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# W14c

Date: February 24, 2022

To: **COMMISSIONERS AND INTERESTED PERSONS**

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CARRIE BOYLE, COASTAL PLANNER, SAN DIEGO COAST DISTRICT**

Subject: **STAFF RECOMMENDATION ON CITY OF CARLSBAD MAJOR  
AMENDMENT NO. LCP-6-CAR-20-0077-2 (ADU Update) for Commission  
Meeting of March 9-11, 2022**

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## SYNOPSIS

The subject LCP land use plan and implementation plan amendment was submitted and filed as complete on November 19, 2020. A one-year time extension was granted on February 10, 2021. As such, the last date for Commission action on this item is April 5, 2022. The subject proposal was originally scheduled for the February 2022 hearing but was postponed in order to allow for time to reach an agreement with the City on the suggested modifications proposed below.

### SUMMARY OF AMENDMENT REQUEST

The City of Carlsbad proposes revisions to the City's Zoning Ordinance, part of the certified LCP implementation plan (IP), as well as to the Village and Barrio Master Plan, a combination IP and land use plan (LUP) for the Village-Barrio LCP segment, in order to bring the City's regulation of accessory dwelling units (ADUs) into compliance with state law.

The proposed LUP amendment would modify the Village and Barrio Master Plan to permit junior ADUs (JADUs) in certain Districts. The existing Plan currently permits ADUs only on lots with one single-family dwelling. The proposed amendment would allow ADUs on lots with one-family, two-family, multifamily, and mixed-use dwellings.

The proposed IP amendment would repeal and replace the City's existing ADU regulations and make several revisions throughout other sections of the Municipal Code in order to provide consistency with state law and clarify the existing language. It would eliminate the existing definitions of ADUs and JADUs and instead refer directly to the Government Code definitions. It would update certain development standards for ADUs and JADUs, including size and height, and refer directly to the Government Code for other development

standards such as setbacks. The proposed IP would require ADUs and JADUs that are new construction or a conversion or expansion of an existing structure to be consistent with all habitat preserve buffers and geologic stability setbacks. The amendment would also update owner requirements and rental terms of an ADU and JADU.

The IP amendment would also eliminate the requirement to replace existing parking required for the primary residence when parking is removed or converted to an ADU. The existing list of exemptions from off-street parking requirements for ADUs would be repealed and replaced with a cross-reference to the Government Code.

The proposed amendment specifies that the City shall not require, as a condition for approval of an ADU or JADU, the correction of nonconforming zoning conditions in an existing nonconforming residential structure.

Finally, the amendment would clarify language exempting certain ADUs from permit requirements. Section 21.201.060 would exempt from a coastal development permit requirement an ADU that is attached to the primary residence or converted from the existing space of a primary residence or attached accessory structure.

## **SUMMARY OF STAFF RECOMMENDATION**

Staff is recommending denial of the LUP and IP amendments as submitted, and approval of both amendments as modified by the staff recommendation.

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

The majority of the provisions of the proposed amendment are consistent with the certified LCP and Coastal Act. However, as proposed, the amendments contain several procedural and substantive issues related to the provision of ADUs that do not conform to the certified LCP or Chapter 3 of the Coastal Act and require suggested modifications to be consistent with the standard of review.

## LCPA LCP-6-CAR-20-0077-2 (ADU Update)

As proposed by the City, the amendment would cross-reference to Government Code Sections 65852.2 and 65852.22, rather than restate the development standards and requirements for ADUs and JADUs within the text of the Implementation Plan. Cross-references to other code sections or documents incorporate by reference the language of those code sections or documents into the certified LCP. The proposed cross-references may become problematic because the Legislature may amend the Government Code sections and thus those amendments would be incorporated into the LCP without Commission knowledge or approval, potentially creating additional inconsistency with the certified LCP or the Coastal Act. As described above, state ADU laws must be harmonized with the Coastal Act. Automatically incorporating any updates to the state law into the LCP would prevent the opportunity for the Commission to review amendments for consistency with the Coastal Act and LUP and could therefore result in impacts to coastal resources and public access protected by the LCP. To address this concern, suggested modifications add the effective date of the Government Code sections referenced in the City's ADU regulations to make clear that only those development standards and requirements currently in effect are part of the City's LCP. Any future changes to the state law provisions that are referenced are subject to an LCP amendment so that the Commission can address any provisions that may conflict with the Coastal Act and the City's LCP.

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 proposal is not likely to have substantial adverse effects to coastal resources in the vast majority of the City. However, in certain coastal areas in Carlsbad, spillover parking demand from private residential uses would impact the ability of visitors to access Carlsbad's shoreline and recreational opportunities. 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 the rail corridor and, between Avenida Encinas to the north and Batiquitos Lagoon to the south, west of Interstate 5, which will ensure consistency with the recreation and access protection policies contained in the certified LUP.

The City's proposed amendment would add a provision to the IP regarding nonconforming lots, structures, and uses stating that nonconforming requirements do not apply to ADUs or JADUs that are proposed with an existing nonconforming residential structure. It would also specify that the City shall not require, as a condition for approval of an ADU or JADU, the correction of nonconforming zoning conditions. However, the construction of an attached ADU or JADU could include the replacement of 50% or more of an existing nonconforming structure, thereby extending the lifetime of the existing nonconformity or nonconformities. This raises concerns about extending a nonconforming structure's adverse impacts on coastal resources such as habitat buffers or public views. Suggested modifications would add a definition of redevelopment for the purposes of the City's section on nonconforming structures, such that correction of nonconforming conditions related to coastal resources would be required for an ADU or JADU that results in redevelopment of a nonconforming structure.

During review of the subject amendment, a significant concern with the City's existing ADU provisions (approved by the Commission in 2017 as LCP-6-CAR-17-0055-2) was

identified. As currently certified, the IP states that an ADU that is attached to the primary residence or converted from the existing space of a primary residence or attached accessory structure is exempt from the requirements of a minor coastal development permit and coastal development permit, except in particular circumstances such as where the proposed improvement would encroach into environmentally sensitive habitat area.

However, the distinction between “attached” and “detached” ADUs and JADUs has proved to be one that does not accurately account for the likelihood of impacts to coastal resources. Section 30610 of the Coastal Act exempts certain improvements to residences from the need for permits, but the Commission’s regulations describe how some types of improvements are not exempt due to their potential for adverse effects. (See Cal. Code of Regs., tit. 14, § 13250(a).) As explained in the Executive Director’s recent ADU memorandum issued to local governments ([Exhibit 8](#)), attached ADUs, like detached ADUs, are subject to coastal hazards and attached ADUs, like detached ADUs, may have impacts on views, habitat, and other resources. Exempting ADUs that are attached to a SFR based solely on their connection to the principal structure may result in development impacts, which would be inconsistent with the purpose of Sections 30610 and 13250. Therefore, suggested modifications would clarify that ADUs and JADUs that are located entirely within the existing primary structure and do not increase the existing habitable area of the structure or convert non-habitable area do not require a coastal development permit, while ADUs and JADUs that do not meet all of those criteria will still be required to obtain a coastal development permit.

Only with the incorporation of these suggested modifications can the IP amendment be found consistent with the stated goals and policies of the certified LUP while still allowing for the number and types of housing units that constitute an effective land use plan.

The appropriate motions and resolutions begin on page 7. The suggested modifications begin on page 9. The findings for denial of the Land Use Plan Amendment as submitted begin on page 15. The findings for approval of the plan, if modified, begin on page 15. The findings for denial of the Implementation Plan Amendment as submitted begin on page 18. The findings for approval of the plan, if modified, begin on page 22.

## **ADDITIONAL INFORMATION**

Further information on the City of Carlsbad LCP amendment No. LCP-6-CAR-20-0077-2 may be obtained from [Carrie Boyle](#), Coastal Planner, at (619) 767-2370 or [SanDiegoCoast@coastal.ca.gov](mailto:SanDiegoCoast@coastal.ca.gov).

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## EXHIBITS

[Exhibit 1 – Ordinance](#)

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

[Exhibit 3 – Village and Barrio Master Plan Use Restrictions Map \(Figure 2-2\)](#)

[Exhibit 4 – Proposed ADU/JADU Parking Replacement Area](#)

[Exhibit 5 – Government Code Section 65852.2 \(effective January 1, 2022\)](#)

[Exhibit 6 – Government Code Section 65852.22 \(effective January 1, 2020\)](#)

[Exhibit 7 – Government Code Section 65852.26 \(effective January 1, 2022\)](#)

[Exhibit 8 – Executive Director’s ADU Memorandum \(January 21, 2022\)](#)

## **I. OVERVIEW**

### **A. LCP HISTORY**

The City of Carlsbad's certified LCP contains six geographic segments as follows: Agua Hedionda, Mello I, Mello II, West Batiquitos Lagoon/Sammis Properties, East Batiquitos Lagoon/Hunt Properties, and Village-Barrio. Pursuant to Sections 30170(f) and 30171 of the Public Resources Code, the Coastal Commission prepared and approved two portions of the LCP, the Mello I and II segments in 1980 and 1981, respectively. The West Batiquitos Lagoon/Sammis Properties segment was certified in 1985. The East Batiquitos Lagoon/Hunt Properties segment was certified in 1988. The Village Redevelopment Area LCP was certified in 1988; the City has been issuing coastal development permits there since that time. The Village LCP segment was expanded and renamed the Village-Barrio in 2019. On October 21, 1997, the City assumed permit jurisdiction and has been issuing coastal development permits for all segments except Agua Hedionda. The Agua Hedionda LCP segment is a deferred certification area until an implementation plan for that segment is certified. This amendment modifies the City's Implementation Plan for the other five segments and the City's Land Use Plan for the Village-Barrio segment.

### **B. STANDARD OF REVIEW**

The standard of review for land use plans, or their amendments, is found in Section 30512 of the Coastal Act. This section requires the Commission to certify an LUP or LUP amendment if it finds that it meets the requirements of Chapter 3 of the Coastal Act. Specifically, it states:

#### **Section 30512**

(c) The Commission shall certify a land use plan, or any amendments thereto, if it finds that a land use plan meets the requirements of, and is in conformity with, the policies of Chapter 3 (commencing with Section 30200). Except as provided in paragraph (1) of subdivision (a), a decision to certify shall require a majority vote of the appointed membership of the Commission.

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 certify the Land Use Plan Amendment for the No. LCP-6-CAR-20-0077-2 for the Village-Barrio segment of the City of Carlsbad as submitted.

### **STAFF RECOMMENDATION OF DENIAL OF CERTIFICATION:**

Staff recommends a **NO** vote on the motion. Failure of this motion will result in denial of the land use plan amendment as resubmitted and adoption of the following resolution and findings. The motion to certify as submitted passes only upon an affirmative vote of a majority of the appointed Commissioners.

### **RESOLUTION TO DENY CERTIFICATION OF LAND USE PLAN AMENDMENT AS SUBMITTED:**

The Commission hereby denies certification of the Land Use Plan Amendment for the Village-Barrio segment of the City of Carlsbad as submitted and finds for the reasons discussed below that the submitted Land Use Plan Amendment fails to meet the requirements of and does not conform to the policies of Chapter 3 of the California Coastal Act. Certification of the plan would not comply with the California Environmental Quality Act because there are feasible alternatives or mitigation measures that would substantially lessen any significant adverse impact which the Land Use Plan Amendment may have on the environment.

### **2. MOTION:**

I move that the Commission certify the Land Use Plan Amendment for the No. LCP-6-CAR-20-0077-2 for the Village-Barrio segment of the City of Carlsbad certified LCP as submitted if modified pursuant to the staff recommendation.

### **STAFF RECOMMENDATION: CERTIFICATION IF MODIFIED AS SUGGESTED:**

Staff recommends a **YES** vote on the motion. Passage of the motion will result in certification with suggested modifications of the submitted land use plan amendment and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the appointed Commissioners.

### **3. MOTION:**

I move that the Commission reject the Implementation Program Amendment No. LCP-6-CAR-20-0077-2 for the City of Carlsbad as submitted 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 City of Carlsbad and adopts the findings set forth below on grounds that the Implementation Program as submitted does not conform with, and is inadequate to carry out, the provisions of the certified Land Use Plan . 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.

**4. MOTION:**

I move that the Commission certify the Implementation Program Amendment No. No. LCP-6-CAR-20-0077-2 for the City of Carlsbad if it is modified pursuant to the staff recommendation.

**STAFF RECOMMENDATION:**

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

**RESOLUTION TO CERTIFY THE IMPLEMENTATION PROGRAM AMENDMENT WITH SUGGESTED MODIFICATIONS:**

The Commission hereby certifies the Implementation Program Amendment for the City of Carlsbad 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 carryout the certified Land Use Plan. 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.

#### Village & Barrio Master Plan

1. Modify Table 2-1 Permitted Uses, in Section 2.3.3, as follows to apply footnote “2” to the use listing for Accessory Dwelling Unit in the VC and HOSP districts:

RESIDENTIAL	VC	VG	HOSP	FC	PT	BP	BC
Dwelling, One-Family	-	P <sup>1</sup>	-	-	P <sup>1</sup>	P <sup>1</sup>	P <sup>1</sup>
Dwelling, Two-Family (attached)	P <sup>2</sup>	P	P <sup>2</sup>	P	P	P	P
Dwelling, Multiple-Family	P <sup>2</sup>	P	P <sup>2</sup>	P	P	P	P
Accessory Dwelling Unit (accessory to one-family, two-family, multifamily, and mixed-use dwellings; subject to CMC Section 21.10.030; defined: CMC Sections 21.04.121)	A <sup>2</sup>	A	A <sup>2</sup>	A	A	A	A

[. . .]

<sup>2</sup> Not permitted on the ground floor street frontage as identified in Figure 2-2. See exception for “Educational Institutions or Schools, Public or Private,” in Section 2.7.3.J., Hospitality Supplemental District Standards.

[. . .]

#### Zoning Ordinance

2. Throughout Sections 21.04 and 21.10.030, add the following to all references to Government Code Section 65852.2:

... 65852.2 (effective Jan. 1, 2022) ...

Add the following to all references to Government Code Section 65852.22:

... 65852.22 (effective Jan. 1, 2020) ...

3. Revise Section 21.10.030.C as follows:

C. Residential Use and Density. ADUs and JADUs, which comply with the requirements of this section (21.10.030) and California Government Code Sections 65852.2 and 65852.22:

[. . .]

3. ~~Shall not be considered a dwelling unit when implementing the dwelling unit limitations established by Proposition E enacted by Carlsbad voters~~

~~on November 4, 1986, and shall not be considered a dwelling unit under the definition of "short term vacation rental" in Chapter 5.60, Short Term Vacation Rentals.~~

4. Revise Section 21.10.030.E. as follows:

E. Other Requirements and Standards. ADUs and JADUs shall comply with all the following requirements and standards:

1. ADUs and JADUs shall comply with the development requirements and standards of California Government Code Sections 65852.2 and 65852.22.
2. When not in conflict with California Government Code Sections 65852.2 and 65852.22 and the coastal resource and public access protection requirements of the certified local coastal program, ADUs and JADUs shall also comply with applicable development requirements and standards of this code.

[ . . . ]

6. The construction of an ADU or JADU that is all new construction, or is a conversion of a portion or all of an existing structure, or expands the square footage of an existing structure, shall be consistent with all habitat preserve buffers, ~~and~~ geologic stability setbacks, and visual resource protection policies in the certified local coastal program, habitat management plan, general plan, or geotechnical report, as applicable.

[ . . . ]

9. Parking.

- a. An ADU shall provide off-street parking in compliance with Chapter 21.44 (Parking), unless it qualifies for an exemption as specified in California Government Code Section 65852.2 (effective Jan. 1, 2022).
- b. No off-street parking is required for a JADU if it meets the requirements specified in California Government Code Section 65852.22 (effective Jan. 1, 2020).
- c. When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an ADU or converted to an ADU, the loss of parking for the primary dwelling does not need to be replaced, except on lots located west of the rail corridor and on lots located east of the rail corridor and west of Interstate 5 between Avenida Encinas to the north and Batiquitos Lagoon to the south. In which case, the loss of parking for the primary dwelling shall be replaced subject to the parking requirements in Chapter 21.44 (Parking), except as follows:

- i. The replacement parking spaces may be covered, uncovered, or tandem spaces, or provided by the use of mechanical automobile parking lifts (within a garage); and may be located in the front, side or rear yard, provided the parking area is an improved parking surface, such as paving, hardscape, decomposed granite, etc.
- ii. The location of the replacement parking spaces shall be consistent with all habitat preserve buffers, geologic stability setbacks, and visual resource protection policies in the certified local coastal program.

[. . .]

11. A Notice of Restriction shall be recorded on the property declaring that:

- a. The An ADU and/or JADU shall not be used for short-term rentals of less than 30 days. This requirement does not apply to any unit that was issued a building permit prior to January 1, 2020.
- b. The obligations and restrictions imposed on the approval of the ADU(s) per California Government Code Section 65852.2 and/or JADU per California Government Code Section 65852.22 are binding on all present and future property owners.

[. . .]

13. An ADU may be sold separately from the primary dwelling only in limited situations pursuant to California Government Code Section 65852.26 (effective Jan. 1, 2022).

5. Revise Section 21.10.030.G. as follows:

~~G. Conflicting Standards. If there is a conflict between the requirements of this section and requirements of the California Government Code provisions relating to ADUs and JADUs, including but not limited to Sections 65852.2 or 65852.22, the California Government Code provisions shall apply.~~

6. Revise Section 21.48.020 as follows:

[. . .]

B. The provisions of this chapter [Nonconforming lots, structures, and uses] do not apply:

[. . .]

- 2. When an accessory dwelling unit or junior accessory dwelling unit is proposed on a lot with an existing nonconforming residential structure that

is nonconforming with regard to geologic setback, public view encroachment, coastal access, or habitat preserve buffers, and development of the proposed accessory dwelling unit or junior accessory dwelling unit does not result in redevelopment of the nonconforming residential structure. Pursuant to California Government Code Section 65852.2, the city shall not require, as a condition for approval of an accessory dwelling unit or a junior accessory dwelling unit, the correction of nonconforming zoning conditions, except where the accessory dwelling unit or junior accessory dwelling unit is located in the Coastal Zone and is attached to the nonconforming residential structure that is nonconforming with regard to geologic setback, public view encroachment, coastal access, or habitat preserve buffers, and will result in redevelopment of the nonconforming structure. For purposes of this section, redevelopment shall mean alterations to the residential structure resulting from construction of an accessory dwelling unit or junior accessory dwelling unit that consist of (1) additions to an existing structure, or (2) exterior or interior renovations, or (3) demolition or replacement of an existing principal structure, or portions thereof, any of which results in replacement (including demolition, renovation or alteration) of 50 percent or more of major structural components including exterior walls, floor, roof structure or foundation, or a 50 percent increase in gross floor area.

7. Revise Section 21.201.060 as follows:

21.201.060 Exemptions and categorical exclusions from minor coastal development permit and coastal development permit procedures.

- A. For the purposes of subsection B.1 of this section, an existing single-family residential building shall include:
1. All appurtenances and other non-habitable accessory structures, including decks, directly attached to the residence;
  2. Accessory structures or improvements on the property normally associated with residences, such as garages, swimming pools, fences and storage sheds, and junior accessory dwelling units and accessory dwelling units that are completely within an existing residential building and are created from existing habitable floor area, attached to or converted from the existing space of a primary residence or attached accessory structure, but not including: ~~guest houses or self-contained residential units that are detached from an existing single-family residential building;~~
    - a. Guest houses
    - b. Accessory dwelling units or junior accessory dwelling units that:
      - i. Are detached from the existing residential building; or

- ii. Are attached to, or not completely contained within, an existing residential building; or
- iii. Result in an increase in habitable area or convert non-habitable space to habitable area.

3. Landscaping on the lot.

B. Exemptions. The following projects are exempt from the requirements of a minor coastal development permit and coastal development permit:

1. Improvements to an existing single-family residential building, except:

[. . .]

c. Improvements that would result in an increase of ten percent or more of internal floor area of an existing structure or an additional improvement of ten percent or less where an improvement to the structure had previously been undertaken pursuant to California ~~to~~ Public Resources Code Section 30610(a), [. . .]

[. . .]

e. Expansion or construction of water wells or septic systems; ~~;~~

~~f. Improvements to establish an accessory dwelling unit that is attached to the primary residence, or converted from the existing space of a primary residence or attached accessory structure or a junior accessory dwelling unit within a one-family dwelling where such primary residence or attached accessory structure is nonconforming with respect to habitat preserve buffers or geologic stability setbacks in the certified local coastal program.~~

#### **IV. FINDINGS FOR DENIAL OF CERTIFICATION OF THE CITY OF CARLSBAD LAND USE PLAN AMENDMENT, AS SUBMITTED, AND APPROVAL IF MODIFIED**

##### **A. AMENDMENT DESCRIPTION**

The City of Carlsbad proposes to modify Table 2-1 in the Village and Barrio Master Plan to add JADUs as a permitted use in certain districts. The amendment would also modify the language describing ADUs in Table 2-1, which currently lists ADUs as a permitted use accessory to a single one-family dwelling unit only. The proposed amendment would clarify that ADUs could be also accessory to two-family, multifamily, and mixed-use dwellings.

**B. CONFORMANCE WITH SECTION 30001.5 OF THE COASTAL ACT**

The Commission finds, pursuant to Section 30512.2(b) of the Coastal Act, that portions of the Land Use Plan as set forth in the preceding resolutions, are not in conformance with the policies and requirements of Chapter 3 of the Coastal Act to the extent necessary to achieve the basic state goals specified in Section 30001.5 of the Coastal Act which states:

The legislature further finds and declares that the basic goals of the state for the Coastal Zone are to:

a) Protect, maintain and, where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and manmade resources.

b) Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state.

c) Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resource conservation principles and constitutionally protected rights of private property owners.

(d) Assure priority for coastal-dependent and coastal-related development over other development on the coast.

(e) Encourage state and local initiatives and cooperation in preparing procedures to implement coordinated planning and development for mutually beneficial uses, including educational uses, in the coastal zone.

The Commission therefore finds, for the specific reasons detailed below, that the land use plan does not conform with Chapter 3 of the Coastal Act or the goals of the state for the coastal zone with regards to visitor-serving uses.

**C. CONFORMITY OF THE CITY OF CARLSBAD LAND USE PLAN WITH CHAPTER 3**

Relevant Coastal Act policies include the following:

Section 30213 of the Coastal Act states:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Section 30222 of the Coastal Act states:

The use of private lands suitable for visitor-serving commercial recreation facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but

not over agriculture or coastal-dependent industry.

## **1. FINDINGS FOR DENIAL**

The existing Table 2-1 Permitted Uses in the Village and Barrio Master Plan (VBMP) includes a footnote (#2) to indicate which uses are prohibited on the ground floor street frontage in certain visitor-serving areas indicated in Figure 2-2 of the VBMP ([Exhibit 3](#)). This footnote is applied to two-family and multi-family dwellings within the Village Center (VC) and Hospitality (HOSP) Districts. The VC and HOSP Districts are meant to serve as visitor-serving and commercial areas, with ground floor commercial uses primarily catering to visitors. When the VBMP was certified by the Commission in 2019 (LCP-6-CVR-18-0070-1), Footnote 2 was not applied to ADUs in any district. This was presumably because ADUs were previously limited to a single one-family dwelling, which is not a permitted use in the VC and HOSP Districts. However, with the City's proposed amendment to permit ADUs in two-family, multifamily, and mixed use dwellings, there is ambiguity regarding whether or not an ADU would be permitted on the ground floor of a building containing one of these types of dwellings. Permitting an ADU on the ground floor in an area intended to have primarily visitor-serving ground floor commercial uses would be inconsistent with Sections 30213 and 30222 of the Coastal Act.

## **2. FINDINGS FOR APPROVAL IF MODIFIED**

Suggested Modification #1 would apply Footnote 2 to ADUs located in the VC and HOSP Districts in order to prevent an ADU from being constructed on the ground floor of a visitor-serving area. As modified, the Permitted Uses table in the VBMP would prioritize visitor-serving commercial recreation facilities over private residential uses and therefore be consistent with Sections 30213 and 30222 of the Coastal Act.

# **V. FINDINGS FOR REJECTION OF THE CITY OF CARLSBAD IMPLEMENTATION PLAN AMENDMENT, AS SUBMITTED, AND APPROVAL IF MODIFIED**

## **A. AMENDMENT DESCRIPTION**

The City of Carlsbad proposes to modify the Zoning Ordinance (Municipal Code), which is certified as part of its LCP Implementation Plan (IP) in order to make the City's regulation of accessory dwelling units (ADUs) consistent with recent changes to state housing law (see Gov. Code, §§ 65852.2 and 65852.22, as amended). The proposed changes would repeal and replace Municipal Code Section 21.10.030, which contains the City's ADU and junior ADU (JADU) regulations. Revisions are also proposed in other sections of the Zoning Ordinance in order to clean up the existing language and ensure consistency with the new regulations.

Specifically, the proposed amendment would:

- Replace the existing definitions of ADU and JADU with cross-references to the Government Code definitions.
- Add JADUs or ADUs as permitted uses in various zones by adding JADUs to the permitted uses tables in residential zones and adding ADUs to the permitted use tables in the Neighborhood Commercial, General Commercial, and Local Shopping Center Zones.
- Require ADU/JADU applications to be approved ministerially without discretionary review or a public hearing if all requirements of Section 21.10.030 are met.
- Clarify that ADUs and JADUs shall not be considered a dwelling unit under the City's definition of "short-term vacation rental."
- Cross-reference to the Government Code for the number and location of ADUs and JADUs on a lot; the development requirements and standards; and exemptions for parking requirements.
- Eliminate the requirement to replace existing parking required for the primary residence when parking is removed or converted to an ADU.
- Modify the maximum size and height of an ADU or JADU.
- Require that ADUs or JADUs be consistent with all habitat preserve buffers and geologic stability setbacks in the certified LCP.
- Prohibit use of an ADU or JADU for short-term rentals less than 30 days.
- Specify that if there is a conflict between the requirements of Section 21.10.030 and requirements of the Government Code provisions relating to ADUs and JADUs, the California Government Code provisions shall apply.
- Revise the regulations on accessory structures to make them consistent with the proposed ADU and JADU regulations.
- Add a new provision that the City shall not require the correction of nonconforming zoning conditions when an ADU or JADU is proposed with an existing nonconforming residential structure.
- Exempt from the requirements of a coastal development permit the creation of JADUs and attached ADUs as improvements to single-family residences.

## **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:

### Habitat Management Plan

Policy 7-1 Environmentally Sensitive Habitat Areas (ESHA) states:

Pursuant to Section 30240 of the California Coastal Act, environmentally sensitive habitat areas, as defined in Section 30107.5 of the Coastal Act, shall be protected against any significant disruption of habitat values, and only uses dependent upon those resources shall be allowed within those areas.

Policy 7-8 No Net Loss of Habitat states, in relevant part:

There shall be no net loss of Coastal Sage Scrub, Maritime Succulent Scrub, Southern Maritime Chaparral, Southern Mixed Chaparral, Native Grassland, and Oak Woodland within the Coastal Zone of Carlsbad.

Policy 7-11 Buffers and Fuel Modification Zones states, in relevant part:

Buffers shall be provided between all preserved habitat areas and development. Minimum buffer areas shall be provided as follows:

- a. 100 ft. for wetlands
- b. 50 ft. for riparian areas
- c. 20 ft. for all other native habitats (coastal sage scrub, southern maritime chaparral, maritime succulent scrub, southern mixed chaparral, native grassland, oak woodland).

The City of Carlsbad's certified Mello I and Mello II LUPs also include the above-cited language of Policies 7-1, 7-8, and 7-11.

### Mello II

Policy 1-1 Allowable Land Uses states:

Allowable uses are those that are consistent with both the General Plan and the Local Coastal Program.

Policy 4-1 Coastal Erosion – I. Development Along Shoreline states in relevant part:

- (a) For all new development along the shoreline, including additions to existing development, a site-specific geologic investigation and analysis similar to that required by the Coastal Commission's Geologic Stability and Blufftop Guidelines shall be required; for permitted development, this report must demonstrate bluff stability for 75 years, or the expected lifetime of the structure, whichever is greater.

Policy 7-10 Parking states:

Parking standards set forth within the City of Carlsbad Zoning Ordinance are appropriate for the future development of various land uses.

Policy 8-1 Site Development Review states:

The Scenic Preservation Overlay Zone should be applied where necessary throughout the Carlsbad coastal zone to assure the maintenance of existing views

and panoramas. Sites considered for development should undergo individual review to determine if the proposed development will obstruct views or otherwise damage the visual beauty of the area. The Planning Commission should enforce appropriate height limitations and see-through construction, as well as minimize any alterations to topography.

The City of Carlsbad's certified Mello J LUP also includes the above-cited language of Policy 7-10.

### East Batiquitos Lagoon

Policy 3 Environmentally Sensitive Habitats states, in relevant part:

The environmentally sensitive habitats (wetlands, riparian areas, and areas greater than 25% slope) shall be preserved as open space with the following additional requirements: [...]

Policy 6 Scenic and Visual Qualities states, in relevant part:

The scenic and visual qualities of the area are of great value to the region. Again, the focal point for these qualities is Batiquitos Lagoon. The viewshed to the lagoon and from the lagoon shoreline are important resources. Many of the requirements previously established by this document address visual quality components [...]

## **1. FINDINGS FOR DENIAL**

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

Much of Carlsbad's coastal zone consists of already-developed residential areas with adequate public services that may be appropriate for infill affordable housing development, both inside and outside of the coastal zone. Within the coastal zone, there are also substantial areas within the City where ADUs could likely be developed with no impacts to

coastal resources. Thus, at a broad level, the proposed IP amendment should help achieve the streamlining objectives of the state ADU and housing legislation while helping further the City's own housing goals as specified in the LCP. As described below, there are also concerns that as proposed, the amendment would not fully protect some specific coastal resources, including public access in the City's most parking impacted shoreline areas, habitat buffers, public views, and the avoidance of hazards.

### Cross-References

The City has proposed numerous cross-references to policies that are not part of the certified LCP. The proposed ordinance states that ADUs and JADUs shall not be considered a dwelling unit under the definition of "short-term vacation rental" in Chapter 5.60, Short-Term Vacation Rentals. However, Chapter 5.60 is not part of the certified LCP. Short-term vacation rentals are allowed within the City's coastal zone and Chapter 5.60 of the City's Municipal Code specifies licensing and operation requirements for vacation rentals. By cross-referencing to it in the proposed LCP amendment, the City would be pulling this Chapter on licensing and operation of short-term vacation rentals into the LCP, requiring LCP amendments for any future changes the City makes to that Chapter.

There are also several references to the California Government Code. For example, the City proposes to repeal the existing definitions of ADUs and JADUs and instead refer to Government Code Sections 65852.2 and 65852.22, respectively. The proposed ADU and JADU regulations would refer to these sections for standards such as the number and location of ADUs or JADUs on a lot; off-street parking exemptions; and any other development requirements and standards not explicitly listed in the City's ordinance.

The proposed ordinance also includes a statement that, if there is a conflict between the City's ADU and JADU requirements and the requirements of the California Government Code provisions relating to ADUs and JADUs, including but not limited to Sections 65852.2 or 65852.22, the California Government Code provisions shall apply. However, the City's proposed ADU and JADU requirements differ from the referenced Government Code provisions in order to protect coastal resources. For example, the state ADU law does not require setbacks for ADUs. The City's provisions require ADUs and JADUs comply with habitat buffers and geologic stability setbacks in the certified LCP to ensure that sensitive habitat will not be impacted and that ADUs will be sited in safe locations. Therefore, the proposed conflict language creates ambiguity about whether an ADU must comply with setback requirements.

The concern raised by these cross-references is that the Legislature may amend the Government Code sections and those may be incorporated into the LCP without Commission knowledge or approval, creating potential inconsistencies with the certified LUP or the Coastal Act. As described above, state ADU laws must be harmonized with the Coastal Act in a way that continues to protect coastal resources while also reducing or eliminating barriers to the development of affordable housing. Automatically incorporating any updates to the state law into the LCP would prevent the opportunity for the Commission to strike this balance between affordable housing goals and the Coastal Act, and could therefore result in impacts to the coastal resources and public access.

Parking Requirements for ADUs and Primary Structures

The City of Carlsbad contains seven miles of shoreline and three coastal lagoons which are accessed regionally by the north/south Interstate 5 corridor, and locally by El Camino Real, Carlsbad Boulevard, College Boulevard, Paseo del Norte, and Avenida Encinas. East/West access is provided by Carlsbad Village Drive, Chestnut Avenue, Tamarack Avenue, Cannon Road, Faraday Avenue, Palomar Airport Road, Poinsettia Lane, Aviara Parkway, and La Costa Avenue.

Vertical access to the lagoons is typically provided through residential neighborhoods, and lateral access along lagoon shorelines is provided by trails. There are fourteen public vertical pedestrian beach accessways. Carlsbad Boulevard, which runs parallel to much of the City's coastline, provides on-street parking spaces, and many public streets within residential neighborhoods provide on-street parking spaces within walking distance of the beach. A 2021 parking study conducted by the City found that, for the Downtown area between Laguna Drive on the northern extent of the City and Tamarack Avenue to the south, some of the highest street parking demand occurs west of the rail corridor.

The City's existing 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 an ADU if it is part of a proposed or existing primary dwelling unit or accessory structure; located within one-half mile of public transit or one block of a designated care share location; located within an architecturally and historically significant historic district; or located in an area where on-street parking permits are required but not offered to the ADU occupant. However, as proposed, the amendment would repeal this language and instead cross-reference to the parking exceptions listed in the Government Code. As described above, this raises concerns about future changes in state ADU law being automatically incorporated into the LCP without Commission review.

The amendment would also remove the requirement that off-street parking spaces for the primary dwelling be replaced when an existing parking structure is converted to an ADU or demolished in conjunction with the construction of an ADU.

These proposals are not likely to have substantial adverse effects to coastal resources in the vast majority of the City. However, west of the rail corridor, spillover parking demand from private residential uses would directly impact the ability of visitors to access Carlsbad's shoreline and recreational opportunities. In addition, trails along the northern shore of Batiquitos Lagoon are accessed through residential neighborhoods west of Interstate 5 between Avenida Encinas to the north and Batiquitos Lagoon to the south. There are limited dedicated parking spaces for trail access, and trail users utilize street parking when the lot is full. In addition, these neighborhoods have repeatedly sought to limit public access through proposed parking restrictions and gates. The conversion of existing garages to ADUs could significantly impact the amount of available public street parking, thereby impacting public access to the trail system. Thus, as proposed, the LCP amendment could result in impacts to coastal resources and access protected by the policies of the LUP.

### Protection of Visual Resources

As proposed by the City, an ADU or JADU that is all new construction, or is a conversion of a portion or all of an existing structure, or expands the square footage of an existing structure, shall be consistent with all habitat preserve buffers and geologic stability setbacks in the certified LCP, habitat management plan, general plan, or geotechnical report. However, this list does not include visual resource protection policies. An ADU could potentially impact visual resources by blocking public coastal views due to its height or reduced setbacks.

### Nonconformities Regarding Setbacks and Views

The City's proposed amendment would exclude from its regulations on nonconforming lots, structures, and uses ADUs or JADUs that are proposed with an existing nonconforming residential structure. It would also specify that the City shall not require, as a condition for approval of an ADU or JADU, the correction of nonconforming zoning conditions.

However, the City's LCP does not currently contain a definition of redevelopment and would not prevent construction of an ADU or JADU from replacing 50% or more of an existing nonconforming structure, thereby extending the lifetime of the existing nonconformity or nonconformities. This raises concerns about extending a nonconforming structure's adverse impacts on coastal resources such as habitat buffers, geologic setbacks, or public views. Therefore, as proposed, the LCP amendment could result in impacts to coastal resources protected by the policies of the LUP.

### CDP Requirements

The City's proposed revisions to Section 21.201.060, exemptions and categorical exclusions from minor coastal development permit and coastal development permit procedures, would not substantially change the City's existing coastal development permit requirements for ADUs. However, as currently certified, the IP states that an ADU that is attached to the primary residence or converted from the existing space of a primary residence or attached accessory structure is exempt from the coastal development permit requirements, except in particular circumstances such as where the proposed improvement would encroach into environmentally sensitive habitat area.

After years of considering LCP provisions for ADUs, the Commission finds that it is not necessary or useful to base the distinction between exempt ADUs and non-exempt ADUs on whether they are "attached" to the principal structure. Section 30610 of the Coastal Act exempts certain improvements to single-family residences and other structures from the need to obtain permits but requires the Commission to specify, by regulation, classes of development that involve a risk of significant environmental impact and therefore require a permit. Section 13250(a)(2) states that guest houses and self-contained residential units are not considered part of a single-family home, and thus the addition or improvement of such a unit does not qualify for the exemption. This provision does not distinguish between guest houses and residential units that are attached to, versus detached from, a main residence. Pursuant to Section 30610, the purpose of Section 13250 (and 13253, which applies to multi-family homes and other structures) is to specify types of development that require a permit because they involve a risk of adverse environmental effects. The Commission's recent experience has shown that attached ADUs, as well as detached ADUs, are subject to coastal hazards, and attached ADUs, as well as detached ADUs, could have impacts on views, habitat, access, and other resources. Thus, it is most

consistent with Section 30610, as well as the most protective of coastal resources (see Coastal Act Section 30009) to interpret Section 13250 of the Regulations to require coastal development permits for attached and detached ADUs unless they are located entirely within the existing primary structure and do not increase the existing habitable area of the structure or convert non-habitable area. Ultimately, the Commission finds that the creation of a self-contained living unit, in the form of an ADU, is not an “improvement” to an existing single-family residence. Rather, it is the creation of a new residence. This is true regardless of whether the new ADU is attached to the existing single-family residence or is in a detached structure on the same property.<sup>1</sup> The Commission therefore rejects the CDP exemptions for certain classes of ADUs as proposed.

## 2. FINDINGS FOR APPROVAL IF MODIFIED

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

### Cross References

Suggested Modification #2 revises all of the proposed Government Code references to add the date each provision went into effect in order to clarify that the provisions that are incorporated by reference are those that are effective as of the specific dates. This avoids automatic incorporation of a provision without Commission review, and furthermore avoids disputes about the applicable language of the Government Code. Suggested Modification #4 also adds an effective date to the cross-reference to Government Code Section 65852.26. [Exhibits 5-7](#) provide the Government Code language that is being certified as part of the LCP through this amendment.

Suggested Modification #5 strikes the City’s proposed language stating that the Government Code provisions shall apply where there is a conflict between the City’s ADU and JADU regulations and requirements of the California Government Code provisions relating to ADUs and JADUs. The proposal is too general. As modified, the LCP will not automatically incorporate by reference any future updates to state ADU laws. Therefore, when an incorporated provision changes, the City must submit an LCP amendment in order to incorporate the amendment, which will provide the Commission with an opportunity to review incorporated provisions for LUP consistency.

Suggested Modification #3 removes the cross-reference to the short-term vacation rental definition from Chapter 5, which is not part of the certified LCP. As proposed by the City, Section 21.10.030.E.11.a clarifies that new ADUs and JADUs cannot be used for short-term rentals of less than 30 days. Therefore, this restriction on the use of ADUs and JADUs for short-term rentals will be included in the LCP. At the City’s request, suggested Modification #3 also removes the existing reference to dwelling unit limitations established by Proposition E. In April 2021, the City of Carlsbad adopted Resolution No. 2021-074,

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<sup>1</sup> The Commission took this same position on a matter in December, 2021 (see <https://documents.coastal.ca.gov/reports/2021/12/F14b/F14b-12-2021-report.pdf>), which was described in a January 21, 2022 memo from the Commission’s Executive Director to local planning directors (see <https://documents.coastal.ca.gov/assets/rflg/ADU-Memo.pdf> or [Exhibit 8](#)).

finding that the dwelling unit limitations established in Proposition E are preempted by state law and unenforceable.

Finally, as proposed by the City, Section 21.10.030.E.2 would require ADUs and JADUs to comply with other requirements of the City's Zoning Code when not in conflict with California Government Code Sections 65852.2 and 65852.22. Suggested Modification #4 clarifies that application of other Zoning Code provisions shall not conflict with the coastal resource and public access protection requirements of the certified LCP.

#### Parking Requirements for ADUs and Primary Structures

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. However, in the area of the coast where public streets are used for beach or lagoon trail parking, spillover parking resulting from eliminating parking associated with existing structures has the potential to significantly impact public access to the shoreline. Therefore, Suggested Modification #4 requires replacement parking for projects that demolish or convert an off-street parking structure in conjunction with the construction of an ADU or JADU, where the site is located within the area generally described as west of the rail corridor or east of the rail corridor and west of Interstate 5 between Avenida Encinas to the north and Batiquitos Lagoon to the south ([Exhibit 4](#)). The replacement parking may be covered or uncovered, consist of tandem spaces, or within a parking lift within a garage; and may be located in the front, side, or rear yard, provided the parking area is an improved parking area and is consistent with the coastal resource protection policies in the certified LCP. The number of residential properties in Carlsbad in the area included in [Exhibit 4](#) represents a small percentage of the City's housing stock, and requiring replacement off-street parking for these residences would have a less than significant effect on the City's ability to provide adequate lower-cost housing through the development of ADUs and JADUs.

Suggested Modification #2 also clarifies that only the off-street parking exemptions in Government Code Section 65852.2, as effective January 2022, would apply to ADUs or JADUs. Thus, if the City wishes to incorporate any future changes in state law related to parking exemptions for ADUs, an LCP amendment subject to Commission review will be required.

#### Protection of Visual Resources

Suggested Modification #4 would add visual resource protection policies to the list of policies that new ADU or JADU construction, conversion, or expansion would need to be consistent with. It would also incorporate minor edits to clarify the proposed Notice of Restriction language.

#### Nonconformities Regarding Setbacks and Views

Suggested Modification #6 would require correction of nonconforming conditions related to geologic setback, public view encroachment, coastal access, or habitat preserve buffers, when the addition of an ADU or JADU would result in the redevelopment of an existing nonconforming residential structure. As modified, the provisions would prevent a significant nonconformity from being prolonged, thereby reducing or eliminating any continuing impacts on coastal resources that might occur from an existing nonconformity.

The City's LCP does not currently contain a definition of redevelopment that ensures that nonconforming structures are brought into conformance when they undergo significant replacement. Suggested Modification #6 defines redevelopment as alterations that result in replacement of 50 percent or more of the existing structure or a 50 percent increase in gross floor area. A prior staff report published for this item on the February 2022 agenda included a more expansive definition of redevelopment that included cumulative alterations undertaken since January 1, 1977. City staff requested postponement of this item, in part, based on opposition to the addition of a definition of redevelopment that includes cumulative changes to a structure since 1977. Staff now recommends a more limited modification in anticipation of a wider update to the LCP that would address nonconforming issues for all development.

The City recently submitted LCP Amendment No. LCP-6-CAR-21-0087-3 to comprehensively update the Land Use Plan, including to address coastal hazards. In that LUP Update LCP amendment, the City is proposing a definition of redevelopment that includes replacement of 50 percent or more of any major structural components or a 50 percent increase in gross floor area. As approved by the City Council, the definition does not include cumulative changes over time. City staff indicated that including language regarding cumulative alterations since 1977 in this ADU LCP amendment would conflict with the definition approved by the Carlsbad City Council for the LUP Update, and requested that our staffs continue discussing the definition through the LUP Update amendment. The definition of redevelopment is critically important to ensure that over time, development located within the coastal zone is reevaluated for potential impacts to coastal resources and brought up to current safety and planning standards. This is particularly critical for structures located in dynamic shoreline areas, where changing conditions such as sea level rise may necessitate the redesign or relocation of development to be safe from hazards through the life of that development. Because replacement of a structure could (and often does) occur incrementally in disparate projects, it is important that the definition of redevelopment includes cumulative alterations over time. However, the definition of redevelopment in Suggested Modification #6 will only apply in the limited circumstances where the addition of an ADU or JADU would result in redevelopment of an existing nonconforming residential structure, while the definition of redevelopment in the LUP Update will apply to all development within the City's coastal zone. The definition in Suggested Modification #6 thus addresses the scope of this amendment, with the mutual understanding that the overall issue of redevelopment will be analyzed in more depth when the Commission reviews the LUP Update.

#### CDP Requirements

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

space would generally constitute a “change in the density or intensity of use.” Therefore, these activities would generally constitute development in the coastal zone that requires a CDP or other authorization (Pub. Res. Code, § 30600).

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

Thus, in order to streamline the approval of the above described ADUs and JADUs that have the least likelihood to create adverse impacts to coastal resources while ensuring continued coastal permitting review of the remaining majority of ADU and JADU types, Suggested Modification #7 clarifies that ADUs and JADUs that are not located entirely within the existing primary structure, increase existing habitable area, or convert non-habitable area require a coastal development permit. ADUs and JADUs that are wholly internal and do not increase habitable area or convert non-habitable area do not require a coastal development permit. Such wholly internal units do not pose significant risk of adverse impacts and constitute a minority of accessory unit design, as the size and configuration of many properties in the coastal zone require some alteration or conversion of existing structures in order to accommodate a new attached accessory dwelling unit.

With the Suggested Modifications, the proposed LCP amendment is consistent with the public access and recreation, geologic stability, and habitat and visual resource protection policies of the certified LUP. The proposed amendment, if modified as suggested, conforms to the certified Land Use Plans, and the proposed ordinance can be found in conformance with and adequate to implement the certified LUP.

## **VI. 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 determined that the subject LCP amendment is exempt from environmental review pursuant to CEQA Guidelines Section 15061(b)(3) [no potential for causing a significant effect on the environment] and Section 15282(h) [adoption of ordinance regarding ADUs]. (Cal. Code of Regs., tit. 14.) 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 provisions. In this particular case, the LCP amendment as proposed will not have any significant adverse effects on the environment

and no significant coastal resource impacts are anticipated. Therefore, the Commission finds that the subject LCP as proposed conforms to CEQA.