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Prepared January 20, 2023 for February 10, 2023 Hearing

To: Commissioners and Interested Persons

From: Kevin Kahn, Central Coast District Manager
Nolan Clark, Coastal Planner

Subject: De Minimis Amendment Determination for Proposed Santa Cruz County Local Coastal Program Amendment Number LCP-3-SCO-22-0058-2 (Septic Systems)

Proposed LCP Amendment

Santa Cruz County proposes to amend both the Land Use Plan (LUP) and Implementation Plan (IP) components of its Local Coastal Program (LCP) to update provisions regulating onsite wastewater treatment systems (OWTS, commonly known as septic systems) including to bring such County provisions into conformance with requirements from the Central Coast Regional Water Quality Control Board (Regional Board) and the County's Local Agency Management Program (LAMP). The LAMP is the result of the State Water Resources Control Board's May 2013 adoption of the State OWTS Policy, which, in general, establishes a statewide, risk-based, tiered approach for the regulation and management of OWTS installations and replacements, including setting more stringent water quality standards for OWTS in order to protect public health and the environment¹. Consistent with these requirements, in October of 2021 the Regional Board approved Santa Cruz County's LAMP, which serves to implement the State OWTS policy locally by identifying the requirements for existing and new septic systems to provide continued protection of water quality and public health.

The proposed changes seek to strengthen water quality by specifying new requirements in the siting and operation of existing, replacement, and new septic systems. For example, the proposed amendment requires system upgrades to meet new water quality standards upon sale or transfer of property², establishes new OWTS setbacks of at least 200 feet from the ocean and wetlands and at least 150 feet from public water

¹ See State OWTS Policy summary available at:
https://www.waterboards.ca.gov/water_issues/programs/owts/summary.html

² Including for biological oxygen demand, total suspended solids, total nitrates, fecal coliform, and *E. coli*.

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wells, and the use of “enhanced treatment systems”³ in rural areas. All septic installation and replacement must be undertaken by a licensed professional and approved by the County Health Officer, with property owners responsible for septic maintenance and upkeep, including with regular inspections by the County Health Officer. Finally, the amendment proposes to replace strict septic prohibitions with more stringent water quality requirements based on new septic technology. The LCP currently prohibits certain parcels that are under 15,000 square feet and located within the “Septic Constraint Area”⁴ from having a septic system. This area was mapped in the 1970s and includes parts of the Coastal Zone, but is now considered outdated, according to County analysis. In lieu of the Septic Constraint Area, as proposed, septic systems may be allowed in this area subject to strict water quality specifications based on soil nitrogen concentration, infiltration and percolation rates, and/or environmental health requirements (setbacks, depth, etc.) all in conformance with the applicable Regional Board water quality requirements and those specified in the amended LCP.

In sum, the proposed amendment seeks to align LCP provisions with updated (and generally stricter) environmental and public health protections set forth by State OWTS Policies and the County LAMP. See **Exhibit 1** for the proposed LCP amendment text.

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.
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 submittal⁵ 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).

³ An “enhanced treatment system” is defined in the proposed amendment as “a system that utilizes an additional component (other than a septic or dosing tank) that performs additional wastewater treatment so that the effluent is of higher quality prior to discharge into the soil” such as reducing pathogen, nitrogen, phosphorus, total suspended solids, and/or biological oxygen demand concentrations.

⁴ Per existing LUP Policies 5.5.15 and 5.5.16, the “Septic Constraint Area” is defined as “those areas having high groundwater conditions, poor soil conditions, known septic system problems or are primary groundwater recharge areas”.

⁵ 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.

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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 Coastal Act seeks to protect coastal water quality and ensure that new development does not adversely impact it. Coastal Act Section 30230 seeks to sustain the biological productivity in coastal waters, and Section 30231 protects the quality of coastal waters, streams, wetlands, estuaries, and lakes, including through measures such as "minimizing adverse effects of wastewater discharges and entrainment". As mentioned above, the proposed amendment will generally strengthen water quality protection by numerous means, including specifying new water quality standards, increasing setbacks from sensitive aquatic environments, and more robust monitoring and maintenance. All of these measures are in line with OWTS standards specified by the State and Regional Water Boards, and all should ensure that septic systems are operated and maintained in a manner that protects water quality. In short, the proposed amendment will lessen the impact of OWTS on coastal resources through increased environmental protections and enhanced systems. Therefore, the proposed amendment will not adversely affect coastal resources and is consistent with Coastal Act Chapter 3, thus meeting the first de minimis LCP amendment criterion.

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

The proposed amendment does not re-zone any parcels or otherwise change allowable uses of LCP land use/zoning designations, but instead specifies the criteria by which septic systems are allowed and according to what standards they will be designed and built. The amendment would potentially allow septic systems in some areas that are currently prohibited (i.e., parcels of less than 15,000 square feet located within the Septic Constraint Area); therefore, the County undertook an analysis so as to understand the coastal resource impacts of removing this prohibition. The County found that the proposed removal would only affect ten parcels in the Coastal Zone. Of those ten, seven are zoned as single-family residential, two are zoned as commercial agriculture, and one is zoned as urban open space. Because all of the parcels are located within existing developed areas and within the Rural Services Line (an LCP demarcation where higher density development is concentrated and generally encouraged), the potential for increasing the bounds of development is limited. In each case, all proposed development must be an otherwise permissible use (single-family residential, farmworker housing, etc.) and must meet all other coastal resource

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protection requirements per the County LCP. As such, the amendment should not result in any adverse growth inducement potential or otherwise adversely impact coastal resources. Therefore, the proposed amendment does not change any LCP-allowed uses of land or property, thus meeting the second de minimis LCP amendment criterion.

3. Provision of public notice

The County provided public notice, via newspaper notice⁶ and email notice⁷ in advance of both the Planning Commission hearing (held on June 22, 2022) and the Board of Supervisors' hearings (held on August 23, September 13, October 18, and October 25, 2022) on the matter. The Board approved the amendments to the LUP at its August 23, 2022 meeting and approved the amendments to the IP at its October 25, 2022 meeting. Additionally, the proposed amendment text was made available to the public via mailing lists from the Planning Commission and the Board of Supervisors prior to consideration, and physical copies were made available for public inspection at the County Planning Department on June 10, 2022. The proposed amendment was received by Coastal Commission staff on December 13, 2022 and filed as complete on January 17, 2023, six months after the materials were publicly noticed and made available. Therefore, the 21-day noticing requirement has been satisfied, thus meeting the third 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 County exempted the proposed amendment from environmental review under a Class 8 Categorical Exemption (CCR Section 15308) because the local ordinance would assure maintained and enhanced protection of the environment.

The Coastal Commission is not exempt from satisfying CEQA requirements with respect to LCPs and LCP amendments, but the Commission's LCP/LCP amendment review, approval, and certification process has been certified by the Secretary of the Natural 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. It is

⁶ The proposed amendment was noticed via a newspaper notice on June 8, 2022, prior to Planning Commission hearing, and on August 12, 2022, prior to the Board of Supervisors' hearing.

⁷ Email notices were sent to all interested parties on file with relevant County mailing lists prior to Planning Commission and Board of Supervisors' hearings.

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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 hearing. If you have any questions or need additional information regarding the proposed amendment or the method under which it is being processed, please contact Nolan Clark at the Coastal Commission's Central Coast District Office by email at nolan.clark@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 January 17, 2023. The proposed amendment affects the LCP's LUP and IP, thus the 90-working-day deadline for the Commission to take action on it is May 25, 2023. 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 May 25, 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 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 Santa Cruz County Local Coastal Program Amendment Number LCP-3-SCO-22-0058-2 to May 25, 2024, and I recommend a yes vote.

Exhibits

Exhibit 1: Proposed LCP Amendment Text