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Prepared February 17, 2023 for March 8, 2023 Hearing

To: Commissioners and Interested Persons

From: Kevin Kahn, Central Coast District Manager
Kiana Ford, Coastal Planner

**Subject: De Minimis Amendment Determination for Proposed City of Capitola
Local Coastal Program Amendment Number LCP-3-CAP-22-0060-2-Part A
(Code Cleanup)**

Proposed LCP Amendment

The City of Capitola is proposing to amend portions of the Implementation Plan (IP) component of its Local Coastal Program (LCP) through a series of changes to its Zoning Code. The impetus for the amendment is to update the Zoning Code in response to recent changes to State law regarding certain types of land uses, as well as in response to certain formatting and other minor errors/discrepancies encountered subsequent to its recent comprehensive update in 2021. As such, the latter category of changes are non-substantive items such as renumbering or relocating certain standards to different parts of the Zoning Code for internal consistency purposes. And the former category is meant to incorporate additional standards consistent with other State laws and regulations that govern particular land use types, such as electric vehicles, ADUs, home day care facilities, and others.

For example, among the more substantive changes, the modifications to ADUs are meant to respond to updated State law¹ to encourage additional ADU production by expediting the permitting process and expanding the ability to create internal and new detached ADUs. The amendment does not change any of the coastal resource requirements specific to ADUs, including in terms of off-street parking in parking constrained areas near the shoreline, and all ADUs would still require a CDP so as to ensure protection of coastal resources. The amendment also proposes to require electric vehicle charging stations in new development to be in conformance with the California Green Building Standards Code, including requiring EV capable status for all new single-family residential development. And the proposed amendment modifies the LCP's 'Minor Modifications' chapter by allowing the Community Development Director to make certain modifications to approved project permit requirements. However, the

¹ See SB 897 and AB 2221 which went into effect on January 1, 2023, which, among other things, allows for additional flexibility for ADUs on second stories.

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language makes clear that any such modification must be concurrent with the CDP (i.e., the CDP must also be amended, with LCP consistency findings made) and at whatever review level/hearing body is required of that CDP (e.g., at the Planning Commission for changes to CDPs appealable to the Coastal Commission).

See **Exhibit 1** for the text of the proposed amendment showing proposed changes in ~~strikethrough~~/underline.

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 submittal² 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 March 18, 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

As described above, the proposed amendment would correct errors, resolve ambiguities, improve organization, update certain provisions consistent with recent changes to State law, and address new issues which have arisen since the adoption of the updated Zoning Code. Many of these changes are non-substantive reorganization

² 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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for easier use and readability. And the substantive changes are specific to individual land use types to align with changes in other laws and regulations that govern them. All of these changes can be understood as relatively minor refinements. Most importantly, in terms of coastal resources, none of the proposed changes relate to core coastal resource issues governed by the LCP (e.g., related to environmentally sensitive habitats and their buffers, coastal bluffs and their buffers, public coastal access, and public views), and thus all such development must still be found in conformance with all of these standards, including as they were recently comprehensively updated and strengthened. As such, at a broad level, the amendments cover a variety of topics throughout the City's Zoning Code but are not intended to modify core coastal resource issues or provisions.

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

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

The proposed amendment would add ADUs as an allowed use within all of the LCP's commercial districts and the Mixed-Use Village zoning district, which is located in the heart of the visitor-serving and beach-adjacent Capitola Village. However, per the City's LCP, residential uses are already allowed within these zones, and thus the amendment is simply being more specific about the types of permissible residential uses allowed within these areas. No other component of the proposed amendment adds or deletes land use types in any zoning district. Thus, the proposed amendment does not change any LCP-allowed uses of land or LCP-allowed uses of property, and it meets the second de minimis LCP amendment criterion.

3. Provision of public notice

The City provided public notice, via newspaper notice³ and mail notice⁴ in advance of both the Planning Commission hearing (held on October 20, 2022) and the City Council hearing (held on November 10, 2022), and the City Council approved the amendment on November 22, 2022. In addition, as part of both hearing processes, the proposed amendment text was made available to the Planning Commission's mailing list and the City Council agenda packet distribution list prior to its consideration in a hearing, and the text was also available for public inspection at the City Planning Department and on the City's website in advance of the hearings. The proposed amendment was subsequently received by the Commission on December 22, 2022, and filed as complete on February 17, 2023, roughly two 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)

³ The proposed amendment was noticed via a newspaper notice on October 4, 2022, prior to Planning Commission hearing, and on November 8, 2022, prior to the City Council hearing.

⁴ Hard copy notices were mailed to all interested parties of noticed agencies.

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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 review (citing CEQA Sections 15061(b)(3)).

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 March 8, 2023 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 Kiana Ford at the Coastal Commission's Central Coast District Office by email at kiana.ford@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 March 3, 2023.

Procedural Note - LCP Amendment Action Deadline

This proposed LCP amendment was filed as complete on February 17, 2023. The proposed amendment affects the LCP's IP only, and the 60-working-day deadline for the Commission to take action on it is May 16, 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 May 16, 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

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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 City of Capitola Local Coastal Program Amendment Number LCP-3-CAP-22-0060-2-Part A to May 16, 2024, and I recommend a yes vote.

Exhibits

Exhibit 1: Proposed Amendment Text