') coastal resource protections be incorporated into the process when considering ADUs, and thus, updated local government ADU provisions must continue to ensure coastal resource protections. In short, the goal of updating LCPs related to ADUs and JADUs is to harmonize the state ADU/JADU housing law changes with the Coastal Act in a way that continues to protect coastal resources while also reducing and eliminating barriers to the development of ADUs.

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

1. Findings for Denial

Parking Required for Primary Structures

The City of Encinitas is bounded by the City of Solana Beach and San Elijo Lagoon on the south, the City of Carlsbad and Batiquitos Lagoon to the north, and extends up to approximately 6 miles inland of the coast adjacent to the County of San Diego. The City has approximately 6 miles of shoreline, which is accessed regionally by the north/south Interstate 5 corridor, and locally by Coast Highway 101. Major east–west connectors to the shoreline are Leucadia Boulevard, La Costa Avenue, Encinitas Boulevard, Santa Fe Drive, and Manchester Avenue.

Existing land uses in the City are predominantly residential, accounting for about 45% of the City’s land area. Almost all of the development within 1,000 feet of the shoreline in Encinitas consists of residential uses except for immediately adjacent to Coast Highway 101. Two state beaches are located on the southern end of the City, Cardiff State Beach and San Elijo State Beach. North of the state beaches, the City has a variety of public beach access points, overlooks and parking lots. Grandview Beach, Beacon's Beach, Moonlight Beach, and Swami’s Beach have public parking lots at their access points, while Stonesteps Beach, D Street Beach, and the viewpoints at North El Portal, Roseta Street, the Moonlight Beach Overlook, E Street, H Street, I Street, J Street, all rely on street parking for public access.

There are approximately 25,818 housing units in Encinitas as reported by the San Diego Association of Governments (SANDAG) in 2015. Thus, the proposed amendment would potentially encourage the provision of a substantial amount of new lower cost residential units, consistent with the goals of the LCP. However, with regard to the proposed changes to parking requirements, the City of Encinitas’ existing certified LCP, like most LCPs, includes requirements that residential properties account for their parking needs on their own properties, often referred to as “off-street” parking requirements (e.g., typically in garages, carports, covered parking, driveways, etc.). Under the City’s existing certified LCP, no parking is required for accessory dwelling units within one-half mile of public transit and most JADU’s; no changes are proposed to the parking requirements for accessory units. However, as proposed, the amendment would remove the requirement that off-street parking spaces for the primary dwelling be replaced when a garage, carport, or covered parking structure is demolished in conjunction with the construction of an ADU or JADU, or when an existing garage or off-street parking structure is converted into an ADU or JADU.

This policy change is not likely to have substantial adverse effects to coastal resources in the residential areas in the vast majority of the City. However, west of Coast Highway 101, spillover parking demand from private residential uses would directly impact the ability of visitors to access Encinitas’ shoreline and recreational opportunities. The public shoreline parking lots are insufficient to support the demand for parking, and most coastal visitors must utilize on-street parking. During the busy summer months, most of the existing public street parking west of Coast Highway is occupied by beach

visitors. The recently approved Streetscape project (CDP #A-6-ENC-18-0019), will be adding more parking along the Coast Highway 101 corridor, but all of the parking added will be located on the eastern side of Coast Highway 101. Public parking east of Coast Highway 101 is typically used by the public to access the commercial developments on the west side of Coast Highway 101 but is not typically used for beach access due to its relative distance from the coast. Thus, it is of utmost importance to preserve the supply of public, on-street parking west of Coast Highway 101 in Encinitas for coastal access.

Nonconformities and Intensification of Use

The City's existing nonconformity regulations allow reconstruction of and additions to nonconforming structures, that is, those that do not meet current development standards, as long as neither density nor the intensity of the nonconformity are increased. As proposed, the amendment revises the nonconforming policies such that the conversion of an existing, legal nonconforming detached, non-habitable accessory structure into an ADU would not be considered an intensification of use. The amendment also establishes that "new construction, a conforming addition to an existing dwelling, or the conversion existing structures in order to create an accessory dwelling unit or junior accessory dwelling unit" would not be considered an increase in density or intensity.

Under the existing LCP, conversion of a nonconforming detached accessory structure, such as a storage building or a garage, to a habitable structure, either part of the primary dwelling unit or to an accessory unit, is considered an intensification or creation of a nonconformity. Intensification or creation of a nonconformity requires the nonconformity to be resolved; that is, the structure must be brought into conformance with the current policies of the LCP.

Most nonconformities have little or no substantial impact on coastal resources. For example, an existing detached garage or shed located in a front yard setback is technically inconsistent with the LCP but is unlikely to significantly affect community character. Accessory units, by their very nature, bring additional people and activity to a site, and thus, conversion of non-habitable structures into ADUs are typically be considered an intensification of use, but in such a case, the conversion would not impact coastal resources. Thus, there would no compelling reason to require the structure/ADU be brought into conformance with the LCP. In contrast, an existing detached shed, or studio, or other detached accessory structure, or reconstruction or conversion of existing structures located on a bluff within the geologic setback, or within an public view corridor, or within the setback from a sensitive wetland or upland habitat, would impact coastal resources by blocking views, impairing biological resources, or threatening geologic stability. Thus, in those cases, creation of or conversion to an ADU should be considered an intensification or creation of a nonconformity that must be brought into conformance with the LCP. Conversion of an existing non-primary structure into a new ADU or JADU 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. Again, the vast majority of accessory structures are *not* located on blufftop lots, or adjacent to

sensitive habitat, or within view corridors. However, in the event there is such a structure, the LCP should not allow those structures to be converted to dwelling units without resolving the nonconformity. Thus, as proposed, the LCPA could result in impacts to coastal resources protected by the policies of the LUP.

In addition, the amendment identifies when new construction of an ADU or JADU would not be considered an increase in density or intensity and thus, would not necessarily have to resolve nonconformities at a site.

Conformity with LCP Setbacks

As proposed, the amendment eliminates or reduces many of the existing setback requirements to accommodate and maximize opportunities for ADUs. In recognition of the need to protect coastal resources, several of the proposed changes establish that setback requirements for ADUs “required by the Local Coastal Program” still apply, while one change specifies that “setbacks established in Special Purpose Overlay Zones of the Municipal Code where required by the LCP” still apply to ADUs.

The Special Purpose Overlay Zones have policies protecting coastal bluffs, inland hillsides, floodplains and wetlands, cultural resources, agriculture, and scenic view corridors. However, the Overlay Zones do not include setback and buffer requirements required to protect environmentally sensitive habitat areas (ESHA) outside of wetlands or floodplain areas. Thus, requiring that ADUs conform with the setback policies of only the Overlay Zones could potentially result in impacts to sensitive upland habitat.

Conversely, while the proposed amendment requires full consistency with the LCP, the existing LCP includes setback policies that *could* be eliminated to accommodate the construction of ADUs without impacting coastal resources. As noted above, allowing ADUs to encroach into in front, side, and backyard setbacks on properties not adjacent to bluffs, hillsides, or sensitive habitat, and not within view corridors, would promote the construction of ADUs and still be consistent with the resource protection policies of the Land Use Plan. Requiring conformance with all of the setback policies in the Implementation Plan could unnecessarily restrict the construction of ADUs in the city, inconsistent with the policies of the LUP promoting balanced development.

Thus, the proposed amendment creates potential conflicts with coastal resource protection and public access policies of the certified LUP, regarding housing, public access, sensitive habitats, geologic setbacks and stability, and coastal views.

2. Findings for Approval

To address these issues, the Commission has included several suggested modifications to the proposed amendment.

As described above, not requiring replacement parking when an off-street parking structure is demolished in conjunction with the construction of an ADU or JADU, or when an existing off-street parking structure is converted into an ADU or JADU is

unlikely to impact public access in the majority of the City. For example, there are only a few areas where residential areas street parking is used to access canyon or lagoon trails, and these low density areas are unlikely to be impacted significantly even if existing parking were to be removed to construct accessory dwelling units. However, in the area of the shoreline where the public streets are used for beach parking, spillover parking resulting from eliminating parking associated with existing structures has the potential to significantly adversely impact public access. Therefore, Suggested Modification #7 adds a new figure into the LCP, Figure 1, (see [Exhibit 3](#) to this staff report) and Suggested Modification #5, which establishes that replacement parking is required for projects that demolish or convert an off-street parking structure in conjunction with the construction of an ADU or JADU when the site is located within the area generally described as west of Highway 101. The number of residential properties in Encinitas that are located west of Coast Highway 101 represents a small percentage of the City's housing stock, and requiring replacement off-street parking for these residences would have a nominal effect on the City's ability to provide adequate lower-cost housing through the development of ADUs and JADUs. Furthermore, Suggested Modification #6 allows for the replacement parking spaces to be located in any configuration on the site, including but not limited to uncovered spaces, tandem spaces, or within building setback areas, as long as the spaces comply with applicable setbacks and buffers in the Local Coastal Program that protect coastal bluffs and inland hillsides, sensitive habitat, and scenic views and visual resources. Thus, even within the proposed ADU replacement parking area where replacement parking is required, limits on the ability to construct accessory units will be minimized, while impacts to public access and recreation will be avoided. As long as the required parking will be provided somewhere on the site consistent with LCP setbacks and buffers that protect coastal resources, demolition or conversion of parking structures into ADUs or JADUs will not have any adverse impact on public access or coastal resources.

Suggested Modifications #9, #10, and #11 relate to concerns regarding nonconforming and new structures and what should be considered an increase in density or intensity of use when converted to accessory dwellings. As modified, new construction or the conversion of existing nonconforming structures to accessory units will only be considered an increase in density or intensity if the project does not conform with the coastal bluff and inland hillside, sensitive habitat, or scenic views and visual resource protection policies of the Local Coastal Program.

As described above, the amendment would allow ADUs to be constructed with reduced side and rear yard setbacks, except as required by the Local Coastal Program. However, while the Commission appreciates the City's attentiveness to the LCP, in this case, strict adherence to all of the setback requirements in the LCP may limit the ability to construct new accessory units beyond what is necessary to protect coastal resources. Suggested Modifications #1, #2, #3, and #4 revise the amendment to allow reduced setbacks, except for those associated with coastal bluff and inland hillsides, sensitive habitat, or visual resource protection policies. In this way, the maximum flexibility for the siting of ADUs and JADUs will be allowed, while protecting sensitive coastal resources.

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

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

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

The City found that this Ordinance is statutorily exempt from the requirements of CEQA pursuant to Section 21080.17 of the Public Resources Code, which provides that CEQA does not apply to the adoption of an ordinance to implement the provisions of Section 65852.2 of the Government Code regarding accessory dwelling units. The City also found that the proposed amendments regarding junior accessory dwelling units are also exempt from environmental review pursuant to General Rule, Section 15061(b)(3) of the CEQA Guidelines since it can be seen with certainty that there is no possibility that the Ordinance may have a significant effect on the environment.

Nevertheless, the Commission is required in an LCP submittal or, as in this case, an LCP amendment submittal, to find that the LCP, or LCP, as amended, does conform with CEQA. In this particular case, the LCP amendment as modified will not have any significant adverse effect on the environment and there are no feasible alternatives or feasible mitigation measures available that would substantially lessen any significant adverse impact on the environment. Therefore, the Commission finds the subject LCP implementation plan, as amended, conforms to CEQA provisions.