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To: Commissioners and Interested Persons

From: Kevin Kahn, Central Coast District Manager
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**Subject: City of Santa Cruz LCP Amendment Number LCP-3-STC-21-0071-2
(Wireless Telecommunications Facilities)**

SUMMARY OF STAFF RECOMMENDATION

The City of Santa Cruz proposes to amend its Local Coastal Program (LCP) by updating LCP Implementation Plan (IP) standards associated with wireless telecommunications facilities, including a series of changes specific to small-cell wireless telecommunication facilities. As proposed, small-cell wireless facilities that are located in the public right-of-way would not be subject to existing LCP wireless provisions, and would instead be subject to a new Municipal Code section that is not part of the LCP. Thus, within the coastal zone, the standard of review for coastal development permit (CDP) purposes of such facilities would be the LCP's general and broader policies requiring protection and enhancement of coastal resources, and not its wireless-specific provisions. The primary intent behind the proposed amendment is to more quickly process such permit applications in light of federal timing requirements.¹

While the existing LCP's non-wireless provisions that would apply in such cases provide a robust policy framework to protect and enhance coastal resources (and these policies would remain unchanged and continue to govern in any case), those policies are also appropriately augmented by the IP's existing wireless telecommunication facilities provisions. These existing provisions provide detailed standards specific to these unique types of facilities, and addresses their particular issues and contexts. 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 provisions also include technical requirements, including third-party technical review to justify any deviation from required

¹ Specifically, the "Middle Class Tax Relief and Job Creation Act of 2012" (also known as the "Spectrum Act") and its associated implementing regulations set 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 must 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 application filing for small-cell wireless facilities on new structures.

standards, to ensure that these standards can be met and do not run afoul of federal law (including providing for the relevant tests for same).

Staff is concerned that the City's proposal to eliminate the applicability of these provisions in these small-cell cases in the coastal zone would lead to confusion, and would ultimately lead to adverse coastal resource outcomes. In fact, by exempting these facilities from existing IP standards in the coastal zone, there is the potential for such facilities to be approved in forms that would not adequately protect coastal resources, including significant public views.² Thus, the amendment as proposed cannot be found consistent with and adequate to carry out applicable LUP policies (i.e., the standard of review for IP amendments such as this). It is also unclear whether this type of system would actually result in less processing time, as is the intent. In fact, it could conceivably result in a *longer* permitting processes due to the potential for appeals and other controversies that could be avoided with more clear and specific standards that help guide siting and design of such facilities, including ideally siting in locations that will not lead to significant coastal resource impacts. Fortunately, it is possible to continue to adequately protect coastal resources, including through specific provisions applicable to these unique uses, while also allowing for the City's desired streamlining.

Toward this end, Commission and City staffs worked collaboratively to develop specific LCP language that can help to achieve the City's streamlining objectives while making sure that there exist adequate LCP provisions capable of ensuring coastal resource protection. The primary way this is achieved is to include specific siting, design, and processing standards that would apply to small-cell wireless facilities located in the public right-of-way. Many of these standards are pulled from the LCP's existing wireless provisions (e.g., siting away from significant public view areas) or from the new non-LCP design guidelines the City developed as part this submittal (e.g., colocation, undergrounding, camouflaging etc.) or both (i.e., there is significant substantive overlap between them). In addition, and to address the short time period allotted via the federal shot clock, the new language also allows for City CDP decisions on small-cell facilities in the public right-of-way to be appealed directly to the Coastal Commission.

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's/Federal Communications Commission's streamlining objectives. City staff indicates they are in agreement with the suggested modification language. Thus staff recommends that the Commission approve the amendment with suggested modifications. The required motions and resolutions are found on page 5.

Staff Note: LCP Amendment Action Deadline

² 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.

This proposed LCP amendment was filed as complete on October 25, 2021. The proposed amendment affects the LCP's Implementation Plan (IP) only, and the 60-working-day action deadline was December 24, 2021. On December 17, 2021, the Commission extended the deadline by one year, and thus the current action deadline is December 24, 2022.

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EXHIBITS

Exhibit 1: Proposed IP Amendment

Exhibit 2: Proposed IP Amendment Showing the Commission’s Suggested
Modifications

Exhibit 3: Types of Small-Cell Wireless Facilities

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-21-0071-2 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-21-0071-2 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-21-0071-2 as submitted by the City of Santa Cruz if it is modified as suggested in this staff report, and I recommend a yes vote.*

Resolution to Certify: *The Commission hereby certifies LCP Amendment Number LCP-3-STC-21-0071-2, 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 August 11, 2022**), 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's suggested modifications.

1. Modify the IP amendment as show in Exhibit 2.

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 facilities³ and by specifying that 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. While the legal definition of these facilities are quite technical and defined pursuant to federal law, in layman's terms, small-cell facilities are a type of wireless broadband infrastructure that typically take the form of small antennas (3-4 feet tall) that are placed on existing infrastructure (such as utility poles) and are accompanied by equipment cabinets installed lower on the pole or underground. Examples of types of small-cell facilities are shown in **Exhibit 3**. The amendment would also exempt these facilities from all existing IP standards in the coastal zone. 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

³ 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 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."

nationwide.⁴ These federal guidelines impose restrictions on state and local governments as to 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 must 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 from filing for small wireless facilities on new structures.

The LCP's existing wireless telecommunications provisions require all such facilities to meet stringent siting and design requirements to protect visual and other coastal resources. The overall objective of these existing provisions is to ensure that wireless facilities "minimize adverse visual impact" and protect "the aesthetic quality of the city" (IP Section 24.12.1400), and they require 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 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).

As discussed above, the proposed amendment 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" section of Municipal Code 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 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.⁵

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

⁴ See FCC Declaratory Ruling and Report Order (FCC 18-133) released September 27, 2018.

⁵ 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.

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 under Section 30513 of the Coastal Act 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 number of provisions 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, 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.*

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 landforms, 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

While the LUP includes 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 provisions provide 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.⁶ 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 for action on permit applications for small-cell wireless facilities.⁷ 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. Given this, under the 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 no) impacts on coastal resources. In short, the City's proposal would offer fewer 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. And, the expected outcome is *reduced* coastal resource protection for such facilities under the amended LCP as proposed. As a result, 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.

⁶ 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 directed.

⁷ 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.

First, it is important to note that the City already has certain streamlining tools, 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 order 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.⁸ 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/exemptible areas of the coastal zone, it is important to include siting and design standards that would protect potentially impacted coastal resources, including aesthetics and coastal views, public recreational access and archeological resources.⁹

In light of these concerns, Commission and City staff worked together to develop LCP language that could meet the City's streamlining objectives while still providing appropriate provisions to protect coastal resources for small-cell facilities in the public right-of-way, including to make clear what standards apply to wireless telecommunications more broadly (i.e., the wireless telecommunications provisions specified in IP Section 24.12.1400 et. seq. as well the rest of the LCP) and what standards within the ordinance apply to the specific subtype of small-cell facility in the public right-of-way. Thus, suggested modifications are included that first make this 'road-map' clear for CDP evaluation purposes (see language to be added to Section 24.12.1415(A) to this effect on pages 5-7 of **Exhibit 2**). The modifications also add new provisions to address the particular issues and needs of small-cell facilities in the public right-of-way, including requirements addressing their siting and design to avoid and/or minimize impacts to sensitive coastal resources. Many of these standards are pulled from existing LCP wireless provisions (e.g., establishing location preferences outside the coastal zone and in areas that will not adversely impact significant public views, and in all cases outside of any sensitive habitats or natural areas) or from the new design guidelines the City developed as part this ordinance (e.g., requirements to locate such facilities on existing poles or below grade, to use camouflaging and other visual blending techniques, and to incorporate noise, lighting, and maintenance standards) (see pages 7-9 of **Exhibit 2**). The overall intent is: "To the maximum extent feasible, such facilities shall be sited and designed in a manner that avoids overall visibility, and eliminates or substantially reduces their visual and aesthetic impact upon the surrounding public right-of-way, archeologic resources, public views and public access"

⁸ 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) in areas where sensitive coastal resources could be adversely affected, 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.).

⁹ And these facilities located in coastal zone public rights-of-way would, almost by definition, be located generally 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.

(see Section 24.12.1434(C) on pages 9-12 of **Exhibit 2**). Finally, to address streamlining issues, suggested modifications are added that provide that CDPs for small-cell facilities in the public right-of-way approved by the Zoning Administrator are appealable directly to the Coastal Commission (see pages 24-26 of **Exhibit 2**), and therefore able to bypass potential appeals to the City's Planning Commission and City Council, which will allow for faster processing time should such City CDP decisions get appealed. This will allow for quicker processing that is mindful of the shot clocks set by the federal government but in a manner that will retain important regulatory standards governing such facilities.

As modified, the revised LCPA addresses the particular substantive and procedural issues that small-cell wireless facilities in the public right-of-way engender, and would make clear which siting and design standards apply to small-cell facilities located within the public right-of-way versus all other wireless types, provide specific siting and design requirements for these small-cell facilities, and provide for expedited permit review. The result is a more directive set of standards governing small-cell wireless facilities in the coastal zone that targets their specific issues. 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, has addressed all comments received, 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 (all above findings are incorporated herein in their entirety by reference). 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).