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To: Commissioners and Interested Persons

From: Kevin Kahn, Central Coast District Manager
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**Subject: De Minimis Amendment Determination for Proposed City of Capitola
Local Coastal Program Amendment Number LCP-3-CAP-22-0037-1-Part B
(SB 9 Housing Provisions)**

Proposed LCP Amendment

The City of Capitola proposes to modify the Local Coastal Program's (LCP) Implementation Plan (IP)) by adding IP Chapters 16.78 (Urban Lot Splits) and 17.75 (SB 9 Residential Developments) and with minor corresponding updates to IP Sections 16.08.020 and 17.74.040(m) to implement the provisions of Senate Bill (SB) 9 in the coastal zone. Broadly, and consistent with SB 9, the proposed amendments would allow the subdivision of single-family residentially zoned parcels (R-1) and the construction of up to two residential units on each lot (i.e., a lot that previously only allowed one residence may now be subdivided and each of the lots allowed two residences, thereby totaling four). The amendment includes certain exceptions to the subdivision allowances stated above to protect sensitive coastal resources as required by the LCP, including disallowing such development in areas that are within LCP-designated/mapped environmentally sensitive habitat areas (ESHA), geologic hazard areas, or within the mapped 100/500-year flood hazards areas. In addition, in mapped high-volume coastal access areas, SB 9 residences are required to provide a minimum of one off-street parking space per dwelling unit so as not to compete with coastal visitors. See **Exhibit 1** for the proposed amendment. See **Exhibit 2** for the maps denoting the environmentally sensitive habitat areas (ESHA), geologic hazard areas, and 100/500-year flood hazards areas.

De Minimis LCP Amendment Determination

Pursuant to Coastal Act Section 30514(d), the Executive Director may determine that a proposed LCP amendment is "de minimis" if the amendment meets the following three criteria:

1. The proposed amendment would have no impact, either individually or cumulatively, on coastal resources, and it is consistent with Coastal Act Chapter 3.

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2. The proposed amendment does not propose any change in use of land or water or allowable use of property.
3. The proposed amendment was properly noticed by the local government at least 21 days prior to submittal¹ to the Commission (i.e., by posting notice on-site and off-site in the affected area, publishing notice in the local newspaper, and/or mailing notice to owners and occupants of affected and contiguous properties).

If the Executive Director determines that an amendment is de minimis, that determination must be reported to the Commission. If three or more Commissioners object to the Executive Director's de minimis LCP amendment determination at that time, then the amendment is set for a future public hearing as a regular LCP amendment. If not, then the amendment is deemed approved and it becomes a certified part of the LCP ten days after the date it is reported to the Commission (in this case, it would be certified on February 20, 2023).

The purpose of this notice is to advise interested parties of the Executive Director's determination that the proposed LCP amendment is de minimis.

De Minimis LCP Amendment Analysis

Each of the de minimis criteria is discussed briefly below

1. No impact to coastal resources and consistency with Coastal Act Chapter 3

The proposed amendments would implement SB 9 within the City's coastal zone.² Broadly speaking, SB 9 seeks to intensify the amount of allowed residential development within urbanized areas zoned for single-family residential use in California in an effort to address the state's housing – particularly affordable housing – crisis, a crisis that is particularly acute in the coastal zone. Specifically, lots that were previously allowed only one single-family residence may now be subdivided into two lots and each subsequent lot can be built with up to two primary units per SB 9, thereby potentially increasing the amount of development on a particular lot from its current limit of one residence to up to four, provided applicable criteria are met.

The intent is to facilitate additional housing opportunities in areas previously zoned solely for one residential unit. In many coastal jurisdictions, such single-family zoning comprises the bulk of their respective coastal zone, and thus these areas represent opportunity for residential densification including to help meet affordable and market rate housing goals. Such an approach is not so different from the Coastal Act's (and by extension local government LCP) direction to funnel new development into existing developed areas (per Coastal Act Section 30250). Moreover, it attempts to make better use of the coastal zone's single-family residential areas, recognizing that conventional

¹ An LCP amendment is deemed to have been "submitted" when it has been determined that it includes all of the necessary supporting documentation and information required by the Coastal Act and the Commission's implementing regulations, and is 'filed' by Commission staff as complete.

² SB 9, which went into effect January 1, 2022, amends Government Code Section 66452.6 and adds Government Code Sections 65852.21 and 66411.7.

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single-family residential land use practices and development, especially as it relates to large lot single-family development, inherently limit housing stock.

Of course, the Coastal Act and corresponding LCPs include extensive policies ensuring that all development, including housing, is sited, designed, and built in such a manner so as to protect coastal resources such as bluffs and beaches (e.g., by being set back appropriately so as not to need coastal armoring), wetlands and sensitive habitats (e.g., prohibiting residential development within these areas), public views and public access (e.g., ensuring that both are protected in development proposals), and resources affected by public service limitations (e.g., limiting development in areas where water and/or wastewater inadequacies are leading to adverse coastal resource impacts). While in most cases existing LCP requirements should be able to address these coastal resource issues for SB 9 development in the same manner that LCP's protect such resources when any development is proposed, in some cases it may be appropriate and/or necessary to include specific prescriptions for SB 9 development (e.g., requiring off-street parking in areas where residential parking competes with coastal access, or even prohibitions on SB 9 development, including in areas with known public service capacity constraints or on eroding blufftop parcels fronting the ocean, etc.). And in all LCP cases, it requires an evaluation of the particular single-family residential context and issues to be able to draw such conclusions in a CDP context.

In Capitola's case, the proposed amendment is consistent with the above-described framework by ensuring that all SB 9 development is otherwise consistent with existing LCP provisions, as well as specifying additional requirements to address particular resource needs. The City is predominantly urban in nature and built out, and thus the vast majority of new residential development that would be fostered by the proposed amendment would be considered 'infill' development in areas that generally do not raise coastal resource issues. In any case, to guard against any potential issues that may come up, the City's proposed SB 9-related provisions largely mirror the requirements set forth in the state law, including prohibiting SB 9 development within historic properties and high fire and flood hazard zones, protections for existing affordable housing units, prohibiting the use of SB 9-related units as short-term vacation rentals, requiring a minimum 1,200-square-foot lot size for new parcels and maximum 1,200 square-foot units. And in addition, the amendment also makes clear that existing LCP requirements continue to apply, including those governing sensitive habitats and bluffs. Namely, SB 9 development would not be allowed on any parcel within environmentally sensitive habitat areas (ESHA), geologic hazard areas or within the 100-year and/or 500-year flood hazard areas, as well as their corresponding setbacks. And finally, the proposed amendment also requires one off-street parking space per dwelling unit in all high-traffic coastal areas where off-street parking is critical to facilitate coastal access and coastal visitor-serving uses. This area was previously identified and mapped in the City's updates to its ADU ordinance, and the new SB 9 parking provisions overlap with this same geography (see Figure 1 on page 4 of **Exhibit 1**). In essence, the amendment makes clear that, within the coastal zone, such development must still comply with the

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Coastal Act and applicable LCP policies, including all of the LCP's CDP requirements.³ In sum, the proposed amendments serve to facilitate SB 9 development within urban single-family zoned areas of Capitola while providing adequate coastal resource protections, including by ensuring that such development is not located in ESHA, within floodplains or on eroding bluffs, and that coastal visitor parking opportunities are not reduced or adversely impacted.

Thus, the proposed amendments will not adversely affect coastal resources; are consistent with Coastal Act Chapter 3; and meet the first de minimis LCP amendment criterion.

2. No change in use of land or allowable use of property

The proposed amendment would allow for an increased number of residential units on parcels zoned for single-family residential (R-1) use. Thus, the proposed amendment does not change any LCP-allowed uses of land in these areas since they already allow residences, and thus the second de minimis LCP amendment criterion is met.

3. Provision of public notice

The City provided public notice, via newspaper notice⁴ in advance of both the Planning Commission hearing (held on January 20, 2022) and the City Council hearing (held on May 12, 2022), and the Council approved the amendment on May 12, 2022. In addition, as part of both hearing processes, the proposed amendment text was made available to the Planning Commission's and the City Council's mailing lists/agenda packet distribution lists prior to its consideration in a hearing, and the text was also available for public inspection at the City's Planning Department and on the City's website in advance of the hearings. The proposed amendment was subsequently received by the Commission on July 22, 2022, and filed as complete on November 15, 2022, roughly two-and-a-half months after it was last noticed locally. Therefore, the 21-day noticing requirement has been satisfied, and the proposed amendment meets the third and final de minimis LCP amendment criterion.

California Environmental Quality Act (CEQA)

CEQA Section 21080.5(d)(2)(A) prohibits a proposed LCP or LCP amendment from being approved if there are feasible alternatives and/or feasible mitigation measures available that would substantially lessen any significant adverse effect that the LCP or LCP amendment may have on the environment. Although local governments are not required to satisfy CEQA in terms of local preparation and adoption of LCPs and LCP amendments, many local governments use the CEQA process to develop information about proposed LCPs and LCP amendments, including to help facilitate Coastal Act review. In this case, the City exempted the proposed amendment from environmental

³ With the exception that public hearings on CDP decisions are not required, as specified in SB 9.

⁴ The proposed amendment was noticed via a newspaper notice on January 5, 2022, prior to Planning Commission hearing and on May 2, 2022, prior to the City Council hearing.

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review, asserting that the proposed amendment is not a project, and that the proposed amendment would thus not have a significant effect on the environment.⁵

The Coastal Commission is not exempt from satisfying CEQA requirements with respect to LCPs and LCP amendments, but the Commission's LCP/LCP amendment review, approval, and certification process has been certified by the Secretary of the Natural Resources Agency as being the functional equivalent of the environmental review required by CEQA (CCR Section 15251(f)). Accordingly, in fulfilling that review, this report has discussed the relevant coastal resource issues with the proposal, and has concluded that approval of the proposed amendment is not expected to result in any significant environmental effects, including as those terms are understood in CEQA. Accordingly, it is unnecessary for the Commission to suggest modifications (including through alternatives and/or mitigation measures) as there are no significant adverse environmental effects that approval of the proposed amendment would necessitate. Thus, the proposed amendment will not result in any significant adverse environmental effects for which feasible mitigation measures have not been employed, consistent with CEQA Section 21080.5(d)(2)(A).

Coastal Commission Concurrence

The Executive Director will report this de minimis LCP amendment determination, and any comments received on it, to the Coastal Commission at its February 10, 2023, virtual meeting. If you have any questions or need additional information regarding the proposed amendment or the method under which it is being processed, please contact Rainey Graeven at the Coastal Commission's Central Coast District Office by email at rainey.graeven@coastal.ca.gov. If you wish to comment on the proposed amendment and/or object to the proposed de minimis LCP amendment determination, please do so via regular mail (directed to the Central Coast District Office) or email (by emailing centralcoast@coastal.ca.gov) by 5:00 p.m. on February 3, 2023.

Procedural Note - LCP Amendment Action Deadline

This proposed LCP amendment was filed as complete on November 15, 2022. The proposed amendment affects the LCP's IP only, and the 60-working-day deadline for the Commission to take action on it is February 14, 2023. Thus, unless the Commission extends the action deadline (it may be extended by up to one year by the Commission per the Coastal Act), the Commission has until February 14, 2023 to take a final action on this LCP amendment.

Therefore, if three or more Commissioners object to the Executive Director's determination that this amendment is de minimis, then staff recommends that the Commission vote to extend the deadline for final Commission action on the proposed amendment by one year. To do so, staff recommends a YES vote on the motion below. Passage of the motion will result in a new deadline for final Commission action on the

⁵ The City justified its CEQA exemption by citing Government Code Sections 65852.21(j) and 66411.7(n), which state that local agencies may adopt ordinances to implement Senate Bill 9, and that adopting such an ordinance shall not be considered "a project under Division 13 (commencing with Section 21000) of the Public Resources Code."

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proposed LCP amendment. The motion passes only by an affirmative vote of a majority of the Commissioners present.

Motion: I move that the Commission extend the time limit to act on City of Capitola Local Coastal Program Amendment Number LCP-3-CAP-22-0037-1-Part B to February 14, 2024, and I recommend a yes vote.

Exhibits

Exhibit 1: Proposed LCP Amendment

Exhibit 2: LCP Maps Identifying Areas Where SB 9 Provisions are Inapplicable (ESHA, Geologic Hazard Areas, 100/500-Year Flood Hazards Areas)