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Date: February 26, 2025

To: COMMISSIONERS AND INTERESTED PERSONS

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Subject: STAFF RECOMMENDATION ON CITY OF DEL MAR MAJOR AMENDMENT
NO. LCP-6-DMR-23-0001-2 (ADU Update) for Commission Meeting of
March 12-14, 2025)

SYNOPSIS

The subject LCP implementation plan amendment was submitted on December 21, 2023 and filed as complete on February 6, 2024. A one-year time extension was granted on April 12, 2024. As such, the last possible date for Commission action on this item is the April 2025 hearing.

SUMMARY OF AMENDMENT REQUEST

The City of Del Mar proposes to harmonize recent changes to State ADU laws in Government Code Sections 65852.2 and 65852.22 with the Coastal Act and the City's certified Local Coastal Program (LCP). Specifically, the City will modify its Implementation Plan (IP), including Sections 30.04.190, 30.19.030, 30.19.040, 30.21.030, and 30.21.040, and repeal and replace Chapter 30.91 (Accessory Dwelling Units). The new Chapter 30.91 provides for updated review and permit processing of Accessory Dwelling Units/Junior Accessory Dwelling Units (ADUs/JrADUs), as well as development regulations for the construction of ADUs and JrADUs on single-family and multi-family lots. An incentive bonus and amnesty program are also included to further encourage housing opportunities.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that, following a public hearing, the Commission deny the proposed City of Del Mar Implementation Plan amendment as submitted, and then approve the amendment subject to the suggested modifications listed below.

The primary LCP changes proposed are to streamline the existing processes for the construction of ADUs and JrADUs on most parcels in the City. The intent of these changes is to increase opportunities for the construction of affordable housing, an issue of statewide importance. As proposed, expanding opportunities for ADU and JrADU construction will

not displace any existing high priority Coastal Act uses, such as public recreation or visitor-serving uses. No direct impacts to public access, habitat, or visual resources are expected, as the City is already largely developed and additional structures will likely be considered infill.

The goal of increasing housing is supported by the Coastal Act. Many of the suggested modifications are revisions to clarify the City's intent, correct references, and clarify Coastal Act requirements. The suggested modifications ensure that ADUs do not result in new or increased impact to coastal resources including hazards, environmentally sensitive habitat areas (ESHA), wetlands, and public views. With regard to coastal hazards, while the City's amendment includes a requirement for elevation and floodproofing where a parcel is located in the special flood hazard area, additional suggested modifications to the amendment require that sea level rise be considered during the design of an ADU or JrADU. While the proposed amendment includes a provision that the owner must record a deed restriction that acknowledges the applicable use limitations of the property prior to issuance of a building permit for an ADU or JrADU, an additional suggested modification requires that the owner also notice all occupants of any overlay zones in which the property is located. By including this provision, future occupants of the ADU will be aware of the lot's location in a hazardous area that may be susceptible to flooding, wave action, and sea level rise.

Suggested modifications have been added to require that where an ADU triggers redevelopment of a primary residence that is nonconforming with regards to geologic setbacks, public view encroachment, coastal access, or wetland and habitat preserve buffers, the correction of the nonconforming condition is required. Another suggested modification replaces the City's proposed language regarding when an ADU or JrADU may be considered exempt from an administrative CDP with new language that clarifies the only scenario where an ADU or JrADU could be found exempt is when it is contained in the existing primary structure and does not include either increases in habitable area or conversion of non-habitable space. Other suggested modifications remove inaccurate language regarding a potential loss of public access in the City's appeal jurisdiction due to potential loss of off-street parking; restrict the development of tiny homes in the Beach Commercial and Visitor Commercial Zones to preserve priority visitor-serving uses; and allow for an attached ADU on a second story level on duplex lots where there is not sufficient buildable area on the first floor, or if necessary to accommodate an alternative that minimizes impacts to the greatest extent in compliance with the LCP.

Only with the incorporation of these suggested modifications can the amendment be found consistent with the stated goals and policies of the certified LCP and the Coastal Act.

The appropriate motions and resolutions begin on page 5. The suggested modifications begin on page 6. The findings for denial of the Implementation Plan Amendment as submitted begin on page 24. The findings for approval of the plan, if modified, begin on page 29.

BACKGROUND

On November 1, 2017, the City of Del Mar submitted an IP amendment (LCP-6-DMR-17-0062-2) revising the City's Municipal Code and adding a new Chapter 30.91 to make its regulation of ADUs and JrADUs consistent with then-recent changes to state law that took effect on January 1, 2017. Those changes were intended to facilitate and encourage the creation of accessory dwelling units in residential zones to help address a shortage of affordable housing throughout the state. No changes were proposed to the City's coastal resource protection standards and ADUs were required to be consistent with all LCP policies related to the protection of sensitive habitat, including steep slopes and lagoons; and public access, visual resources, and requirements to ensure safe development in hazard areas. With regard to the approval process, unless located within the appeals area, ADUs that were found to comply with all relevant development standards would be exempt from coastal development permit requirements. On February 8, 2018, the Commission certified the IP Amendment as submitted per staff recommendation.

In response to the state's affordable housing crisis, the State legislature has continued to pass a series of changes to state housing law in recent years to facilitate more ADUs and affordable housing units. These laws are 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. These changes include requirements to provide for streamlined review and permit processing of ADUs, expand where ADUs are considered permitted uses, and relaxing standards for size, height, and setbacks by which ADUs must comply.

In response to these changes, the City of Del Mar submitted an LCP Implementation Plan update in August 2020 to implement a newly passed local ordinance modifying the regulations and requirements for ADUs and JrADUs consistent with recent changes in state law (LCP-6-DMR-20-0044-2). However, the City withdrew the LCPA in October 2021 prior to Commission action. On December 18, 2023, the City Council adopted local Ordinance No. 1002 that incorporated the requirements of the most recent changes to ADU law. Accordingly, the newest provisions for ADUs that have been approved and enacted by the City at the local level have not been certified as part of the LCP. This amendment submittal is expected to result in a revised LCP consistent with state law.

ADDITIONAL INFORMATION

Further information on the City of Del Mar LCP amendment LCP-6-DMR-23-0001-2 may be obtained from [Stephanie Leach](#), Coastal Planner, at (619) 767-2370 or SanDiegoCoast@coastal.ca.gov.

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I. OVERVIEW

A. LCP HISTORY

In May 1991, the City of Del Mar submitted its Land Use Plan (LUP) for Commission action. The Commission denied the LUP as submitted, but approved it with suggested modifications in September 1991. The City did not accept the suggested modifications within six months; so, the City resubmitted the same documents and the Commission again approved the LUP with suggested modifications in June 1992. The City Council adopted the modifications within the prescribed time and the Commission effectively certified the LUP in March 1993. The Implementation Plan (IP) was approved with suggested modifications on March 13, 2001. On September 11, 2001, the Commission concurred with the Executive Director's determination to effectively certify the City of Del Mar Local Coastal Program (LCP). The Commission has certified many amendments to the City's LCP since the LUP/IP certifications.

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 Del Mar 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 Del Mar 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 Del Mar 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 Del Mar 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 30.75.120(E)(3) as follows:

An application for an Accessory Dwelling Unit in accordance with Subsection 30.91.030.E D-5, that is not otherwise exempt from a Coastal Development Permit.

2. Revise Section 30.91.010 as follows:

The purpose of this Chapter is to provide regulations and procedures for the establishment of Accessory Dwelling Units (ADUs) and Junior Accessory Dwelling Units (JrADUs) on lots zoned to allow single unit and multi-unit residential uses which include a proposed or existing dwelling in accordance with California Government Code Sections 66310 (et seq), as amendeds 65852.150, 65852.2, 65852.22, and without superseding or in any way altering or lessening the effect or application of the California Coastal Act of 1976 (Division 20 commencing with Section 3000) and the City's Local Coastal Program. ~~Should this Chapter conflict with existing State law or subsequent amendments then State law will prevail over the terms of this Chapter.~~

3. Revise Section 30.91.020(C) as follows:

Tiny homes are permitted on any lot that allows an ADU. A tiny home may also be developed in ~~additional non-residential zones,~~ except the Beach Commercial and Visitor Commercial Zones, if the tiny home is deed restricted affordable for a lower income household for a term of at least 30 years.

4. Revise Section 30.91.030(E) as follows:

~~Approval of an ADU~~The California Coastal Act requires issuance of an Administrative Coastal Development Permit implemented in accordance with DMMC Chapter 30.75, to harmonize State Housing law with the Coastal Act and ensure protection of coastal resources as follows:

1. California Government Code section 65852.21 ~~(4)~~ provides that the Accessory Dwelling Unit statutes do not supersede or in any way alter or lessen the effect or application of the California Coastal Act, except that the City shall not be required to hold public hearings for Coastal Development Permit applications for ADUs.
2. ~~A The following~~ proposed ADU or JrADU development is exempt from an Administrative Coastal Development Permit where it is meets all of the following:
 - a. ~~An ADU or JrADU created through conversion of entirely existing~~ legally established habitable space contained in an existing primary structure that will not involve removal or replacement of major structural components (e.g. roofs, exterior walls, or foundations).; ~~and~~
 - b. ~~Consistent with other residential development in the City, the ADU or JrADU is not located in any of the following Overlay~~

~~Zones: Floodplain, Beach, Lagoon, Coastal Bluff, or Bluff, Slope, and Canyon; and~~

- ~~c. Consistent with other residential development in the City, that the ADU or JrADU application is not in a location subject to the permit appeal authority of the Coastal Commission as defined by DMMC Section 30.75.030.~~

3. [No change]

4. Where an Administrative Coastal Development Permit is required by Section 30.91.030(E)(3), it shall be processed in accordance with the following procedures:

- a. Consistent with the public participation provisions found in ~~the California Coastal Act and the City's certified LCP~~, a Notice of Application informing the public of the filing of an application for an Administrative Coastal Development Permit for an ADU shall be posted at the project site on a notice card provided by staff of the City of Del Mar Department of Planning and Community Development. The notice of application shall advise interested persons that plans are available for public review at Del Mar City Hall. The notice, however, will stipulate that the application is required to be administratively approved by the Department of Planning and Community Development and that no public hearings will be held permitted.

b. [No change]

- c. A Notice of Administrative Coastal Development Approval stating that the Coastal Development Permit has been approved shall be posted at City Hall and on the City's website, and shall be mailed within five working days of the final action as follows:

i. [No change]

- ii. Notice shall be transmitted by any acceptable delivery means pursuant to state law to the San Diego Coast District office sent via U.S. Postal Service to the Executive Director of the California Coastal Commission.

iii. [No change]

- d. Within five (5) working days of ~~Once~~ a final decision of approval or denial ~~is issued~~ by the Planning and Community Development Director, the notice of final action shall be transmitted by any acceptable delivery means pursuant to state law to the San Diego Coast District office ~~provided within five (5) working days to the Executive Director of the Coastal Commission and provided~~ to any interested parties who requested notice in writing in accordance with Section 30.75.100.
- e. If the ADU qualifies as appealable development pursuant to Chapter 30.75, the Planning and Community Development Director's decision to approve a Coastal Development Permit may be appealed to the San Diego Coast District office of the Coastal Commission within ten (10) working days in accordance with Section 30.75.110(A) and (B).

5. Revise Section 30.91.030(I) as follows:

Prior to issuance of a building permit for an ADU or JrADU on private property, the owner shall record a deed restriction with the County Recorder and file the recorded deed restriction with the City, acknowledging the applicable use limitations that shall run with the land, and shall include notification to all occupants of any overlay zones in which the property is located. The deed restriction shall include information regarding the sale, occupancy, and rental of the unit, consistent with State Law.

6. Revise Section 30.91.040(D)(1) as follows:

The ADU shall be designed to comply with ~~the~~ Government Code Section 66314, as amended, ~~65852.2(j)~~ definition of ADU by including permanent provisions for living, sleeping, eating, cooking, and sanitation. This is typically demonstrated by identifying that the ADU includes a fully functioning: Bathroom consisting of a toilet, sink, a bathtub or shower; and a kitchen. The kitchen includes a cooking appliance (not a hotplate), refrigeration, and other appliances, food storage cabinets, and a countertop or similar food preparation area. The kitchen area is to be proportional to the size of the ADU.

7. Revise Section 30.91.040(D)(5) as follows:

In accordance with Section 30.91.030(I), the owner shall record a deed restriction with the County Recorder and file the recorded deed restriction with the City, acknowledging the applicable use limitations that shall run with the land, including notification to all occupants of any overlay zones in which the property is located. The deed restriction shall include information regarding the sale, occupancy, and rental of the unit, consistent with State Law.

8. Revise Section 30.91.040(E) as follows:

The ADU may be rented but shall not be sold or conveyed separately from the primary dwelling unit on the property, except that the City or qualified non-profit corporation per Government Code section 66341 65852-26, as amended, may sell a deed restricted ADU to an eligible low-income owner.

9. Revise Section 30.91.040(F) as follows:

If rented, the term for rental of an ADU in a residential zone shall be for a term longer than 30 consecutive days per Government Code section 66315, as amended 65852-2(e)(4).

10. Revise Section 30.91.040(G) as follows:

In accordance with California Government Code Section 66321(b)(3), as amended, 65852-2(e)(2)(C), the City shall accommodate an ADU at least 800 square feet in size, which is also known as the “universal” ADU size provision. If the size of a proposed ADU exceeds 800 square feet, the remaining square footage beyond 800 square feet shall be subject to review against the applicable Floor Area Ratio (FAR) and lot coverage development standards of the zone. Additionally, should the combined total size of a proposed ADU greater than 800 square feet and the primary residence exceed the maximum FAR or lot coverage allowed for the site location, then the primary residence shall be required to reduce its square footage accordingly so as to preserve the ability to build at least an 800 square foot ADU. For the purpose of this section:

[No change to Subsections 1 – 6]

7. In order to comply with the mandates of the California Coastal Act and the provisions of the certified LCP, the City is required to protect coastal access and coastal resources, which may require modification of the proposed ADU location and size to demonstrate conformity. The City shall approve ~~accommodate~~ a proposed ADU meeting the universal size provision of at least 800 square feet in size, unless the project would result in impacts to coastal resources or public access protected by the LCP, in which California Coastal Act supersedes this minimum size requirement due to impacts to protected coastal resources or otherwise impedes public access to the coast. In such a case, the City will prepare written findings and, where applicable, mitigation measures to alleviate such impacts as necessary to accommodate a proposed ADU at least 150 square feet in size that meets the definition of an efficiency unit as defined by ~~per~~ California Government Code Section 66313, as amended 65852-2(e)(2)(A).

8. [No change]

11. Revise Section 30.91.040(K)(3) as follows:

Attached ADUs must share a common wall horizontally with the primary dwelling unit. The maximum height for attached ADUs in single dwelling unit zones is as follows:

- a. For consistency with local conditions and the certified LCP, attached ADUs in single dwelling unit zones shall be proposed at the first story level if sufficient buildable area is available on the first story level of the lot. The maximum building height for an ADU attached horizontally sharing a common wall with the existing primary dwelling unit at the first story level is 16 feet.
- b. Attached ADUs may be proposed at a second story level only if there is not sufficient buildable area available on the lot and if necessary to accommodate an ADU up to 800 square feet on the lot as an alternative that minimizes potential impacts to the greatest extent in compliance with the certified LCP. The maximum building height for a proposed attached ADU that horizontally shares a common wall with the primary dwelling unit at the second story level shall not exceed 25 feet above grade, or the base zoning requirements, whichever is lower, and in no case shall exceed two stories.

12. Add a new Section 30.91.040(M) as follows, with renumbering of the subsequent items that follow:

M. Where an accessory dwelling unit is attached to a nonconforming residential structure that is nonconforming with regard to geologic setbacks, public view encroachment, coastal access, or wetland and habitat preserve buffers, and where development of the accessory dwelling unit will result in redevelopment of the nonconforming structure, the City shall require the correction of nonconforming zoning conditions as a condition of approval.

For purposes of this section, redevelopment shall mean alterations to the residential structure resulting from construction of an accessory dwelling unit that consist of (1) additions to an existing structure, or (2) exterior or interior renovations, or (3) demolition or replacement of an existing principal structure, or portions thereof, any of which results in replacement (including demolition, renovation or alteration) of 50 percent or more of major structural components including exterior walls, floor, roof structure or foundation, or a 50 percent increase in gross floor area.

13. Revise new Section 30.91.040(N) as follows:

~~M.~~ N. A side and rear setback of four (4) feet shall be required for a new ADU structure, except as follows:

1. An existing legal non-conforming structure, such as a garage or accessory building, may be converted to an ADU and maintain the non-

conforming setback, where the structure complies with the building and safety standards of the California Building Code and California Fire Code and the minimum setbacks specified in Section 30.91.040(M N)(3).

[No changes to subsection (2) through (4)]

7. In all cases, including the conversion of non-habitable, legal conforming structures noted in Section 30.91.040(M N)(1), the ADU shall comply with Coastal resource protections that require the following additional setback requirements:

- a. The required minimum coastal bluff setback in the Coastal Bluff Overlay Zone as required by DMMC Section 30.55.

[No changes to subsections (b) through (e)]

14. Revise new Section 30.91.040(O) as follows:

~~N. O.~~ O. The parking requirements for ADUs are provided in Section 30.91.040(~~N~~O) and (~~O~~P). ~~In order to ensure the continuation of public access to coastal resources, w~~Where an existing garage, carport, or covered parking, is demolished or converted to an ADU, replacement off-street parking shall be required and all required off-street parking for the primary dwelling unit shall be maintained or replaced on-site.

1. [No change]
2. The location of replacement parking shall be consistent with all wetland habitat buffers, environmentally sensitive habitat buffers, steep slope and geologic stability setbacks, and public scenic view protection regulations contained in the certified LCP.
3. [No change]

15. Revise new Section 30.91.040(P)(1) as follows:

~~Θ. P.~~ P. The following parking requirements are specific to properties located along the shoreline or on the hillside within areas of high wildfire risk:

1. ~~To avoid significant impacts to public access within the Coastal Commission Appeals Jurisdiction (where public parking has been determined by the Coastal Commission to be scarce), t~~The ADU shall provide one off-street parking space (covered or uncovered), except as follows:

[No change to subsections (a) through (c)]

- d. The ADU would be located on a property within one-half mile walking distance of public transit, including a bus stop, train station, or paratransit service, if applicable. This exemption does not apply to those lots within the Coastal Commission Appeals Jurisdiction, ~~as additional parking is still required on those lots to maintain coastal access.~~

[No change to subsections (e) and (f)]

16. Revise new Section 30.91.040(Q) as follows:

- ~~P.~~ Q. ADUs are required to comply with the same building and safety requirements as the primary dwelling unit in accordance with the California Building Code and California Fire Code. Special construction standards that would not otherwise apply to the single dwelling unit as a whole shall not be required. Pursuant to the California Code of Regulations Section 13250 and Public Resources Code Section 30610(a), a proposed ADU or JrADU development shall not be eligible for ministerial approval if it includes improvements to expand or construct water wells, sewer, fire protection capacities, or septic systems, which is a class of development that requires a discretionary coastal development permit per the Coastal Act because it involves a risk of adverse environmental effects.

17. Revise new Section 30.91.040(T)(1) as follows:

- ~~S.~~ T. For consistency with the certified LCP ~~Coastal Act~~, scenic views shall be protected as follows:
- 1. Projects shall be designed to ensure that no scenic views from public vantage points ~~streets, roads or pedestrian trails~~ are obstructed, unless there is no feasible alternative siting which eliminates or significantly reduces the obstruction, and that bulk and scale of the proposed structure have been minimized to the greatest extent feasible commensurate with preserving the physical characteristics of the site.

18. Revise new Section 30.91.040(V) as follows:

- ~~U.~~ V. ADUs shall not be located or approved where the ADU ~~or JrADU~~ is located on: a beach, a wetland or its buffer, seaward of the mean high tideline, in an environmentally sensitive habitat area or its buffer, within a coastal bluff setback, ~~in a habitat buffer, environmentally sensitive habitat area or its buffer~~, or in an area designated as highly scenic area as determined by the City's certified Local Coastal Program.

19. Revise new Section 30.91.040(X) as follows:

~~W. X.~~ Pursuant to the California Code of Regulations Section 13250 and Public Resources Code Section 30610(a), ADU development shall not create significant alterations to landforms, which is a class of development that requires a discretionary coastal development permit ~~per the Coastal Act~~ because it involves a risk of adverse environmental effects. The following objective standards apply to proposed ADU development for protection of the public health and safety through the regulation of excavation and grading and protection of steep slopes and coastal resources consistent with the certified Local Coastal Program:

[No change to subsections (1) through (5)]

20. Revise new Section 30.91.040(Y) as follows:

~~X. Y.~~ If a proposed ADU is located on a parcel that falls entirely or partially within the special flood hazard areas identified on the 2019 FEMA Flood Insurance Rate Map (FIRM) or its updated versions, the following shall apply as a requirement for the administrative Coastal Development Permit:

1. Development shall be located and designed, including elevation and flood proofing, to minimize flood damage and avoid flood hazards, including with consideration of sea level rise.
2. Proposed development shall comply with the certified Local Coastal Program.

21. Revise Section 30.91.050(B) as follows:

A JrADU that is designed to meet all of the requirements in Section 30.91.050 shall be issued a permit in accordance with Section 30.91.030. The City is preempted by State Law from requiring ~~any type of discretionary review, or public hearing, except for an Administrative Coastal Development Permit where required in accordance with Section 30.91.030(C)(5).~~

22. Add a new Section 30.91.050(G), with renumbering of the subsequent items that follow:

G. Where a junior accessory dwelling unit is attached to, or created within, a nonconforming residential structure that is nonconforming with regard to geologic setbacks, public view encroachment, coastal access, or wetland and habitat preserve buffers, and where development of the junior accessory dwelling unit will result in redevelopment of the nonconforming structure, the City shall require the correction of nonconforming zoning conditions as a condition of approval.

For purposes of this section, redevelopment shall mean alterations to the residential structure resulting from construction of an accessory dwelling unit or junior accessory dwelling unit that consist of (1) additions to an existing

structure, or (2) exterior or interior renovations, or (3) demolition or replacement of an existing principal structure, or portions thereof, any of which results in replacement (including demolition, renovation or alteration) of 50 percent or more of major structural components including exterior walls, floor, roof structure or foundation, or a 50 percent increase in gross floor area.

23. Revise new Section 30.91.050(H) as follows:

~~G.~~ H. In order to ensure the continuation of public access to coastal resources, where an existing garage, carport, or covered parking, is demolished or converted to a JrADU, replacement off-street parking shall be required and all required off-street parking for the primary dwelling unit shall be maintained or replaced on-site in accordance with Section 30.91.040(O)(1)-(3).

24. Revise new Section 30.91.050(N) as follows:

~~M.~~ N. If a proposed JrADU is subject to approval of an Administrative Coastal Development Permit, and is located on a parcel that falls entirely or partially within the special flood hazard areas identified on the 2019 FEMA Flood Insurance Rate Map (FIRM) or its updated versions, the permit approval shall be subject to the requirements in Section 30.91.040.~~X~~Y.

25. Add a new Section 30.91.060(A)(5) as follows:

5. Consistent with the process set forth in Section 30.91.040(K), an attached ADU may be proposed at a second story level only if there is not sufficient buildable area available on the lot or if necessary to accommodate an alternative that minimizes potential impacts to the greatest extent in compliance with the certified LCP.

26. Revise Section 30.91.060(C)(1) as follows:

The City shall accommodate proposed ADUs meeting the universal size provision of at least 800 square feet in size, unless the California Coastal Act supersedes this minimum size requirement due to impacts to protected coastal resources or otherwise impedes public access to the coast. In such a case, the City will prepare written findings and, where applicable, mitigation measures to alleviate such impacts as necessary to accommodate ADUs at least 150 square feet in size that meet the definition of an efficiency unit as defined per California Government Code Section 66313, as amended ~~65852.2(c)(2)(A).~~

27. Revise Section 30.91.060(C)(3) as follows:

A detached ADU shall comply with the required street fronting setbacks of the applicable zone, but otherwise may be located within 4 feet of the side or rear property lines, except that in all cases, including conversion of non-habitable, legal, non-conforming structures noted in Section 30.91.040(~~MN~~)(1), the ADU shall comply with the following additional setback requirements.

- a. ~~The required~~ coastal bluff setback in the Coastal Bluff Overlay Zone as required by Section 30.55.

[No change to subsections (b) through (e)]

IV. FINDINGS FOR REJECTION OF THE CITY OF DEL MAR IMPLEMENTATION PLAN AMENDMENT, AS SUBMITTED, AND APPROVAL IF MODIFIED

A. AMENDMENT DESCRIPTION

The proposed LCP amendment intends to incorporate State ADU laws in Government Code Sections 65852.2 and 65852.22 into the City's certified LCP. The City proposes to modify the Implementation Plan (IP) component of its Local Coastal Program (LCP), specifically Sections 30.04.190, 30.19.030, 30.19.040, 30.21.030, and 30.21.040, as well as the repeal and replacement of Chapter 30.91 (Accessory Dwelling Units) of Title 30 (Zoning) to amend existing regulations and refine ADU provisions to comply with recent changes to state housing law (see Gov. Code, §§ 65852.2 and 65852.22, as amended). The proposal provides for streamlined review and permit processing of Accessory Dwelling Units/Junior Accessory Dwelling Units (ADUs/JrADUs); allows ADUs as permitted uses in all areas zoned for residential or mixed-use (with the exception of several lots in the Carmel Valley Precise Plan), including on lots with either an existing or proposed dwelling unit; details the location and configuration of ADUs and JrADUs on a lot; relaxes the standard for size, height, and setbacks by which ADUs must comply compared to the certified LCP.

In terms of requirements for coastal development permits, the amendment proposes a change in the exemptions in which a CDP is not required. In the certified LCP, an ADU is exempt when it's contained entirely within or directly attached to an existing single dwelling unit, and where minor changes to an existing residential structure to construct an ADU will not involve the removal or replacement of major structural components and will not have the potential to adversely impact coastal resources. Under the proposed amendment, an ADU or JrADU may only be exempt from an administrative CDP where it is created through conversion of entirely existing habitable space, is not located in any of the City's Overlay Zones, and is not located in the Commission's appeals jurisdiction.

Specifically, the proposed amendment would:

- Add a new definition of Tiny Home to Section 30.04.190. A tiny home will include a small accessory dwelling unit of at least 150 square feet (maximum 400 square feet) installed on a foundation and designed for independent living with inclusion of cooking and sleeping facilities, as well as connections to water and sewer utilities.
- Modify Chapter 30.19 to delete a prohibition on ADUs and JrADUs in the RM-South Zone, as well as add an allowance for ADUs as an accessory use in accordance with Chapter 30.91.

- Modify Chapter 30.21 to delete a limitation on ADUs only being permitted on a lot with an existing single dwelling unit in the RC Zone, and add an allowance for ADUs in accordance with Chapter 30.91 throughout the zone.
- Repeal Chapter 30.91 (Accessory Dwelling Units) and replace it with a new Chapter:
 - 30.91.010 on the purpose of the Chapter being to provide regulations and procedures for ADUs and JrADUs.
 - 30.91.020 describing where ADUs and JrADUs are permitted, including:
 - An ADU may be permitted on any lot that is zoned to allow residential or mixed use, including the Carmel Valley Precise Plan (permitted only on residential lots 3-9, 11-17, 20-29) and other Specific Plan zones that have been developed or are proposed to be developed with at least one or more unit.
 - JrADUs are permitted within the walls of an existing or proposed single dwelling unit, including an attached garage, on lots located within single dwelling unit zones R1-40, R1-14, R1-10, R1-10B, R1-5, R1-5B, and CVPP (lots 3-9, 11-17, 20-29).
 - Tiny homes are permitted on any lot that allows an ADU as well as additional non-residential zones if deed restricted affordable for at least 30 years.
 - Development of an ADU, JrADU, or Tiny Home pursuant to Chapter 30.91 does not exceed the allowable density of the parcel.
 - 30.91.030 describing the permitting and processing of ADUs and JrADUs, including:
 - Specifies that the City shall ministerially approved or disapprove a building permit application in compliance with time periods established by State law.
 - Describes submittal requirements for both ADU and JrADU applications, including that proposed ADUs and JrADUs in the Coastal Bluff Overlay Zone must comply with the recommendations of a geotechnical report in accordance with the IP when sited in a new structure or within non-habitable space that would be converted to habitable space.
 - Specifies narrow circumstances where an ADU or JrADU may be found exempt from an Administrative CDP, including conversion of entirely existing habitable space, location outside overlay zones, and outside the appeals area.
 - Specifies hearing procedures for CDPs as consistent with the certified IP and states that no public hearing is required.
 - States that all dwelling units meeting the definition of a Tiny Home shall be processed as an ADU.

- 30.91.040 describing the development regulations for ADUs, including:
 - Allowable combinations of attached and detached ADUs on a lot.
 - Specifying rental terms of greater than 30 days when an ADU is located in a residential zone.
 - A maximum size of 800 square feet (or 1,000 if there is more than one bedroom) and that an ADU in excess of these limits will have the remaining square footage reviewed against the floor area ratio and lot coverage standards of the zone, as well as other size limitations and considerations.
 - Architectural and hardscape standards to ensure compatibility with surrounding neighborhood.
 - Maximum building height of 16 feet for detached ADUs with some exceptions for proximity to transit stops, and limitation of attached ADUs to the first story level if buildable area is available (if not, a second story may be permitted). A 14-foot maximum height applies for ADUs proposed in the Bluff, Slope, and Canyon Overlay Zone.
 - A standard side and rear yard setback of four feet with several exceptions, including the required setbacks to protect coastal resources and public views as required by the certified LCP.
 - Requirements for the replacement of off-street parking where an existing garage, carport, or covered parking is demolished or converted to an ADU.
 - Areas where one off-street parking space is required for a new ADU, including for lots in the Commission's appeals jurisdiction.
 - Protection of public scenic views and the use of appropriate setbacks in accordance with the certified LCP, as well as the statement that there are no private views protections related to ADU development.
 - Prohibition on ADUs being permitted on a beach, a wetland or its buffer, or an environmentally sensitive habitat area or its buffer.
 - Requirement that when an ADU is located within the 100-year floodplain as depicted on the 2019 FEMA FIRM (or as updated), the ADU should be located and designed to minimize flood damage and avoid flood hazards, and should also comply with the LCP.
- 30.91.050 describing the development regulations for JrADUs, including:
 - That a JrADU can be no more than 500 square feet and contained entirely within an existing or proposed primary single dwelling unit, and may be created within the walls of an attached garage.
 - Specifies that only one JrADU may be located on a lot with a single dwelling unit and where it may be located on the lot.
 - Specifies that where an existing garage, carport, or covered parking is demolished or converted to a JrADU, that replacement of the off-street parking is required.
 - Specifies that there are no private view protections from a JrADU.

- Specifies that if a proposed JrADU is located on a parcel that falls entirely or partially within the FEMA FIRM, that the permit will be subject to the requirements of the ADU provisions described above.
- 30.91.060 describing the development regulations for ADUs on lots with multiple dwelling units, including:
 - Specifies the number and configurations of ADUs allowable on lots with multiple dwelling units, including limits on how many ADUs are permitted according to the number of dwelling units on site.
 - Specifies the spaces within multiple dwelling unit structures that may be converted to an ADU.
 - Specifies the maximum size, height, and required setbacks.
- 30.91.070 detailing an incentive program the City has designed to encourage the use of ADUs as lower income housing.
 - Specifies that incentives shall be granted to property owners who commit to record a deed restriction, covenant, or similar instruments that limits the use and occupancy of the ADU to restricted income limits and rental rates for low-income households.
 - Incentives include bonus JrADU units granted in accordance with specific regulations for either single dwelling or duplex development, or multiple dwelling unit development with three or more units.
 - Specifies that bonus units in multiple dwelling unit buildings must comply with the coastal resource protections of the certified LCP.
 - Specifies that properties with existing non-conforming density shall be eligible for the Incentive Program if the property has an on-site property manager.
- 30.91.080 details the Amnesty Program to encourage owners to obtain permits and formally legalize any existing, unpermitted ADUs.
- 30.91.090 details the severability clause in the event a court finds certain terms or provisions are void.

[Exhibit 1](#) contains the proposed IP amendment text. [Exhibit 2](#) shows the proposed amendment in strike-out/underline.

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:

B. Land Use Development Goals and Policies – General

Policy II-2: Insure that future development, whether commercial or residential, retains the aesthetic quality of the community by protecting and preserving public views to the ocean and other significant natural resources; and by minimizing the disturbance of natural topography and vegetation.

III.B. Shoreline Hazards – Goals and Policies

Policy III-7 (Beach Overlay Zone Regulations) (13. New Construction or Reconstruction): No reconstruction or remodeling of a structure when 50% or more of the lot's permitted floor area is involved and no new construction shall be located within 15 feet east of the Shoreline Protection Area line...

III.C. Coastal Bluffs

Goal III-B: Preserve Del Mar's fragile coastal bluffs as a visual resource and avoid the risks to life and property associated with bluff failure and shoreline erosion.

Policy III-9 (Coastal Bluff Regulations)(a): A minimum setback of 40 feet from the edge of the coastal bluff top shall be provided in the construction of all principal structures and all accessory structures, such as, but not limited to: pools, spas, storage sheds, gazebos and above grade decks or patios. All new additions to existing structures shall maintain the minimum 40-foot coastal bluff top setback required herein. This requirement shall also apply to the construction or installation of new supporting foundations or other structural supports for existing structures. [...]

No grading shall be allowed within a minimum setback of 40 feet from the top edge of the coastal bluff top.

Policy III-9 (Coastal Bluff Regulations)(c): All applications for projects involving new construction on coastal bluff top properties shall be accompanied by a geotechnical report addressing: 1) existing conditions; 2) the suitability of the site for the proposed construction; and 3) the potential of the proposed development to affect bluff stability over a 70-year life span of the project. The report shall also include recommended mitigation measures as they relate to avoidance of risks and preservation of fragile bluff systems. In the event that a submitted report recommends a bluff top setback of a greater distance than otherwise minimally required in this Land Use Plan, the greater distance shall be provided.

III.E. Flood Hazards

Policy III-12: Ensure that the development of real property which is subject to floodwaters will not obstruct flood flow; will not create a hazard to life, health, safety, or the general welfare; will reduce the need for the construction of flood control facilities that would be required if unregulated development occurs; and will minimize the cost of flood insurance to Del Mar residents. The following Floodplain (FP) Overlay Zone policies shall be applied to all applications for a Floodplain Development Permit.

[...]

Applications for Floodplain Development Permits shall be reviewed for consistency with the following requirements to be assured that new development will:

- a. Be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
- b. Be constructed with materials and utility equipment resistant to flood damage;
- c. Use methods and practices that minimize flood damage;
- d. Have the lowest floor (including basement) of any residential structure elevated to or above the base flood elevation;
- e. Have the lowest floor (including basement) of any nonresidential structure elevated to or above the base flood level or, together with attendant utility and sanitary facilities, be flood-proofed below the base flood level to the extent that the structure is watertight with walls substantially impermeable to the passage of water and with structure components have the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy, as certified by a registered professional engineer or architect;
- f. When located in an area of shallow flooding (Zones AO and VO on the community's FIRM), have the lowest floor (including basement) elevated to or above the depth number indicated on the most current FIRM; or if there is no depth number indicated on the most current FIRM, be elevated at least two feet above the highest adjacent grade. As an alternative, nonresidential structures, together with attendant utility and sanitary facilities, may be flood-proofed to that level as specified in subsection "e" above;
- g. [...]

IV.B. Coastal Access

Goal IV-A: Provide physical and visual access to coastal recreation areas for all segments of the population without creating a public safety concern, overburdening the City's public improvements, degrading the City's natural resources, or causing substantial adverse impacts to adjacent private properties.

Goal IV-C: Preserve existing views and view corridors from public vantage points to the maximum extent possible without preventing reasonable use of private property.

Policy IV-24: Preserve views of the Pacific Ocean from Camino del Mar through the application of scenic view easements and related view preservation restrictions for development proposals located along the west side of this roadway. In order to preserve such views from Camino del Mar, structures on properties fronting the west side of this roadway within the Central Commercial, Professional Commercial or Visitor Commercial designations shall not exceed a height of 14 feet above the adjacent curb level of Camino del Mar.

Goal IV-D: Maximize the opportunity for access to beach areas by minimizing competition for public on-street parking spaces.

VI.B. Steep Slope Preservation – Goals and Policies

Policy VI-1 (Bluff, Slope and Canyon Overlay Zone Regulations) (E.

Development Review): Within the BSC Overlay Zone, no building improvement, structure, or portion thereof shall be erected, constructed, converted, established, altered, or enlarged, nor shall any lot or premises be excavated or graded for any purpose, including not limited to in-ground structures such as swimming pools or spas, or cleared of vegetation, unless in accordance with this Land Use Plan and the following:

1. In order to preserve viewsheds and the open space appearance of the area from a distance, no structure shall exceed a height of 14 feet as measured pursuant to the provisions of the Del Mar Municipal Code unless it is found that scenic viewsheds and the open space appearance of the area will be less affected by structures of a greater height.

[...]

3. Construction, grading or other encroachments of any kind on substantial slopes exceeding twenty-five percent grade, or within twenty feet of the top and ten feet of the bottom of substantial slopes exceeding twenty-five percent grade or the construction of structures which overhang such slopes or slope setbacks, shall be prohibited, except when specific encroachments are allowed in according with the following policies. For purposes of this section, “substantial slopes” shall mean: Any areas of slopes with a gradient of 25% or greater on a site where the total elevation differential within such slope areas themselves is 20 feet or more, or where such slopes on site adjoin contiguous slopes of 25% or greater on adjoining property and together involve an elevation differential of 20 feet or more. “Substantial slopes” shall include smaller, isolated pockets of area with less than 25% grade when surrounded by contiguous “substantial slopes” located either entirely or partially on site.

VI.D. Wetlands Preservation – Goals and Policies

Policy VI-3: Ensure the protection of the wetlands of the Los Peñasquitos Lagoon and San Dieguito Lagoon and their sensitive upland habitat by requiring that all development activities taking place in lagoon and uplands areas, designated on the Lagoon Overlay Zone Map (Figure VI-B), conform to the wetland preservation regulations of this chapter. In addition, the City shall implement the Bluff, Slope, and Canyon Overlay Zone regulations of this Land Use Plan to protect sensitive wetland habitat from the impacts of upland development which lies outside of the Lagoon Overlay Zone but within the watershed of San Dieguito and Los Peñasquitos Lagoon.

Wetland Preservation Regulations

[...]

1. Permitted Uses in Wetlands. Permitted uses in wetland areas shall be limited to the following uses and activities, provided that the implementation of such uses or activities does not involve grading, filling, construction or placement of

structures within the boundaries of wetland areas as determined pursuant to the policies of this chapter.

- a. Aquaculture, provided that it is carried out in such a manner so as to avoid any adverse impacts to the water quality or the biological productivity of the wetlands.
 - b. Scientific research, educational or recreational uses, provided that they do not involve adverse impacts to the natural ecosystem.
 - c. Wetland restoration projects where the primary function is restoration of wetland habitat.
2. Permitted Uses in Wetland Buffer Areas. Permitted uses in wetland buffer areas shall be limited to:
- a. Passive recreational access paths and viewpoints within the upland half of the buffer, only when designed to assure no adverse impacts to adjacent wetland areas. An exception to allow access paths or viewpoints within the lower half of the buffer may be permitted where there is an elevation difference between the buffer and wetland resources of at least ten feet, or where an existing accessway/viewpoint present will be formalized. Any such permitted new access trail or viewpoint shall be setback at least ten feet from the edge of the bluff/slope. No armoring or reinforcing to either construct or maintain such a trail or viewpoint shall be permitted.
 - b. The placement of improvements necessary to provide protection, preservation or enhancement of adjacent wetland areas. Such improvements shall be located within the upland half of the buffer only, and may include, but are not limited to fencing, creation of landscape berms and placement of signage related to scientific, educational or recreational uses.
 - c. All uses permitted in wetland areas.

[...]

Additionally, the certified IP contains the following relevant policies in Chapter 30.55 (Coastal Bluff Overlay Zone):

30.55.090(B): All applications for projects involving new construction on properties containing coastal bluffs shall be accompanied by a geotechnical report addressing: 1) existing conditions; 2) the suitability of the site for the proposed construction; and 3) the potential of the proposed development to affect bluff stability over a 70-year life span of the project; 4) the potential future need for shoreline protection during an expected 70-year life span of the project; 5) an analysis of bluff retreat and coastal stability for the project site, according to accepted professional standards; 6) an analysis of the potential effects on bluff stability of rising sea levels, using latest scientific information; 7) an analysis of the potential effects of past and projected El Nino events on bluff stability; and 8) an analysis of whether the affected section of coastline is under a process of retreat. The report shall also include recommended mitigation measures as they relate to avoidance of risks and preservation of fragile bluff systems. In the event that a submitted report recommends a coastal bluff top setback of a greater distance than otherwise minimally required in this Chapter, the greater distance shall be provided. In addition, for new development, the applicant

shall acknowledge a waiver of all rights to future protective devices for the new development through recordation of a deed restriction as a condition for permit approval.

1. FINDINGS FOR DENIAL

The standard of review for LCP implementation submittals or amendments is their consistency with and ability to carry out the provisions of the certified LUP.

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. 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, state law continues 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 JrADUs is to harmonize the state ADU/JrADU 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 Del Mar's coastal zone consists of already-developed residential areas with adequate public services that may be appropriate for in-fill ADU development. There are 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. However, the amendment does raise concerns regarding the protection of several specific coastal resources protected under the certified LUP.

Coastal Hazards

The proposed LCP amendment states that where an ADU or JrADU is located on a parcel that falls entirely within or partially within the special flood hazard area identified on the FEMA Flood Insurance Rate Map (FIRM), the administrative Coastal Development Permit will have additional requirements. These include that the ADU or JrADU shall be located and designed to minimize flood damage and avoid flood hazards, such as with the incorporation of elevation considerations and flood proofing measures. Additionally, the amendment states that the proposed development shall comply with the certified LCP. However, the City's amendment does not include adequate noticing requirements to occupants or that design requirements should take into account sea level rise projections in addition to present-day flood concerns. Additional provisions for the development of ADUs and JrADUs in hazardous areas are necessary, not only to inform the

applicant/owner of safest physical design of the structure over its lifetime, but also to notify occupants of the development's location within the floodplain.

Del Mar is one of the most vulnerable areas in San Diego County when taking into account flooding and sea level rise. The North Beach area of Del Mar is especially vulnerable to the effects of both flooding and sea level rise. A significant portion of the North Beach is mapped within special flood hazard area Zone AE (classified as a high risk area with a 1% chance of annual flooding) with a smaller portion is mapped within Zone X (classified as a moderate to low risk area with a 0.2% - 1% chance of annual flooding) on the 2019 FEMA FIRM ([Exhibit 3](#)). In most cases across the state, sea level rise will exacerbate existing flood hazards and expand the range of these hazards over time. While the exact rate and amount of sea level rise will depend on future greenhouse gas emissions and this uncertainty presents challenges for planning coastal development, it is widely documented that underestimating sea level rise could result in costly damages and adverse outcomes to coastal resources.

Planning and development decisions on the California coast must, therefore, be appropriately precautionary and made with the full understanding that sea level rise will change coastal landscapes and exacerbate hazardous conditions. Not only will regulatory review of proposed coastal development influence the future safety of the development and overall resiliency of the California coast, but it will impact the future of coastal resources protected under the Coastal Act. Accordingly, additional measures are required to protect coastal resources, as well as to safeguard human life and development.

Corrections of Existing Non-conformities

As submitted, the City's LCP amendment specifies a four-foot side and rear setback for new ADUs, with several exceptions. One of the exceptions refers to a scenario in which an existing legal non-conforming structure, such as a garage or accessory building is converted to an ADU, in which case it may maintain the non-conforming setback as long as the structure complies with the building and safety standards of the California Building Code and California Fire Code, as well as additional setbacks specified further in the section for street fronting setbacks. The submitted LCP amendment also requires that in all cases, including the conversion of non-habitable, legal non-conforming structures, the ADU must comply with the setback requirements of the LCP regarding the Beach Overlay Zone, the Coastal Bluff Overlay Zone, the Bluff, Slope, and Canyon Overlay Zone, as well as minimum setbacks necessary for protection of wetlands, environmentally sensitive habitat area, and public scenic views. Finally, the submitted LCP amendment includes a setback that explicitly states that ADUs and JrADUs may not be located or approved on a beach, in a wetland or its buffer, in an environmentally sensitive habitat area and its buffer, within a coastal bluff setback, or in a highly scenic area.

While these provisions are appropriate and will help ensure that ADUs do not impact coastal resources, they do not address the correction of existing non-conformities for the principal residence where construction of an ADU results in such significant changes to that primary structure that the entire structure should be considered a new or "redeveloped" residence.

First, it is important to acknowledge that most nonconformities have little or no substantial impact on coastal resources. For example, an existing home located partially within a front yard setback is technically inconsistent with the LCP but is unlikely to significantly affect community character or otherwise impact coastal resources. Even if construction of an ADU resulted in substantial changes to the existing non-conforming residence, there would be no compelling reason to require the existing structure be brought into conformance with the LCP at that time. In contrast, where a primary structure is located on a bluff within the geologic setback, or within a public view corridor, or within the setback from a sensitive wetland or upland habitat, should construction of an ADU attached to the non-conforming residence result in “redevelopment” of that structure—that is, sufficient changes to be considered essentially a new structure that extends the life expectancy and economic value of the nonconforming structure—then at that point, the existing structure should be required to be brought into conformance with the LCP .

City staff have stated that there are no non-conforming primary residences in Del Mar that impact the above listed coastal resources, and therefore, there is no circumstance where a new ADU could be attached to a non-conforming structure, regardless of whether or not the construction resulted in redevelopment of the existing home. However, non-conformities typically arise due to changing circumstances; the location of habitat changes, the science of how to identify habitat evolves; bluffs erode; new public view corridors are established. Establishing now that construction of a new ADU that results in substantial change to an existing non-conforming structure that impacts specific coastal resources triggers the need to bring the structure into conformity with current LCP requirements, is a necessary baseline planning policy that both protects sensitive coastal resources and provides direction and certainty to applicants in the future.

Coastal Development Permit

The amendment proposes a change in scenarios where a CDP is not required. In the certified LCP, an ADU is exempt when it's contained entirely within or directly attached to an existing single dwelling unit, and where minor changes to an existing residential structure to construct an ADU will not involve the removal or replacement of major structural components and will not have the potential to adversely impact coastal resources. Under the proposed amendment, an ADU or JrADU may be exempt from an administrative CDP only where it is created through conversion of entirely existing habitable space, is not located in any of the City's Overlay Zones, and is not located in the Commission's appeals jurisdiction.

The proposed amendment language would allow for exemption from a CDP in only a narrow range of circumstances; regardless, the development of an ADU or JrADU is only considered exempt in the case that it is created through conversion of entirely existing legally established habitable space contained in an existing primary structure that will not involve removal or replacement of major structural components. ADUs and JADUs 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 an intensification of an existing use and require a CDP. Because of this, the exemption language as proposed is not consistent with the certified LUP.

Additionally, several changes are necessary to the same section of the amendment to ensure accurate language is included as to the processing of Notices of Final Actions. Similarly, the section of the amendment that refers to the permitting requirements for JrADUs should be clarified. As submitted, the amendment refers to a preemption by state law from requiring any type of discretionary review except for an Administrative CDP. The City's reference to state law appears limited to consideration for housing law; however, the Coastal Act is also state law and must be harmonized with state housing law.

Finally, the amendment proposes to repeal and replace Chapter 30.91, and because of that, other Chapters of the IP that reference 30.91 may need to have their citations corrected. In the case of Chapter 30.75 (Coastal Development Permits), Section 30.75.120(E)(3) references a section of the currently certified LCP that will be updated under the current amendment. Accordingly, this section of the certified IP must be updated to ensure it references the correct provision of the updated amendment.

Public Access/Parking

As described above, the City's submitted LCP amendment has several provisions relating to the parking requirements for ADUs and JrADUs, including requiring replacement on-site parking for the primary residence where an existing garage, carport, or covered parking space is converted to an ADU or JrADU. In many areas of Del Mar, street parking is used for public shoreline access, and in these areas, this requirement will help protect public access. Other areas of Del Mar are far enough away from the shoreline that street parking is unlikely to serve as a reservoir for people accessing the beach. Requiring replacement parking throughout the City is not inconsistent with the certified LUP, but identifying that the reason for this City-wide requirement is public access to coastal resources as stated in the proposed LCP, could be misleading. Similarly, the proposed LCP amendment requires one off-street parking space for ADUs in certain development scenarios, and characterized this need as necessary to avoid significant impacts to public access in areas located within the Coastal Commission's appeals jurisdiction, "where public parking has been determined by the Commission to be scarce." However, the Commission has not made such a determination for the area subject to the Commission's appeals jurisdiction. While no specific evaluation has been made by City or Commission staff, it is apparent that there are areas both within and outside of the appeals used for public shoreline parking, while other areas within the appeals jurisdiction are likely not used for coastal access. Furthermore, while requiring parking for ADUs is not inconsistent with the LCP, the Commission has not specifically evaluated whether parking for ADUs is required to protect public access in Del Mar. Thus, clarification of the City's description of this requirement is necessary.

As an additional clarification, the City's LCP amendment states that replacement parking should be consistent with all wetland habitat buffers, steep slope and geologic stability setbacks, and public scenic view protection regulations of the certified LCP. While accurate, buffers for environmentally sensitive habitat areas are missing from this list and should be added for consistency with all coastal resource protections of the LCP.

As one additional note on JrADUs, while there is nothing explicit in the amendment that states there is no parking requirement for JrADUs, the City has explained that ADU law explicitly exempts JrADUs from the requirement for new parking because State Housing

Law considers them to be essentially conversions of bedroom space into a small accessory unit. Accordingly, there is no off-street parking requirement for JrADUs in the City's submittal, but replacement parking is required if a JrADU is constructed in a converted garage.

Tiny Homes

As stated above, tiny homes will be added to the certified LCP as an allowable use on any lot that allows an ADU as well as a non-residential zone if deed restricted affordable for a lower income household for a term of at least 30 years. However, in allowing for tiny homes in non-residential zones, they would become an allowable use in the Beach Commercial and Visitor Commercial Zones. According to the certified LCP, the Beach Commercial Zone is focused on providing commercial activities that maximize open space and public access and usage of beach areas. The Visitor Commercial Zone is designed to allow activities such as hotels and motels to further allow visitors to enjoy the coast. Residential uses are currently not permitted in either zone, and the eleven parcels that make up the Beach Commercial and Visitor Commercial Zones are developed with restaurants, overnight accommodations, a pay parking lot, a lifeguard tower, public restrooms, and the Del Mar depot of the railroad.

The Coastal Act prioritizes public access to the coast and visitor accommodating uses over residential uses, and the allowance of residential uses, including tiny homes in the Beach Commercial and Visitor Commercial, is not in conformance with the objectives of these two zones as stated in the LCP. However, given the statewide housing crisis, it is crucial to scrutinize any proposed modification to the amendment that would restrict housing opportunities. To put this amendment in context, the City has been steadily expanding multi-family housing opportunities in other zones throughout the years, such as the North Commercial and Professional Commercial Zones (certified under LCP-6-DMR-20-0079-3), as well as the Central Commercial, and Public Facilities Zones (approved under LCP-6-DMR-24-0019-1). The City has undertaken housing analyses consistent with their most recent Housing Element (which has also been certified by HCD) to identify those housing goals and objectives which are most critical in achieving the required low-income housing stock and additional housing opportunities as needed. The City has not identified tiny homes in the Beach Commercial and Visitor Commercial Zones as critical to those goals, and does not object to the exclusion of them from these areas. As is, the proposed language of the LCP amendment is not consistent with the certified LCP, and the exclusion of tiny home construction in the Beach Commercial and Visitor Commercial Zones will not result in a significant loss of affordable housing opportunities.

Second Story ADUs on Duplex Lots

In the case of a zone where two primary dwelling units are allowed per lot, each dwelling unit is permitted an ADU either within the walls of the existing unit, or attached horizontally at the first story level at a maximum height not to exceed a height of 16 feet, or one detached ADU with a maximum height of 16 feet above grade. The ADU allowed for one unit may not be attached the ADU allowed for the other unit. The City's amendment restricts an ADU to the first floor for duplex lots; however, an allowance should be made

for development of an ADU at the second-story level if the design minimizes impacts to coastal resources.

Government Code Citations

In the time since the City has submitted the ADU amendment, several sections of the Government Code governing ADU development have been moved. Accordingly, the citations to the Code within the ADU amendment are out of date and should be changed to reflect the accurate citation and avoid the need for further amendments.

Clarifying Edits

A number of clarifying edits are required for the City's submittal for several reasons. Examples of several statements to be modified include those implying State Housing Law as prevailing over the Coastal Act, those where the City's certified LCP is the more appropriate reference other than the Coastal Act, those where a reference to a required coastal bluff setback in the certified LCP is most instructive, and various other provisions where clarifying language conveys the intention of the City's submittal.

2. FINDINGS FOR APPROVAL AS MODIFIED

Coastal Hazards

As detailed above, the Commission has identified concerns regarding coastal hazards and coastal access as presented by the LPCA; specifically, the amendment is an update to the certified LCP that would relax the existing standards for the construction of ADUs and JrADUs on most parcels in the City. However, several portions of the City, most especially the North Beach neighborhood, are vulnerable to flooding and sea level rise. In reviewing the LPCA, additional provisions to safeguard life, property, and public access to the coast are required.

It is important to first discuss if and when ADUs and JrADUs could be found allowable in hazardous areas at all. Many jurisdictions place strict limits on development in the floodplain, other than uses and structures that can accommodate periodic flooding, such as stables, parks, golf courses, etc. However, Del Mar has many structures already located in the floodplain. To address these concerns, the City has several hazards policies in the certified LUP that address development located in areas sensitive to flooding. Goal III-D of the certified LUP states that development in the City must minimize risks to life and property associated with flooding and flood waters, while Policy III-12 specifically states that development of property that is subject to floodwaters shall not create a hazard to life, health, safety, or the general welfare. Consistent with the City's hazard policies, it is necessary to take into account the effects of sea level rise in coastal resources planning and management policies and activities in order to identify, assess, and, to the extent feasible, avoid and mitigate the adverse effects of sea level rise.

As described above, portions of the City, including most especially the North Beach neighborhood, is located in a vulnerable area. However, considering the dire need to provide affordable housing in the City of Del Mar, the Commission may consider the need for accessory dwelling units against the risks of construction in a hazardous area. As such,

allowing new ADU development on the site could provide much-needed affordable housing for several decades before the structures are likely to be at serious risk. Nevertheless, the Commission must consider how to minimize and avoid those risks pursuant to Section 30270 of the Coastal Act.

The City of Del Mar has acknowledged the threats posed by sea level rise and increased flooding by publishing a Coastal Hazards, Vulnerability, and Risk Assessment report, most recently updated in August 2018. The City submitted an LCP amendment in order to incorporate some of its key findings, but this proposal was withdrawn before the Commission could hear the matter. However, during its review of that submittal, Commission staff suggested the incorporation of the December 2019 FEMA FIRM maps to replace the City's original certified Floodplain Overlay Zone map. While these maps do not depict the floodplain associated with extreme flood events that can be expected in the future due to sea level rise, they largely overlap with areas vulnerable to sea level rise identified in the City's coastal hazards study as well as those identified using USGS CoSMoS data in OCOF.

While the existing amendment includes a provision that the owner must record a deed restriction that acknowledges the applicable use limitations of the property prior to issuance of a building permit for an ADU or JrADU, **Suggested Modifications #5 and #7** requires that the owner also notice all occupants of any overlay zones in which the property is located, which would include the FEMA FIRM Map as part of the City's Floodplain Overlay Zone. Additionally, while the City's amendment does include a requirement for elevation and floodproofing where a parcel is located in the special flood hazard of the FEMA FIRM to minimize flood damage and avoid flood hazards, **Suggested Modification #20** adds that sea level rise must also be required in these considerations. Given the vulnerability of Del Mar, especially its North Beach area, planning for sea level rise is a reasonable and precautionary approach in allowing densification through ADU development to provide much needed housing.

As one additional note, **Suggested Modification #20** will be added to Section 30.91.040 for development regulations specific to ADUs; however, **Suggested Modification #24** states that where a JrADU will be developed on a parcel partially or entirely within the floodplain, it shall also adhere to these measures. Similarly, Section 30.91.060 for the regulation of ADUs on lots with multiple dwelling units, as well as Section 30.91.070 for the Incentive Program, describes that development of units must conform with the requirements with Section 30.91.040 (ADUs) and 30.91.050(JrADUs) as applicable, and so in this way, the suggested modifications will also apply to those units.

It is important to acknowledging that the subject amendment addresses only ADUs, and does not address risks or hazards associated with primary structures. The City of Del Mar has indicated it will be developing a sea level rise adaptation plan LCP amendment in the future, and at this time, the Commission will be evaluating hazards associated with new and existing development in Del Mar in a comprehensive manner.

Corrections of Existing Non-conformities

As described above, there are limited circumstances where the development of an ADU results in the redevelopment of the residence and therefore requires the correction of certain coastal-related non-conformities for the principal residence. Accordingly, **Special Condition #12** requires that where an ADU is attached to a residential structure that is nonconforming with regards to geologic setbacks, public view encroachment, coastal access, or wetland and habitat preserve buffers, and the development of the ADU results in redevelopment of the structure, the correction of the nonconforming condition is required. The suggested modification goes on to state that redevelopment in this case means the alteration to the residential structure resulting from construction of an ADU that results in replacement (including demolition, renovation, or alteration) of 50 percent or more of major structural components including exterior walls, floor, roof structure or foundation, or a 50 percent increase in gross floor area. **Special Condition #22** mirrors this same language but specifically refers to JrADUs attached to, or created within, nonconforming residential structures.

Because these modifications are related to only coastal resource related nonconformities, they are foreseen to have limited applicability compared to other circumstances where the nonconformity may be related to height, landscaping, front yard setbacks, or other non-coastal resources. Additionally, the modifications only apply to those ADUs and JrADUs attached to, or built within, an existing non-conforming residence. It would not apply to construction of detached ADUs. If there are no non-conforming residential structure in Del Mar, either now or in the future, this condition would never be applicable. Despite its limited applicability, the Commission is ensuring maximum protection for sensitive areas and public views.

Coastal Development Permit

As described above, an ADU or JrADU can only be considered exempt from a CDP when it is contained in the existing primary structure, and does not include either increases in habitable area or conversion of non-habitable space. While the proposed amendment language would allow for exemption from a CDP in only a narrow range of circumstances, the development of an ADU or JrADU is only considered exempt in the case that it is created through conversion of entirely existing legally established habitable space contained in an existing primary structure that will not involve removal or replacement of major structural components. Accordingly, **Suggested Modification #4** requires deletion of the City's proposed language and insertion of new language that clarifies the only scenario where an ADU or JrADU could be found exempt from a CDP. Additionally, several changes are necessary to the same section of the amendment to ensure accurate language is included as to the processing of Notices of Final Actions. **Suggested Modification #4** also includes several minor corrections to the proposed language to ensure accurate citations to the current Government Code is included, correcting references to the CDP process and LCP amendment as needed, and specifying that the NOFA shall be provided to the San Diego District Office by any acceptable delivery means pursuant to state law.

Also, in the case of the proposed language for JrADU permitting, the City's reference to state law preempting discretionary review with the exception of a CDP is not an accurate characterization of the relationship between the Coastal Act and state housing law.

Because of that, **Suggested Modification #21** removes the proposed language while maintaining the intent of the provision.

Finally, Chapter 30.75 (Coastal Development Permits) of the certified LCP must be updated to be consistent with the relevant citation to the new version of Chapter 30.91 proposed under this amendment. Specifically, **Suggested Modification #1** requires that Section 30.75.120(E)(3) of the IP be updated to reference Subsection 30.91.030(E) rather than Subsection 30.91.030(D)(5).

Public Access/Parking

As described above, while the parking requirements for ADUs and JrADUs are largely acceptable and in accordance with the certified LCP, the language characterizing the rationale for these provisions could be misinterpreted. Accordingly, **Suggested Modification #14** removes the proposed language from the provision regarding when replacement parking is needed for primary dwelling units where an existing garage, carport, or covered parking is demolished or converted to an ADU. Similarly, **Suggested Modification #15** deletes language referencing public access requirements associated with ADU parking requirements.

Two additional clarifying edits on the subject of parking include **Suggested Modification #23**, which requires parking as a result of JrADU development to be maintained or replaced on site in accordance with the ADU regulations of Section 30.91.040. **Suggested Modification #14** also requires the addition of environmentally sensitive habitat buffers to the list of coastal resources for which any replacement parking must be consistent with LCP protections.

Tiny Homes

As state above, the City's proposed allowance of tiny homes in non-residential zones (if deed restricted affordable for a lower income household for a term of at least 30 years) would enable dwelling unit construction in both the Beach Commercial and Visitor Commercial Zones. Currently, the eleven parcels of the two zones are developed with visitor-serving uses as intended by the LCP, and neither allow residential uses. The City has been expanding housing opportunities in other zones, such as the North Commercial, Professional Commercial, Central Commercial, and Public Facilities Zones, over the past several years in an effort to meet its Housing Element goals, and the exclusion of tiny home construction in the Beach Commercial and Visitor Commercial Zones will not result in a significant loss of affordable housing opportunities. To preserve the priority uses of the Beach Commercial and Visitor Commercial Zones, **Suggested Modification #3** adds a restriction that tiny homes cannot be developed in the two zones.

Second Story ADUs on Duplex Lots

The City's proposed amendment restricts an ADU on a duplex lot to the first floor; however, an allowance should be made for development of an ADU at the second-story level in the event that design minimizes impacts to coastal resources. Accordingly, **Suggested Modification #25** states that an attached ADU may be proposed on the second story level if there is not sufficient buildable area available on the lot or if necessary

to accommodate an alternative that minimizes potential impacts to the greatest extent in compliance with the certified LCP.

The suggested modification also states that the development must be consistent with Section 30.91.040(K) of the proposed ADU amendment. This section, found under the ADU Development Regulations for Single-Family Zones, states that ADUs on the second story level will be limited to 800 square feet to minimize potential impacts to the greatest extent in compliance with the certified LCP. The maximum building height for a proposed attached ADU that horizontally shares a common wall with the primary dwelling unit at the second story cannot exceed 25 feet above grade, or the underlying zoning requirement, whichever is lower, and in no case shall exceed two stories.

Government Code Citations

As stated above, the ADU amendment references several sections of the Government Code that are now out of date. **Suggested Modifications #2, 6, 8-10, and 26** correct these Government Code sections to reflect the accurate sections of the updated code.

Clarifying Edits

A number of clarifying edits are required in order to make clear references to the Coastal Act, the City's LCP, as well as adjust the proposed language for edification. **Suggested Modification #2** removes language that makes an unclear reference to State Law, while **Suggested Modifications #10, 17 and 19** correct the proposed language to remove references to the Coastal Act and insert references to the City's LCP instead where appropriate. **Suggested Modifications #13 and 27** add language that the required minimum coastal bluff setback for a site in the Coastal Bluff Overlay Zone is determined in compliance with Section 30.55 of the City's certified IP. Other modifications, including **Suggested Modifications #11, and 16-18**, add a clarifying word or phrase to make the intent of the provision clearer to the reader.

One potential concern with the proposed amendment is that it cites several sections of their Municipal Code that are not part of the certified LCP. These include Chapter 9.20 (Noise Regulations), Chapter 23.04 (Building Construction General Provisions), Chapter 23.08 (Design Review Permit), Chapter 23.32 (Excavation and Grading Permit), Chapter 23.33 (Land Conservation Permit), Chapter 23.50 (City's Tree Ordinance), Chapter 23.60 (Water Efficiency Landscape Ordinance), Chapter 30.72 (Bulk Floor Area Limitations), Chapter 30.74 (Conditional Use Permits), and Chapter 30.86 (Supplemental Regulations). While the Commission typically considers citations made to code sections within an LCP to incorporate those sections into the LCP by reference, in this case the City has explicitly stated that they do not intend for these sections to become part of the LCP but still consider them important citations for purposes of implementation and enforcement. Because of this, the Commission recognizes that the City's references to these sections outside the certified LCP will continue to be outside of the certified LCP.

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 the proposed changes to be exempt under a variety of CEQA provisions. (Pub. Resources Code, § 21080.17 [Adoption of ordinances that implement ADU provisions]; Cal. Code of Regs., tit. 14, §§ 15282(h) [Adoption of ordinances regarding second units], 15301 [Existing Facilities], 15302 [Replacement or Reconstruction], 15303 [Small Structures]), and 15332 [In-Fill Development Projects].

Notwithstanding the above, the proposed actions have been the subject of prior environmental analysis in the 6th Cycle Housing Element Update Final Program Environmental Impact Report (SCH No. 2020029064) certified by the City Council on October 5, 2020 (Resolution 2020-52), which analyzed and disclosed anticipated impacts of future housing development. No new or substantially greater impacts would result. As such, pursuant to CEQA Guidelines Sections 15162 and 15163, and based on the review of the entire record, including without limitation, the Final PEIR referenced above, the City stated the proposed action does not require a subsequent EIR or further environmental review. Ordinance No. 1002 was adopted by the City on December 18, 2023.

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.