

CALIFORNIA COASTAL COMMISSION

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W18a

LCP-6-ENC-22-0014-1 (ADU and JADU Update Resubmittal)

July 13, 2022

EXHIBITS

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EXHIBIT 1: Ordinance No. 2022-03

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ORDINANCE NO. 2022-03

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ENCINITAS, CALIFORNIA, ADOPTING THE MODIFICATIONS SUGGESTED BY THE CALIFORNIA COASTAL COMMISSION TO CITY COUNCIL ORDINANCE NO. 2020-10, AMENDING SECTION 30.48.040 (ACCESSORY USE REGULATIONS) AND SECTION 30.76.120 (REMODELING OR RECONSTRUCTION OF RESIDENTIAL BUILDINGS WITH STRUCTURAL/USE NONCONFORMITY) OF TITLE 30 (ZONING), WITH THE EXCEPTION OF THE PROVISIONS REGARDING REPLACEMENT PARKING

WHEREAS, the City Council conducted public hearings on October 21, 2020 and November 18, 2020, for the purpose of considering amendments to the Local Coastal Program and Title 30 of the Municipal Code, and at which time adopted City Council Ordinance No. 2020-10;

WHEREAS, the California Coastal Commission ("Coastal Commission") held a public hearing to review the proposed amendments in the City Council Ordinance No. 2020-10 and certified the Local Coastal Program Amendment No. LCP-6-ENC-21-0002-2 with suggested modifications;

WHEREAS, the suggested modifications to the Local Coastal Program and Section 30.04, Section 30.16.010, Section 30.48.040, and Section 30.76.120 of the Zoning Code are required to modify the regulations and requirements for accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs) consistent with recent changes in state law;

WHEREAS, the City Council conducted a public hearing on September 22, 2021, to review the suggested Coastal Commission modifications and was supportive of the modifications regarding nonconforming conditions and setbacks but not supportive of the provisions regarding replacement parking. City Council directed Staff to explore further options for responding to the Coastal Commission regarding the replacement parking modifications;

WHEREAS, the City Council conducted public hearings on January 26, 2022 and February 9, 2022 for the purpose of considering public testimony relative to Ordinance No. 2022-03 regarding the suggested modifications by the Coastal Commission, with the exception of the provisions regarding replacement parking;

WHEREAS, the City Council has duly considered all evidence, including testimony and the analysis and recommendations by staff, presented at said hearing;

WHEREAS, the City finds that the proposed amendments to the City's Municipal Code is statutorily exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 21080.17 of the Public Resources Code, which provides that CEQA does not apply to the adoption of an ordinance to implement the provisions of Section 65852.2 of the Government Code regarding accessory dwelling units. The proposed amendments regarding junior accessory dwelling units are also exempt from

EXHIBIT NO. 1

Ordinance No. 2022-03



LCP-6-ENC-22-0014-1

California Coastal Commission

environmental review pursuant to General Rule, Section 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines since it can be seen with certainty that there is no possibility that the Ordinance may have a significant effect on the environment; and

WHEREAS, based on the totality of the record and evidence described and referenced in this Ordinance, the City Council finds that the proposed text amendment is consistent with the purposes of the General Plan, Municipal Code, and adopted Local Coastal Program.

NOW, THEREFORE, the City Council of the City of Encinitas, California, hereby ordains as follows:

SECTION 1: The foregoing recitals are true and correct.

SECTION 2: Section 30.48.040(T)(15)(b) of Chapter 30.48 (Accessory Use Regulations) is hereby amended to read as follows (underline is used to denote new text being added, ~~strikeout~~ is used to denote text being deleted):

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

SECTION 3: Section 30.48.040(T)(15)(c)(iii) of Chapter 30.48 (Accessory Use Regulations) is hereby amended to read as follows (underline is used to denote new text being added):

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

SECTION 4: Section 30.48.040(T)(15)(c)(iv) of Chapter 30.48 (Accessory Use Regulations) is hereby amended to read as follows (underline is used to denote new text being added):

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

SECTION 5: Section 30.48.040(T)(15)(c)(v) of Chapter 30.48 Accessory Use Regulations is hereby amended to read as follows (underline is used to denote new text being added):

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

SECTION 6: Section 30.48.040(T)(18)(c) of Chapter 30.48 Accessory Use Regulations is hereby amended to read as follows (underline is used to denote new text being added, ~~strikeout~~ is used to denote text being deleted):

~~c. When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the city shall not require that those off-street parking spaces be replaced.~~

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

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

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

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

Note, This means that the existing language of the LCP remains and is unchanged.

SECTION 8: Section 30.48.040(T)(23) of Chapter 30.48 Accessory Use Regulations is hereby amended to read as follows (underline is used to denote new text being added):

23. Nonconforming.

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

SECTION 9: Section 30.76.120(A)(1)(d) of Chapter 30.76 Nonconformities is hereby amended to read as follows (underline is used to denote new text being added):

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

SECTION 10: Section 30.76.120(A)(3)(d) of Chapter 30.76 Nonconformities is hereby amended to read as follows (underline is used to denote new text being added):

d. New construction, a conforming addition to an existing dwelling, or the conversion of existing structures in order to create an accessory dwelling unit or junior accessory dwelling unit in accordance with 30.48.040(T) and 30.48.040(U) shall not be considered an increase in density or intensity for purposes of this section, unless the reconstructed structure does not conform with the coastal bluff and inland hillside, sensitive habitat, or scenic views and visual resource protection policies of the Local Coastal Program.

SECTION 11: This Ordinance is consistent with the intents and purposes of the General Plan, Municipal Code, Specific Plans, and Local Coastal Program. The amendments modify the regulations and requirements for accessory dwelling units (ADUs) and junior accessory dwelling units (JADUs) consistent with recent changes in state law.

SECTION 12: It has been determined that the proposed Ordinance is statutorily exempt pursuant to Section 21080.17 of the Public Resources Code, and categorically exempt pursuant to Section 15061(b)(3) of the CEQA Guidelines.

SECTION 13: This Ordinance is consistent with the adopted Local Coastal Program in that the amendments will not interfere with the protection and maintenance of the overall quality of the coastal zone environment.

SECTION 14: This Ordinance is intended to be carried out in a manner in full conformance with the California Coastal Act of 1976 and the Director of Development Services is hereby authorized to submit this Ordinance as part of the Local Coastal Program Amendment to the California Coastal Commission for its review and adoption.

SECTION 15: If any section, sentence, clause or phrase of this Ordinance is determined to be invalid, illegal, or unconstitutional by a decision or order of any court or agency of competent jurisdiction, then such decision or order will not affect the validity and enforceability of the remaining portions of this Ordinance. The City Council declares that it would have passed and adopted this Ordinance, and each section, sentence, clause, or phrase thereof, regardless of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

SECTION 16: This Ordinance shall take effect and be in force on the date of adoption by the California Coastal Commission, regardless of whether an area is or is not within the Coastal Zone, but not sooner than thirty (30) days after its passage by the City Council. The City Clerk of the City of Encinitas is hereby authorized to use summary publication procedures pursuant to Government Code section 36933 utilizing the Coast News, a newspaper of general circulation designated for legal notices publication in the City of Encinitas.

INTRODUCED at a regular meeting of the City Council of the City of Encinitas, California, held on this 26th day of January 2022; and

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council of the City of Encinitas, California, held on the 9th day of February 2022.


Catherine S. Blakespear, Mayor

ATTEST:


Kathy Hollywood, City Clerk

APPROVED AS TO FORM:


Leslie E. Devaney, City Attorney

CERTIFICATION: I, Kathy Hollywood, City Clerk of the City of Encinitas, California, do hereby certify under penalty of perjury that the foregoing ordinance was duly and regularly introduced at a meeting of the City Council on the 26th day of January, 2022 and that thereafter the said ordinance was duly and regularly adopted at a meeting of the City Council on the 9th of February, 2022 by the following vote, to wit:


AYES: Blakespear, Hinze, Kranz, Lyndes, Mosca

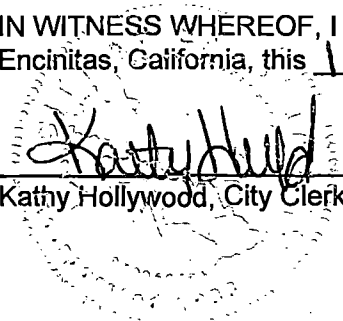
NOES: None

ABSENT: None

ABSTAIN: None

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Encinitas, California, this 16 day of February 2022


Kathy Hollywood, City Clerk



CALIFORNIA COASTAL COMMISSION

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**This is the final report
adopted by the Commission
on July 30, 2021**

F13c

Date: July 30, 2021

To: COMMISSIONERS AND INTERESTED PERSONS

From: KARL SCHWING, DEPUTY DIRECTOR, SAN DIEGO COAST DISTRICT
DEBORAH LEE, DISTRICT MANAGER, SAN DIEGO COAST DISTRICT
CORT HITCHENS, COASTAL PLANNER, SAN DIEGO COAST DISTRICT

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

SYNOPSIS

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

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

SUMMARY OF AMENDMENT REQUEST

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

EXHIBIT NO. 2

Staff Report for LCP-6-ENC-21-002-2



LCP-6-ENC-22-0014-1

California Coastal Commission

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

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

SUMMARY OF STAFF RECOMMENDATION

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

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

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

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

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

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

ADDITIONAL INFORMATION

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

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EXHIBITS

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

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

[Exhibit 3 – Recommended Figure 1](#)

I. OVERVIEW

A. LCP HISTORY

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

B. STANDARD OF REVIEW

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

C. PUBLIC PARTICIPATION

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

II. MOTION AND RESOLUTIONS

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

1. MOTION:

I move that the Commission reject the Implementation Program Amendment for the City of Encinitas certified LCP as submitted.

STAFF RECOMMENDATION OF REJECTION:

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

RESOLUTION TO DENY CERTIFICATION OF THE IMPLEMENTATION PROGRAM AMENDMENT AS SUBMITTED:

The Commission hereby denies certification of the Implementation Program Amendment submitted for the City of Encinitas certified LCP and adopts the

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

2. MOTION:

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

STAFF RECOMMENDATION:

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

RESOLUTION TO CERTIFY THE IMPLEMENTATION PROGRAM AMENDMENT WITH SUGGESTED MODIFICATIONS:

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

III. SUGGESTED MODIFICATIONS

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

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

T. Accessory Dwelling Units, General

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

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

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

[...]

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

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

[...]

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

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

[...]

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

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

18. Parking.

[...]

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

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

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

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

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

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

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

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

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

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

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

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

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

[...]

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

23. Nonconforming.

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

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

[...]

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

[...]

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

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

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

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

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

A. AMENDMENT DESCRIPTION

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

Specifically, the proposed amendment would:

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

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

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

B. CONFORMANCE WITH THE CERTIFIED LAND USE PLAN

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

Land Use Element

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

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

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

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

Circulation Element

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

Resource Management Element

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

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

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

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

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

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

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

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

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

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

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

1. Findings for Denial

Parking Required for Primary Structures

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

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

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

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

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

Nonconformities and Intensification of Use

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

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

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

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

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

Conformity with LCP Setbacks

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

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

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

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

2. Findings for Approval

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

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

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

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

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

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

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

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

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

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

CALIFORNIA COASTAL COMMISSION

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F13c

LCP-6-ENC-21-0002-2 (ADU and JADU Update)

August 13, 2021

EXHIBITS

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EXHIBIT 2: Proposed Text Changes in Strikeout/Underline

EXHIBIT 3: Recommended Figure 1

ORDINANCE 2020-10

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ENCINITAS, CALIFORNIA,
ADOPTING AMENDMENTS TO TITLE 30 (ZONING) OF THE ENCINITAS MUNICIPAL CODE
TO ADDRESS CHANGES IN STATE LAW REGARDING ACCESSORY DWELLING UNITS
AND JUNIOR ACCESSORY DWELLING UNITS**

CASE NUMBER: PLCY-003712-2020 ZA/LCPA

The City Council of the City of Encinitas hereby finds and declares as follows:

WHEREAS, on January 1, 2020, changes to California Government Code Sections 65852.2 (Accessory Dwelling Units) and 65852.22 (Junior Accessory Dwelling Units) went into effect;

WHEREAS, Government Code Sections 65852.2 and 65852.22 require the City of Encinitas to adopt zoning regulations in compliance with state law provisions regarding accessory dwelling units and junior accessory dwelling units;

WHEREAS, in order to encourage the construction of additional dwelling units to provide more housing for California residents, the State of California has enacted legislation to encourage the construction of accessory dwelling units and junior accessory dwelling units, as further defined in this ordinance;

WHEREAS, state lawmakers are increasingly concerned about the unaffordability of housing in the State of California;

WHEREAS, accessory dwelling units are commonly referred to as "second units," and are additional living quarters on lots that allow single-family and multifamily residential uses that are independent of the primary dwelling unit. They are also known as accessory apartments, accessory dwellings, mother-in-law units, or granny flats. They may be either attached or detached to the primary dwelling unit, and they typically provide complete independent living facilities, including facilities for living, sleeping, eating, cooking, and sanitation;

WHEREAS, Section 65582.1 of the California Government Code provides that accessory dwelling units are one of the reforms and incentives adopted to facilitate and expedite the construction of affordable housing;

WHEREAS, Section 65852.150(a) of the California Government Code provides that accessory dwelling units are a valuable form of housing; that they may provide housing for family members, students, the elderly, in-home healthcare providers, the disabled, and others at below market prices within existing neighborhoods; that they may add income and an increased sense of security to homeowners; that they will provide additional rental housing stock; that they offer lower cost housing to meet the needs of existing and future residents within existing neighborhoods, while respecting architectural character; and that they are an essential component of California's housing supply;

WHEREAS, Section 65852.2(a)(4) of the California Government Code provides that any local ordinance that is inconsistent with Section 65852.2(a) shall be null and void.

EXHIBIT #1

Ordinance No. 2020-10

**LCP-6-NEC-21-0002-2
ADU and JADU Update**



California Coastal Commission

65852.2(a) shall apply unless or until the local agency adopts an ordinance consistent with that provision;

WHEREAS, the 2013-2021 Housing Element approved by the City Council on March 13, 2019 contains Housing Element Program 1C, which provides that the City promote the development of accessory housing units and continue to administer the accessory dwelling unit ordinance;

WHEREAS, the City finds this Ordinance is statutorily exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Section 21080.17 of the Public Resources Code, which provides that CEQA does not apply to the adoption of an ordinance to implement the provisions of Section 65852.2 of the Government Code regarding accessory dwelling units. The proposed amendments regarding junior accessory dwelling units are also exempt from environmental review pursuant to General Rule, Section 15061(b)(3) of the California Environmental Quality Act (CEQA) Guidelines since it can be seen with certainty that there is no possibility that the Ordinance may have a significant effect on the environment. Regardless of whether the City adopts this Ordinance, accessory dwelling units and junior accessory dwelling units must be allowed in the City in accordance with the standards set forth in state law. Therefore, it can be seen with certainty that the project will not cause any significant impacts;

WHEREAS, a Public Notice of Availability of proposed Local Coastal Plan Amendments (LCPA) was issued which opened a six-week public review period that ran from May 1, 2020 and concluded on June 12, 2020;

WHEREAS, the proposed Local Coastal Program Amendment meets the requirements of, and is in conformity with, the policies of Chapter 3 of the Coastal Act and does not conflict with any coastal zone regulations or policies with which future development must comply;

WHEREAS, the Planning Commission conducted Public Hearings on May 21, 2020, June 4, 2020, June 18, 2020, and August 2020 for the purpose of considering amendments to Title 30 (Zoning) of the Encinitas Municipal Code and considered public testimony and made a recommendation to the City Council to adopt the proposed amendments;

WHEREAS, the Planning Commission adopted Planning Commission Resolution No. PC-2020-16, on file with the Office of the City Clerk and incorporated by this reference, recommending approval of said Ordinance;

WHEREAS, the City Council conducted Public Hearings on October 21, 2020 and November 18, 2020 for the purpose of considering amendments to Title 30 (Zoning) of the Encinitas Municipal Code; and,

WHEREAS, the City Council has duly considered the totality of the record and all evidence submitted into the record, including public testimony and the evaluation and recommendations by staff, presented at said hearing;

WHEREAS, notices of said public hearings were made at the time and in the manner required by law;

WHEREAS, the City Council finds that this Ordinance is intended to be carried out in a manner in full conformance with the California Coastal Act of 1976 and the Development Services

Director is hereby authorized to submit this Ordinance as part of the Local Coastal Program Amendment to the California Coastal Commission for their review and adoption; and

WHEREAS, based on the totality of the record and evidence described and referenced in this Ordinance, the City Council finds that the proposed text amendments are consistent with the purposes of the General Plan, Municipal Code, and adopted Local Coastal Program.

NOW, THEREFORE, the City Council of the City of Encinitas, California, hereby ordains as follows:

SECTION ONE: CHAPTER 30.04 (DEFINITIONS) OF TITLE 30, ZONING

Chapter 30.04 (Definitions) of Title 30 of the Encinitas Municipal Code is hereby amended as follows (~~strikeout~~ is used to denote existing text being deleted; underline is used to denote new text being added):

ACCESSORY DWELLING UNIT shall mean an attached or a detached residential dwelling unit on the same lot as an existing or proposed ~~dwelling unit~~ primary residence ~~zoned for to allow~~ single-family or multifamily residential use that provides complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation on the same parcel as the primary residential structure(s) ~~are~~ single family dwelling is or will be situated. An ADU can be an efficiency unit, as defined in Section 17958.1 of Health and Safety Code, or a manufactured home, as defined in Section 18007 of the Health and Safety Code.

JUNIOR ACCESSORY DWELLING UNIT shall mean a residential dwelling unit that is no more than 500 square feet in area, contained entirely within ~~an existing single-family residence~~, and with separate sanitation facilities from, or shared sanitation facilities with, the existing residence.

SECTION TWO: SECTION 30.16.010 (DEVELOPMENT STANDARDS) OF TITLE 30, ZONING

Subsection 30.16.010(F) (Accessory Structures) of Section 30.16.010 (Development Standards) of Title 30 of the Encinitas Municipal Code is hereby amended as follows (underline is used to denote new text being added):

F. Accessory Structures. In all residential zones except for the R-30 Overlay zone, and except for accessory dwelling units and junior accessory dwelling units conforming to Sections 30.48.040(T) and 30.48.040(U), the following development standards related to accessory structures shall apply (refer to Chapter 30.48, Accessory Use Regulations, for additional standards related to accessory uses, location, quantity permitted, size, etc. of permitted accessory structures),

SECTION THREE: SECTION 30.48.040 (ACCESSORY USE REGULATIONS) OF TITLE 30, ZONING

Subsection 30.48.040(T) (Accessory Dwelling Units) of Section 30.48.040 (Accessory Use Regulations) of Title 30 of the Encinitas Municipal Code is hereby amended as follows (~~strikeout~~ is used to denote existing text being deleted; underline is used to denote new text being added):

T. Accessory Dwelling Units, General. ~~Attached and Detached.~~

1. Accessory dwelling units shall be a permitted use in all areas zoned to allow single-family or multifamily residential use.
- ~~42.~~ One ~~attached or one detached~~ accessory dwelling unit may be permitted in conjunction with an existing or proposed single-family residence ~~or the construction of a new single-family residence on a lot zoned for residential single-family or multifamily use.~~ Accessory dwelling units meeting the standards of Subsection 30.48.040(T)(19) are permitted in conjunction with multifamily dwelling units.
- ~~23.~~ An accessory dwelling unit may be permitted on a lot ~~where~~ with an existing or proposed junior accessory dwelling unit ~~exists~~ meeting the standards of Section 30.48.040(U).
- ~~3.~~ An accessory dwelling unit shall be incidental, appropriate, and clearly subordinate to the primary single-family residence.
- ~~4.~~ Attached and detached accessory units must maintain the general character of a single-family residential neighborhood, and maintain the character as a single-family dwelling as determined by the Development Services Director. Architectural design, building materials, and exterior colors of the accessory dwelling unit shall be compatible with the principal residence primary residential structure(s).
5. All development standards contained in the underlying zoning district shall apply to accessory dwelling units unless they are inconsistent with the provisions of this Section 34.48.040(T), in which case the standards of this Section 34.48.040(T) shall apply.
- ~~56.~~ An accessory dwelling unit shall not be sold separately from the primary residence or multifamily ownership structure as detailed within the covenant for the accessory dwelling unit.
- ~~67.~~ An accessory dwelling unit may be rented, but only with a rental agreement with terms greater than 30 days.
- ~~78.~~ ~~Except as provided herein, attached and detached a~~Accessory dwelling units shall comply with all applicable local building and fire code requirements, ~~as appropriate.~~
- ~~89.~~ Prior to approval of an accessory dwelling unit on properties with a private sewage system, approval by the County of San Diego Department of Environmental Health, or any successor agency, shall be required.
- ~~910.~~ Accessory dwelling units shall not be required to provide fire sprinklers if they are not required for the primary residence.

~~4011.~~ An attached accessory dwelling unit shall have a separate exterior entrance from that of the primary dwelling unit. ~~entry with no interior access to the primary dwelling unit.~~

12. An accessory dwelling unit may be constructed above a garage provided that there is no loss of parking provided within the garage.

13. Zoning limits on lot coverage, floor area ratio, open space requirements, and size must permit, or shall be waived, to allow up to an 800 square foot detached or attached accessory dwelling unit, up to 16 feet high, with four-foot side and rear yards, unless the open space is within a recorded easement or protected by the Local Coastal Plan.

4114. Unit Size.

a. An attached or detached accessory dwelling unit with a living area of up to 800 square feet, a maximum height of 16-feet, and four-foot side and rear setbacks, is permitted regardless of the living area of the primary dwelling unit.

b. The Mmaximum living area of an attached or detached accessory unit shall not exceed 1,200 square feet or the total living area of the primary dwelling unit, whichever is less.

4215. Setbacks for accessory units:

a. ~~Except as provided herein in this Section 34.48.040(T), attached and detached accessory dwelling units shall comply with the setbacks required for the primary dwelling unit as established by the underlying zoning designation.~~

b. ~~Attached and detached~~ Notwithstanding any other provision of this Section 34.48.040(T), accessory dwelling units shall comply with the setbacks established in Chapter 30.34 (Special Purpose Overlay Zones) of the Municipal Code where required by the Local Coastal Program.

c. ~~Attached and detached~~ Accessory dwelling units may be located within a required street side, interior side, yard or rear yard setback area provided that such structure is located no closer than four feet to a side or rear lot line shall have a setback of not less than five feet from side and rear property lines, except unless any of the following are true:

i. The underlying zoning allows for a setback of less than four feet.

- ii. An accessory dwelling unit that is constructed above (may be cantilevered, or supported by posts, but not solid walls) an existing or proposed attached or detached garage shall have a setback of five four feet from the side and rear property lines. ~~However, an accessory dwelling unit that is constructed above a garage shall comply with the setbacks established in Chapter 30.34 (Special Purpose Overlay Zones) of the Municipal Code.~~
- iii. No setback shall be required ~~for~~ if the accessory dwelling unit consists of the conversion of existing space wholly within an existing primary residence, or wholly within an existing accessory building to an accessory dwelling unit, structure, or for is a structure constructed in the same location and to the same dimensions as an existing structure, unless the Local Coastal Program requires a greater setback. ~~However, an existing accessory building (including an existing garage) that is converted to an accessory dwelling unit shall comply with the setbacks established in Chapter 30.34 (Special Purpose Overlay Zones) of the Municipal Code.~~
- ivii. Side and rear setbacks sufficient for fire and safety conditions and regulations shall be required for an accessory dwelling unit constructed within the existing space of an accessory structure except for an expansion of up to 150 square feet to accommodate ingress and egress only, unless the Local Coastal Program requires a greater setback.
- iii. ~~Roof eaves and other architectural projections for accessory dwelling units shall comply with Section 30.16.010E8.~~
- iv. Accessory dwelling units constructed on properties directly adjacent to a coastal bluff shall ~~be consistent~~ comply with the setbacks required for the ~~primary dwelling unit as established by the underlying zoning designation~~ the Local Coastal Program.

~~13.d.~~ Any accessory dwelling unit that is permitted or constructed in reliance on the setback relief provisions established for accessory dwelling units in Subsection 30.48.040(T)(12)(c) shall be maintained:

- a. ~~Maintained as an accessory dwelling unit and shall not be converted to or used for any other purpose.~~
- b. ~~Limited to a height of one story for (1) any portion of an attached ADU relying on the setback reliefs, or (2) an entire detached ADU structure if any portion of the structure relies on the setback reliefs.~~

1316. Height.

- a. Any accessory dwelling unit in compliance with the required setbacks of the underlying zone shall be permitted to build to the height limit for that

zone pursuant to Chapter 30.16.010.B.6 (Residential Zones) of the Encinitas Municipal Code.

- b. An accessory dwelling unit that is constructed above a proposed or existing attached or detached garage shall be permitted to construct to the height regulations of the underlying zone pursuant to Chapter 30.16.010.B.6 (Residential Zones).
- c. Any accessory dwelling unit not constructed above a garage, or wholly within or to the same dimensions as an existing or proposed primary residence or accessory structure, and not in compliance with the required setbacks of the underlying zone shall be permitted to build to a maximum of 16-feet in height, with no projections permitted above the maximum 16-foot height limit. Roof decks shall be permitted provided the design of the roof or deck railings do not extend beyond the maximum 16-foot height limit.

1417. Architectural Projections.

- a. Architectural features of the accessory dwelling unit including required access stairways, awnings, chimneys, bay windows, window seats, fireplaces, planters, and porches, steps, and decks less than thirty inches above grade, which do not create additional livable area, may project into any yard not more than four feet; however, architectural features shall not be permitted to project into the minimum required four-foot side and rear setback, unless permitted by the underlying zoning.
- b. Roof eaves for the accessory dwelling unit shall be permitted to project a maximum of two feet into the minimum required four-foot street side, interior side, and rear yard setback.

~~14. An additional five percent (5%) of lot coverage and ten percent (0.1) of floor area ratio above that established for the underlying zoning designation shall be allowed for accessory dwelling units only for lots of 10,000 square feet or less and where there is an existing single-family residence.~~

1418. Parking.

- a. Except as otherwise provided herein, parking spaces for accessory dwelling units shall comply with Chapter 30.54 (Off-Street Parking) of the Municipal Code, including, but not limited to, the design requirements of the Off-Street Parking Design Manual.
- b. One parking space shall be required for an accessory dwelling unit, which may be provided as tandem parking on an existing driveway or within setback

areas, provided that the parking area is properly surfaced in accordance with applicable regulations.

c. When a garage, carport, or covered parking structure is demolished in conjunction with the construction of an accessory dwelling unit or converted to an accessory dwelling unit, the city shall not require that those off-street parking spaces be replaced.

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

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

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

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

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

i. The accessory dwelling unit is located within a radius of one-half mile of public transit.

ii. The accessory dwelling unit is located within an architecturally and historically significant historic district.

iii. The accessory dwelling unit is contained wholly within the existing space of an existing primary residence or an existing accessory building, with no additional area added. If an accessory dwelling unit constructed under this provision is expanded, parking shall be provided for the accessory dwelling unit in accordance with this section.

iv. When on-street parking permits are required but not offered to the occupant of the accessory dwelling unit.

v. When there is a car share facility located within one block of the accessory dwelling unit.

4719. Multifamily Dwelling Structures.

a. Accessory dwelling units are permitted within any portions of an existing multifamily dwelling structure in space currently not being used as livable space, including, but not limited to, storage rooms, boiler rooms, passageways, attics, basements, crawlspaces, or garages, if each unit complies with state building standards for dwellings. The number of accessory dwelling units permitted under this subsection is equivalent to up to 25 percent of the existing units in the building or one, whichever is greater. In determining the maximum number of accessory dwelling units

allowed, any fraction of an accessory dwelling unit shall be rounded down to the next whole number not less than one.

- b. Not more than two detached accessory dwelling units may be constructed on a lot that has an existing multifamily dwelling, subject to a height limit of sixteen feet and four-foot interior side and rear yard setbacks. Any accessory dwelling unit in compliance with the required setbacks of the underlying zone shall be permitted to build to the height limit for that zone pursuant to Chapter 30.16.010.B.6 (Residential Zones) of the Encinitas Municipal Code.

4620. Utilities.

- a. Accessory dwelling units shall not be considered new residential uses for the purposes of calculating connection fees or capacity charges for utilities, including water and sewer service, unless the accessory dwelling unit is constructed with a new single-family dwelling. Any fees related to utilities shall be proportional to the burden of the accessory dwelling unit on the water or sewer system, based upon either its size in square feet or fixture units.
- b. For an accessory dwelling unit that is contained within the existing space of a single-family residence or accessory building, including up to 150 square foot expansion of the accessory building to accommodate egress and ingress, that has independent exterior access from the existing residence and the side and rear setbacks are sufficient for fire safety, no new or separate utility connection directly between the accessory dwelling unit and the utility shall be required and no related connection fee or capacity charge shall be imposed. For accessory units that do not meet these criteria, new or separate utility connections may be required, and related connection fees or capacity charges may be imposed.
- c. Accessory dwelling units shall be exempt from the requirements of undergrounding overhead utilities and public right-of-way dedication and improvements.

21. Applications.

47.-Applications for accessory dwelling units on a lot with an existing single-family residence or multifamily dwelling units that conforming to the requirements of this section shall be considered as ministerially permits without discretionary review or a hearing, and the City shall approve or deny such applications within 42060 calendar days after receiving the completed application. If the permit application to create an accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on

the permit application for the accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit shall still be considered as a ministerial permit without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay.

4822. Fees.

Development Service Department fees for accessory dwelling units may be waived. Any impact fees shall not be imposed upon the development of an accessory dwelling unit less than 750 square feet. Any impact fees charged for an accessory dwelling unit of 750 square feet or more shall be charged proportionately in relation to the square footage of the primary dwelling unit.

23. Nonconforming.

The city shall not require, as a condition for ministerial approval of a permit application for the creation of an accessory dwelling unit or a junior accessory dwelling unit, the correction of legal nonconforming zoning conditions.

24. Covenants.

49a. Prior to issuance of a building permit for an accessory dwelling unit, a covenant shall be recorded between the owner and the City of Encinitas agreeing to the terms stipulated in this chapter. The covenant shall specifically mention that:

- a). The accessory dwelling unit shall not be sold separately from the primary dwelling unit or multifamily ownership structure as detailed within the covenant for the accessory dwelling unit.
- b). The accessory unit may be rented, but only with rental agreements with terms greater than 30 days.
- c). The accessory unit is limited to the size and attributes set forth by this section.
- d). The covenant shall be binding upon any successors in interest or ownership of the property and lack of compliance with the provisions thereof may result in legal action against the property owner, including revocation of the right to maintain an accessory dwelling unit on the property.

25. In cases of conflict between this subsection 30.48.040(T) and any other provision of this title, the provisions of this subsection shall prevail. To the extent that any provision of this subsection conflicts with state law, the applicable provision of state

law shall control, but all other provisions of this chapter shall remain in full force and effect.

2026. Definitions.

The definitions found in Government Code Section 65852.2 Accessory Dwelling Units, as amended, and the following definitions shall apply to the terms contained in this section. ~~For the purposes of this section, the following definitions apply:~~

- a. "Accessory dwelling unit" shall be as defined in Chapter 30.04 of this title.
- b. "Car share facility" shall mean a city permitted designated area where a car share vehicle can be parked for extended periods of time.
- c. "Existing space" shall mean an enclosed area within the existing exterior walls and existing roofline of an existing structure that can be made safely habitable under applicable building and fire codes at the determination of the building official, notwithstanding any noncompliance with zoning regulations ~~that was in existence on the date the ordinance codified in this section became effective.~~
- d. "Living area" shall mean the interior habitable area of a dwelling unit including basements and attics, but does not include a garage or any accessory building structure.
- e. ~~"Major public transit center" shall mean a multimodal transportation hub.~~
- f. ~~"Public transit" shall mean any major public transit center, or any bus stop.~~

Subsection 30.48.040(U) (Junior Accessory Dwelling Units) of Section 30.48.040 (Accessory Use Regulations) of Title 30 of the Encinitas Municipal Code is hereby amended as follows (~~strikeout~~ is used to denote existing text being deleted; underline is used to denote new text being added):

U. Junior Accessory Dwelling Units.

- 1. One junior accessory dwelling unit may be permitted in conjunction with ~~an existing, previously constructed~~ a proposed or existing single-family residence on lots zoned for single-family or multifamily use.
- 2. A junior accessory dwelling unit may be permitted within a single-family residence on a lot with an existing or proposed accessory dwelling unit exists conforming with Section 34.48.040(T).
- 3. A junior accessory dwelling unit shall not be sold separately from the primary residence.

4. A junior accessory dwelling unit may be rented, but only with a rental agreement with terms greater than 30 days.
5. The owner of a lot with a junior accessory dwelling unit shall occupy as a principal residence either the primary dwelling or the junior accessory dwelling unit or, if applicable, the accessory dwelling unit, except where the primary dwelling and junior accessory dwelling are held by a governmental agency, a land trust or housing organization in an effort to create affordable housing.
6. ~~Junior Accessory Dwelling Unit Development Standards.~~
 - a. A junior accessory dwelling unit shall not exceed 500 square feet in total floor area.
 - b. A junior accessory dwelling unit shall be contained entirely within an the walls of a proposed or existing single-family residence.
 - ~~c. Creation of a junior accessory dwelling unit must include the conversion of an existing bedroom.~~
 - ~~dc.~~ A junior accessory dwelling unit shall be provided with a separate exterior entry from that of the primary dwelling.
 - ~~e. An interior connection to the main living area of the primary residence shall be maintained. A second door may be added for sound attenuation.~~
 - ~~fd.~~ A junior accessory dwelling unit shall include an efficiency kitchen, requiring and limited to which shall include the following components:
 - ~~i. A sink with a maximum waste line of one and one-half inches.~~
 - ii. A cooking facility with appliances that do not require electrical service greater than 120 volts or natural or propane gas.
 - iii. A food preparation counter and storage cabinets that are reasonable to the size of the unit.
 - ~~ge.~~ No additional parking shall be required for a junior accessory dwelling unit other than that required when the existing primary residence was constructed.
 - ~~hf.~~ The junior accessory dwelling unit may share a bath/sanitation facility with the primary residence or have its own. Access to a bathroom is required, which may be part of the junior accessory dwelling unit or located in the existing primary dwelling. If provided as part of the primary dwelling, the

junior accessory dwelling unit shall have direct access to the main living area of the primary dwelling so as to not need to go outside to access a bathroom.

7. Except as provided herein, a junior accessory dwelling unit shall comply with all local building and fire code requirements, as appropriate.
8. Junior accessory dwelling units shall not be required to provide fire sprinklers or fire attenuation specifications if they are not required for the primary residence. ~~An inspection to confirm that the junior accessory dwelling unit complies with development standards may be assessed.~~
9. No sewer or water connection fees shall be required for the development of a junior accessory dwelling unit. ~~An inspection to confirm that the junior accessory dwelling unit complies with development standards may be assessed.~~
10. Prior to issuance of a building permit for a junior accessory dwelling unit, a covenant shall be recorded between the owner and the City of Encinitas agreeing to the terms stipulated in this chapter. The covenant shall specifically mention that:
 - a. The junior accessory dwelling unit shall not be sold separately from the primary dwelling unit.
 - b. The junior accessory unit may be rented, but only with a rental agreement with terms greater than 30 days.
 - c. The junior accessory unit is limited to the size and attributes set forth by this section.
 - d. The owner of record of the property shall occupy the primary dwelling unit or the junior accessory dwelling unit or, if applicable, the accessory dwelling unit, except where the primary dwelling and junior accessory dwelling are held by a governmental agency, land trust or housing organization in an effort to create affordable housing.
 - e. The covenant shall be binding upon any successors in interest or ownership of the property and lack of compliance with the provisions thereof may result in legal action against the property owner, including revocation of the right to maintain a junior accessory dwelling unit on the property.
11. Applications for junior accessory dwelling units conforming to the requirements of this section shall be considered as ministerially permits, without discretionary review or a hearing, and the City shall approve or deny such applications within 42060 calendar days after receiving the completed application. If the permit application to create a junior accessory dwelling unit is submitted with a permit application to create

a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the junior accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the junior accessory dwelling unit shall still be considered ministerial, without discretionary review or a hearing. If the applicant requests a delay, the 60-day time period shall be tolled for the period of the delay.

12. Impact fees shall not be imposed upon the development of a junior accessory dwelling unit.
13. Junior accessory dwelling units shall be exempt from the requirements of undergrounding overhead utilities and public right-of-way dedication and improvements.
14. In cases of conflict between this subsection 30.48.040(U) and any other provision of this title, the provisions of this subsection shall prevail. To the extent that any provision of this subsection is in conflict with state law, the applicable provision of state law shall control, but all other provisions of this chapter shall remain in full force and effect.

SECTION FOUR: SECTION 30.76.120 (REMODELING OR RECONSTRUCTION OF RESIDENTIAL BUILDINGS WITH STRUCTURAL/USE NONCONFORMITY) OF TITLE 30, ZONING

Subsection 30.76.120(A) (Remodeling or Reconstruction of Residential Buildings with Structural/Use Nonconformity) of Title 30 of the Encinitas Municipal Code is hereby amended as follows (strikeout is used to denote existing text being deleted; underline is used to denote new text being added):

- A. Any residential project of four or fewer dwelling units with one or more structural or use nonconformities that is damaged up to 100% (by accident or voluntary) of its valuation can be reconstructed with the continuation of the nonconformities provided such nonconformities are not increased in density or intensity. Nonconforming residential buildings of four units or less may be reconstructed, added to, or structurally altered so long as neither the density nor the intensity of the nonconformity is increased, and the number and size of existing required parking spaces is not reduced.
 1. An increase to the "intensity" of a nonconforming structure/use would refer to:
 - a. Expanding the structural nonconformity, e.g., not meeting development standards.
 - b. Any additions to a nonconforming use (e.g., an existing duplex in a single-family zone) that would expand or intensify the nonconforming use. Expansions/additions to such nonconforming uses shall not be considered an intensification when the combined development of all units on the subject property does not exceed the cumulative limitations of the

underlying zone. Where more than one dwelling unit exists on a legal lot, the development allowances of the underlying zone shall be applied on a pro-rata basis (for example, if two dwelling units exist on one lot, each would be allowed one half of the lot coverage and/or floor area ratio applicable to the zone). Where all of the units on the lot are under common ownership, or, in the case of multiple ownership, where all owners of units on the property are in agreement, a different combination of percentages may be established and recorded on the subject property by covenant.

- c. An addition for the enclosing of parking shall not be considered an increase in intensity of the nonconforming use.
 - d. Conversion of a nonconforming detached accessory structure from a ~~non-unhabitable~~ use type (for example, storage building or garage) to a habitable structure type (for example, a portion of the primary dwelling unit ~~or accessory unit~~) shall be considered an intensification or creation of a nonconformity. However, conversion of such ~~nonuninhabitable~~ structures to accessory structures dwelling units permitted under Municipal Code Section 30.48.040W(T) shall not be considered an intensification, ~~provided the structure is not located closer than five feet to rear and interior side lot lines, and not located within front or exterior side yard setback areas, pursuant to Municipal Code Section 30.16.010E3.~~
2. An increase to the "density" of a legal nonconforming structure/use ~~would refer to is~~
- a. ~~—~~ New construction or conversion of existing structures with the result of creating any dwelling units above the number allowed for the subject property in the applicable zone.
 - b. ~~—~~ A conforming addition to, or the conversion of a portion of a legal nonconforming single-family residential building in order to create an accessory unit in accordance with Sections 30.16.010 and 30.48.040W shall not be considered an increase in density or intensity for purposes of this section.
3. New construction, a conforming addition to an existing dwelling, or the conversion existing structures in order to create an accessory dwelling unit or junior accessory dwelling unit in accordance with 30.48.040(T) and 30.48.040(U) shall not be considered an increase in density or intensity for purposes of this section.

SECTION FIVE: SEVERABILITY

If any section, sub-section, sentence, clause, phrase or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the Ordinance. The City Council hereby declares that it would have adopted the Ordinance and each section, sub-section, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, sub-sections, sentences, clauses, phrases or portions to be declared invalid or unconstitutional.

SECTION SIX: PUBLIC NOTICE AND EFFECTIVE DATE

The City Clerk is directed to prepare and have published a summary of the ordinance no less than five days prior to consideration of its adoption, and again within 15 days following adoption, indicating the votes cast. This Ordinance will become effective following certification by the California Coastal Commission as being consistent with the Local Coastal Program for the City of Encinitas and California Coastal Act.

SECTION SEVEN: INTRODUCTION

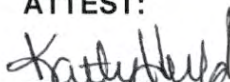
This Ordinance was introduced on October 21, 2020.

PASSED, APPROVED AND ADOPTED at a regular meeting of the City Council held on the 18th day of November, 2020.




Catherine Blakespear, Mayor

ATTEST:



Kathy Hollywood, City Clerk

APPROVED AS TO FORM:

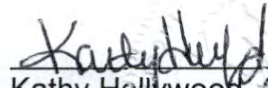


Leslie E. Devaney, City Attorney

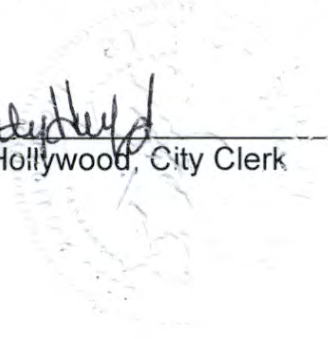
CERTIFICATION: I, Kathy Hollywood, City Clerk of the City of Encinitas, California, do hereby certify under penalty of perjury that the foregoing ordinance was duly and regularly introduced at a meeting of the City Council on the 21st day of October, 2020 and that thereafter the said ordinance was duly and regularly adopted at a meeting of the City Council on the 18th day of November, 2020 by the following vote, to wit:

AYES: Blakespear, Hinze, Hubbard, Kranz, Mosca
NAYS: None
ABSENT: None
ABSTAIN: None

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of Encinitas, California, this 19 day of November, 2020.



Kathy Hollywood, City Clerk



LCP-6-ENC-21-0002-2 Encinitas LCPA (ADU/JADU Update) -- Suggested Modifications

*City of Encinitas' proposed amendments in underline/strikeout format

**Commission's suggested modifications in double-underline/double strikeout format

Suggested Modifications:

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

b. ~~Attached and detached~~ Notwithstanding any other provision of this Section 34.48.040(T), accessory dwelling units shall comply with the setbacks established in Chapter 30.34 (Special Purpose Overlay Zones) and the sensitive habitat protection policies of the Municipal Code where required by to comply with the coastal bluff and inland hillside, sensitive habitat, or scenic views and visual resource policies of the Local Coastal Program.

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

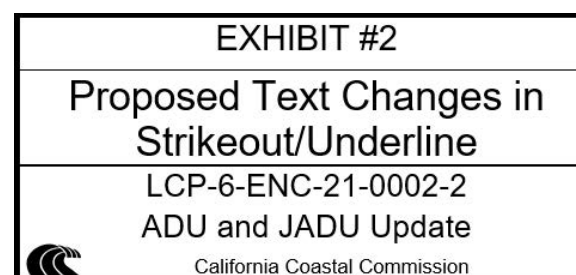
c. ~~Attached and detached a~~ Accessory dwelling units may be located within a required street side, interior side, yard or rear yard setback area provided that such structure is located no closer than four feet to a side or rear lot line shall have a setback of not less than five feet from side and rear property lines, except unless any of the following are true:

[...]

iii. ~~No setback shall be required for~~ if the accessory dwelling unit consists of the conversion of existing space wholly within an existing primary residence, or wholly within an existing accessory building to an accessory dwelling unit, structure, or for is a structure constructed in the same location and to the same dimensions as an existing structure, unless the coastal bluff and inland hillside, sensitive habitat, or scenic views and visual resource policies of the Local Coastal Program requires a greater setback. However, an existing accessory building (including an existing garage) that is converted to an accessory dwelling unit shall comply with the setbacks established in Chapter 30.34 (Special Purpose Overlay Zones) of the Municipal Code.

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

[...]



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

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

[...]

iv. Accessory dwelling units constructed on properties directly adjacent to a coastal bluff shall ~~be consistent~~ comply with the setbacks required for ~~the primary dwelling unit as established by the underlying zoning designation~~ coastal bluff and inland hillside, sensitive habitat, or scenic views and visual resource protection policies of the Local Coastal Program.

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

~~4518.~~ Parking

[...]

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

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

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

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

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

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

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

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

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

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

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

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

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

[...]

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

23. Nonconforming

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

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

[...]

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

[...]

d. Conversion of a nonconforming detached accessory structure from a ~~non-uninhabitable~~ use type (for example, storage building or garage) to a habitable structure type (for example, a portion of the primary dwelling ~~unit or accessory unit~~) shall be considered an intensification or creation of a nonconformity. However, conversion of such ~~nonuninhabitable~~ structures to accessory ~~structures~~ dwelling units permitted under Municipal Code Section 30.48.040W(T) shall not be considered an intensification, ~~provided the structure is not located closer than five feet to rear and interior side lot lines, and not located within front or exterior side yard setback areas, pursuant to Municipal Code Section 30.16.010E3~~ unless the structure does not conform with the coastal bluff and inland hillside, sensitive habitat, or scenic views and visual resource protection policies of the Local Coastal Program.

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

3. New construction, a conforming addition to an existing dwelling, or the conversion existing structures in order to create an accessory dwelling unit or junior accessory dwelling unit in accordance with 30.48.040(T) and 30.48.040(U) shall not be considered an increase in density or intensity for purposes of this section, unless the reconstructed structure does not conform with the coastal bluff and inland hillside, sensitive habitat, or scenic views and visual resource protection policies of the Local Coastal Program.

City of Encinitas - Proposed ADU Replacement Parking Area

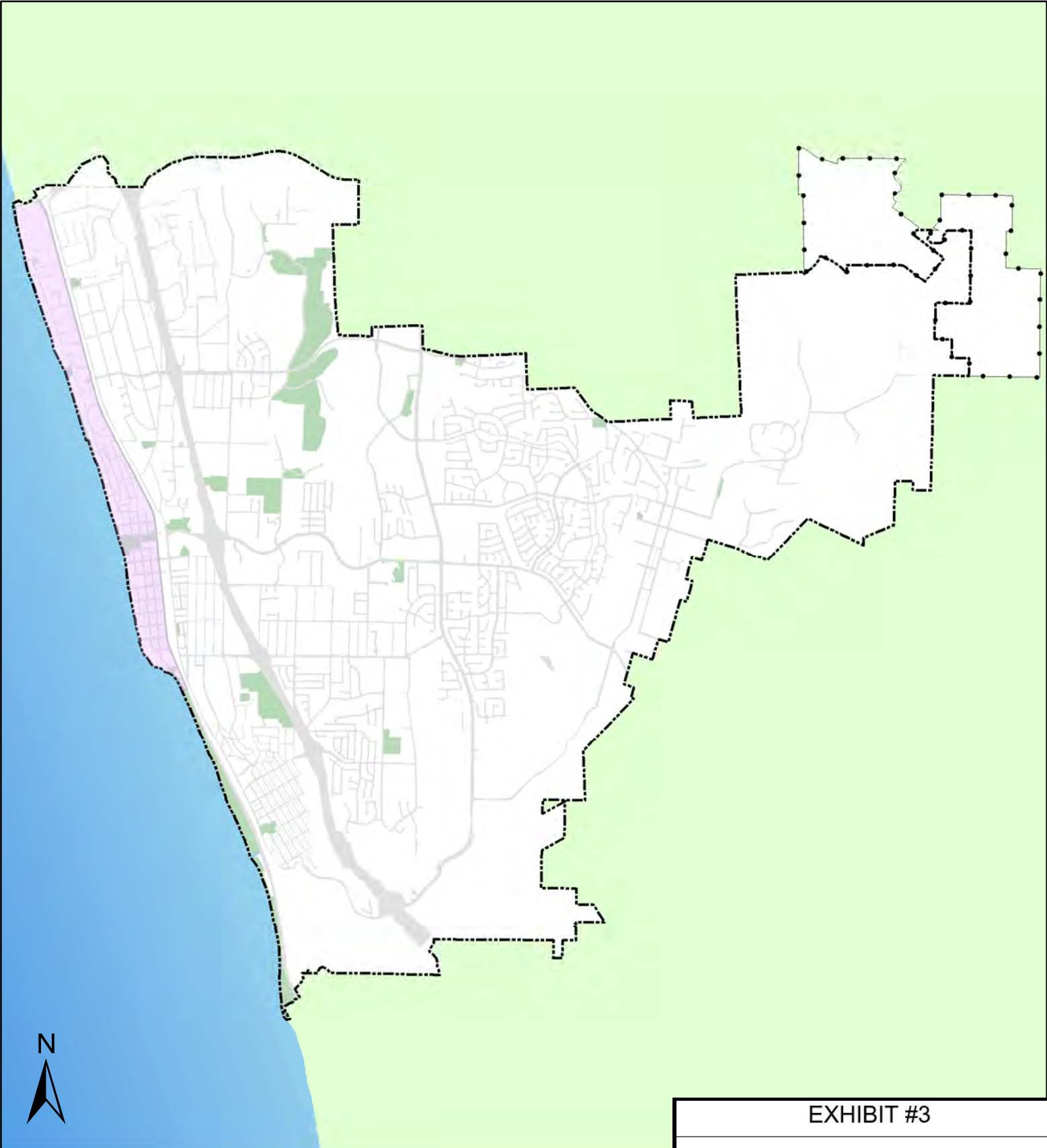


EXHIBIT #3

Recommended Figure 1

LCP-6-ENC-21-0002-2
ADU and JADU Update

California Coastal Commission

DISCLAIMER:

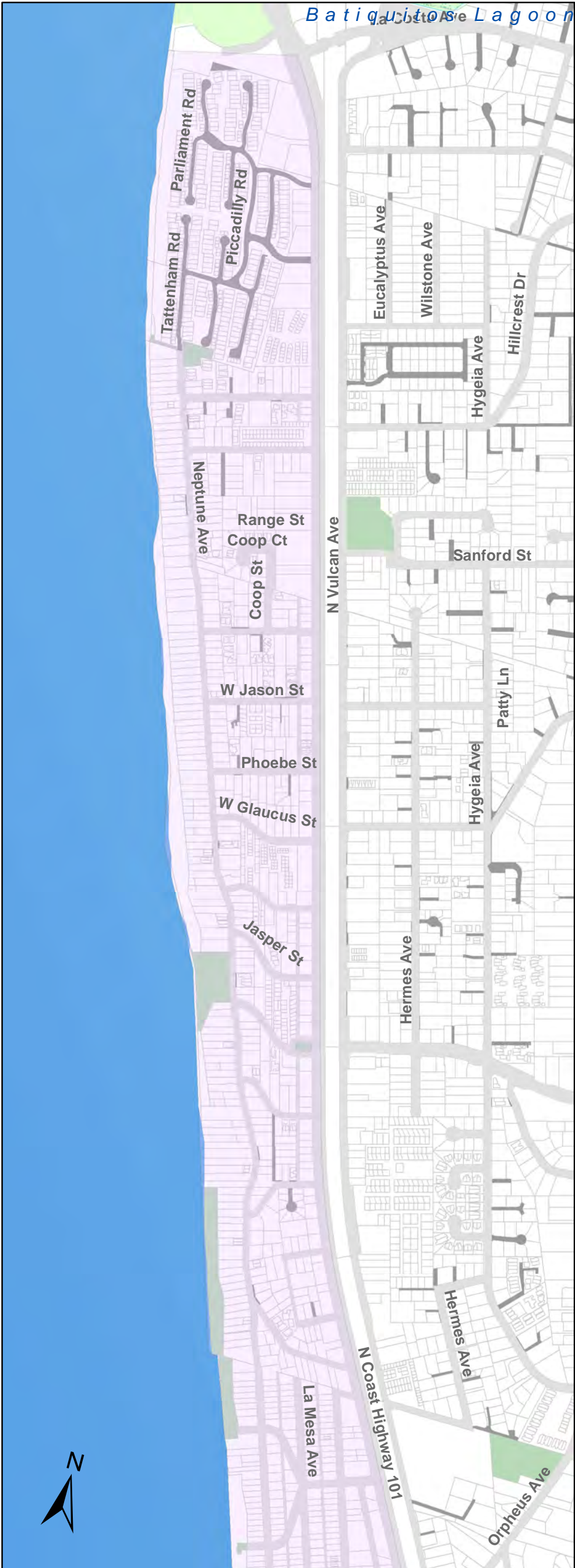
This map should not be used for Engineering, Survey, or Site-Specific Analysis.

Every reasonable effort has been made to assure the accuracy of the data provided; nevertheless, some information may not be accurate. The City of Encinitas assumes no liability or responsibility arising from the use of or reliance upon this information.

- Map Coordinates: Stateplane NAD83 Feet, CA Zone 6
- Parcel lines are not survey accurate, and some parcels can be positionally off up to +/- 40 feet
- Photo flight dates: July 2009. 4 inch pixel resolution. Digital true color.
- Orthophoto and Topo positional accuracy meet the precision adequate to support National Map Accuracy Standards for 1" = 100' mapping.



City of Encinitas - Proposed ADU Replacement Parking Area

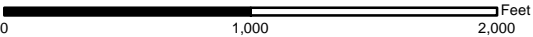
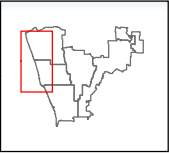


DISCLAIMER:

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- Map Coordinates: Stateplane NAD83 Feet, CA Zone 6
- Parcel lines are not survey accurate, and some parcels can be positionally off up to +/- 40 feet
- Photo flight dates: July 2009. 4 inch pixel resolution. Digital true color.
- Orthophoto and Topo positional accuracy meet the precision adequate to support National Map Accuracy Standards for 1" = 100' mapping.



LCP-6-ENC-22-0014-1 Encinitas LCPA (ADU/JADU Update Resubmittal) -- Suggested Modifications

Suggested Modifications:

1. Revise Section 30.48.040(T)(21) Applications as follows:

Except for required coastal development permits, Applications for accessory dwelling units on a lot with an existing single-family residence or multifamily dwelling units that conform to the requirements of this section shall be considered as ministerial permits without discretionary review or a hearing, and the City shall approve or deny such applications within 60 calendar days after receiving the completed application. If the permit application to create an accessory dwelling unit is submitted with a permit application to create a new single-family dwelling on the lot, the permitting agency may delay acting on the permit application for the accessory dwelling unit until the permitting agency acts on the permit application to create the new single-family dwelling, but the application to create the accessory dwelling unit shall still be considered as a ministerial permit without discretionary review or a hearing. If the application requests a delay, the 60-day time period shall be tolled for the period of the delay.

Coastal development permits: Accessory dwelling units and junior accessory dwelling units that are not completely contained in the existing primary structure, or include increases in habitable area, or include conversion of non-habitable space, are considered self-contained residential units and require a coastal development permit or administrative coastal development permit. The City shall approve or deny coastal development permit applications within 60 calendar days after receiving the completed application to the extent feasible.

EXHIBIT NO. 3

Suggested Modification



LCP-6-ENC-22-0014-1

California Coastal Commission