

CALIFORNIA COASTAL COMMISSION

SAN DIEGO DISTRICT OFFICE
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4402
VOICE (619) 767-2370
FAX (619) 767-2384



W18a

Date: June 28, 2022

To: **COMMISSIONERS AND INTERESTED PERSONS**

From: **KARL SCHWING, DEPUTY DIRECTOR, SAN DIEGO COAST DISTRICT
DIANA LILLY, DISTRICT MANAGER, SAN DIEGO COAST DISTRICT
KAITLIN CARNEY, COASTAL PLANNER, SAN DIEGO COAST DISTRICT**

Subject: **STAFF RECOMMENDATION ON CITY OF ENCINITAS MAJOR
AMENDMENT NO. LCP-6-ENC-22-0014-1 (ADU and JADU Update)
(Resubmittal of City of Encinitas LCP Amendment No. LCP-6-ENC-21-
0002-2) for Commission Meeting of July 13, 2022**

SYNOPSIS

The subject LCP implementation plan amendment was submitted and filed as complete on March 3, 2022. This LCP implementation plan amendment is a resubmittal of LCP Amendment No. LCP-6-ENC-21-002-2. Thus, pursuant to Commission regulations, there are no time limits for Commission review of this LCP amendment. This report addresses the entirety of this submittal.

BACKGROUND & SUMMARY OF AMENDMENT REQUEST

On August 13, 2021, the Commission conditionally certified the City's first submittal of the Accessory Dwelling Unit (ADU) and Junior Accessory Dwelling Unit (JADU) Update (LCP-6-ENC-21-002-2) subject to several modifications. These modifications: 1) require replacement off-street parking to be provided for residential sites west of Coast Highway 101, 2) clarify when creation of or conversion to an ADU would be considered an intensification or creation of a nonconformity that must be brought into conformance with the LCP, and 3) allow for reduced setbacks, except for those associated with coastal bluff and inland hillsides, sensitive habitat, and visual resource protection policies. After Commission action, the City took action to adopt certain modifications suggested by the Commission; however, it also constructively rejected some of the modifications by adopting alternative language that varied from the Commissions' suggested modifications. Thus, the City resubmitted the LCPA pursuant to the requirements of Section 13541 of the Commission's regulations.

In this second submittal, the City incorporated the majority of the Commission-approved suggested modifications. The only suggested modifications that the City did not incorporate exactly as approved by the Commission are those related to the requirement to provide replacement parking. Suggested Modifications established that west of Coast

Highway 101, any existing required parking removed or converted to accommodate construction of ADU would have to be replaced. The City is now in the process of analyzing and conducting parking demand studies for its coastal communities. Therefore, the City determined that at this time, it will not propose any changes to the parking requirements in the existing certified LCP. The existing LCP requires that any required parking removed for construction of ADUs be replaced in all areas of the city. Thus, no impacts to public access or recreation will occur associated with the construction of an ADU. Other than this change to replacement parking, the City accepted the Commission's suggested modifications related to nonconformities and intensification of use, and conformance with LCP setbacks, and the suggested modifications are reflected in the City's proposed second LCPA submittal.

After the LCPA was resubmitted, Commission staff became aware that City staff were interpreting their LCP to allow the construction of ADUs without a coastal development permit (CDP), except in areas of the Commission's appeals jurisdiction. The City's currently-certified ADU ordinance was one of the earlier ordinances to be adopted and does not clearly establish the CDP requirement for ADUs. Therefore, Commission and City staff have agreed to clarify in this LCPA that a CDP is required for development of an ADU/JADU, except for in very limited circumstances. This updated language will be consistent with the Commission's latest guidance to local governments and language approved in other jurisdictions. Therefore, staff is recommending denial of the IP amendment as submitted, and approval of the IP amendment with one suggested modification to clarify when a CDP is required for the construction of a new ADU/JADU.

SUMMARY OF STAFF RECOMMENDATION

The appropriate motions and resolutions begin on page 4. The suggested modifications begin on page 5. The findings for denial of the Implementation Plan Amendment as submitted begin on page 6. The findings for approval of the plan, if modified, begin on page 6.

ADDITIONAL INFORMATION

Further information on the Encinitas LCP amendment LCP-6-ENC-22-0014-1 may be obtained from Kaitlin Carney, Coastal Planner, at SanDiegoCoast@coastal.ca.gov.

TABLE OF CONTENTS

I. OVERVIEW	4
A. LCP HISTORY	4
B. STANDARD OF REVIEW.....	4
C. PUBLIC PARTICIPATION.....	4
II. MOTIONS AND RESOLUTIONS.....	4
III. SUGGESTED MODIFICATIONS.....	5
IV. FINDINGS FOR REJECTION OF THE CITY OF ENCINITAS IMPLEMENTATION PLAN AMENDMENT, AS SUBMITTED, AND APPROVAL IF MODIFIED	6
A. AMENDMENT DESCRIPTION.....	6
B. CONFORMANCE WITH THE CERTIFIED LAND USE PLAN	8
V. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA).....	16

EXHIBITS

[Exhibit 1 – Ordinance No. 2022-03](#)

[Exhibit 2 – Commission-adopted staff report for LCP-6-ENC-21-002-2](#)

[Exhibit 3 – Suggested modifications in strike-out/underline](#)

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. MOTIONS 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 as submitted.

STAFF RECOMMENDATION OF REJECTION:

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

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

The Commission hereby denies certification of the Implementation Program Amendment submitted for City of Encinitas and adopts the findings set forth below

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

2. MOTION:

I move that the Commission certify the Implementation Program Amendment for the City of Encinitas if it is modified pursuant to the staff recommendation.

STAFF RECOMMENDATION:

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

RESOLUTION TO CERTIFY THE IMPLEMENTATION PROGRAM AMENDMENT WITH SUGGESTED MODIFICATIONS:

The Commission hereby certifies the Implementation Program Amendment for the City of Encinitas 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 Land Use Plan. Certification of the Implementation Program Amendment if modified as suggested complies with the California Environmental Quality Act, because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the Implementation Program Amendment on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.

III. SUGGESTED MODIFICATIONS

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

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.

IV. FINDINGS FOR REJECTION 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 amendments to Government Code sections 65852.2 and 65852.22 via AB 68 (Ting, 2019), AB 587 (Friedman, 2019), AB 881 (Bloom, 2019), AB 3182 (Ting, 2020), and SB 13 (Wieckowski, 2019)).

First Submittal (LCP-6-ENC-21-0002-2)

In the first submittal, the primary proposed LCP changes provided for streamlined ADU/JADU (Accessory Dwelling Units/Junior Accessory Dwelling Units) review and permit processing. Specifically, that proposed amendment:

- Eliminated the requirement of discretionary review and public hearings for new ADU/JADU.
- Allowed JADUs to be permitted in conjunction with a proposed single-family residence.

- Clarified 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.
- Allowed ADUs as a permitted use in all areas zoned to allow single-family or multi-family residential uses.
- Allowed 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.
- Broadly required ADUs to comply with the setback requirements established in the City's LCP.
- Waived most zoning limits and open space requirements for ADUs unless the open space is within a recorded easement or protected by the LCP.
- Removed the requirement to provide replacement parking when a garage, carport, or covered parking structure is demolished in conjunction with the construction of an ADU or converted to an ADU.
- 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.

On August 13, 2021, the Commission denied certification of the City's first submittal of the ADU/JADU Update as proposed and approved the amendment subject to 11 modifications (LCP-6-ENC-21-002-2). These modifications 1) required replacement off-street parking to be provided for residential sites west of Coast Highway 101, 2) clarified when 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, and 3) allowed for reduced setbacks, except for those associated with coastal bluff and inland hillsides, sensitive habitat, and visual resource protection policies. See [Exhibit #2](#) the adopted staff report, for the suggested modifications.

Second Submittal (LCP-6-ENC-22-0014-1)

After Commission approval, the City took action to adopt eight out of the eleven modifications suggested by the Commission. The City Council held three public hearings to consider the Commission-approved modifications and ultimately adopted an ordinance on February 9, 2022 accepting the modifications with the exception of the replacement parking provisions. The proposed second submittal makes changes to the suggested modifications #5 and #6 approved by the Commission in August 2021 and does not include suggested modification #7 ([Exhibit #1](#)). All other suggested modifications have been accepted by the City and were incorporated into this second submittal.

As originally proposed in the first submittal, the City's amendment would have removed the requirement that off-street parking spaces for primary dwelling units be replaced when a

garage, carport, or covered parking structure is demolished in conjunction with the construction of an ADU/JADU, or when an existing garage or off-street parking structure is converted into an ADU. The Commission's action established 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 (suggested modifications #5 and #6), as shown on a new figure to be added to the LCP (suggested modification #7). As proposed in this second submittal, the City's amendment would maintain the original certified language of the LCP, which requires replacement parking in *all* areas of the city. As currently certified in the LCP, these replacement spaces can be located in any configuration on the lot, including covered, uncovered, tandem, or via an automobile parking lift. Uncovered replacement parking can be located within building setback areas, while structures for covered parking must comply with applicable setbacks.

The City has incorporated the Commission-adopted suggested modifications related to nonconformities and intensification of use and conformance with LCP setbacks into this second submittal. As proposed in this second submittal, new construction or conversion of existing nonconforming structures to an ADU will be considered an increase in density or intensity of use if the project is located on a bluff within a geologic setback, within a public view corridor, or within a setback from sensitive habitat or wetlands and will be required to correct the nonconformity. In addition, the amendment allows reduced setbacks for ADU/JADU, except for those setbacks associated with coastal bluff and inland hillsides, sensitive habitat, and visual resource protection policies.

B. CONFORMANCE WITH THE CERTIFIED LAND USE PLAN

In addition to the following consistency findings related to particular Coastal Act issues raised by this second submittal, this recommendation incorporates the July 30, 2021 LCP amendment staff report ([Exhibit #2](#)) herein in its entirety. The July 30, 2021 staff report provides an analysis of the LCP amendment's consistency with applicable Coastal Act and LCP policies as first submitted by the City and modified by the Commission, including those related to replacement parking for primary structures, nonconformities and intensification of use, and conformity with LCP setbacks.

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 certified IP also contains the following relevant policies in Chapter 30.80 (Coastal Development Permit):

30.80.010 Purpose and Coastal Development Permit Requirement: To provide for implementation of the City of Encinitas Local Coastal Program (LCP) as described in the General Plan, the procedures contained in this chapter provide for the processing of coastal development permit applications and enforcing permit requirements. A coastal development permit is required for all development within the Coastal Zone of the City, unless exempt, pursuant to Section 30.80.050 of this chapter. Where the procedures described in this chapter for issuing coastal development permits conflict with other procedures in the Zoning Code, the procedures described herein shall take precedence in the Coastal Zone. (Ord. 95-04)

30.80.050 Exempt Development Projects: The following types of development projects are exempt from the requirement for a coastal development permit when in conformance with all other provisions of the Municipal Code (i.e., no use permit, variance or other discretionary entitlement is required and the development is not governed by the Coastal Bluff Overlay regulations of Chapter 30.34 of the Municipal Code):

- A. Improvements to existing single-family residences, as defined under paragraph (a) of Section 13250 of Title 14 of the California Code of

Regulations; provided, however, that improvements specified under paragraph (b) of Section 13250 of the Code are not exempt.

B. Improvements to an existing structure other than a single-family residence or a public works facility, as defined under paragraph (a) of Section 13253 of Title 14 of the California Code of Regulations; provided, however, that improvements specified under paragraph (b) of Section 13253 of the Code are not exempt.

C. Repair and maintenance activities to existing structures or facilities that do not result in an addition to, or enlargement or expansion of, the structures or facilities; provided, however, that repair or maintenance activities specified under paragraphs (a) and (b) of Section 13252 of Title 14 of the [California Code of Regulations](#) are not exempt.

D. The installation, testing, and placement in service or the replacement of any necessary utility connection between an existing service facility and any development which has been approved under the California Coastal Act.

E. The replacement of any structure other than a public works facility destroyed by a disaster. [...]

F. Temporary uses or events, as determined to be exempt under Chapter 30.46 of this Municipal Code.

G. Signs which are exempted from provisions of the Municipal Code (change of message/copy).

H. Categorically excluded development pursuant to a Coastal Commission approved categorical exclusion order.

I. Development excluded from permit requirements as described in the document titled "Interpretive Guideline on Exclusions from Permit Requirements" adopted by the California Coastal Commission pursuant to Section 30610 of the Coastal Act. (Ord. 94-06; Ord. 95-04; Ord. 2017-03)

1. FINDINGS FOR DENIAL

The Commission is aware that the state has an affordable housing crisis, and this issue is only more acute in the state's coastal zone. To address this critical need, the state legislature has enacted a number of housing laws in the last several years designed to eliminate barriers to the provision of housing, and to help foster additional housing units—particularly critically needed affordable units—where they can be appropriately accommodated by adequate public services and where, in the coastal zone, they will not adversely affect coastal resources. Toward this end, the 2019-2020 legislative session included a series of changes to state housing law designed to facilitate more ADUs and affordable housing units. Those changes have triggered the need for jurisdictions in the

coastal zone to update their LCPs to address requirements affecting the development of ADUs. Importantly, 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 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.

Replacement Parking for Primary Structures

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 development 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, and 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 ADUs within one-half mile of public transit and most JADUs.

In the first submittal, the amendment would have removed 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/JADU, or when an existing garage or off-street parking structure is converted into an ADU/JADU. However, the Commission found that in the area of the shoreline where the public streets are used for beach parking, not requiring replacement parking has the potential to adversely impact public access. 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. 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. Therefore, the Commission adopted suggested modifications to add a new figure to the LCP that depicts the area west of Coast Highway 101 (where loss of public parking would most significantly impact coastal access) and required replacement parking in this area for projects that demolish or convert an off-street parking structure in conjunction with the construction of an ADU/JADU.

The City is in the process of gathering information on how loss of off-street parking could impact public beach access and will be conducting a parking study to determine what public street parking areas are most critical for public access. Based on the results of this study, the City plans to refine their approach to replacement parking for ADU/JADUs. Therefore, the City determined that at this time, they will not propose any changes to the parking requirements in the existing certified LCP. The City's existing certified LCP requires that replacement parking be provided with the construction of an ADU city-wide. Thus, the proposed amendment will protect on-street parking used by the public for coastal access consistent with the LUP and the Commission's previous action and no adverse impacts from spillover will occur. Consistent with the Commission-adopted modifications, the existing LCP provision 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 LCP that protect coastal bluffs and inland hillsides, sensitive habitat, and scenic views and visual resources. Thus, even with the requirement to provide replacement parking, 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. Therefore, the proposed second LCP amendment submittal will adequately protect public access consistent with the LUP and the Coastal Act.

Nonconformities and Intensification of Use

The City's existing nonconformity regulations allow reconstruction of and additions to nonconforming structures (i.e., those that do not meet current development standards) as long as neither density nor the intensity of the nonconformity are increased. The City's first submittal revised 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 first submittal also proposed 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. While most nonconformities have little or no substantial impact on coastal resources (such as an existing detached garage or shed located in a front yard setback), accessory units bring additional people and activity to a site, and thus, conversion of non-habitable structures into ADUs are

typically considered an intensification of use. In many cases, the conversion would not impact coastal resources and there would no compelling reason to require the structure/ADU be brought into conformance with the LCP. However, in some circumstances, 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 to avoid adverse impacts on coastal resources. This would include an existing detached accessory structure or reconstruction or conversion of existing structures located on a bluff within the geologic setback, within a public view corridor, or within the setback from a sensitive wetland or upland habitat. In these cases, conversion into an ADU would impact coastal resources by threatening geologic stability, blocking views, or impairing biological resources. Therefore, the Commission adopted suggested modifications related 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 by the Commission, new construction or the conversion of existing nonconforming structures to accessory units would 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 LCP.

In this second submittal, the City proposes to incorporate the language adopted by the Commission regarding nonconformities and intensification of use. The proposed amendment requires that new construction or conversion of existing nonconforming structures to ADU will be considered an increase in density or intensity if the project is located on a bluff within a geologic setback, within a public view corridor, or within a setback from sensitive habitat or wetlands. Thus, the proposed amendment will ensure the protection of coastal resources through adequate setbacks, and the correction of nonconformities that would result in coastal resource impacts, while encouraging the creation of new housing through ADUs. Therefore, the proposed amendment is consistent with the LUP.

Conformity with LCP Setbacks

Previously, the City's first submittal broadly required ADU/JADU to comply with setback requirements "required by the Local Coastal Program" or "established in Special Purpose Overlay Zones of the Municipal Code where required by the LCP." To maximize opportunities for the provision of new housing through ADU/JADU without adversely impacting coastal resources, the Commission adopted modifications to refine the setback requirements for ADU/JADU. Allowing ADUs to encroach into 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 LUP. Requiring conformance with all of the setback policies in the LCP could unnecessarily restrict the construction of ADUs in the city, inconsistent with the policies of the LUP promoting balanced development. Therefore, the Commission adopted modifications to allow reduced setbacks, except for those associated with coastal bluff and inland hillsides, sensitive habitat, or visual resource protection policies.

In this second submittal, the City proposes to incorporate the language adopted by the Commission regarding conformity with LCP setbacks. The proposed amendment will

ensure protection of coastal resources while allowing for flexibility in the siting and design of ADU/JADU. Therefore, the proposed amendment is consistent with the LUP.

Coastal Development Permit Requirement

The City's first submittal included minor changes to the section covering applications for ADUs. The changes included reducing the City's timeframe to take action on ADU applications from 120 to 60 days, and clarification of how to process applications that include both new ADUs and new single-family residences. These changes are the result of updates to state ADU legislation and were approved by the Commission without modification. Since the City submitted this second submittal, Commission staff became aware that the City was interpreting their LCP to mean that ADUs are exempt from CDP requirements, except in areas of the Commission's appeals jurisdiction. The existing LCP language lacked clarity on CDP requirements for ADUs. While the City's first submittal did not change the section of the City's LCP that generally defines development and states when a CDP is required for various project types, which is outside of the subject ADU section, the ADU ordinance states that ADUs that conform to the City's ADU ordinance shall be considered as ministerial permits without discretionary review or hearing. Thus, the LCP language included in this second submittal does not adequately convey when development of a new ADU/JADU requires a CDP consistent with the LCP and the Coastal Act.

As defined by the Coastal Act and referenced in the City's LCP, development refers to both "the placement or erection of any solid material or structure" on land as well as any "change[s] in the density or intensity of use of land[.]" (See Pub. Resources Code, § 30106.) Most ADU/JADUs constitute development if they include, for example, new construction of a detached ADU, new construction of an attached ADU/JADU, or conversion of an existing, uninhabitable, attached or detached space to an ADU/JADU (such as a garage, storage area, basement, or mechanical room). The construction of new structures constitutes the "placement or erection of solid material," and the conversion of existing, uninhabitable space would generally constitute a "change in the density or intensity of use." Therefore, these activities would generally constitute development in the coastal zone that requires a CDP or other authorization. (See Pub. Resources Code, § 30600.)

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

It is important that the City require and review CDP applications for non-exempt ADUs to ensure that the proposed developments are consistent with the City's LCP and avoid or minimize impacts on coastal resources. As proposed, the amendment is not consistent with the requirements of the City's LCP or the Coastal Act. Therefore, Commission and City staff have agreed to clarify in this second submittal that a CDP is required for development of an ADU/JADU, except for in very limited circumstances. Thus, staff is

recommending one suggested modification to clarify when a CDP is required for the construction of a new ADU/JADU.

2. FINDINGS FOR APPROVAL IF MODIFIED

To address this issue, the Commission has included one suggested modification to the second submittal ([Exhibit #3](#)).

As described above, not requiring a CDP for the construction of a new ADU/JADU is inconsistent with Coastal Act and LCP requirements for CDPs for new development. Without requiring and reviewing CDPs for ADU/JADU the City cannot ensure that they will be constructed consistent with LCP requirements and will not adversely impact coastal resources. Therefore, Suggested Modification #1 clarifies that a CDP is required for ADUs except in limited circumstances. ADUs and JADUs that are completely contained in the existing primary structure, or that do not include increases in habitable area, or that do not include conversion of non-habitable space, are considered self-contained residential units and do not require a CDP. All other ADU/JADUs will require a CDP. This updated language will be consistent with the Commission's latest guidance to local governments and language approved in other jurisdictions.

With this one suggested modification, the proposed LCP amendment is consistent with the coastal resource protection policies of the LUP, as well as with policies and implementation measures of the IP and the Coastal Act. The proposed amendment, if modified as suggested, conforms to the certified LUP, 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 ADUs. The City also found that the proposed amendments regarding JADUs 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.