

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877
WEB: WWW.COASTAL.CA.GOV



Th12

Prepared June 30, 2022 for July 14, 2022 Hearing

To: Coastal Commissioners and Interested Persons

From: Dan Carl, Central Coast District Director

Subject: Central Coast District Director's Report for July 2022

The following coastal development permit (CDP) waivers, immaterial CDP amendments, immaterial CDP extensions, emergency CDPs, and LCP certification reviews for the Central Coast District Office are being reported to the Commission on July 14, 2022. Pursuant to the Commission's procedures, each item has been appropriately noticed as required, and each item is also available for review from the Commission's Central Coast District Office in Santa Cruz. Staff is only reporting any emergency CDPs and LCP certification reviews, is asking for the Commission's concurrence on the other items in the Report and will report any objections received and any other relevant information on these items to the Commission when it considers the Report on July 14th during the hybrid virtual/in-person hearing.

With respect to the July 14th hearing, interested persons may sign up to address the Commission on items contained in this Report prior to the Commission's consideration of the Report. The Commission can overturn staff's noticed determinations for some categories of items subject to certain criteria in each case (see individual notices for specific requirements).

Items being reported on July 14, 2022 (see attached)

LCP Certification Reviews

- LCP-3-SLO-21-0027-1-Part F, Los Osos Vacation Rentals (San Luis Obispo County)
- LCP-3-CAP-21-0083-1, Parklets (City of Capitola)

CDP Extensions

- A-3-MCO-04-012-E6, Wang Residence (Big Sur)
- A-3-SLO-15-0001-E5, Loperena Residence (Cayucos)

Emergency CDPs

- G-3-22-0021, Santa Cruz Wharf Railing Replacement (City of Santa Cruz)

CDP Waivers and CDP Amendments

- None

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Th12

Prepared June 29, 2022 (for July 14, 2022 Hearing)

To: Coastal Commissioners and Interested Persons

From: John Ainsworth, Executive Director
Dan Carl, Central Coast District Director
Esme Wahl, Coastal Planner

**Subject: Certification Review for San Luis Obispo County LCP Amendment
Number LCP-3-SLO-21-0027-1-Part F (Los Osos Vacation Rentals)**

On February 11, 2022, the California Coastal Commission considered a proposed San Luis Obispo County LCP amendment (LCP-3-SLO-21-0027-1-Part F) to establish standards for residential vacation rentals for the community of Los Osos. At that time, and after a public hearing, the Commission conditionally certified the amendment provided it was modified as suggested by the Commission.

The San Luis Obispo County Board of Supervisors considered the Commission's conditional certification on June 7, 2022 and approved a modified version of the LCP amendment that day in response to the Commission's conditional certification, including the suggested modifications (see attachment).

The Executive Director has reviewed the County's June 7, 2022 action, and has determined that it is legally adequate to meet all of the Commission's conditional certification requirements. The Executive Director will report that determination to the Coastal Commission at the Commission's July meeting on July 14, 2022 as part of the Central Coast District Director's Report. The Commission meeting starts at 9am on July 14th, and the District Director's Report is item number 12 on the agenda for that day. Interested persons are welcome to submit comments and/or to sign-up to testify to the Commission regarding this matter under that agenda item (see the Commission's website at www.coastal.ca.gov for further information and instructions to participate in these ways).

Please note that this certification review is not a time to revisit any substantive issues associated with the approval of the subject LCP amendment, as certification review is limited to the question of whether the County adopted the suggested modifications to the LCP amendment approved by the Commission. Please further note that the Executive Director's determination is not subject to any required concurrence or approval by the Commission, but rather is simply being reported to the Commission as is required by the Commission's regulations in order to allow for the amended LCP to be

certified in that form (see Title 14, Division 5.5, Sections 13544 and 13544.5). Upon reporting this item to the Commission in the Central Coast District Director's Report, the amended LCP will be certified as of that date and time.

If you have any questions about this LCP amendment certification review process, including questions about how to submit written comments and/or to testify to the Commission, please contact the Central Coast District office at (831) 427-4863 and/or centralcoast@coastal.ca.gov.

Attachment: San Luis Obispo County Board of Supervisors' June 7, 2022 Action

IN THE BOARD OF SUPERVISORS

County of San Luis Obispo, State of California

Tuesday, June 7, 2022

PRESENT: Supervisors John Peschong, Dawn Ortiz-Legg, Lynn Compton,
Debbie Arnold and Chairperson Bruce S. Gibson

ABSENT: None

RESOLUTION NO. 2022-139

RESOLUTION ACKNOWLEDGING RECEIPT OF THE CALIFORNIA COASTAL COMMISSION'S RESOLUTION OF CERTIFICATION AND ACCEPTING THE CALIFORNIA COASTAL COMMISSION'S SUGGESTED MODIFICATIONS PERTAINING TO LOCAL COASTAL PROGRAM AMENDMENT NUMBER LCP-3-SLO-21-0027-1-PART F (STANDARDS FOR RESIDENTIAL VACATION RENTALS FOR THE COMMUNITY OF LOS OSOS)

The following resolution is hereby offered and read:

WHEREAS, the County of San Luis Obispo Board of Supervisors conducted a public hearing on December 15, 2020, and approved amendments to the Coastal Zone Land Use Ordinance (Title 23 of the San Luis Obispo County Code), to establish standards for residential vacation rentals for the community of Los Osos; and

WHEREAS, on February 9, 2021, the County of San Luis Obispo subsequently submitted a request to amend the County of San Luis Obispo Local Coastal Program, in accordance with the Board-approved amendments to the Coastal Zone Land Use Ordinance, to the California Coastal Commission for consideration and certification; and

WHEREAS, on February 11, 2022, the California Coastal Commission held a hearing and took action on the County of San Luis Obispo's proposed amendments to the County of San Luis Obispo Local Coastal Program, which consists of certifying the Board-approved amendments to the Coastal Zone Land Use Ordinance if modified in accordance with the California Coastal Commission's suggested modifications; and

WHEREAS, the California Coastal Commission's suggested modifications, pertaining to Local Coastal Program Amendment Number LCP-3-SLO-21-0027-1-Part F, are described in the California Coastal Commission's resolution of certification, attached hereto and incorporated by reference herein; and

WHEREAS, pursuant to the California Code of Regulations, Title 14, Section 13544,

the County of San Luis Obispo Board of Supervisors may accept and agree to the terms and modifications suggested by the California Coastal Commission in Local Coastal Program Amendment Number LCP-3-SLO-21-0027-1-Part F and take formal action to satisfy the terms and modifications.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED by the Board of Supervisors of the County of San Luis Obispo, State of California, in a regular meeting assembled on the 7th day of June, 2022, that the Board of Supervisors of the County of San Luis Obispo, acknowledges receipt of the California Coastal Commission's resolution of certification and hereby accepts and agrees to the modifications, as suggested by the California Coastal Commission, without further changes, pertaining to Local Coastal Program Amendment Number LCP-3-SLO-21-0027-1-Part F, as set forth in Exhibit A and Exhibit B attached hereto and incorporated herein as though fully set forth.

BE IT FURTHER RESOLVED AND ORDERED that pursuant to California Code of Regulations, Title 14, Section 13544, the Board of Supervisors directs staff to submit this resolution to the Executive Director of the California Coastal Commission for determination, in writing, that the County of San Luis Obispo's action is legally adequate to satisfy conditions of certification set forth in the California Coastal Commission's resolution of certification.

BE IT FURTHER RESOLVED AND ORDERED that Local Coastal Program Amendment Number LCP-3-SLO-21-0027-1-Part F shall become final, effective and operative upon the California Coastal Commission's concurrence with its Executive Director's determination pursuant to California Code of Regulations, Title 14, Section 13544, at which point the amendments to the County of San Luis Obispo Local Coastal Program will become effective immediately.

Upon motion of Supervisor Peschong, seconded by Supervisor Gibson, and on the following roll call vote, to wit: AYES:

NOES: Supervisors Peschong, Chairperson Gibson, Ortiz-Legg, Compton and Arnold

ABSENT: None

ABSTAINING: None

the foregoing resolution is hereby adopted on the 7th day of June, 2022.

Bruce S. Gibson
Chairperson of the Board of Supervisors

ATTEST:

WADE HORTON

Ex-Officio Clerk of the Board of Supervisors

By: Niki Martin
Deputy Clerk

[SEAL]

Approved as to Legal Form and Effect:

RITA L. NEAL

County Counsel

By: /s/ Benjamin Dore
Deputy County Counsel

Dated: May 10, 2022

STATE OF CALIFORNIA) ss.
COUNTY OF SAN LUIS OBISPO)

I, **WADE HORTON**, Ex-Officio Clerk of the Board of Supervisors thereof, do hereby certify the foregoing to be a full, true and correct copy of an order entered in the minutes of said Board of Supervisors, and now remaining of record in my office.

Witness, my hand and seal of said Board of Supervisors on June 22, 2022.

WADE HORTON,
Ex-Officio Clerk of the Board of Supervisors

By: Niki Martin
Deputy Clerk

CALIFORNIA COASTAL COMMISSION

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FAX: (831) 427-4877
WEB: WWW.COASTAL.CA.GOV



February 15, 2022

Cory Hanh
San Luis Obispo County Planning Department
976 Osos Street, Room 200
San Luis Obispo, CA 93408

Subject: Coastal Commission Action on San Luis Obispo County Local Coastal Program (LCP) Amendment No. LCP-3-SLO-21-0027-1-Part F (Los Osos Vacation Rentals Amendment)

Dear Mr. Hanh:

At its meeting on February 11, 2022, the Coastal Commission took action on San Luis Obispo County LCP Amendment No. LCP-3-SLO-21-0027-1-Part F (Los Osos Vacation Rentals). The Commission approved the proposed amendments to the Implementation Plan, if modified as suggested. A copy of the adopted findings and suggested modifications will be sent to you electronically.

This letter formally transmits to you the Commission's resolution of certification and adopted findings pursuant to Section 13544 of Title 14 of the California Code of Regulations. Pursuant to Section 13544, effective certification of LCP Amendment No. LCP-3-SLO-21-0027-1-Part F, whereby the County may begin issuing coastal development permits subject to this amendment, will occur after:

1. The County, by action of the Board of Supervisors: (a) acknowledges receipt of this resolution of certification, including the suggested modifications; and (b) accepts and agrees to the modifications and takes whatever formal action is required to satisfy the modifications (e.g., implementation of ordinances).
2. The Commission's Executive Director reports to the Commission his determination that the County's actions are legally adequate, and the Commission does not object to the Executive Director's determination.
3. Notice of the certification of the LCP amendment is filed with the Secretary of the Resources Agency.

Coastal Commission staff will take care of items #2 and #3 above, following completion of item #1 by the County. Note that the Commission's regulations provide that the Commission's action of certification with the suggested modifications shall expire six months from the date of the Commission's action, or on August 11, 2022.

Please let me know if I can assist you in any way in completing action on this LCP amendment, or if you have any questions. Thanks for all your help during this process.

Cory Hanh
LCP-3-SLO-21-0027-1-Part F
Page 2 of 2

Sincerely,

A handwritten signature in cursive script that reads "Esme Wahl".

Esme Wahl
Coastal Planner
Central Coast District Office

Enclosure (Via Email): Adopted Staff Report with Suggested Modifications

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**ADOPTED****F16e****Prepared January 21, 2022 for February 11, 2022 Hearing****To:** Commissioners and Interested Persons**From:** Kevin Kahn, Central Coast District Manager
Esme Wahl, Coastal Planner**Subject:** San Luis Obispo County LCP Amendment Number LCP-3-SLO-21-0027-
1-Part F (Los Osos Vacation Rentals)**SUMMARY OF STAFF RECOMMENDATION**

San Luis Obispo County proposes to amend the Local Coastal Program's (LCP) Implementation Plan (IP) regarding vacation rentals to apply specific requirements to the unincorporated community of Los Osos, which is located along the shores of Morro Bay in the 'back bay' area. The LCP currently allows vacation rentals throughout the coastal zone, with specific requirements applicable within the unincorporated communities of Cayucos, Cambria, and Avila Beach. These requirements include "good neighbor" operational standards (such as noise and guest limits, required off-street parking, and a local contact person in case of complaints) as well as density limits so as not to oversaturate particular neighborhoods or blocks with vacation rentals. The proposed amendment would add specific rules for Los Osos vacation rentals into the LCP's vacation rental provisions, including these same types of general operational standards as well as limits specific to Los Osos. On the latter, the proposed amendment would cap vacation rentals at a total of 55 in Los Osos, and would require that new vacation rentals be located at least 500 feet from other vacation rentals or from overnight lodging accommodations (such as motels, hotels, and bed-and-breakfast inns).¹

The proposed amendment's 55-unit cap and 500-foot buffer requirements raise some concerns with respect to conformance with LUP requirements to maximize public recreational access and prioritize visitor accommodations. The proposed LCP amendment is one of the more limiting versions of such caps and buffers that the Commission has considered (and is significantly more limiting than the rules that apply

¹ Staff had previously scheduled this proposed amendment for an October 2021 Commission hearing, but postponed that hearing in light of significant comments received after the staff report was distributed that made staff reconsider its recommendation (which was then for the amendment to be approved as submitted) in light of same. Staff has since reevaluated the issues and worked with County staff on solutions to identified problems, including two suggested modifications with which County staff is in agreement, all of which is described herein.

LCP-3-SLO-21-0027-1 Part F (Los Osos Vacation Rentals)

to other areas of the County).² In evaluating these concerns, including in light of comments received from interested parties, a number of issues were identified. Some of these are specific to Los Osos, but many of them are also generically issues under the LCP because the LCP structure for vacation rentals, including as it relates to the individual communities with additional standards, is the same. The main concern raised specific to Los Osos is the potential for vacation rentals to increase water demand in an area where water supply is severely limited. These concerns stem from the idea that out-of-town visitors who are not familiar with the water supply constraints of Los Osos would not conserve or reduce water the way residents do. This issue is already partially addressed by the relatively low 55 vacation rental unit cap in Los Osos, and by the fact that vacation rentals are not likely to be occupied as often as full-time residences are. And in addition, at the suggestion of some community members and the County, Suggested Modification 2 requires vacation rental permit holders to post signs inside the residence to educate the public about the importance of water conservation in Los Osos and further ensure that vacation rentals have the least impact possible on Los Osos's water supply. The other more general issues are primarily related to the way in which buffers from vacation rentals are applied and concerns that such buffers could be used to 'block' otherwise legitimate vacation rentals. This could occur by establishing a vacation rental or other visitor-serving accommodation (such as hotels, motels, and bed and breakfasts) to which a buffer must be applied, but without actually renting that unit out. In other words, using the rentals/accommodations permitting process could be used to block vacation rentals altogether.

In terms of the buffer issue, the buffers in the proposed amendment apply too broadly and include types of visitor accommodations, such as homestays, that do not further the primary objective of these buffers. The primary objective of such buffers is to avoid oversaturation of whole house short-term rentals, which are identified in the LCP as vacation rentals. These whole house short-term rentals are different than when a portion of a house is rented out for a short term but the long-term residents of the house are present at the same time. These are instead considered "homestays" rather than vacation rentals per the LCP and are covered elsewhere in the LCP. Homestays have been identified as a type of short-term rental to which typical issues often ascribed to whole house short-term rentals don't accrue, such as community character issues related to noise. This is generally because the long-term residents are present at the same time. Thus, homestays have been identified as a preferred form of short-term rental that does not require the same level of oversight as whole house short-term rentals (i.e., "vacation rentals" in the LCP) and the buffers proposed should not be applicable to homestays. But the proposed LCP amendment would require buffers to be applied not only between vacation rentals, but also between vacation rentals and other visitor-serving accommodations, which include homestays and other overnight use types such as hotels, motels, and bed and breakfasts. In other words, under this construct, because the buffers would also apply to types of visitor accommodations that do not raise the sorts of issues that come with whole house short-term rentals, the

² The proposed 500-foot buffer for Los Osos is over twice as large as the 200-foot buffer used in Cambria, five to 10 times as large as the 50-foot to 100-foot buffers used in Cayucos, and 10 times as large as the 50-foot buffers used in Avila Beach.

LCP-3-SLO-21-0027-1 Part F (Los Osos Vacation Rentals)

proposed buffers will significantly reduce the space where vacation rentals can exist at all. This concern is exacerbated by how large the proposed buffers are here.

Commission staff worked closely with County staff on these issues and have identified a suggested modification that ensures that buffers are applied between vacation rentals, and not between vacation rentals and these other forms of overnight accommodations. This continues to achieve the primary objective of such buffers related to whole house short-term rentals, while also helping to ameliorate the potential for 'blocking' schemes to be implemented via establishing a homestay (with or without the intent of ever offering any rooms for short-term rental) through the simpler permitting process associated with that type of use (e.g., a non-CDP process). While it is true that a property owner could still establish a vacation rental with no intent to ever make it available to the public as a means of blocking other vacation rentals within the prescribed buffer, the vacation rental permitting process is much more robust/difficult (including requiring a minor use permit, which act as a CDP under the LCP), and this is likely to dissuade such potential maneuvers. Although a 'use it or lose it' requirement could also be applied to vacation rentals, where they are required to be rented some minimum amount to maintain their permits, County staff believes that the permitting process alone would be enough for now to address this issue, and has committed to better tracking of vacation rental usage over time to see if a subsequent LCP change would be warranted to ensure that such blocking schemes do not occur.³

Even with Suggested Modification 1 changing how the buffer applies, the buffer is still more limiting than in other communities. However, in this case, such limits can be found acceptable for Los Osos for several reasons. First, the County estimates that there are 38 vacation rentals in Los Osos, so the proposed amendment would allow an additional 17 vacation rentals, or about a 45 percent increase in vacation rentals over existing conditions. At the same time, however, the 500-foot buffer means that such rentals would actually decrease over time nearest the shoreline (including because some existing vacation rentals are already within 500 feet of others), and thus rentals may actually decrease over time unless vacation rentals were to be established in more inland locations. At any rate, it would appear that the Los Osos vacation rental market would probably at least stay at about current levels, or somewhere close to that, provided the suggested modification is applied. Thus, the cap should not pose a visitor-serving issue requiring additional modifications. And that makes sense, as the market here in Los Osos is slightly different than other communities in the County. Visitors to Los Osos are typically looking for a more low-key visitor experience focused on back bay offerings (like kayaking) and the slower pace that Los Osos generally provides, where the market has adjusted thus far to that demand at 38 units, and where it would

³ And, because the LCP is structured the same way for the other communities identified, the same issues associated with such buffers and potential blocking apply there as well. County staff indicate that they will look to make any needed corrections for those communities through a future LCP amendment. Although staff notes that it is within the Commission's discretion to make similar changes there as are being suggested here in relation to Los Osos at the least, staff concurs with the County that the issues surrounding vacation rentals in those other communities deserve a more thorough local process that can allow the interested public in those communities to also make their views known. Therefore, staff is not recommending that such corrections be implemented in those parts of the LCP here.

LCP-3-SLO-21-0027-1 Part F (Los Osos Vacation Rentals)

thus appear that it would not be necessary to substantially increase vacation rentals limits.

Second, Los Osos is a community that continues to try to establish a sustainable water source, which has been hindered by questions regarding groundwater basin safe yield, as well as by historic nitrate contamination and seawater intrusion. As a result, new development in Los Osos, including new residential development, has been curtailed as a result of public service limitations (and other issues, such as wastewater disposal and protection of ESHA). Thus, the County here is trying to balance visitor-serving accommodation needs with the need to provide housing opportunities for longer term residential purposes in an area where development options are currently limited. Should development constraints change, it may be that the balance could be reconsidered,⁴ but at the current time this balance is appropriate. And third, homestays will continue to remain available in Los Osos without a cap. In addition, Los Osos also provides for a variety of other overnight lodging opportunities, including several small hotels and camping opportunities at nearby Montaña de Oro State Park, even if these do not add up to a significant number of overnight accommodations.

Finally, the County undertook an extensive community planning process to develop short-term rental regulations that respond to and address the unique context of Los Osos. While all such ordinances can be complex in terms of finding an appropriate balance between providing for important visitor-serving accommodations while protecting community character, housing opportunities, and coastal resources, and while reasonable people can and do disagree about where that balance is, staff believes that with the suggested modifications, the County's proposal here adequately and appropriately finds that balance given Los Osos' unique context. Commission and County staff are also in agreement on the suggested modifications. Staff thus recommends that the Commission approve the amendment with the suggested modifications, and the motions and resolutions to do so are found on page 6 below.

Staff Note: LCP Amendment Action Deadline

This proposed LCP amendment was filed as complete on September 2, 2021. The proposed amendment affects the LCP's IP, and the 60-working-day action deadline was originally on December 1, 2021. On November 17, 2021 the Commission extended the action deadline by one year, and thus the Commission now has until December 1, 2022 to take a final action on this LCP amendment.

⁴ The County has submitted a proposed Los Osos Community Plan (that would be added to the LCP's Estero Area Plan) to the Commission for consideration that is intended to provide a framework for potential future development (including increased residential development) in the community that can adequately and appropriately address water, wastewater, ESHA and other development constraints. That Plan is currently tentatively scheduled to come before the Commission in early 2022, and its final disposition could materially affect how to understand the ways in which development is to be balanced and provided in the community going forward.

LCP-3-SLO-21-0027-1 Part F (Los Osos Vacation Rentals)

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EXHIBITS

Exhibit 1: Proposed IP Amendment (shown in strikethrough and underline)

CORRESPONDENCE

LCP-3-SLO-21-0027-1 Part F (Los Osos Vacation Rentals)

1. MOTION AND RESOLUTION

Staff recommends that the Commission, after public hearing, approve the proposed LCP amendment with suggested modifications. The Commission needs to make two motions 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 the Implementation Plan Amendment and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

***Motion:** I move that the Commission reject Implementation Plan Amendment LCP-3-SLO-21-0027-1 Part F as submitted by San Luis Obispo County, and I recommend a yes vote.*

***Resolution to Deny:** The Commission hereby denies certification of LCP Amendment Number LCP-3-SLO-21-0027-1 Part F as submitted by San Luis Obispo County and adopts the findings set forth below on grounds that the Implementation Plan 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 Implementation Plan Amendment with suggested modifications and the adoption of the following resolution and the findings in this staff report. The motion to certify with suggested modifications passes only by an affirmative vote of a majority of the Commissioners present:

***Motion:** I move that the Commission certify LCP Amendment Number LCP-3-SLO-21-0027-1 Part F as submitted by San Luis Obispo County 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-SLO-21-0027-1 Part F, if modified as suggested, and adopts the findings set forth below on grounds that the Implementation Plan 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 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.*

2. SUGGESTED MODIFICATIONS

The Commission hereby suggests the following modifications to the proposed Implementation Plan amendment, which are necessary to make the requisite Land Use Plan consistency findings. If the Commission certifies the LCP amendment as submitted, no further Board of Supervisors action will be necessary pursuant to Section 13544(b)(2) of Title 14 of the California Code of Regulations. Should the Commission deny the LCP Amendment, as submitted, without suggested modifications, no further action is required by either the Commission or the Board of Supervisors, and the LCP amendment is not effective, pursuant to Section 13542(f). Should the Commission deny the LCP Amendment, as submitted, but then approve it with suggested modifications, then the Board of Supervisors may consider accepting the suggested modifications and submitting them by resolution to the Executive Director for a determination that the Board of Supervisors' acceptance is consistent with the Commission's action. In that scenario, pursuant to Section 13544(c) of Title 14 of the California Code of Regulations, the modified LCP Amendment will become final at a subsequent Commission meeting if the Commission concurs with the Executive Director's Determination that the Board of Supervisors' action in accepting the suggested modifications approved by the Commission for LCP Amendment LCP-3-SLO-21-0027-1 Part F is legally adequate. If the Board of Supervisors does not accept the suggested modifications within six months of the Commission's action, then the LCP amendment remains uncertified and not effective within the coastal zone. Where applicable, text in underline format denotes proposed text to be deleted/added by the County. Text in ~~double cross-out~~ and double underline denotes text to be deleted/added by the Commission's suggested modifications.

1. Modify IP Section 23.08.165(C)(4)(iv) as follows:

Within all residential land use categories, no residential vacation rental shall be located within 500 feet of another parcel with a residential vacation rental and/or other visitor-serving accommodation. Distances shall be measured from the closest property line of the existing residential vacation rental and/or other visitor-serving accommodation to the closest property line of the parcel containing the proposed residential vacation rental.

2. Add IP Section 23.08.165(C)(4)(v):

A minimum of one water conservation sign shall be posted in each restroom and kitchen of the dwelling. Water conservation signs shall encourage occupants to reduce water usage by stating (a) the importance of conserving water in Los Osos and (b) ways in which occupants can reduce the amount of water used during the stay. Water conservation signs shall be created and posted utilizing County-approved language.

3. FINDINGS AND DECLARATIONS

A. Proposed LCP Amendment Description

The proposed amendment would modify the Local Coastal Program's (LCP) Implementation Plan (IP) to establish new regulations for vacation rentals in the unincorporated community of Los Osos, which is located along the shores of Morro Bay in the 'back bay' area. The LCP currently allows vacation rentals throughout the coastal zone, with both general "good neighbor" operational standards (such as noise and guest limits, required off-street parking, and a local contact person in case of complaints) as well as specific requirements for vacation rental use in the communities of Cambria, Cayucos, and Avila Beach (including numeric caps and distance requirements between vacation rentals and other visitor accommodations). The proposed amendment would add specific rules for Los Osos vacation rentals into the LCP's vacation rental provisions, including the same types of general operational standards as well as limits specific to Los Osos. On the latter, the proposed amendment would cap vacation rentals at a total of 55 in Los Osos, and would require that new vacation rentals be located at least 500 feet from other vacation rentals or from other overnight lodging accommodations (such as motels, hotels, bed-and-breakfast inns, and homestays).⁵ The proposed amendment requires a CDP to establish a vacation rental in Los Osos, and allows one such rental per natural person, limited liability company, or personal family trust. Finally, vacation rentals would only be allowed within existing single-family residences, and would not be allowed within accessory dwelling units, multi-family dwellings or mobile home parks. See Exhibit 1 for the proposed LCP changes.

B. Proposed LCP Amendment Consistency Evaluation

Standard of Review

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

Applicable Land Use Plan Policies

The LCP's LUP contains a series of provisions encouraging visitor-serving uses as well as other types of things that support visitors, with the intent of maximizing coastal access and providing appropriate upland support facilities, such as vacation rentals, directed towards coastal zone visitors, including:

LUP Recreation and Visitor-Serving Facilities Policy 1: Recreation Opportunities. Coastal recreational and visitor-serving facilities, especially lower-cost facilities, shall be protected, encouraged and where feasible provided by both public and private means. ...

⁵ The LCP distinguishes between short-term rentals that occupy a whole house (i.e., identified by the LCP as "vacation rentals") and short-term rentals that do not occupy a whole house (i.e., identified by the LCP as "homestays"), which allow the rental of up to two rooms in a single-family residence for up to seven days with the remainder of the house occupied by its long-term residents. The former requires a minor use permit, which acts as a CDP under the LCP, while the latter does not require a CDP.

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LUP Recreation and Visitor-Serving Facilities Policy 2: Priority for Visitor Serving Facilities. *Recreational development and commercial visitor-serving facilities shall have priority over non-coastal dependent use, but not over agriculture or coastal dependent industry in accordance with PRC 30222. All uses shall be consistent with protection of significant coastal resources. The Land Use Plan shall incorporate provisions for areas appropriate for visitor-serving facilities that are adequate for foreseeable demand. ...*

LUP Recreation and Visitor-Serving Facilities Policy 3: Low Cost Facilities. *Larger visitor-serving projects shall make provisions for services which are geared to a range of costs, including low cost facilities.*

LUP Shoreline Access Policy 4: Provision of Support Facilities and Improvements. *Facilities necessary for public access shall be provided. ...*

LUP Shoreline Access Policy 8: Minimizing Conflicts with Adjacent Users. *Maximum access shall be provided in a manner which minimizes conflicts with adjacent uses. Where a proposed project would increase the burdens on access to the shoreline at the present time or in the future, additional access areas may be required to balance the impact of heavier use resulting from the construction of the proposed project.*

With respect to public services, LUP Public Works Policy 1 states that the amount, location, and rate of development must be kept within the sustainable capacity of resources, public services, and public facilities. And LUP Public Works Policy 6 provides that where there are identified public service limitations, priority uses under the Coastal Act take precedence over non-priority uses. LUP Public Works Policies 1 and 6 state:

LUP Public Works Policy 1: Availability of Service Capacity. *New development (including divisions of land) shall demonstrate that adequate public or private service capacities are available to serve the proposed development. Priority shall be given to infilling within existing subdivided areas. Prior to permitting all new development, a finding shall be made that there are sufficient services to serve the proposed development given the already outstanding commitment to existing lots within the urban service line for which services will be needed consistent with the Resource Management System where applicable.*

LUP Public Works Policy 6: Resource Management System. *The county will implement the Resource Management System to consider where the necessary resources exist or can be readily developed to support new land uses. Permitted public service expansions shall ensure the protection of coastal natural resources including the biological productivity of coastal waters. In the interim, where there are identified public service limitations, uses having priority under the Coastal Act shall not be precluded by the provision of those limited services to non-priority uses.*

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And the LUP also protects special communities and their unique character, including identifying the Baywood Village commercial area of Los Osos as a special community,⁶ stating:

LUP Visual and Scenic Resources Policy 6: Special Communities and Small-Scale Neighborhoods. *Within the urbanized areas defined as small-scale neighborhoods or special communities, new development shall be designed and sited to complement and be visually compatible with existing characteristics of the community, which may include concerns for the scale of new structures, compatibility with unique or distinguished architectural historical style, or natural features that add to the overall attractiveness of the community.*

And finally, the LCP's Estero Area Plan is also a component of the LUP, and it includes additional specific standards for Los Osos, including identifying the vision for this stretch of the County's coast:⁷

Provide maximum public access, and protect existing public access, to the coast, the shoreline, the bay, and public recreation areas, consistent with the need to protect natural and agricultural resources and private property rights.

In short, mirroring the Coastal Act's same directives, the LUP seeks to maximize public recreational access by, among other things, prioritizing visitor-serving development such as overnight accommodations (particularly lower-cost ones) over other types of development, but doing so in a manner that respects community character and other coastal resources, as well as the physical capacity (e.g., water, wastewater, ESHA, circulation, etc.) of the community to sustain such use.

Consistency Analysis

The opportunity to rent residences or portions of residences within California's coastal communities represents one way in which California residents and visitors enjoy the coast. In some instances, such short-term rental opportunities may also provide a lower-cost alternative to renting hotel or motel rooms, particularly for large families or groups of individuals. In all cases, these short-term rentals increase the range of options available to coastal visitors, oftentimes in residential areas along the immediate shoreline where there may not be other significant commercial overnight opportunities, thus helping to facilitate visitor access to the coast overall. In this context, proposals to regulate short-term rentals have the potential to conflict with the LUP's objectives to protect access and recreational opportunities, and to also conflict with the LUP's prioritization of visitor-serving opportunities. Proposals to regulate such rentals, though, also can be vehicles to help ensure that such rental uses appropriately address other LCP objectives as well, such as protecting community character. Thus, the regulation of residential short-term rentals plays an important role in implementing LUP policies by

⁶ IP Section 23.11 defines special communities as "Areas and communities with unique, visually pleasing characteristics which serve as visitor destination points and include: ... South Bay - Baywood Village Commercial area ..."

⁷ Estero Area Plan Vision and General Goals A.1, Page 1-7.

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ensuring that type of visitor-serving use is conducted in a manner that protects access, coastal resources, and the integrity of residential communities.

As with other communities across the state developing short-term rental regulations, the County undertook an extensive community planning process, including through the Los Osos Community Advisory Council,⁸ to help understand the community's perspective about issues raised by such rentals, and to help solicit community ideas on ways to regulate them in Los Osos. While some community members advocated for more short-term rentals, and some for none, many others in the community looked to ways to allow short-term rentals while addressing the types of issues they can present in residential settings, including in terms of residential housing stock. Ultimately, the Advisory Council recommended including a 55 unit cap on whole house short-term rentals (or "vacation rentals" under the LCP),⁹ no cap on short-term rentals for rooms in a house when the residents are present (or "homestays" under the LCP), and a 500-foot buffer between vacation rentals and other visitor-accommodations. The Board of Supervisors ultimately agreed with these provisions, even though they were significantly more restrictive than similar LCP vacation rental provisions applicable to the unincorporated Cambria, Cayucos, and Avila Beach areas.

As an initial matter, the proposed amendment's 55-unit cap and 500-foot buffer requirements raise some concerns with respect to conformance with LUP requirements to maximize public recreational access, including in terms of prioritizing visitor accommodations, including as it is one of the more limiting versions of such caps and buffers that the Commission has considered (and is significantly more limiting than the rules that apply to other areas of the County).¹⁰ In evaluating these concerns, including in light of comments received from interested parties, a number of issues were identified. Some of these are specific to Los Osos, but many of them are also generically issues under the LCP because the LCP structure for vacation rentals, including as it relates to the individual communities with additional standards, is the same. The main concern raised specific to Los Osos is the potential for Vacation Rentals to increase water demand in an area where the water supply is severely limited. These concerns stem from the idea that out-of-town visitors who are not familiar with the water supply constraints in Los Osos would not conserve or reduce water the way residents do. These concerns also appear to assume that short-term rentals would be occupied for as many days a year as a normal rental, which seems unlikely. This issue is already partially addressed by the relatively low 55 vacation rental unit cap in Los Osos, and by the fact that vacation rentals are not likely to be occupied as often as full-time residences are. And in addition, at the suggestion of some community members and the County, Suggested Modification 2 requires vacation rental holders to post signs

⁸ The Los Osos Community Advisory Council is an 11-member volunteer group that advises the San Luis Obispo County Board of Supervisors, the County's Planning Commission, and County planning staff on land use planning and other important issues that affect Los Osos.

⁹ According to the County there are approximately 5,500 single-family residences in Los Osos, and thus 55 units represents up to 1% of such residences.

¹⁰ The proposed 500-foot buffer for Los Osos is over twice as large as the 200-foot buffer used in Cambria, five to 10 times as large as the 50-foot to 100-foot buffers used in Cayucos, and 10 times as large as the 50-foot buffers used in Avila Beach.

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inside the rental explaining the importance of water conservation in Los Osos. The intent is to educate the public of water supply issues in the community and further ensure that vacation rentals have the least impact possible on Los Osos's water supply. The other more general issues are primarily related to the way in which buffers from vacation rentals are applied and concerns that such buffers could be used to 'block' otherwise legitimate vacation rentals. This could occur by establishing a vacation rental or other visitor-serving accommodation (such as hotels, motels, and bed and breakfasts) to which a buffer must be applied, but without actually renting that unit out. In other words, using the rentals/accommodations permitting process could be used to block vacation rentals altogether.

In terms of the buffer issue, the buffers in the proposed amendment apply too broadly and include types of visitor accommodations, such as homestays, that do not further the primary objective of these buffers. The primary objective of such buffers is to avoid oversaturation of whole house short-term rentals, which are identified in the LCP as vacation rentals. These whole house short-term rentals are different than when a portion of a house is rented out for a short-term but the long-term residents of the house are present at the same time. These are instead considered "homestays" rather than vacation rentals per the LCP and are covered elsewhere in the LCP. Homestays have been identified as a type of short-term rental to which typical issues often ascribed to whole house short-term rentals don't accrue, such as community character issues related to noise. This is generally because the long-term residents are present at the same time. Thus, homestays have been identified as a preferred form of short-term rental that does not require the same level of oversight as whole house short-term rentals (i.e., "vacation rentals" in the LCP) and the buffers proposed should not be applicable to homestays. But the proposed LCP amendment would require buffers to be applied not only between vacation rentals, but also between vacation rentals and other visitor-serving accommodations, which include homestays and other overnight use types such as hotels, motels, and bed and breakfasts. In other words, under this construct, because the buffers would also apply to types of visitor accommodations that do not raise the sorts of issues that come with whole house short-term rentals, the proposed buffers will significantly reduce the space where vacation rentals can exist at all. This concern is exacerbated by how large the proposed buffers are here.

To address this issue, Suggested Modification 1 would ensure that buffers are applied between vacation rentals, and not between vacation rentals and these other forms of overnight accommodations. This continues to achieve the primary objective of such buffers related to whole house short-term rentals, while also helping to ameliorate the potential for 'blocking' schemes to be implemented via establishing a homestay (with or without the intent of ever offering any rooms for short-term rental) through the lesser/easier permitting process associated with that type of use (e.g., a non-CDP process). While it is true that a property owner could still establish a vacation rental with no intent to ever make it available to the public as a means of blocking other vacation rentals within the prescribed buffer, the vacation rental permitting process is much more robust/difficult (including requiring a minor use permit, which act as a CDP under the LCP), and this is likely to dissuade such potential maneuvers. Although a 'use it or lose it' requirement could also be applied to vacation rentals, where they are required to be rented some minimum amount to maintain their permits. County staff believes that the

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permitting process alone would be enough for now to address this issue, and has committed to better tracking of vacation rental usage over time to see if a subsequent LCP change would be warranted to ensure that such blocking schemes do not occur.¹¹

Even with Suggested Modification 1 changing how the buffer applies, the buffer is still more limiting than in other communities. However, in this case, such limits can be found acceptable for Los Osos for several reasons. First, the County estimates that there are 38 vacation rentals in Los Osos, which will continue to be allowed to operate irrespective of potential buffer issues,¹² so the proposed amendment would allow an additional 17 vacation rentals, or about a 45 percent increase in vacation rentals over existing conditions. At the same time, however, the 500-foot buffer means that such rentals would actually decrease over time nearest the shoreline (i.e., due to 19 of the 38 vacation rentals already being within 500 feet of each other in this area), and thus it may be that rentals actually decrease over time unless vacation rentals were to be established in more inland locations. At any rate, it would appear that the Los Osos vacation rental market would probably stay about at current levels at the least, or somewhere close to that, provided the suggested modification is applied, and thus the cap should not pose a visitor-serving LUP issue requiring additional modifications. And that makes sense, as the market here in Los Osos is slightly different than other communities in the County, where visitors to Los Osos are typically looking for a more low-key visitor experience focused on back bay offerings (like kayaking) and the slower pace that Los Osos generally provides, where the market has adjusted thus far to that demand at 38 units, and where it would thus appear that it would not be necessary to substantially increase vacation rentals limits.

Second, Los Osos is a community that continues to try to establish a sustainable water source, which has been hindered by questions regarding groundwater basin safe yield, as well as by historic nitrate contamination and seawater intrusion. As a result, new development in Los Osos, including new residential development, has been curtailed as a result of public service limitations (and other issues, such as wastewater disposal)¹³

¹¹ And, because the LCP is structured the same way for the other communities identified, the same issues associated with such buffers and potential blocking apply there as well, and County staff indicate that they will look to make any needed corrections for those communities through a future LCP amendment. Although it is within the Commission's discretion to make similar changes there as are being suggested here in relation to Los Osos at the least, the issues surrounding vacation rentals in those other communities deserve a more thorough local process that can allow the interested public in those communities to also make their views known, and such corrections are not here and now implemented in those parts of the LCP too for this reason.

¹² The County indicates that 19 of the 38 vacation rentals are currently located within the proposed 500-foot buffer. Under this amendment, those rentals could still continue to operate as long as their permits remained valid (and would thus be 'grandfathered' as legal non-conforming uses/development moving forward) and until such properties changed hands, at which time their permits would no longer be effective and would need to be reestablished (if they could meet the 55 unit cap and the 500-foot buffer requirements at that time).

¹³ Coastal Commission CDP A-3-SLO-09-055/069, which authorized the construction of a wastewater treatment plant in Los Osos in 2010, also prohibits wastewater service to serve new growth in Los Osos and instead only allows connections for existing development unless and until the LCP is amended to identify appropriate and sustainable development controls for Los Osos. The County has submitted a proposed Los Osos Community Plan (that would be added to the LCP's Estero Area Plan) to the

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and protection of ESHA). Thus, the County here is trying to balance visitor-serving accommodation needs with the need to provide housing opportunities for longer term residential purposes in an area where development options are currently limited. Should circumstances change with respect to development constraints it may be that the balance could be reconsidered (e.g., through the afore-mentioned Los Osos Community Plan), but at the current time this balance is appropriate.

Third, homestays (again, where visitors rent a room or rooms in a home occupied by the long-term owners/residents) will continue to remain available in Los Osos without a cap). In addition, while not in significant numbers, Los Osos provides for a variety of other overnight lodging opportunities, including several small hotels and camping opportunities at nearby Montaña de Oro State Park.

Finally, as described above, the County undertook an extensive community planning process to develop short-term rental regulations that respond to and address the unique context of Los Osos. While all such ordinances can be complex in terms of finding an appropriate balance between providing for important visitor-serving accommodations while protecting community character, housing opportunities, and coastal resources, and while reasonable people can and do disagree about where that balance is, staff believes that with the suggested modifications, the County's proposal here adequately and appropriately finds that balance given Los Osos' unique context. Thus, for all the reasons discussed above, with the suggested modifications, the proposed IP amendment can be found consistent with and adequate to carry out the certified LUP.

C. California Environmental Quality Act (CEQA)

CEQA Section 21080.5(d)(2)(A) prohibits a proposed LCP or LCP amendment from being approved if there are feasible alternatives and/or feasible mitigation measures available that would substantially lessen any significant adverse effect that the LCP or LCP amendment may have on the environment. Although local governments are not required to satisfy CEQA in terms of local preparation and adoption of LCPs and LCP amendments, many local governments use the CEQA process to develop information about proposed LCPs and LCP amendments, including to help facilitate Coastal Act review. In this case, the County exempted the proposed amendment from environmental review, citing CEQA Section 15061(b)(3) (i.e., where CEQA applies only to projects which have the potential for causing a significant effect on the environment, and the County determined that no possibility exists that the amendment may have a significant effect on the environment).

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

Commission for consideration that is intended to provide just such a framework for potential future development (including increased residential development) in the community that can adequately and appropriately address water, wastewater, ESHA and other development constraints. That Plan is currently tentatively scheduled to come before the Commission in early 2022, and its final disposition could materially affect how to understand the ways in which development is to be balanced and provided in the community going forward.

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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).

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877
WEB: WWW.COASTAL.CA.GOV



Th12

Prepared June 29, 2022 (for July 14, 2022 Hearing)

To: Coastal Commissioners and Interested Persons

From: John Ainsworth, Executive Director
Dan Carl, Central Coast District Director
Rob Moore, Coastal Planner

Subject: Certification Review for City of Capitola LCP Amendment Number LCP-3-CAP-21-0083-1 (Parklets)

On June 10, 2022, the California Coastal Commission considered a proposed City of Capitola LCP amendment (LCP-3-CAP-21-0083-1) designed to add provisions to the City's LCP to allow for and regulate sidewalk dining and outdoor dining decks in the public right-of-way. At that time, and after a public hearing, the Commission conditionally certified the amendment provided it was modified as suggested by the Commission.

The Capitola City Council considered the Commission's conditional certification on June 23, 2022, and approved a modified version of the LCP amendment that day in response to the Commission's conditional certification, including the suggested modifications (see attachment).

The Executive Director has reviewed the City's June 23, 2022 action, and has determined that it is legally adequate to meet all of the Commission's conditional certification requirements. The Executive Director will report that determination to the Coastal Commission at the Commission's July meeting on July 14, 2022 as part of the Central Coast District Director's Report. The Commission meeting starts at 9am on July 14th, and the District Director's Report is item number 12 on the agenda for that day. Interested persons are welcome to submit comments and/or to sign-up to testify to the Commission regarding this matter under that agenda item (see the Commission's website at www.coastal.ca.gov for further information and instructions to participate in these ways).

Please note that this certification review is not a time to revisit any substantive issues associated with the approval of the subject LCP amendment, as certification review is limited to the question of whether the County adopted the suggested modifications to the LCP amendment approved by the Commission. Please further note that the Executive Director's determination is not subject to any required concurrence or approval by the Commission, but rather is simply being reported to the Commission as

is required by the Commission's regulations in order to allow for the amended LCP to be certified in that form (see Title 14, Division 5.5, Sections 13544 and 13544.5). Upon reporting this item to the Commission in the Central Coast District Director's Report, the amended LCP will be certified as of that date and time.

If you have any questions about this LCP amendment certification review process, including questions about how to submit written comments and/or to testify to the Commission, please contact the Central Coast District office at (831) 427-4863 and/or centralcoast@coastal.ca.gov.

Attachment: City of Capitola City Council's June 23, 2022 Action

RESOLUTION NO. 4274

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPITOLA ACCEPTING CALIFORNIA COASTAL COMMISSION MODIFICATIONS TO THE CITY OF CAPITOLA LOCAL COASTAL PROGRAM REPEALING AND REPLACING MUNICIPAL CODE SECTIONS 17.96.170, AND AMENDING MUNICIPAL CODE SECTIONS 17.44.150(B)(3) AND 17.120.030, AND DIRECTING THE COMMUNITY DEVELOPMENT DIRECTOR TO TRANSMIT THE ACCEPTANCE TO THE CALIFORNIA COASTAL COMMISSION.

WHEREAS, pursuant to authority delegated to the City of Capitola by the California Coastal Commission, the City of Capitola regulates development in the portion of the coastal zone that lies in the City boundary and that is outside of the original jurisdiction of the California Coastal Commission and the Local Coastal Program; and

WHEREAS, the City of Capitola's Local Coastal Program (LCP) was certified by the California Coastal Commission in December of 1981 and has since been amended from time to time; and

WHEREAS, the City Council adopted the General Plan Update on June 26, 2014; and

WHEREAS, the Local Coastal Program Land Use Plan is a comprehensive long-term plan for land use and physical development within the City's coastal zone and includes the Coastal Land Use Plan Map; and

WHEREAS, the Capitola City Council adopted the most recent comprehensive update to the City of Capitola Zoning Code (Title 17 of the Capitola Municipal Code) in 2021; and

WHEREAS, the State of California and Santa Cruz County established social distancing requirements in response to the COVID-19 pandemic that prohibited indoor dining at restaurants in Capitola; and

WHEREAS, in response to the pandemic and social distancing orders, the City issued temporary use permits to local restaurants to provide outdoor dining; and

WHEREAS, in 2020 and 2021 approximately 24 restaurants in Capitola were granted temporary use permits under this program to provide outdoor dining; and

WHEREAS, on April 22, 2021, the City Council directed staff to develop a program for permanent outdoor dining and to bring the program back to the Council for review and possible adoption;

WHEREAS, Municipal Code Section 17.96.170 contains existing requirements for temporary sidewalk dining in the public right-of-way; and

WHEREAS, the proposed program for permanent outdoor dining would replace existing Municipal Code Section 17.96.170 with new standards to allow for street dining decks in addition to sidewalk dining;

WHEREAS, the City aims to allow for streamlined approval of prototype street dining decks utilizing a design that will be preauthorized by the Planning Commission through a blanket Coastal Development Permit.

WHEREAS, the City aims to balance the desire for permanent outdoor dining in the public right-of-way with adequate public parking and coastal access;

WHEREAS, City staff consulted with Coastal Commission staff in the preparation of the Zoning Ordinance amendments to ensure that the proposed program and ordinance would comply with the California Coastal Act and Capitola's Local Coastal Program; and

WHEREAS, the proposed Zoning Ordinance amendments to allow for permanent outdoor dining in the public right-of-way qualify for the Exemption found at CEQA Guidelines Section 15305 and 15311; and

WHEREAS, the draft ordinance was then circulated for a 60-day public review period on October 1, 2021; and

WHEREAS, the Planning Commission held a duly noticed public hearing on October 7, 2021 and November 4, 2021, at which time it reviewed the proposed amendments, considered all public comments on the revisions and related CEQA exemption, and provided input on the draft ordinance, and a recommendation to delay the proposed ordinance; and

WHEREAS, the Capitola City Council conducted duly noticed public hearings on November 23, 2021 and December 1, 2021, at which the City Council introduced and performed a first reading of the revised municipal code sections. On December 9, 2021, the City Council adopted the ordinance, which repealed and replaced Section 17.96.170, and amended section 17.120.030 of the Capitola Municipal Code; and

WHEREAS, the City Council determined that the amendments are consistent with the General Plan and that the revisions would be internally consistent with all other provisions of the Municipal Code.

WHEREAS, the amendments would become a component of Implementation Plan of the City's Local Coastal Program and is intended to be implemented in a manner that is in full conformance with the California Coastal Act.

WHEREAS, following the City Council's adoption, Capitola staff submitted the Zoning Code update to the Californian Coastal Commission staff for preliminary review in preparation for Local Coastal Plan (LCP) certification; and

WHEREAS, the Local Coastal Program Implementation Plan establishes specific land use and development regulations to implement the Local Coastal Program Land Use Plan, and Chapter 17 (Zoning) and the Zoning Map are part of Capitola's Local Coastal Program Implementation Plan; and

WHEREAS, the City provided Public Notice, as required under Coastal Act 30514 et seq., for Certification of the LCP Implementation Plan and Corresponding Maps.

WHEREAS, on June 10, 2022, the California Coastal Commission held a public hearing on the amendments to the Capitola Local Coastal Program implementing the Zoning Code amendments adopted by the City Council and certified the amendments to the Capitola Local Coastal Program with modifications; and

WHEREAS, the modifications proposed by the California Coastal Commission to the Capitola Local Coastal Program implementing the Zoning Code amendments, are summarized in a letter dated June 13, 2022, from the Coastal Commission and included as Attachment 1; and

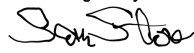
WHEREAS, insofar as the proposed changes to the Capitola Zoning Code are amendments to the Local Coastal Program and LCP Implementation Plan, the application of the proposed amendments in the coastal zone is statutorily exempt from California Environmental Quality Act (CEQA) review pursuant to CEQA Guidelines Section 15265 and the California Public Resources Code Section 21089.9;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the City Council hereby accepts each of the modifications suggested by the California Coastal Commission to the Capitola Zoning Code attached and incorporated as Exhibit 1.


BE IT FURTHER RESOLVED AND ORDERED that the City Council hereby directs the Community Development Director or their designee to transmit this acceptance and any adopted ordinance that incorporates these modifications to the California Coastal Commission for concurrence by its Executive Director.

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Capitola on the 23rd day of June, 2022, by the following vote:

AYES:	Council Members Bertrand, Brooks, Brown, Keiser and Mayor Storey
NOES:	None
ABSENT:	None
ABSTAIN:	None

DocuSigned by:

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Sam Storey, Mayor

DocuSigned by:

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ATTEST:

Chloé Woodmansee, City Clerk

Attachment 1: Coastal Commission-proposed modifications to Capitola's Local Coastal Program Implementation Plan (Chapter 17: Zoning Code)

Attachment 2: June 13, 2022, Letter from Coastal Commission staff

~~17.96.170 Temporary Outdoor Dining~~

~~This section establishes requirements for temporary outdoor dining areas located on a public sidewalk or other area within the public right-of-way.~~

- ~~A. **Required Permits.** Temporary outdoor dining within the public right-of-way requires an Administrative Permit and an Encroachment Permit. Temporary outdoor dining may require a Coastal Development Permit as specified by Chapter 17.44 (Coastal Overlay Zone) if any part of the site is located in the coastal zone and the proposed development shall conform with the CDP findings for approval as specified in 17.44.130 (Findings for Approval).~~
- ~~B. **Permitted Zoning Districts.** Temporary outdoor dining within the public right-of-way is allowed in the Commercial Community (C-C), Commercial Regional (C-R), and Mixed Use, Neighborhood (MU-N) zoning districts. Temporary outdoor dining within the public right-of-way is not permitted in the Mixed Use Village (MU-V) zoning district.~~
- ~~C. **Standards.** Temporary sidewalk dining shall comply with the following standards.~~
- ~~1. **Location.** Outside dining is permitted on the public sidewalk:~~
 - ~~a. When incidental to and part of a restaurant; and~~
 - ~~b. Along the restaurant's frontage.~~
 - ~~2. **Number of Dining Areas.** An indoor restaurant may operate only one outside dining area confined to a single location.~~
 - ~~3. **Safe Passage.**~~
 - ~~a. Temporary sidewalk dining is permitted only where the sidewalk is wide enough to adequately accommodate both the usual pedestrian traffic in the area and the operation of the outside dining area.~~
 - ~~b. The sidewalk immediately adjacent to the restaurant shall have adequate space to accommodate tables and chairs and shall provide adequate safe passage along the sidewalk for pedestrian and wheelchair users of the sidewalk. Safe and adequate passage of at least 4 feet in width shall be provided along the sidewalk and from the curb to the sidewalk. No tables or chairs or any other objects shall be placed or allowed to remain on any sidewalk that inhibit such passage.~~
 - ~~4. **Furniture and Signage Location.**~~
 - ~~a. Tables and chairs in a sidewalk dining area shall be set back at least 2 feet from any curb and from any sidewalk or street barrier, including a bollard, and at least 8 feet from a bus stop.~~
 - ~~b. All outdoor dining furniture, including tables, chairs, umbrellas, and planters, shall be movable.~~
 - ~~c. All temporary improvements to separate the outdoor dining area from the sidewalk, such as a railing, shall relate to the architectural design of the primary restaurant structure in color, materials, and scale.~~
 - ~~d. Umbrellas shall be secured with a minimum base of not less than 60 pounds.~~
 - ~~e. All signs are subject to Chapter 17.80.~~

5. **~~Food and Beverages.~~** ~~The service of alcoholic beverages within the sidewalk dining area requires a Conditional Use Permit, and shall comply with the following requirements:~~
 - a. ~~The outside dining area shall be situated immediately adjacent to and abutting the indoor restaurant which provides it with food and beverage service.~~
 - b. ~~The outside dining area shall be clearly separate and delineated from the areas of the sidewalk which remains open to pedestrian traffic.~~
 - c. ~~One or more signs shall be posted during hours of operation stating that alcohol is prohibited outside of the dining area.~~
 - d. ~~The outside dining area shall receive all licenses required for on-site consumption of alcoholic beverages from State authorities.~~
6. **~~Trash and Maintenance.~~**
 - a. ~~Storage of trash is prohibited within or adjacent to the sidewalk dining area. All trash and litter shall be removed as it accumulates or otherwise becomes a public nuisance.~~
 - b. ~~The sidewalk dining area, including the sidewalk surface and furniture, shall be maintained in a clean and safe condition.~~
7. **~~Hours of Operation.~~** ~~Sidewalk dining may occur between 7 a.m. and 10 p.m. seven days a week. Tables, chairs, other outdoor dining furniture, and all other structures and materials associated with the outdoor dining area shall be removed from the sidewalk and stored indoors at night and when the sidewalk dining area is not in operation.~~

17.96.170 Outdoor Dining in Public Right of Way

- A. **Purpose.** This section establishes standards and permit requirements for outdoor dining in the public right-of-way.
- B. **Definitions.**
 1. **Outdoor Dining.** “Outdoor dining” means both sidewalk dining and street dining decks.
 2. **Sidewalk Dining.** “Sidewalk dining” means the use of an outdoor sidewalk area within the public-right-of-way, by a private business that is an eating and drinking establishment, for eating and drinking activities.
 3. **Street Dining Deck.** A street dining deck means a platform or similar level surface within the public right-of-way and extending beyond the curb and into a roadway or on-street parking area for use by a private business that is an eating or drinking establishment.
 - a. **Custom Street Dining Deck.** A custom street dining deck is a street dining deck designed by the applicant.

- b. **Prototype Street Dining Deck.** A prototype street dining deck is a street dining deck utilizing a design that has been authorized by the City and has received all necessary permits and authorizations.

C. Where Allowed.

1. Sidewalk Dining.

- a. Sidewalk dining is allowed in the MU-N, MU-V, C-C, and C-R zoning districts.
- b. In the MU-V zoning district, sidewalk dining is allowed only on Monterey Avenue, Capitola Avenue, and on the Capitola Wharf immediately adjacent to the restaurant it serves.

2. **Street Dining Decks.** Street dining decks are allowed only in the MU-V zoning district and only on the Esplanade, Monterey Avenue, Capitola Avenue, and San Jose Avenue.

- D. Maximum Number of On-Street Parking Spaces.** A maximum of 25 total on-street parking spaces may be used for street dining decks. Spaces shall be allocated by the City Manager in accordance with administrative policies issued pursuant to this section. On-street parking spaces utilized for in-lieu bicycle parking shall count toward the maximum 25 spaces.

E. Permits and Approvals.

1. **Required Permits.** Table 17.96-2 shows permits required for sidewalk dining and street dining decks.

Table 17.96-2: Permits Required for Outdoor Dining in Public Right-of-way

Type of Outdoor Dining	Permit Required [2]	Zoning Code Chapter [3]
Sidewalk Dining	Design Permit	17.120
Street Dining Decks		
Prototype Street Dining Deck [1]	Administrative Permit	17.116
Custom Street Dining Deck	Design Permit	17.120

[1] Prototype dining deck designs are identified in the adopted Village Outdoor Dining Program Administrative Policy No. I-36 and as specified by an approved coastal development permit.

[2] Outdoor dining in the public right-of-way also requires an encroachment permit pursuant to Municipal Code Chapter 12.56. Minor encroachment permits for applications for prototype street dining decks may be issued by the Public Works Director and major encroachment permits for custom street dining decks may be issued by the Planning Commission.

[3] A street dining deck or sidewalk dining area located in the coastal zone may also require a coastal development permit (CDP) as specified in Chapter 17.44 (Coastal Overlay Zone).

2. **Administrative Permit Standards.** All applications for an Administrative Permit are reviewed and acted on by the Community Development Director and must comply with the following standards:

- a. The street dining deck must be designed consistent with a prototype design approved by the City and received all necessary permits and authorizations.

- b. The street dining deck must comply with all applicable requirements of this section, the Zoning Code, and all other applicable laws, administrative policies, rules, and regulations.
 - c. If located in the coastal zone, the street dining deck is consistent with the Local Coastal Program and will not adversely impact coastal resources, coastal access, and coastal views.
 - d. The street dining deck must utilize high-quality, durable materials that are compatible with surrounding development and can withstand inclement weather.
 - e. The street dining decks must use the prototype street dining deck design authorized by a valid coastal development permit and shall be subject to the prototype street dining deck coastal development permit findings and conditions.
3. **Design Permit Findings.** All applications for a Design Permit (and any required coastal development permit) are viewed and acted on by the Planning Commission. Notwithstanding Municipal Code Section 17.120.080 (Findings for Approval), for Design Permits issued pursuant to this section, the Planning Commission shall make the following findings and need not make those findings set forth in section 17.120.080
- a. The sidewalk dining area or street dining deck complies with all applicable requirements of this section, the Zoning Code, and all other applicable laws, administrative policies, rules, and regulations.
 - b. If located in the coastal zone, the sidewalk dining area or street dining deck is consistent with the Local Coastal Program, will not adversely impact coastal resources, coastal access, and coastal views, and has been authorized through a valid coastal development permit.
 - c. The design of the sidewalk dining area or street dining deck supports a safe, inviting, and lively public realm consistent with the purpose of the MU-V zoning district as provided in Section 17.20.040 (Purpose of the Mixed Use Zoning Districts).
 - d. The sidewalk dining area or street dining deck materials include high-quality, durable materials that are compatible with surrounding development and can withstand inclement weather.
4. **Good Standing.** An applicant must be in good standing to apply for a permit for outdoor dining. For purposes of this section, “good standing” shall mean that within the twenty-four months directly preceding submission of a complete application for an Administrative Permit or Design Permit, the applicant has not been issued a notice of abatement, violation, or been subject to any code enforcement proceedings related to an ABC license, entertainment permit, or use permit by the City or any other regulatory or permitting agency. Any courtesy code enforcement notices received by the applicant was corrected by the applicant within the date specified on the courtesy notice retains the applicants good standing.
5. **Other Permits and Approvals.**

- a. Sidewalk and street dining decks are subject to all other applicable permits, licenses and/ or entitlements required by State or local law.
- b. A street dining deck or sidewalk dining area located in the coastal zone may require a coastal development permit (CDP) as specified in Chapter 17.44 (Coastal Overlay Zone). Approval of a CDP requires conformance with the CDP findings for approval as specified in Section 17.44.130 (Findings for approval), as well as conformance with the requirements specified in this chapter (Chapter 17.96.170).
- c. A street dining deck or sidewalk dining area located in the coastal zone shall require a coastal development permit (CDP) as specified in Chapter 17.44 (Coastal Overlay Zone). Approval of a CDP requires conformance with the CDP findings for approval as specified in Section 17.44.130 (Findings for approval), as well as conformance with the requirements specified in this chapter (Chapter 17.96.170).
- d. **CDP Recertification Requirement.** All CDPs issued for outdoor dining permits shall require recertification by the City Council no later than three years after the CDP is issued, and every five years thereafter. Recertification shall require a public hearing before the City Council. City staff will initiate the recertification process by providing notice to the Applicant of the hearing date, at least thirty (30) days in advance of the public hearing.

For a CDP to be recertified, the City Council must find that the subject project is operating in compliance with the findings and conditions of the CDP and in compliance with the LCP. The City Council may recertify, modify, or revoke the CDP. The City Council's decision shall be a final action.

The project applicant, any aggrieved person, or any two members of the Coastal Commission may appeal the City Council decision. Appeal procedures for coastal development permits shall be as specified in Section 17.44.150.

F. Administrative Policies.

1. The City Council is authorized to issue administrative policies regarding the administration and leasing of the public right-of-way for sidewalk dining and street dining decks, including but not limited to the application and selection process for applicants, maintenance requirements, and other related policies.
2. In the event of any conflict between the provisions of this chapter and the administrative policy, the more restrictive requirement shall control.

G. Operating and Development Standards. All Sidewalk Dining and Street Dining Decks shall comply with the following standards:

1. **Must Serve Eating and Drinking Establishment.** Outdoor dining in the public right-of-way is allowed only when incidental to and a part of an "eating and drinking establishment" as defined in Chapter 17.160 (Glossary).

2. **One Facility Only.** An eating establishment may have either sidewalk dining or a street dining deck. An eating establishment may not have both sidewalk dining and a street dining deck.
3. **Limited to Eating Establishment Frontage.**
 - a. Sidewalk dining is allowed on the sidewalk directly adjacent to the eating establishment street frontage.
 - b. Street dining decks in the public right-of-way are only allowed on parking spaces that are:
 - (1) Wholly or partially located in the right-of-way; and
 - (2) Directly adjacent to the eating establishment street frontage unless authorized by paragraph (b) below.
 - c. The City may allow an outdoor dining area to extend beyond the eating and drinking establishment frontage if:
 - (1) Due to the road and parking space layout, the outdoor dining area cannot be designed without extending the area beyond immediately adjacent parking spaces;
 - (2) Extending the outdoor dining area will not have significant impact on adjoining businesses as determined by the permit review authority; and
 - (3) Extending the outdoor dining area will not adversely impact coastal access.
4. **Sidewalk Width.** Outdoor dining areas in the public right-of-way shall provide a minimum clear width within the sidewalk of at least:
 - a. 5 feet in the MU-V zoning district; and
 - b. 4 feet in all other zoning districts.
5. **Sidewalk Dining Areas.** Sidewalk dining areas shall be limited to the placement of tables and chairs. In addition, design elements required for ABC permit compliance for separation (fences, ropes, planters, etc.), may be included in the design but shall not exceed 36-inches in height.
6. **Signs.**
 - a. Commercial signs are not permitted in or on any portion of the improvements of a sidewalk dining area or street dining deck, except as specified in section b.
 - b. One business identification sign and one menu sign each not to exceed two square feet are allowed.
7. **Stormwater Drainage.** All street dining decks must allow for adequate stormwater drainage.
 - a. Dining decks shall not block the drainage flow along the gutter line.
 - b. Dining decks shall not block access into any drain inlet or other drainage/stormwater facility.
8. **Utilities.** All outdoor dining shall not interfere with utility boxes, water hydrants, storm drains, and all other related facilities.

9. **Trash and Maintenance.** An outdoor dining area in the public right-of-way shall be maintained in a clean and safe condition as determined by the City, including as follows:
 - a. All trash shall be picked up and properly disposed of.
 - b. All flower boxes and planters shall contain live, healthy vegetation.
 - c. All tables, chairs, equipment, and structures must be kept clean and operational.
10. **Sound.** Music and amplified sound are not allowed in an outdoor dining area.
11. **Bicycle Parking for Street Dining Decks.**
 - a. A street dining deck that eliminates an on-street parking space must include a bicycle parking rack integrated in the street dining deck design or within the private property of the eating or drinking establishment.
 - b. The bicycle parking rack must provide a minimum of two bicycle parking spaces for each eliminated vehicle parking space.
 - c. As an alternative to providing the bicycle parking rack, the City may allow an applicant to pay an in-lieu fee which fee shall be deposited into the City's in-lieu bike fund to create a central bicycle parking location.
12. **Hours of Operation.**
 - a. Outdoor dining in the public right-of-way may occur between 7 a.m. and 10 p.m. seven days a week.
 - b. The City may allow extended hours for street dining decks for special events and holidays.
13. **Open for Use.** All outdoor dining in the public right-of-way must be open for use a minimum of five days per week, except in cases of inclement weather. "Open for use" means that the eating or drinking establishment must allow customers to use the outdoor dining area when the establishment is open for business.
14. **Materials.** Allowed materials include finished or painted wood, glass, ornamental steel or iron, and decorative masonry. Street dining decks where the primary visible material is plastic, fabric, woven bamboo, or chain link/wire fencing are discouraged.

H. Enforcement.

1. **General.**
 - a. The City shall have all enforcement remedies permitted by law, including but not limited to those in Administrative Policy I-36 in Municipal Code Title 4 (General Municipal Code Enforcement).
 - b. Any outdoor dining facility may be subject to inspection by the City on an annual basis or as needed to ensure compliance with this section, conditions of approval, and administrative procedures.

Section 3. Section 17.120.030 (Design Permits – When Required) of Chapter 17.120 of the Capitola Municipal Code is hereby amended to read as follows (additions in underline, deletions in ~~strike through~~):

Chapter 17.120 Design Permits

17.120.030 When Required

- A. Types of Projects.** The types of projects that require a Design Permit, and the type of Design Permit for each project, are listed in Table 17.120-1. If a type of development project or activity is not specifically listed in Table 17.120-1, a Design Permit is not required.

TABLE 17.120-1: PROJECTS REQUIRING DESIGN PERMITS

Type of Project	Type of Permit
Single-Family Residential Projects	
Ground floor additions to existing single-family homes where the addition is visible from a public street and does not exceed 15 ft. in height, except for exempt additions (Section 17.120.030.B)	Minor Design Permit
Accessory structures greater than 10 ft. in height and/or 120 sq. ft. to 300 sq. ft.	Minor Design Permit
Accessory structures greater than 300 sq. ft.	Design Permit
Upper floor decks and balconies on the side or rear of a home that are not adjacent to public open space	Design Permit
All rooftop decks	Design Permit
Upper floor additions to an existing single-family homes	Design Permit
New single-family homes	Design Permit
Multifamily Residential Projects	
Ground-floor additions less than 15% of total floor area of an existing multifamily structure	Minor Design Permit
Upper floor decks and balconies on the side or rear of a structure that are not adjacent to public open space	Design Permit
All rooftop decks	Design Permit
Accessory structures including garbage and recycling enclosures	Minor Design Permit
Ground-floor additions 15% of total floor area or more to an existing multifamily structure	Design Permit
Upper floor additions to an existing multifamily structure	Design Permit
New multifamily residential structures	Design Permit
Non-Residential Projects (Including Mixed-Use)	
Exterior modifications to an existing structure that do not increase the floor area of the structure	Minor Design Permit
Accessory structures 120 sq. ft. to 300 sq. ft. including garbage and recycling enclosures	Minor Design Permit
Accessory structures greater than 300 sq. ft. including garbage and recycling enclosures	Design Permit
Additions less than 15% of the floor area of an existing non-residential structure where the addition is not visible from the primary street frontage	Minor Design Permit
Additions 15% or more of the floor area of an existing non-residential structure where the addition is visible from the primary street frontage	Design Permit
Additions to an existing non-residential structure of 3,000 sq. ft. or more	Design Permit
New non-residential structures	Design Permit
<u>Custom outdoor dining decks and sidewalk dining areas in the public right-of-way</u>	<u>Design Permit</u>

B. Single-Family Exemptions. The following additions to a single-family dwelling are exempt from the Design Permit requirement:

1. Ground-floor single-story additions up to 400 square feet at the rear of the home.
2. Enclosure of an existing recessed entrance up to 25 square feet.
3. Enclosure of an existing open porch up to 50 square feet.
4. Installation of bay windows.
5. A single accessory structures that does not exceed 120 square feet in floor area and 10 feet in height with no connection to water or sewer.
6. Minor exterior modification or replacement of materials on an existing structure including siding, windows, doors, and roof.
7. Other similar minor additions to a single-family dwelling as determined by the Community Development Director.
8. Upper floor decks and balconies immediately adjacent to a street or public open space.

C. Non-Residential Exemptions.

1. Prototype outdoor dining decks that comply with Section 17.96.170 (Outdoor Dining in Public Right of Way) are exempt from the Design Permit requirement.

Section 4. Section 17.44.150(B)(3) of the Capitola Municipal Code is modified to read as follows:

Section 17.44.150(B)(3) The following types of projects may be appealed to the Coastal Commission: [...]

- d. All other projects for which appeals to the Coastal Commission are expressly permitted elsewhere in this Title 7.

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877
WEB: WWW.COASTAL.CA.GOV



June 13, 2022

Katie Herlihy, AICP
Community Development Director
City of Capitola
420 Capitola Ave
Capitola, CA 95010

Subject: Coastal Commission Action on City of Capitola Local Coastal Program (LCP) Amendment No. LCP-3-CAP-21-0083-1 (Parklets)

Dear Ms. Herlihy:

At its meeting on June 10, 2022, the Coastal Commission took action on City of Capitola LCP Amendment No. LCP-3-CAP-21-0083-1 (Parklets). The Commission approved the proposed amendments to the Implementation Plan, if modified as suggested. A copy of the adopted findings and suggested modifications will be sent to you electronically.

This letter formally transmits to you the Commission's resolution of certification and adopted findings pursuant to Section 13544 of Title 14 of the California Code of Regulations. Pursuant to Section 13544, effective certification of LCP Amendment No. LCP-3-CAP-21-0083-1, whereby the City may begin issuing coastal development permits subject to this amendment, will occur after:

1. The City, by action of the City Council: (a) acknowledges receipt of this resolution of certification, including the suggested modifications; and (b) accepts and agrees to the modifications and takes whatever formal action is required to satisfy the modifications (e.g., implementation of ordinances).
2. The Commission's Executive Director reports to the Commission his determination that the City's actions are legally adequate, and the Commission does not object to the Executive Director's determination.
3. Notice of the certification of the LCP amendment is filed with the Secretary of the Resources Agency.

Coastal Commission staff will take care of items #2 and #3 above, following completion of item #1 by the City. Note that the Commission's regulations provide that the Commission's action of certification with the suggested modifications shall expire six months from the date of the Commission's action, or on December 10, 2022.

Please let me know if I can assist you in any way in completing action on this LCP amendment, or if you have any questions. Thanks for all your help during this process.

Katie Herlihy
LCP-3-CAP-0083-1 (Parklets)
Page 2 of 2

Sincerely,

A handwritten signature in black ink, appearing to read "Rob Moore", with a stylized flourish extending from the end.

Rob Moore
Coastal Planner
Central Coast District Office

Enclosure (Via Email): Adopted Staff Report with Suggested Modifications

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877
WEB: WWW.COASTAL.CA.GOV



NOTICE OF PROPOSED PERMIT EXTENSION

Date: June 29, 2022
To: All Interested Parties
From: Dan Carl, Central Coast District Director
Katie Butler, Central Coast Planner
Subject: **Proposed Extension to Coastal Development Permit (CDP) A-3-MCO-04-012**
Applicant: Brandon Wang

Original CDP Approval

CDP A-3-MCO-04-012 was approved by the Coastal Commission on June 7, 2017 and provided for the construction of a 2,315-square foot single-family residence at 36228 Highway 1, at Kasler Point, in the Big Sur Coast area of unincorporated Monterey County.

Proposed CDP Extension

As indicated above, the CDP was originally approved by the Coastal Commission on June 7, 2017 and included a two-year term with an expiration date of June 7, 2019. The Applicant previously filed for five extensions to extend this deadline (ultimately to June 7, 2022), which were granted by the Commission (A-3-MCO-04-012-E1, A-3-MCO-04-012-E2, A-3-MCO-04-012-E3, A-3-MCO-04-012-E4, and A-3-MCO-04-012-E5). Thus, under this proposed extension, the expiration date of CDP A-3-MCO-04-012 would be extended one additional year to June 7, 2023. The Commission's reference number for this proposed extension is **A-3-MCO-04-012-E6**.¹

Executive Director's Changed Circumstances Determination

Pursuant to Title 14, Section 13169 of the California Code of Regulations, the Executive Director of the California Coastal Commission has determined that there are no changed circumstances affecting the approved development's consistency with the certified Monterey County Local Coastal Program and/or Chapter 3 of the Coastal Act, as applicable.

Coastal Commission Review Procedure

The Executive Director's determination and any written objections to it will be reported to the Commission on July 14, 2022, at the Commission's hybrid virtual and in-person

¹ CDP extensions -E1 and -E2 were granted in 2006 and 2007, respectively, while the original CDP approval was undergoing litigation. The CDP application was remanded to the Commission by the Court of Appeal, and subsequently approved in June 2017.

hearing in Fort Bragg. If three or more Commissioners object to the Executive Director's changed circumstances determination at that time, a full hearing on whether changed circumstances exist will be scheduled pursuant to the Commission's regulations.

If you have any questions about the proposal or wish to register an objection, please contact Katie Butler in the Central Coast District office at Katie.Butler@coastal.ca.gov.

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877
WEB: WWW.COASTAL.CA.GOV



NOTICE OF PROPOSED PERMIT EXTENSION

Date: July 29, 2022

To: All Interested Parties

From: Dan Carl, Central Coast District Director
Esme Wahl, Coastal Planner

Subject: Proposed Extension to Coastal Development Permit (CDP) A-3-SLO-15-0001

Applicant: Jack Loperena

Original CDP Approval

CDP A-3-SLO-15-0001 was approved by the Coastal Commission on August 10, 2016 and allows for the construction of an approximately 1,100-square-foot, three-story single-family residence with an elevated driveway platform connecting to Studio Drive, located seaward of Studio Drive at its northern end (approximately 250 feet southwest of the intersection of Studio Drive and Highway 1) and fronting Morro Strand State Beach, in the unincorporated community of Cayucos, San Luis Obispo County (APN 064-253-007).

Proposed CDP Extension

As indicated above, the CDP was originally approved by the Coastal Commission on August 10, 2016 and included a two-year term with an expiration date of August 10, 2018. The Applicant previously filed for four extensions to extend this deadline (ultimately to August 10, 2022), which were granted by the Commission (A-3-SLO-15-0001-E1, A-3-SLO-15-0001-E2, A-3-SLO-15-0001-E3, and A-3-SLO-15-0001-E4 respectively). Thus, under the proposed extension, the expiration date of CDP A-3-SLO-15-0001-E3 would be extended one additional year until August 10, 2023. The Commission's reference number for the proposed extension is A-3-SLO-15-0001-E5.

Executive Director's Changed Circumstances Determination

Pursuant to Title 14, Section 13169 of the California Code of Regulations, the Executive Director of the California Coastal Commission has determined that there are no changed circumstances affecting the approved development's consistency with the certified Santa Cruz County Local Coastal Program and/or Chapter 3 of the Coastal Act, as applicable.

Coastal Commission Review Procedure

The Executive Director's determination and any written objections to it will be reported to the Commission on July 14, 2020, at the Commission's virtual hearing. If three or more Commissioners object to the Executive Director's changed circumstances

determination at that time, a full hearing on whether changed circumstances exist will be scheduled pursuant to the Commission's regulations.

If you have any questions about the proposal or wish to register an objection, please contact Esme Wahl in the Central Coast District office at Esme.Wahl@coastal.ca.gov.

CALIFORNIA COASTAL COMMISSION

455 MARKET STREET, SUITE 300
SAN FRANCISCO, CA 94105
PHONE: (415) 904-5200
FAX: (415) 904-5400
WEB: WWW.COASTAL.CA.GOV



EMERGENCY COASTAL DEVELOPMENT PERMIT

Emergency CDP G-3-22-0021 (Wharf Railing Repair)

Issue Date: June 6, 2022

Permittee: City of Santa Cruz

Emergency Location: Upcoast side of the Santa Cruz Municipal Wharf above Public Landing Number 2 in the City of Santa Cruz.

Emergency Description: About thirty five feet of perimeter safety railing has failed due to rotten joists and a loss of post/fastener stability, leading to a dangerously unstable perimeter railing along the public sidewalk area.

Emergency Development: The existing railing and sidewalk would be removed, the rotten decking and joists would be replaced, and the sidewalk would be repaved and the railing rebuilt.

Executive Director's Determination

The Executive Director of the California Coastal Commission hereby finds that: (a) a sudden unexpected occurrence demanding immediate action to prevent or mitigate loss or damage to life, health, property or essential public services exists (i.e., an "emergency" (see Title 14 California Code of Regulations Section 13009 and California Coastal Act (Public Resources Code) Section 30624); (b) the emergency requires action more quickly than allowed by the procedures for regular CDPs; (c) the emergency development can and will be completed within 30 days unless otherwise specified by the terms of this ECDP; (d) the emergency development carried out under this ECDP is considered temporary work done in an emergency situation to abate an emergency and is undertaken at Permittee risk; (e) a regular CDP must be obtained for the emergency development to become more than temporary emergency abatement and/or if the Permittee wishes to expand the scope of work beyond that authorized by this ECDP; (f) absent obtaining a regular CDP, the emergency development shall be removed and the affected area restored; and (g) Commission staff will review public comment on the proposed emergency development as time allows.

The emergency development is hereby approved, subject to the conditions listed below.

A handwritten signature in black ink, appearing to read "Dan Carl", written over a horizontal line.

Dan Carl, Central Coast District Director, for John Ainsworth, Executive Director

Enclosure: ECDP Acceptance Form

cc: (via email): Tony Elliot, Travis Beck, and Britt Hoberg (City of Santa Cruz); Taylor Meyers (Moffat & Nichol); Kenneth Foster (California State Lands Commission); Sophie De Beukelaer (Monterey Bay National Marine Sanctuary)

Emergency CDP G-3-22-0021 (Wharf Railing Repair)
Issue Date: June 6, 2022

Conditions of Approval

1. The enclosed ECDP acceptance form must be signed by the Permittee and returned to the California Coastal Commission's Central Coast District Office within 15 days of the date of this ECDP (i.e., by June 21, 2022). This ECDP is not valid unless and until the acceptance form has been received in the Central Coast District Office.
2. All emergency development shall be limited in scale and scope to that specifically identified in the Emergency Permit Application Form dated received in the Commission's Central Coast District Office on June 6, 2022. Only that emergency development specifically described in this ECDP and for the specific location listed above is authorized. Any other development requires separate authorization from the Executive Director or the Commission, as applicable.
3. The emergency development authorized on a temporary basis by this ECDP must be completed within 90 days of ECDP issuance (i.e., by September 4, 2022).
4. This ECDP does not obviate the need to obtain necessary authorizations and/or permits from other agencies (e.g., California State Lands Commission, Monterey Bay National Marine Sanctuary, California Department of Fish and Wildlife, U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, etc.). The Permittee shall submit to the Executive Director copies of all such authorizations and/or permits upon their issuance.
5. By exercising this ECDP, Permittee acknowledges and agrees that: (a) the emergency development is temporary, is designed to temporarily abate the emergency, and shall be removed unless and until a regular CDP authorizing the work is approved, and provided the Permittee adheres to such regular CDP's terms and conditions; and (b) a regular CDP is subject to all of the provisions of the California Coastal Act (as codified in Sections 30000 to 30900 of the Public Resources Code) and any applicable Local Coastal Program (LCP) policies and may be conditioned accordingly to avoid and/or to offset coastal resource impacts consistent with the Coastal Act (and LCP as applicable) (including but not limited to requirements for public access provisions (such as offers to dedicate, easements, in-lieu fees, etc.), assumption/disclosure of risks (including deed restrictions), triggers for relocation/removal, offsetting mitigations, etc.). The Permittee acknowledges that review of the CDP application to determine consistency with the Coastal Act (and LCP as applicable) will be based on the conditions the property was legally in prior to initiation of the temporary emergency development that is the subject of this ECDP.
6. By exercising this ECDP, the Permittee acknowledges and agrees in relation to this ECDP and the emergency development that it authorizes: (a) to assume all risks (including all coastal hazard risks, that include but are not limited to episodic and long-term shoreline retreat and coastal erosion, high seas, ocean waves, tidal scour, storms, tsunamis, coastal flooding, landslide, earth movement, and the interaction of all of these, many of which will worsen with future sea level rise); (b) to unconditionally waive any claim of damage and/or liability against the Commission

Emergency CDP G-3-22-0021 (Wharf Railing Repair)
Issue Date: June 6, 2022

and/or its officers, employees, agents, successors and/or assigns; (c) to indemnify and hold harmless the Commission and its officers, employees, agents, successors and/or assigns against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement, including as it relates to any damages to public and/or private properties and/or personal injury; (d) that any adverse effects to property or people caused by the emergency development shall be fully the responsibility of the Permittee.

7. The Permittee shall reimburse the Commission in full for all Commission costs and attorneys' fees (including but not limited to such costs/fees that are: (a) charged by the Office of the Attorney General; and/or (b) required by a court) that the Commission incurs in connection with the defense of any action brought by a party other than the Permittee against the Commission, its officers, employees, agents, successors and/or assigns challenging the approval or issuance of this ECDP, the interpretation and/or enforcement of ECDP terms and conditions, or any other matter related to this ECDP. The Permittee shall reimburse the Commission within 60 days of being informed by the Executive Director of the amount of such costs/fees. The Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission, its officers, employees, agents, successors and/or assigns.
8. Within 120 days of ECDP issuance (i.e., by October 4, 2022), the Permittee shall either: (a) remove all of the materials placed or installed in connection with the emergency development, and restore all affected areas to their prior condition or better, all subject to Executive Director review and approval (and, in some cases, if directed by the Executive Director, subject to a regular CDP); or (b) submit a complete application (i.e., satisfying the requirements of Title 14 California Code of Regulations Section 13056) for a regular CDP to authorize the emergency development (or for a different project designed to address the emergency development), including submitting all information and materials requested, and as directed, by the Executive Director if/when the Executive Director determines that such application is incomplete. If such regular follow-up CDP application is withdrawn by the Permittee, or is denied by the Commission, or if it remains incomplete for a period of 120 days after the Executive Director informs the Permittee that the application is incomplete, then all of the materials placed and/or installed in connection with the emergency development shall be removed, and all affected areas shall be restored to their prior condition or better, all subject to Executive Director review and approval (and, in some cases, if directed by the Executive Director, subject to a regular CDP).
9. Failure to meet any of the applicable requirements of Condition 8 above shall constitute a knowing and intentional violation of the Coastal Act and may result in formal enforcement action by the Executive Director and/or the Commission. Such formal action may include: recordation of a Notice of Violation on the Permittee's property; the issuance of a Cease and Desist Order and/or a Restoration Order; imposition of administrative penalties of up to \$11,250 per day per violation; a civil lawsuit (that may result in the imposition of monetary penalties, including daily

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penalties of up to \$15,000 per violation per day); and/or other applicable penalties and relief pursuant to Coastal Act Chapter 9. In addition, failure to follow and meet all terms and conditions of this ECDP shall also constitute a knowing and intentional Coastal Act violation to which the same actions above may be applied.

10. All emergency development shall be limited to the least amount necessary to temporarily abate the emergency, and shall be undertaken in a time and manner that avoids any and all coastal resource impacts as much as possible, including avoiding impacts to public access. The Permittee shall keep the Executive Director informed regarding emergency development progress, including in terms of any issues encountered that may require adjustment.
11. All emergency development shall be monitored by a qualified biologist with experience in observing seabird reproductive and nesting behavior, where the biologist shall have the authority to halt all or some activities to ensure adequate seabird protection, and shall conform to all of the following:
 - a. No more than 72 hours prior to the start of construction, nesting bird surveys shall be conducted by the biologist to identify any active nests (i.e., as occupied by eggs or nestlings) occurring within a minimum of 300 feet from the work area, both above and below the wharf's deck (including rooftops, eaves, wharf substructures as viewed from the water, etc.). Each nest's location and stage (e.g., eggs, nestlings, etc.) shall be clearly documented on a map of the wharf and buffers of 100 feet, 200 feet, and 300 feet surrounding the work perimeter shall be shown.
 - b. For any nests below deck, blinds shall be placed between active nests and the work area (1) when visibility from a mapped nest to the work area exceeds 10% and (2) when associated activities, including human movement, would exceed two consecutive hours. For any nests above deck, the biologist shall advise if and where blinds may be necessary to prevent further disturbance to the nest sites. All blind placement shall be overseen by the biologist.
 - c. A minimum 100-foot buffer shall be applied between all active nests and any construction activities, except that alternative approaches to working in nest proximity may be allowed (1) if such a buffer is infeasible and (2) if authorized by the Executive Director.
 - d. All active nests within the 300-foot buffer shall be continuously monitored by the biologist while construction activities are underway. If, under any circumstances, either construction staff or the biologist observes signs of nesting distress (e.g., parents flush from the nest and do not readily return as activities continue, anxious warning calls, etc.), then work shall be stopped immediately, and the biologist shall consult with the Executive Director to determine necessary modifications to activities. Options such as the placement of additional blinds or sound barriers may be considered. All behavioral observations should be well-documented, including associated nest site (with species and nest stage), apparent stimuli (e.g., noise, visual, or vibratory cues), responses (e.g., distress calls, nest evacuation), construction activities underway at the time of observed

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- responses (e.g., jackhammering, drilling), etc.
- e. Work shall not commence prior to 10:00 AM.
 - f. Encroachment on the 300-foot buffer shall be limited to the minimum necessary for emergency construction activities and the installation of wildlife protective devices, and shall not be allowed for any other purpose, including noise studies.
 - g. The Permittee shall submit a Post-Activity Report to the Executive Director. The Report shall be prepared by and/or in consultation with the biologist, and shall include: the map detailing pre-construction survey results with nest locations relative to the project work area, 100-, 200-, and 300-foot buffers, and the wharf structures; a brief narrative describing the pre-construction survey and continuous monitoring methods employed; details on each nest including species, stage, and its relative exposure to construction activities or other disturbances (e.g., generally visible and above deck or in a substructure cavity below deck); daily monitoring observations of apparent nest tolerances to noise, vibration, and visual disturbance cues along with a record of activity types carried out that day and their locations relative to active nests; and, a discussion of any incidents that resulted in a need to install additional protections (e.g., blinds or sound barriers), halt work, or initiate further consultation in order to protect nesting birds.
12. Copies of this ECDP shall be maintained in a conspicuous location at the construction job site at all times, and such copies shall be available for public review on request. All persons involved with the construction shall be briefed on the content and meaning of this ECDP, and the public review requirements applicable to it, prior to commencement of construction.
13. Within 30 days of completion of construction authorized by this ECDP, the Permittee shall submit site plans and cross sections to the Executive Director clearly identifying all development completed under this emergency authorization (comparing the legal pre-emergency development condition to both the emergency condition and to the post-emergency development condition), and a narrative description of all emergency development activities undertaken pursuant to this ECDP. Photos showing the project site before the emergency (if available), after the emergency but before emergency development construction activities, during emergency development construction activities, and after the work authorized by this ECDP is complete shall be provided with the site plans and cross sections.
14. A construction coordinator shall be designated to be contacted during construction should questions arise regarding the construction (in case of both regular inquiries and emergencies), and the construction coordinator's contact information (i.e., address, email, phone numbers, etc.) including, at a minimum, an email address and a telephone number (with voice mail capabilities) that will be made available 24 hours a day for the duration of construction, shall be conspicuously posted at the job site where such contact information is readily visible from public viewing areas, along with indication that the construction coordinator should be contacted in the case of questions regarding the construction (in case of both regular inquiries and

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emergencies). The construction coordinator shall record the contact information (e.g., name, address, email, phone number, etc.) and nature of all complaints received regarding the construction, and shall investigate complaints and take remedial action, if necessary, within 24 hours of receipt of the complaint or inquiry. The Permittee shall submit the record of complaints/inquiries and actions taken in response to the Executive Director on a weekly basis, and upon completion of construction activities.

15. Minor adjustments to the requirements above, including deadline adjustments, may be allowed by the Executive Director if the Executive Director determines that such adjustments: (a) are deemed reasonable and necessary to help to temporarily abate the identified emergency, including as emergency conditions may change; (b) are designed to avoid coastal resource impacts (and limit those that are unavoidable) as much as possible; and (c) in the case of deadline extension adjustments, are appropriate in light of circumstances, including that the Permittee has shown diligence in pursuing the emergency development and meeting all ECDP terms and conditions.
16. Failure to comply with the terms and conditions of this ECDP may result in enforcement action under the provisions of Coastal Act Chapter 9. The issuance of this ECDP does not constitute admission as to the legality of any development undertaken on the property without a CDP and shall be without prejudice to the California Coastal Commission's ability to pursue any remedy under Coastal Act Chapter 9.

If you have any questions about the provisions of this ECDP, please contact the Commission's Central Coast District Office at 725 Front Street, Suite 300, Santa Cruz, CA 95060; centralcoast@coastal.ca.gov; and/or (831) 427-4863.

CALIFORNIA COASTAL COMMISSION

CENTRAL COAST DISTRICT
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060
PHONE: (831) 427-4863
FAX: (831) 427-4877
WEB: WWW.COASTAL.CA.GOV



EMERGENCY COASTAL DEVELOPMENT PERMIT ACCEPTANCE FORM

TO: CALIFORNIA COASTAL COMMISSION
CENTRAL COAST DISTRICT OFFICE
725 FRONT STREET, SUITE 300
SANTA CRUZ, CA 95060

RE: Emergency Coastal Development Permit (ECDP) No. G-3-22-0021

INSTRUCTIONS: After reading the attached ECDP, please sign this form and return it to the Central Coast District Office within 15 days from the permit's date.

I hereby understand all of the conditions of the ECDP being issued to the City of Santa Cruz and agree to abide by them.

I also understand that the emergency work is TEMPORARY and that a regular CDP is necessary. I agree to apply for a regular CDP within 120 days of the date of issuance of this ECDP (i.e., by **October 4, 2022**) unless this deadline is extended by the Executive Director.

Signature of City of Santa Cruz Authorized

Matt Huffaker, City Manager

Name (Print)

City of Santa Cruz

Address

809 Center Street, Room 10/Santa Cruz, CA 95060

Approved As To Form:

By:

Office of the City Attorney

Date: June 7, 2022