DATE ISSUED: May 21, 2008 **REPORT NO. PC-08-050**

ATTENTION: **Planning Commission, Agenda of June 5, 2008**

SUBJECT: 6TH UPDATE TO THE LAND DEVELOPMENT CODE AND LOCAL COASTAL PROGRAM AMENDMENT (PROCESS 5)

SUMMARY

Issue(s): Should the Planning Commission recommend approval to the City Council of the 6th Update to the Land Development Code and Local Coastal Program that includes 51 issues divided into seven categories including Measurement, Permit Process, Landscape, Parking, Signs, Compliance with State Law, and Minor Corrections?

Staff Recommendation: That the Planning Commission recommend approval of the 6th Update to the Land Development Code and Local Coastal Program to the City Council.

Environmental Review: This activity is covered under the Land Development Code Environmental Impact Report (EIR) No. 96-0333; Revisions to Land Development Code Project No. 96-7897, Addendum to EIR No. 96-0333; and Land Development Code Revisions: Affordable Housing Density Bonus Regulations Project No. 63422, Supplement to EIR No. 96-0333. The activity is adequately addressed in the environmental documents and there are no changes in circumstance, additional information, or project changes to warrant additional environmental review. Because the prior environmental documents adequately covered this activity as part of the previously approved projects, the activity is not a separate project for purposes of CEQA review per CEQA Guidelines Section 15060(c)(3).

Fiscal Impact Statement: The 6th Update is a part of the Land Development Code Update work program and is funded as an overhead expense in the Development Services Department's budget.

Code Enforcement Impact: The proposed 6th Update code amendments would improve predictability and consistency in application of regulations in the Land Development Code.

Housing Impact Statement: The 6th Update includes language to improve the permit process and clarify applicability of a variety of existing housing regulations including transitional housing, reasonable accommodations, sustainable building projects, affordable housing density bonus, employee housing, and parking for condominium conversion projects. The proposed amendments are consistent with the goals of the City's Housing Element to increase the availability of workforce housing and provide housing for all income groups including those that do not qualify for Housing Commission assistance, as well as goals of the General Plan regarding sustainable development.

BACKGROUND

The 6th Update to the Land Development Code (LDC) is part of the code monitoring program directed by the Mayor and City Council as part of the adoption of the LDC (effective January 2000). The 6th Update project is divided into seven issue categories including Measurement, Permit Process, Landscape, Parking, Signs, Compliance with State Law, and Minor Corrections. There are a total of 51 issues included in the 6th Update.

The issues in this update have been identified as amendments necessary to clarify existing regulations or address inconsistencies, as well as amendments that would help to streamline existing processes and better meet existing policies. Staff has conducted extensive research and analysis involving multiple stakeholder groups, City departments, and other governmental agencies. Due to the complexity of the measurement issues, a series of workshops were held with local architects and Code Monitoring Team subcommittee members between May and August 2006, and more recently in 2008, to gather input specific to those items.

The code update process is a long process that typically involves the Technical Advisory Committee, Code Monitoring Team, Community Planners Committee, Planning Commission, City Council, and California Coastal Commission. In an effort to encourage greater public participation in the code update process, a request for input on the draft 6th Update project was distributed via e-mail on March 18, 2008, to the existing database of interested persons maintained by the City Planning and Community Investment Department that includes community planning chairs and members of each planning group, stakeholder groups, and other interested members of the public. Comments received during the public comment and review period (through May 2) were addressed and incorporated into a revised draft as presented for Planning Commission review and consideration.

Technical Advisory Committee (TAC): On March 13, 2007, the Technical Advisory Committee received an informational report on the 6th Update to the Land Development Code. Additional discussion regarding the 6th Update occurred at TAC's May 14, 2008 meeting.

Code Monitoring Team (CMT): The Code Monitoring Team reviewed the proposed 6th Update to the Land Development Code at their May 9 and June 13, 2007, and February

13, 2008, meetings. The Code Monitoring Team voted unanimously to support the proposed changes contained in the 6th Update and provided suggested edits for various issues.

Community Planners Committee (CPC): On April 22, 2008, the Community Planners Committee reviewed the proposed 6th Update to the Land Development Code as an informational item. Proposed amendments to automobile service stations (Issue #16), reasonable accommodations (Issue #18), and landscape regulation applicability to multi dwelling residential development (Issues #24 and 26) raised concerns from some CPC members as addressed in the discussion section of the report.

DISCUSSION

The 6th Update includes 51 issues which have been divided into seven issue categories including Measurement, Permit Process, Landscape, Parking, Signs, Compliance with State Law, and Minor Corrections. Report Attachment 1 includes an issue matrix with a brief description of each item. The proposed code amendments are discussed in greater detail below. Report Attachments 2-8 include the proposed draft code language in strikeout-underline format (by issue category).

Measurement Issues

Amendments involving the following 15 issues are intended to clarify how various things are defined or measured in the Land Development Code, particularly with respect to floor area, structure height, and setbacks. As previously stated, staff conducted a series of workshops over a two year period to review and discuss these complex items. Participants included local architects, engineers, and a subcommittee of the Code Monitoring Team. Refer to Attachment 2 for the draft code sections in strikeout-underline format and to Attachment 9 for revised Diagrams, as applicable.

1. Determining Proposed Grade

Proposed grade is the grade of the premises that will result after all development has been completed. The definition of "proposed grade" refers readers to Section 113.0231 which attempts to explain the method of calculation for proposed grade and includes diagrams related to proposed grade of a basement; however, this section has been misapplied as related to the calculation of gross floor area and structure height for subterranean spaces. The proposed amendment would delete Section 113.0231 since the existing definition of proposed grade correctly states how the term should be applied within the LDC, and Sections 113.0234 and 113.0270 correctly explain the relationship between proposed grade and the calculation of gross floor area and structure height, including measurement of height related to structures with a basement and/or a pool.

2. Floor Area Ratio and Gross Floor Area

Gross floor area includes all existing and proposed floors within the horizontal area delineated by the exterior surface of the surrounding exterior walls of the building. Certain elements are exempted from the floor area ratio (FAR) calculation depending on the type of development proposed. Clarification is proposed to better explain the connection between gross floor area and floor area ratio. The associated Diagrams have been revised accordingly (see Attachment 9).

Subterranean Structures
The existing code contains exemptions for the portions of basements and underground parking structures that are located underground; however, the two types of subterranean structures are treated differently in the code. The fact that the existing code only specifies the requirements for basements and underground parking structures has also lead to inconsistencies in the calculation of floor area ratio for subterranean garages associated with dwelling units.

For basements, the calculation of gross floor area is based on the slope of the lot. For lots that slope less than 5 percent along the edge of the building footprint, 3-foot, 6-inches is established as the threshold for determining whether the basement space counts towards gross floor area. For lots that slope 5 percent or more along any edge of the building footprint, gross floor area includes basement area where the vertical distance from grade to the finished floor above exceeds 5 feet. Under the existing regulations, areas of an underground parking structure with a vertical distance greater than 3-foot, 6-inches between grade and the finished floor above would be counted as gross floor area regardless of the slope along the edge of the building footprint. In addition, underground parking structures with up to two on-grade vehicular access openings are exempt from gross floor area under the existing code; however, the gross floor area calculation is unclear for underground parking structures with multiple on-grade openings.

The proposed amendment would regulate all subterranean structures (basements, garages, and underground parking structures) similarly based on the slope of the lot. The proposed amendment would further clarify that vehicular access openings up to a maximum of 25 feet in width would not be included for the purposes of measuring the vertical distance between the adjacent grades and the floor above. Floors for underground parking structures and subterranean garages with vehicular access openings greater than 25 feet in width (as measured at the point of entry to the structure) would be counted towards gross floor area. This would help to address confusion where applicants have attempted to measure the width of vehicular access at the point of entrance to the property along the street. In addition, Section 113.0261 (Determining a Story) would be revised for consistency with Section 113.0234 (Calculating Gross Floor Area) with respect to underground parking structures.

At-Grade Space with Enclosed Space Above (Residential Development)
The gross floor area calculation for residential development includes the floors within the surrounding exterior walls of a building, and exterior, at-grade space that is built with enclosed space above when there is at least 7-foot, 6-inches between grade and the finished floor above and where the enclosed space above exceeds a height of 5 feet. Currently, this type of unenclosed space is only counted as gross floor area where the gradient along the edge of the at-grade space is less than 5 percent. Some applicants have submitted residential development

projects where grade was altered to 5 percent or more in order to meet the FAR exemption. The proposed amendment would eliminate this loophole.

The intent of existing Section 113.0234(b)(3) is to capture bulk and scale of a proposed residential development in the measurement of gross floor area, while still allowing for design articulation. The percent grade exemption was originally included to allow this type of development for sloping lots; however, the threshold of 5 percent appears to be too low. As proposed, at-grade space with enclosed space above would be calculated as gross floor area for sites with less than a 25 percent grade. Additionally, staff has observed conflicts with this section where small projecting spaces such as a second story bay window have been interpreted to require that the at-grade space below be counted as gross floor area. The proposed amendment would include an exemption for at-grade space with enclosed space above that projects 4 feet or less from the face of the building to allow for design and articulation of residential structures.

Phantom Floors (Residential Development)
Phantom floors are a way of measuring volume within a residential structure where there is no actual floor. The existing phantom floor regulations are unnecessarily complex. Currently, the phantom floor requirement varies based on the pitch of the roof and counts some floors at 15 foot increments and others at 7-foot, 6-inch increments. The proposed amendment would simplify the phantom floor regulations to calculate floors in the FAR calculation at 15 foot increments for all structures. Similarly, areas with a minimum of 5 feet of vertical distance between the floor and the roof immediately above would be included in the floor area ratio calculation, as opposed to the existing regulation which exempts areas with less than 5-foot, 6-inches of vertical distance from the associated floor area ratio calculation.

3. Setbacks and Property Lines for Lots that Abut an Alley

In spite of existing definitions and rules for calculation and measurement, the setback requirements for lots that abut alleys have been interpreted inconsistently. The first step in the determination of setbacks for a given lot is to establish the location of the front property line. The front property line separates a lot from the public right-of-way. On corner lots, the front property line lies along the narrowest street frontage. The rear property line is the property line most opposite to the front property line. The side property lines connect the front and rear property lines. While by definition, lots with a single public right-of-way frontage on an alley would have a front property line on that alley, the predominant development pattern along most alleys is consistent with a rear yard or interior side yard depending on the location.

Amendments are proposed to clarify that for lots that abut an alley (and no street), a front property line bordering an alley shall apply a setback equivalent to a rear yard in the underlying base zone, and a side yard abutting an alley shall apply an interior side yard setback in order to more consistently follow the established development pattern. The amendments would also revise the definition of "street yard" by replacing the current reference to "public-right-of-way" (which includes alleys) with the defined term "street" (which excludes alleys) to clarify that a street yard is not created along the alley.

4. Determining a Legal Lot

The existing regulations for determination of a legal lot have resulted in challenges due to unclear language, and confusion as to when a Certificate for Compliance is appropriate. The proposed changes would clarify how to determine a legal lot for consistency with the Subdivision Map Act and would clarify that a Certificate of Compliance may be requested in accordance with Section 125.0210 to certify that a lot is legal for development.

5. Measuring Lot Width

Lot width is measured along an imaginary straight line between the side property lines at the point midway between the front and rear property lines. For irregularly shaped lots, the lot width is determined by calculating the average lot width for the first 50 feet of lot depth. For consolidated lots, the lot width is equivalent to the total width of the premises after construction. The proposed amendment would clarify how lot width is measured by relocating the existing requirements for irregularly shaped and consolidated residential lots from Chapter 13 to Section 113.0243 where the rules for calculation and measurement of lot width are explained.

6. Established Setbacks

Setbacks are established within the Land Development Code in accordance with the underlying base zone. Existing Section 113.0249 states that, "setbacks established by the Land Development Code, may be modified by ordinance, approved final subdivision, record of survey, or division plat." For decades, established setbacks (different than the underlying zone) have been approved for communities throughout the City for a variety of purposes, some of which were specific to implementation of identified planning objectives, others of which were more generally applied to provide relief from the basic setback requirement (i.e. adjacent to cul-de-sacs or steep slopes). In other cases, setback lines were simply indicated on the subdivision maps for informational purposes to reflect the underlying zoning in effect at the time of subdivision approval with no formal modification to the setback of the underlying zone.

With the adoption of the LDC, new zones and development regulations were adopted for properties citywide. Since the Land Development Code became effective in 2000, there has been some confusion regarding which setbacks apply for properties in cases where a setback is indicated on the subdivision map that differs from the setback of the underlying base zone. The proposed amendment would clarify that the setbacks established under the Land Development Code would apply in those cases where setbacks were indicated on the associated subdivision maps or surveys solely for informational purposes. Where an ordinance or resolution was/is processed to specifically modify the setbacks of the underlying zone, established setbacks would continue to be applied and enforced.

7. Variable Setback Requirement

Variable setbacks apply to lots (with a lot width greater than 50 feet) in the Residential Estate (RE) and Residential Single Dwelling Unit (RS) zones. The purpose of the variable setback is to preserve separation between neighboring properties on wider lots that are larger than the minimum setback for lots with a standard lot width on one side at a minimum. Table 131-04D specifies the setbacks for standard 50 foot wide lots, and includes footnotes that direct the reader to special setback regulations that apply to lots with smaller or larger lot widths. The existing variable setback requirement (as referenced by footnote) has lead to inconsistent application of the requirement for residential zones. Amendments would replace the existing variable setback requirement for side yard setbacks with a fixed percentage of the lot width for all lots. As proposed, the side yard setback would be 8 percent of the lot width for an interior side yard setback and 10 percent of the lot width for a street yard side setback.

The amendment would make setbacks easier to apply and more predictable, especially for single dwelling unit residential lots greater than 50 feet in width. In accordance with existing regulations, new structures, or additions to previously conforming structures, would be permitted to observe the minimum required side setback dimension on one side of the lot so long as the combined dimensions of both side setbacks are equivalent to the combined total side setback requirement. The setbacks may be reapportioned, as long as each side setback maintains at least 4 feet from the side property line. Once a building has been constructed on a lot to the maximum combined setback total, all future additions must observe the setback lines established by the existing structure.

8. Measuring Setbacks

Setbacks represent the required distance inward from a property line at or behind which all structures shall be located. The setback line is the continuous line located at the setback that runs parallel to the closest property line. In determining whether a structure complies with the setback requirement, there has been confusion as to whether the measurement is taken from the property line to the building frame or to the edge of finished siding material. Amendments to Section 113.0252 would clarify that the setback measurement is taken to the edge of frame line. In addition, amendments to Section 113.0252 and 113.0276 would clarify that structures located completely underground are exempt from setback requirements, except where the structure would conflict with the required landscape and irrigation, or as otherwise regulated by Section 131.0461 (Architectural Encroachments and Projections in Residential Zones). For example, Section 131.0461 includes setback limitations on the encroachment of below grade mechanical equipment.

9. Measuring Structure Height

The proposed amendment would clarify the measurement of structure height. The measurement of height is proposed to be reorganized in order to clarify that calculation of height is a two part measurement that includes a plumb line measurement and an overall height measurement.

Structure height is measured separately for each structure that is separated from another structure on the premises by 6 feet or more (as measured in plan view). These general height regulations would be followed by subsections to address special circumstances such as extreme topography, underground structures (including subterranean garages and parking structures), pools, multiple structures, and the Proposition D coastal height limit. The explanation of how to calculate structure height for subterranean structures would be simplified and clarified as related to interior subterranean areas versus exterior subterranean areas. As clarified, the overall structure height measurement for subterranean structures is taken from an imaginary plane through the building that connects the grade on both sides of the structure, and does not include subterranean spaces exterior to the structure such as stairwells, light wells, or subterranean driveway access. Diagrams illustrating the measurement of structure height would be revised accordingly to reflect the proposed amendments. (See Attachment 9 for revised diagrams.)

In addition, the method for calculation of structure height subject to the coastal height limit overlay zone, which to date has been unpublished in the Land Development Code, would be incorporated directly into Section 113.0270 to reflect the applicable coastal height limit language in Proposition D (effective December 7, 1972 and subsequently amended).

10. Zone Applicability Tables

When the Land Development Code was adopted, tables were provided in each zoning section in Chapter 13 to assist readers with the conversion of old municipal code zone designations to the new LDC zone designations. Since that time, the official zoning map was adopted by resolution on February 28, 2006, and existing zoning data was made available electronically for public review on the City website. The proposed amendment would remove the old conversion tables from the LDC and transfer them to a separate public reference document available for zone history research. The proposed amendment would also incorporate language to reference the adoption of the official zoning map by resolution.

11. Setback Requirement in Agricultural Zones

Section 131.0343 allows for the minimum side setback to be reduced in agricultural zones where a lot has less than the minimum lot width. The proposed amendment would add a reference to Table 131-03C to clarify that the 20-foot setback requirement in agricultural zones may be reduced to the greatest of 10 percent or 5 feet for a side setback for such lots. The proposed amendment would also clarify that architectural projections and encroachments are permitted on lots that are one acre or less in Agricultural-Residential Zones (AR) zones in accordance with Section 131.0461, which specifies the permitted architectural projections and encroachments for residential lots. This change would typically apply to Agricultural-Residential subdivisions that created individual single dwelling unit lots one acre or less in size that more closely resemble a typical residential subdivision rather than the large, multi acre agricultural lots regulated by the same (Agricultural-Residential) zoning category.

12. Maximum Diagonal Plan Dimension

The maximum diagonal plan dimension currently applies to the (Residential-Single Unit) RS-1-7 and (Residential-Small Lot) RX zones. The requirement applies to lots with new development where the lot depth is three times the lot width and limits the diagonal dimension of the structure (as measured between the two most extreme points in plan view) to 150 percent of the lot width. The calculation is more complex where lots are irregular in shape. This section is rarely triggered by development projects, but when the section has been applied, there has been confusion regarding its application with no clear benefit or purpose of the regulation. The 6th Update proposes to delete the maximum diagonal plan dimension regulation. Development in the RS-1-7 and RX zones would continue to be regulated by the development standards of the underlying base zone (i.e. floor area ratio, setbacks, height, and zone specific design standards).

13. Angled Building Envelope Plane/Architectural Projections and Encroachments

The building envelope is a three dimensional space that is determined by the maximum structure height and setbacks for a premises as permitted by the underlying base zone. Most residential base zones establish an angled building plane requirement, which varies based on proposed structure height and the underlying base zone. The proposed amendments would simplify and clarify the angled building envelope plane requirements in Section 131.0444. As proposed, the maximum size of an encroaching dormer would be increased from 8 feet to10 feet maximum for consistency with standard dormer design width.

In addition, the amendments would clarify permitted architectural projections and encroachments into both the angled building envelope plane and the required setbacks in Section 131.0461. As clarified, mechanical equipment such as air conditioner units, gas meters, electrical fuse boxes or pool equipment and associated utility enclosures would be permitted to encroach into required side and rear yards where located a minimum of 4 feet from the property line. Below grade equipment would be permitted to encroach up to 2 feet 6 inches from the property line.

14. Accessory Buildings

Accessory buildings are structures that are incidental and subordinate to a primary structure or use located on the same premises that meet the definition of building under the California Building Code. Section 131.0448 specifies the regulations for accessory buildings. An accessory building may be attached or detached to the primary structure. Multiple accessory buildings are permitted on a premises, but the combined total of all accessory buildings is limited to 25 percent of the gross floor area allowed on the site.

The amendment would clarify that accessory buildings may not be used for living or sleeping purposes and that in all residential zones: plumbing and electrical is permitted in accessory buildings for lighting, washing machines, dryers, laundry, and water heaters; that one half bathroom is permitted; and that a shower is permitted if the property owner signs an agreement stating the building will not be used for living or sleeping purposes. The associated regulations

regarding encroachments into required yards would be modified and transferred to Section 131.0461, which specifies all yard encroachments permitted in residential zones. Encroaching accessory buildings are limited to lots that are less than 10,000 square feet and shall be one story with a maximum height of 15 feet. The proposed amendment would also clarify that structures containing separately regulated uses are not regulated by Section 131.0448. The applicable regulations for each separately regulated use are specified in Chapter 14, Article 1.

15. Planned Development Permits and Density Calculation

Section 143.0410 specifies the general development regulations for Planned Development Permits. A Planned Development Permit may not be used to deviate from the maximum density of the underlying base zone unless the residential component is part of a mixed use project that conforms to the density designated in an associated land use plan. This provision was previously incorporated into Section 143.0410(a)(3)(D) to allow for implementation of the density identified in the City's adopted land use plans. However, because Section 143.0410(b)(1) states: "The number of dwelling units or total gross floor area to be built on the premises shall not exceed that set forth by the applicable zone and the applicable land use plan...", there have been conflicting interpretations as to whether the density of the underlying base zone may be exceeded in cases where the land use plan specifies a higher density. The amendment would clarify that density shall not exceed that set forth by the applicable zone or the applicable land use plan except as permitted by Section 143.0410(a)(3)(D).

Permit Process

Amendments involving the following eight issues are proposed to improve the permit process and address inconsistencies in the existing regulations. Refer to Attachment 3 for the draft code sections in strikeout-underline format.

16. Automobile Service Stations

Automobile service stations are a separately regulated use that is regulated by Section 141.0801. The automobile service station use is classified within the "Vehicle and Vehicular Equipment Sales and Services Use Category" which includes uses that provide for the sale, rental, maintenance, or repair of new or used vehicles and equipment. Since 1971, automobile service stations have been required to obtain a Conditional Use Permit for all locations in the City regardless of the purpose and intent of the underlying base zone. The purpose of the use regulations for automobile service stations is to determine whether the proposed location is appropriate and to limit impacts to surrounding properties. As part of the adoption of the Land Development Code, the automobile service station use was modified to a "not permitted" status in Neighborhood-Commercial (CN) zones to address community concerns. Automobile service stations are generally consistent with the purpose and intent of the community commercial, regional commercial, and industrial zones, however, a Conditional Use Permit is currently required in all circumstances, which adds processing costs to the development of these facilities. The proposal is to lower the use permit requirement in zones with the least potential for impacts to surrounding properties, and to retain the CUP requirement in zones with the greatest potential

for impacts to surrounding properties or questions of consistency (Commercial-Office and Visitor Commercial zones). The Small Business Advisory Board initially requested this amendment to modify the permit process for automobile service stations, which was also a recommendation of the Zero-Based Management Review (ZBMR) conducted by Nonprofit Management Solutions in 2004 that addressed regulatory complexity in the City of San Diego.

The proposed amendment would change the permit requirement for automobile service stations to a Process Two Neighborhood Use Permit in Community-Commercial zones (CC) and the Commercial-Regional zone (CR-1-1) under specific conditions. The amendment would also modify the permit requirement to a Process One "limited use" in the Commercial-Regional zone (CR-2-1) and the industrial zones where residential uses are not permitted. As a "limited use", a proposed automobile service station would be permitted in the CR-2-1 and industrial zones where the proposal is demonstrated to comply with the separately regulated use regulations of Section 141.0801. The CUP requirement would be retained in the Commercial Office (CO) and Commercial Visitor (CV) zones as well as in the City's specialized Planned District Ordinance (PDO) zones.

The separately regulated use regulations and permit processes of Section 141.0502 for alcoholic beverage outlets would continue to apply to automobile service stations in all zones. Section 141.0801 allows for the accessory sale of groceries and sundries with an automobile service station, but any request to sell alcohol as an accessory use to an automobile service station would be subject to the regulations in Section 141.0502. This means that a facility would still be required to obtain a Conditional Use Permit to request offsite alcohol sales as an accessory use in accordance with Section 141.0502 where the location is within 600 feet of an area where the general crime rate is 20 percent of the city average; within 600 feet of a concentrated area of alcoholic beverage outlets; within 600 feet of a school, park, playground/recreational area, church with a CUP, hospital, or county welfare office; within a redevelopment area; or within 100 feet of residentially zoned property. The separation distance in these cases is typically measured from property line to property line unless a physical barrier prevents direct access.

The proposal to modify the permit process for automobile service stations prompted discussion at the Community Planners Committee meeting on April 22, as well as written correspondence from the Rancho Bernardo Community Planning Board. Community concerns are specifically related to the perception that automobile service stations are "intensive uses that cause a substantial impact on the surrounding area" and that as proposed in the CR-2-1 (Regional Commercial) zone, an automobile service station could be requested through Process One, which is not subject to public input or appealable to a higher decision maker. The following vehicle sales and service uses are already permitted through Process One in all CR zones: commercial vehicular repair and maintenance, commercial vehicle sales and rentals, personal vehicle repair and maintenance, personal vehicle sales and rentals, and vehicle equipment and supplies sales and rentals. Only "automobile service stations" and "outdoor storage and display of new, unregistered vehicles as a primary use" currently require a CUP to operate. As explained above, existing Section 141.0801 specifies the applicable requirements for automobile service stations to be sited in an appropriate location and limit impacts to surrounding properties. The proposal is

to modify the permit process, but the existing criteria applicable to the automobile service station use would remain the same.

In consideration of the Rancho Bernardo Community Planning Board's comments, the Planning Commission may consider whether the proposal should be revised to require a Process Two Neighborhood Use Permit in all CC (Community Commercial) and CR (Regional Commercial) zones, instead of allowing automobile service stations in the CR-2-1 zone (which does not allow residential uses) through a Process One Construction Permit as currently proposed.

17. Transitional Housing

Transitional housing is housing offered for a specified period of time with counseling services, and other support services to prepare families and individuals for independent living as regulated by Section 141.0313. Transitional housing facilities do not include homeless facilities such as congregate meal facilities, emergency shelters, or homeless day centers (regulated by Section 141.0412). Existing Section 126.0303 (which identifies the permit process for all uses that require Conditional Use Permits) includes two incorrect references to the processing requirements for this type of use. The proposed amendment would clarify that transitional housing requires a Process Five decision for transitional housing facilities with seven or more persons for consistency with existing Section 141.0313. As stated within existing Section 141.0313, a Planning Commission recommendation is not required prior to City Council consideration for transitional housing facilities. Transitional housing for six or fewer persons is exempt from the Conditional Use Permit requirements in accordance with state law.

18. Reasonable Accommodations

The Federal Fair Housing Act and the California Fair Employment and Housing Act require that jurisdictions make reasonable accommodations to afford disabled persons the equal opportunity to use and enjoy a dwelling. In accordance with the State Attorney General's request, the City adopted reasonable accommodations regulations as part of the 4th Update to the Land Development Code. During their review of the City's Housing Element, the State's Department of Housing and Community Development (HCD) requested that the City delete the discretionary Neighborhood Development Permit process, as well as the existing limitations as to what specific types of reasonable accommodations may be requested for consistency with state law. The City Attorney agreed and advised that these changes be made to help maintain confidentiality of the disability and eliminate appeal loops to Planning Commission where the Planning Commission would not have any authority to exercise discretion in their action. The proposed amendment would eliminate the Process Two Neighborhood Development Permit requirements and limitations as to the specific type of reasonable accommodation requests.

The modification would allow all requests for reasonable accommodations to be processed through Process One subject to the criteria in Section 131.0466. Requests for reasonable accommodations may be granted where the applicant demonstrates that 1) the development will be used by a disabled person, 2) that the deviation request is necessary to make specific housing

available to a disabled person and complies with all applicable development regulations to the maximum extent feasible, 3) that the deviation request will not impose an undue financial or administrative burden on the City, 4) that the deviation request will not create a fundamental alteration in the implementation of the City's zoning regulations, and 5) that for coastal development in the coastal zone (that is otherwise subject to a Coastal Development Permit) there is no feasible alternative that provides greater consistency with the certified Local Coastal Program. Some concern was expressed at the April 22 Community Planners Committee meeting that the reasonable accommodations code provision may be abused by applicants; however, since the regulations were adopted and certified in 2005, only two permits have been granted for reasonable accommodations, both of which were Process One applications that met the criteria in Section 131.0466 consistent with the proposed amendment.

19. Sustainable Building Projects

Sustainable building projects are projects that are designed to reduce impacts associated with fossil fuel energy use by using alternative energy resources. On May 20, 2003, the City Council adopted the Sustainable Buildings Expedite Program and recommended that this program be added to the Affordable In-Fill Housing Program. The 5th Update to the Land Development Code amended Sections 126.0504, 143.0910, and 143.0915 under ordinance (O-19466) which became effective outside of the Coastal Overlay Zone in March 2006. Ordinance O-19466 is still pending Coastal Commission certification and is therefore not effective in the coastal zone at this time. The proposed amendment to Section 126.0502 would specify that a Site Development Permit is required for deviation requests in accordance with the existing program identified in Section 143.0920, which was inadvertently left out of the initial ordinance. The sustainable buildings expedite program will be an important implementation tool for the City's newly adopted General Plan policies regarding sustainable development. Additional code changes will be initiated as part of a separate project to implement the new General Plan policies regarding sustainable development.

20. Affordable Housing Density Bonus

The City Council adopted the Density Bonus ordinance on November 6, 2007, to implement the requirements of State Density Bonus Law (Government Code Section 65915). In accordance with state law, the City must grant up to three incentives to qualifying affordable housing projects that request incentives. The number of incentives a project is eligible for through the ministerial process depends upon the percentage of affordable units provided and the level of affordability. Any request to further deviate from the existing development regulations requires discretionary review through the Site Development Permit process. The proposed amendment would clarify that a Process Four Site Development Permit is only required for a density bonus project where the requested deviation would exceed the allowable incentives as specified under the density bonus regulations.

21. Employee Housing

Employee housing is housing that is provided to agricultural workers and includes employee community housing such as farm labor camps. This type of housing is regulated by the California Health and Safety Code (Employee Housing Act). The California Department of Housing and Community Development is in charge of monitoring this type of use by issuing permits to operate employee housing and conducting associated field inspections. The proposed amendment would clarify that employee housing does not apply to persons engaged in household domestic service. This has been a common misinterpretation since employee housing is currently permitted as a limited use in the single dwelling unit residential zones. The amendment would clarify that employee housing is a state regulated use applicable to agricultural workers in accordance with state law. The existing zoning use tables would be revised to limit employee housing to Agricultural base zones by removing this as a permitted use in the residential and open space zones.

22. Guest Quarters

Guest quarters are attached or detached accessory living quarters without direct access to the primary dwelling unit. They are solely for the use of the occupants of the primary dwelling unit or their guests or employees. Guest quarters do not provide independent living facilities and may not be rented or sold separately from the primary dwelling unit. No more than one guest quarters is permitted on a premises. Guest quarters currently require a Process Two Neighborhood Use Permit. This permit process is more extensive than existing processing requirements for independent living units, which may be rented separately (i.e. companion units).

Based upon the information described above, it would be more logical and consistent to process guest quarters as a "limited use" similar to the existing process for companion units. The proposed amendment would designate guest quarters as a "limited use" subject to the requirements listed in Section 141.0306. Development or use of a guest quarters inconsistent with Section 141.0306 is subject to enforcement penalties in accordance with existing code provisions.

23. Eating and Drinking Establishments Abutting Residentially Zoned Property

Drive-in and drive-through restaurants, live entertainment, and the sale of intoxicating beverages other than beer and wine are not permitted in the CN Zone. However, the limited use section of the separately regulated uses for drinking & eating establishments abutting residentially zoned property did not carry over the same CN zone restriction so there has been some confusion as to whether this restriction applies to establishments abutting residentially zoned property. The proposed amendment would clarify in Section 141.0607 that the same restriction applies.

<u>Landscape</u>

Amendments involving the following four issues are proposed to clarify the type of projects requiring landscape review, plant material requirements, and to address inconsistencies that

conflict with other requirements such as the remaining yard requirement for multi dwelling unit development and street tree requirements. Refer to Attachment 4 for the draft code sections in strikeout-underline format.

24. Landscape Regulations Applicability Table

Section 142.0402 specifies when the landscape regulations apply. Currently landscape review is required for new structures and additions greater than 1,000 square feet in all multi dwelling unit residential (RM) and commercial zones, and for new structures and additions greater than 5,000 square feet in industrial zones. Single dwelling unit residential (RS) zones are exempt from landscape review (except where otherwise required for brush management and sensitive habitat). However, single dwelling units located in RM zones are currently required to submit for landscape review, which has added unnecessary time and costs to this type of low density development. Initially, the proposal was to reduce the threshold for landscape review of both single dwelling unit and duplex development; however, the item was revised in consideration of concerns raised at the Community Planners Committee. The proposed amendment would remove the requirement for landscape review of single dwelling units in RM zones, but would continue to require landscape review for duplex (two-unit) developments. Additional minor modifications are proposed to Table 142-04A to clarify applicability of the landscape regulations based on the proposed type of development as classified by Section 131.0112 "General Rules for Base Zones".

25. Plant Material Requirements

All planting, irrigation, brush management, and landscape related improvements are required to comply with the landscape requirements in Section 142.0403. In accordance with the landscape requirements, specified types of development are assigned a required number of plant points per square foot of yard area. Table 142-04B identifies the equivalencies for plant points based on plant type and size. The proposed amendment would delete the requirement for a 30-inch box size (30.0 plant points) since it is not a standard size available in plant nurseries. The proposed amendment would also clarify that structural soil may be used as an alternative to providing the 40 square foot root zone for tree root barriers. As proposed, tree root barriers or structural soil would be required for all trees planted within 5 feet of public improvements to provide for healthy tree growth and to minimize potential damage to adjacent improvements.

26. Remaining Yard Requirement for Multi Dwelling Unit Residential Development

Existing Section 142.0404 specifies the street yard and remaining yard landscape requirements. The street yard is that area of the lot or premises that lies between the edge of the nearest public right-of-way and the street wall line. Currently for multi dwelling unit development, 50 percent of the street yard shall be planted at .05 plant points per square feet of street yard area. Additional requirements apply to the remaining yard, which is the portion of the lot surrounding the structural envelope that is not within the street yard. The proposed amendment would provide flexibility for project design of residential infill development by modifying the existing "remaining yard" requirement for multi dwelling unit developments.

Trees are required to be located a minimum of 6 feet from each building, with a minimum of 40 square feet of planting area for each tree, to allow for healthy tree growth and to protect against damage to adjacent improvements. This can make it difficult to meet the existing remaining yard requirement for proposed infill residential developments on narrow lots. Instead of requiring that one 24-inch box tree be planted on each side and in the rear area of each structure, the proposal would require that a minimum of 60 plant points be provided for each residential building on a lot. The required minimum 60 plant points would be made up of a combination of at least 30 points worth of trees and the remainder in shrubs.

For residential developments with one building on a lot, the landscape would be required to be located at the sides of the building. The location of required plantings within the remaining yard would no longer be specified for developments with multiple buildings. The proposed amendment would also clarify the regulation applicability for multi dwelling unit and commercial development based on the type of development proposed (instead of based on the zone). Regulations for industrial development would continue to be regulated based on location in a commercial zone versus an industrial zone.

27. Street Tree Requirements

Section 142.0409 specifies the street tree requirements with respect to quantity, location, and species selection. The proposed amendment would limit where palms may be used to satisfy the street tree requirement. Staff received a comment in opposition to the proposed restriction of palms; however, palms do not meet the intended purpose for the street tree requirement with respect to shade and pedestrian scale. As proposed, palms would only be considered as an acceptable street tree species where identified in an adopted land use plan. For example, the Pacific Beach Community Plan, La Jolla Community Plan, Otay Mesa-Nestor Community Plan, and several precise plans currently identify palms as an acceptable street tree species. It should be noted that future community plan updates will include street tree plans, and palms are not precluded from inclusion in those plans as an acceptable street tree species.

With respect to the location of street trees, minimum tree separation distances are specified in Table 142-04E to prevent damage or conflict between street trees and public improvements. The existing minimum tree separation distance requirement for underground utility lines is 5 feet. While this tree separation standard has been effective for other underground utilities, the requirement has been problematic with respect to sewer lines. Tree roots are attracted to sewer lines due to the nutrients, which can lead to degradation of the pipes and potential sewer spills. In consideration of this potential conflict, the City's Sewer Design Manual requires a 10-foot separation distance. The proposed amendment to Table 142-04E would increase the required distance between sewer lines and street trees to 10 feet for consistency with the City's Sewer Design Manual.

Parking

Amendments involving the following four issues would clarify existing parking requirements, and incorporate new requirements to accommodate mechanical automobile lifts and to account

for the driveway design for non-residential uses on narrow lots. Refer to Attachment 5 for the draft code sections in strikeout-underline format.

28. Basic Parking Requirement

Parking is regulated by Land Development Code Chapter 14, Article 2, Division 5. The basic parking requirement applies to development that does not qualify for a reduced parking requirement (i.e. transit parking, or very low income parking ratio) or require an increased parking requirement (i.e. parking impact area ratio). The basic parking requirement also applies in cases where development qualifies for the transit/very low income ratio (reduced) and the parking impact ratio (increased), since the two cancel each other out. The existing Footnote to Table 142-05C has been misinterpreted as it is currently written. The proposed amendment would clarify that the basic parking requirement is applied in cases where a site qualifies for both a parking reduction and a parking increase.

Staff received comments from the Pacific Beach Planning Group expressing interest in amending this requirement for the coastal zone to incorporate parking requirement increases. Other stakeholders have expressed interest in expanding on parking reductions in the existing parking regulations. Any substantive parking amendments to increase, decrease, or even tailor parking requirements by project and location will be subject to the conclusions of an associated parking study. The amendment included in the 6th Update is only intended to clarify the existing parking requirement.

29. Parking for Condominium Conversions

In January and June 2007, the Council passed ordinances to regulate the conversion of existing rental dwelling units to condominium units via subdivision maps and map waivers. Parking was one issue addressed in the new ordinances; however, there has been some confusion as to the applicability with respect to existing parking. The proposed amendment would clarify under Section 142.0525, Table 142-05C, Footnote #8 that if the number of parking spaces required of the development project when it was built exceeds the required number of spaces required in the Table, then the number of spaces originally required must be retained.

30. Mechanical Automobile Lifts

Mechanical automobile lifts may be incorporated into developments to meet required parking in any area where tandem parking is allowed as identified in Section 142.0555. The proposed amendment would clarify that mechanical lifts are permitted for the vertical storage of automobiles in areas where tandem parking is already permitted and that mechanical automobile lifts may also be considered where lift design can order a specific car on demand. The proposed amendment would require that mechanical lifts be fully enclosed in a structure.

31. Driveway Width for Non-Residential Uses on Narrow Lots

Section 142.0560(j) regulates driveway width and access. Previously, the 5th Update amendment project created two tables to regulate driveway size based on width of the lot in addition to land use and location of the site inside or outside of the beach impact area of the Parking Impact Overlay Zone. However, no change was included for nonresidential driveway widths. The proposed regulations for non residential driveway widths would take into account the design constraints of a narrow lot. As proposed, the minimum driveway width or non residential uses on lots less than 50 feet in width would be reduced for two-way driveways from 24 feet to 20 feet. In addition, the minimum driveway width for non residential uses on lots less than 50 feet in width located in beach impact areas would be reduced from 25 feet to 20 feet in width.

Signs

Amendments involving the following two issues are proposed to remove inconsistencies between the Land Development Code and other Chapters of the Municipal Code and clarify the regulations for community entry signs and neighborhood identification signs. Refer to Attachment 6 for the draft code sections in strikeout-underline format.

32. Repeal of Chapter 9, Article 5, Division 1 Sign Regulations

Chapter 9, Article 5, Division 1 of the Municipal Code was to have been repealed with the adoption of the LDC. However, at the time of LDC adoption, the new sign regulations were transferred into the LDC, but the old regulations were unintentionally left in Chapter 9. The proposed amendment would repeal Chapter 9, Article 5, Division 1. Signs would continue to be regulated by Chapter 14, Article 2, Division 12. A conversion table was prepared to demonstrate where the regulations in Chapter 9, Article 5, Division 1 are otherwise addressed by existing LDC enforcement sections in Chapter 12 and sign regulations in Chapter 14. (See Attachment 10 for conversion table.)

33. Community Entry Signs and Neighborhood Identification Signs

Currently the regulation of community entry signs and neighborhood identification signs is addressed in Chapter 14 of the Land Development Code, the "Community Identification Signs Guidelines" (1974), and Council Policy 200-10. The outdated Sign Guidelines and Council Policy are in conflict with the sign regulations, and thus have allowed for varying interpretations of the applicable sign requirements. The proposed amendment would clarify the process and regulations for community entry signs under new Section 141.1101 and neighborhood identification signs under new Section 141.1102. The proposed amendment would also repeal the Guidelines approved via Resolution R-211549 on September 12, 1974, and repeal Council Policy 200-10.

Neighborhood identification signs are signs that are typically located on private property at the entrances of subdivisions or neighborhoods that serve a private purpose or interest. As proposed, the applicable size and design limitations have been transferred from the Sign Guidelines,

Council Policy, and Chapter 14 regulations including the existing requirement for a Process Two Neighborhood Development Permit.

Community entry signs are located in the public right-of-way and identify community area limits. They are typically requested by an official community group, town council or association via the associated City Council office. The previous limitation on sign area (4 feet in height by 8 feet in length) is inconsistent with the types of community entry signs that are requested and developed. For example, existing signs that span the public right-of-way in Hillcrest and Little Italy would not meet the size limitation of the existing Sign Guidelines, Council Policy, or sign regulations. The specific size limitations have therefore been revised to allow flexibility for the types of community entry signs being requested by local communities. As proposed, applicants would be required to demonstrate to the satisfaction of the City Engineer that the sign will not impede sight distance for drivers or pedestrians. Community entry signs are subject to Process One review and recordation of an Encroachment, Maintenance, and Removal Agreement.

Compliance with State Law

Amendments involving the following three issues would bring the City's regulations into conformance with State law as related to heliport licenses, the definition of family child care homes, and compliance with the Solid Waste Reuse and Recycling Act. Refer to Attachment 7 for the draft code sections in strikeout-underline format.

34. Helicopter Landing Facilities

Helicopter landing facilities require a Conditional Use Permit in accordance with Section 141.0610. Municipal Code Section 68.0205 also requires a City issued license for heliports. According to CALTRANS-Division of Aeronautics and the City Attorney, the City does not have permit issuing authority for heliport licenses. The proposed amendment would delete existing Section 68.0205, which requires that a license be obtained prior to maintenance or operation of a heliport or helistop. Conditional Use Permits would continue to be required by the City for helicopter landing facilities in accordance with Section 141.0610; however, an additional license would no longer be required as a condition of approval of the associated Conditional Use Permit.

35. Family Child Care Homes

Family child care homes are licensed child care facilities by the State of California. In the existing Land Development Code, family day care homes are classified as a separately regulated use and are described under the "Child Care Facility" use category. The proposed amendment would address a change in State law regarding the definition of family child care homes, which includes a change in terminology from "day care" to "child care". Under the existing LDC regulations, family day care homes may provide care for up to 6 children in a small child care home and for 7-12 children in a large day care home. State law now allows small child care homes to care for up to 8 children without an additional adult attendant, and for large family child care homes to care for up to 14 children, under specified conditions. The Chapter 13 Use Regulations Tables and Section 141.0606 would be modified accordingly.

36. Refuse/Recycling Storage

The City is required to comply with the California Solid Waste Reuse and Recycling Act. The proposed amendment to Chapter 14, Article 2, Division 8 would clarify that the refuse and recycling materials storage requirements apply to the following types of development: 1) new residential development projects involving two or more dwelling units, 2) new nonresidential development, and 3) additions to existing multiple dwelling unit residential, commercial, or industrial development where the gross floor area would be increased by 30 percent or more.

Minor Corrections

Amendments related to the following 15 issues would fix errors in the code such as incorrect terms (Issues #37-39), formatting errors (Issue #40), typographical errors (Issues #41-45), and minor Planned District Ordinance corrections (Issues #46-51 explained below). See Attachment 8 for the draft minor corrections code language in strikeout-underline format.

46. Central Urbanized PDO- Table 155-02C (Outpatient Medical Clinics)

The proposed amendment would replace the outpatient medical clinic use category with urgent care facilities in all use tables for consistency with the Land Development Code. The Central Urbanized PDO use table should have been amended along with the previous 5th Update project which made this change to better differentiate between medical offices, urgent care facilities, and hospitals. Outpatient medical clinics that function similar to a medical office were not intended to be regulated differently. Instead, the urgent care facilities use category regulates medical clinics that operate after standard business hours in an urgent care type of setting, but not at the emergency level of a hospital with ambulance service and overnight patient stay.

47. Central Urbanized PDO- Table 155-02D

The proposed amendment would correct a typographical error in the reference to Section 131.0552.

48-49. Mid City PDO- Tables 1512-03M, 03S

Ordinance O-17307 dated May 30, 1989 indicates the format and content of the Tables as originally approved by the City Council. When the PDO was later amended minor errors were unintentionally included in Chapter 10 and transferred into the newly reformatted Chapter 15 PDO. The proposed amendment would correct incorrect terms, typographical errors, and format errors to reflect the Council adopted ordinance and clarify existing regulations.

50. Southeastern PDO Special Character Multi Family Neighborhood Criteria

The proposed amendment would clarify that the development regulations for properties located in designated special character multi family neighborhoods are applied in accordance with the

SF-5000 zone standards in accordance with Ordinance (O-16921) and with the special regulations in Section 1519.0303(i).

51. Southeastern PDO Multi Dwelling Unit Parking Requirement

The proposed amendment would correct a formatting error to clarify that the PDO parking design requirements related to uncovered parking and carport parking apply to lots containing four or more dwelling units. When the PDO was reformatted to Chapter 15 during the Phase I PDO reformat project, a formatting error unintentionally changed the way Section 1519.0403 was being interpreted.

Conclusion:

Development Services recommends approval of the proposed 6th Update to the Land Development Code and Local Coastal Program Amendment including each of the 51 issues identified in the Measurement, Permit Process, Landscape, Parking, Signs, Compliance with State Law, and Minor Corrections categories. The proposed code amendments are consistent with the original goals of the Land Development Code including predictability, consistency, objectivity, and adaptability.

Respectfully submitted,

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BROUGHTON/AJL

Attachments:
1. Issue Matrix
2. Draft Code Language: Measurement
3. Draft Code Language: Permit Process
4. Draft Code Language: Landscape
5. Draft Code Language: Parking
6. Draft Code Language: Signs
7. Draft Code Language: Compliance with State Law
8. Draft Code Language: Minor Corrections
9. Draft Diagrams
10. Conversion Table for Issue #32 Sign Regulations