

**CALIFORNIA COASTAL COMMISSION**

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March 21, 2019

**Th21a****TO: COMMISSIONERS AND INTERESTED PERSONS****FROM: KARL SCHWING, DEPUTY DIRECTOR, SAN DIEGO COAST DISTRICT  
DEBORAH LEE, DISTRICT MANAGER, SAN DIEGO COAST DISTRICT  
STEPHANIE LEACH, COASTAL PLANNER, SAN DIEGO COAST  
DISTRICT****SUBJECT: STAFF RECOMMENDATION ON CITY OF DEL MAR LOCAL COASTAL  
PROGRAM AMENDMENT NO. LCP-6-DMR-18-0097-3 for Commission Meeting  
of April 10 - 11, 2019**

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**SYNOPSIS**

The subject Local Coastal Program (LCP) Land Use Plan and Implementation Plan amendment was submitted and subsequently filed as complete on December 21, 2018. Pursuant to Section 30512 of the Coastal Act, the Commission must act on combined LUP/IP amendments within 90 working days of filing. However, a one-year time extension for this item was granted on February 7, 2019. Therefore, the Commission must take action on this LCP amendment by March 21, 2020.

**SUMMARY OF AMENDMENT REQUEST**

The subject submittal consists of changes to both the certified Land Use Plan (LUP) and the Implementation Plan (IP) for the City of Del Mar. The City proposes to amend its LCP to remove language defining and implementing Del Mar Municipal Code (DMMC) Chapter 30.54, also known as the Downtown Initiative Overlay Zone Ordinance, or "Measure B." The Ordinance was adopted by a vote of the people on April 8, 1986 and was later included in the LUP under Policy II-4, a description of the Village Center District, and a referenced Appendix. The original LUP was approved on March 18, 1993 by the Coastal Commission. The Downtown Initiative required that a Specific Plan be developed and a public vote be taken for approval of any development or redevelopment within the Central Commercial Zone ([Exhibit 1](#)) on a parcel or adjacent parcels under the ownership or control of the same applicant where the parcel or parcels taken together contain at least 25,000 square feet or where such project would involve 11,500 square feet or more of floor area. A 2017 court case (*The Park at Cross Creek LLC v. City of Malibu*) prompted a review of the requirements of the Downtown Initiative Overlay Zone and its implementing code by both the Del Mar City Attorney as well as outside counsel, who ultimately decided that Measure B is unenforceable. On December 17, 2018, the Del Mar City Council passed, approved, and adopted Ordinance No. 945 for the repeal of

Measure B and Chapter 30.54 of the Del Mar Municipal Code, as well as the amending of the Local Coastal Program to delete references and provisions of the overlay zone.

With the repeal of this Initiative and related references in the certified LUP, the standards in the IP will be revised to reflect the changes made in the LUP, including removal of Chapter 30.54 in the municipal code.

The City's adopted Ordinance No. 945 is presented as [Exhibit 2](#). A strike-out/underline version of the proposed LUP language is presented as [Exhibit 3](#). A strike-out of the zoning ordinance, DMMC Chapter 30.54, is presented as [Exhibit 4](#).

### **SUMMARY OF STAFF RECOMMENDATION**

Staff is recommending that the Commission approve LCP Amendment No. LCP-6-DMR-18-0097-3 as submitted by the City. The proposed amendment would remove all references to the Downtown Initiative Overlay Zone, or Measure B, as well as Chapter 30.54 of the Del Mar Municipal Code, from both the LUP and IP. Although the City has independently determined that the Initiative may not be legally enforceable and therefore proposed these revisions to the certified LCP land use and implementation plans, there are other LUP and IP provisions that remain to guide development and protect coastal resources within the City's downtown core. Therefore, this amendment will have not have a significant effect on coastal resources or result in physical changes to the coastal zone. As such, the proposed amendment can be found consistent with the Chapter 3 policies of the Coastal Act and the City's certified LUP and can be approved as submitted.

The appropriate resolutions and motions begin on Page 5. The findings for approval of the Land Use Plan Amendment as submitted begins on Page 6. The findings for approval of the Implementation Plan Amendment as submitted begin on Page 9.

### **ADDITIONAL INFORMATION**

Further information on the City of Del Mar LCP Amendment No. LCP-6-DMR-18-0097-3 (Downtown Initiative Overlay Zone Repeal) may be obtained from [Stephanie Leach](#), Coastal Planner, at (619) 767-2370.

### **EXHIBITS**

- [Exhibit 1](#) – City of Del Mar Zoning Maps
  - [Exhibit 2](#) – Ordinance No. 945
  - [Exhibit 3](#) – Strike-out/Underline Amended LUP Language
  - [Exhibit 4](#) – Strike-out DMMC Chapter 30.54
  - [Exhibit 5](#) – City of Del Mar Legal Analysis
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## **PART 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. This time, 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 certified LCP was first amended (LCPA No. 1-2000) in 2002 to incorporate the City's Multiple Species Conservation Program Subarea Plan. A second LCP amendment (DMR-MAJ-1-08), referenced as Garden del Mar, was approved with suggested modifications in March 2009 for the redesignation and rezoning of the property at the southeast corner of Camino del Mar and 10<sup>th</sup> Street. A third amendment (DMR-MAJ-1-09) was approved with suggested modifications in March 2010 to revise parking regulations to support revitalization of the City's downtown business district. A fourth amendment (DMR-MAJ-1-11) involved deleting a phrase regarding the processing for authorization of reductions in wetland setbacks so as to delete automatic deferral to California Department of Fish and Wildlife. A fifth amendment (LCP-6-DMR-16-0073-1) was approved with suggested modifications in May 2017 to add and update various sections related to off-street parking to more efficiently utilize existing spaces in commercial zones, change in-lieu fee parking program requirements, and incentivize alternative transportation options. A sixth amendment (LCP-6-DMR-17-0011-1) was approved with a suggested modification in September 2017 to add a new section to establish a process for approval of temporary uses on private property. In February 2018, the Commission approved a seventh amendment (LCP-6-DMR-17-0062-2) to revise the City's regulations for Accessory Dwelling Units and Junior Accessory Dwelling Units to be consistent with state law. The City of Del Mar requested a time extension on November 7, 2018 to consider Commission modifications to LCP Amendment No. LCP-6-DMR-17-0083-3 (Short-term Rentals), which sought to modify the City's Implementation Plan to add language defining and regulating short-term vacation rentals, homesharing, and similar short-term visitor accommodations in legal dwelling units for less than 30 consecutive days. The one year extension was adopted by the Commission at its December 2018 meeting. Most recently at the February 2019 hearing, a one year time extension was requested by Commission staff for the review of amendments LCP-6-DMR-18-0082-1 (Sea Level Rise Planning), which includes updated policies and implementation measures to reflect recent vulnerability and hazard assessments regarding sea level rise, and LCP-6-DMR-18-0096-2 (941 Camino Del Mar Specific Plan), which includes the repeal and replacement of the Garden Del Mar Specific Plan with the 941

Camino Del Mar Specific Plan standards and guidelines, for the development of two adjacent lots at 941 Camino Del Mar and 307 10<sup>th</sup> Street.

### **B. STANDARD OF REVIEW**

The standard of review for land use plans, or their amendments, is found in Section 30512 of the Coastal Act. This section requires the Commission to certify an LUP or LUP amendment if it finds that it meets the requirements of Chapter 3 of the Coastal Act.

Specifically, Section 30512 states, in relevant part:

*(c) The Commission shall certify a land use plan, or any amendments thereto, if it finds that a land use plan meets the requirements of, and is in conformity with, the policies of Chapter 3 (commencing with Section 30200).*

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.

In those cases when a local government approves implementing ordinances in association with a land use plan amendment and both are submitted to the Commission for certification as part of one LCP amendment, pursuant to Section 13542(c) of the Commission's regulations, the standard of review of the implementing actions shall be the land use plan most recently certified by the Commission.

### **C. PUBLIC PARTICIPATION**

Section 30503 of the Coastal Act requires local governments to provide the public with maximum opportunities to participate in the development of the LCP amendment prior to its submittal to the Commission for review. 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.

**PART II. LOCAL COASTAL PROGRAM SUBMITTAL - 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.

- I. MOTION:** *I move that the Commission certify Land Use Plan Amendment No. LCP-6-DMR-18-0097-3 for the City of Del Mar certified LCP as submitted.*

**STAFF RECOMMENDATION TO CERTIFY:**

Staff recommends a **YES** vote. Passage of this motion will result in certification of the land use plan amendment as submitted and adoption of the following resolution and findings. The motion to certify as submitted passes only upon an affirmative vote of a majority of the appointed Commissioners.

**RESOLUTION TO CERTIFY LAND USE PLAN AMENDMENT AS SUBMITTED:**

The Commission hereby certifies the Land Use Plan Amendment for the City of Del Mar certified LCP as submitted and finds for the reasons discussed below that the submitted Land Use Plan Amendment will meet the requirements of and conform to the policies of Chapter 3 of the Coastal Act. Certification of the land use plan 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 plan 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 that will result from certification of the land use plan.

- II. MOTION II:** *I move that the Commission reject the Implementation Plan Amendment No. LCP-6-DMR-18-0097-3 for the City of Del Mar certified LCP as submitted.*

**STAFF RECOMMENDATION OF CERTIFICATION AS SUBMITTED:**

Staff recommends a **NO** vote. Failure of this motion will result in certification of the Implementation Plan Amendment as submitted 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 IMPLEMENTATION PLAN AS SUBMITTED:**

The Commission hereby certifies the Implementation Plan Amendment for the City of Del Mar certified LCP as submitted and adopts the findings set forth below on grounds

that the Implementation Plan Amendment conforms with, and is adequate to carry out, the provisions of the certified Land Use Plan and certification of the Implementation Plan will meet the requirements of 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 Plan Amendment on the environment, or 2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts on the environment that will result from certification of the Implementation Plan Amendment.

### **PART III. FINDINGS FOR APPROVAL OF THE CITY OF DEL MAR LAND USE PLAN AMENDMENT, AS SUBMITTED**

#### **A. AMENDMENT DESCRIPTION**

The proposed amendment would allow for the deletion of all references to the Downtown Overlay Zone Ordinance within the LUP and its appendices. On April 8, 1986, the people of Del Mar voted for approval of the Downtown Initiative, also known as “Measure B.” The Downtown Initiative required that a Specific Plan be developed and a public vote be taken for approval of any development or redevelopment within the Central Commercial Zone on a parcel or adjacent parcels under the ownership or control of the same applicant where the parcel or parcels taken together contain at least 25,000 square feet or where such project would involve 11,500 square feet or more of floor area. The Downtown Initiative was subsequently adopted by the Del Mar City Council and amended by Resolution No. 87-114 on November 16, 1987, and was included in the Del Mar Municipal Code and Associated Implementing Guidelines under Chapter 30.54. On March 18, 1993, the Coastal Commission certified the Local Coastal Program Land Use Plan, which contains references to the Downtown Overlay Zone under LUP Policy II-4, a description of the Village Center District, and a referenced appendix, Appendix E.

A 2017 court case (*The Park at Cross Creek LLC v. City of Malibu*, 12 Cal.App.5th 1196), whereby a nearly identical ordinance to Measure B was deemed unconstitutional, prompted a review of the requirements of the Downtown Initiative by the Del Mar City Attorney as well as outside counsel, who ultimately decided that Measure B is unenforceable ([Exhibit 5](#)). On June 2, 2018, the City Council determined there was no possibility that repeal of the Downtown Initiative Overlay may have a significant effect on the environment and the repeal of the land use regulation will not, in itself, result in physical changes to the environment. Finally, on December 17, 2018, the Del Mar City Council passed, approved, and adopted Ordinance No. 945 for the repeal of Measure B and DMMC Chapter 30.54, as well as the amending of the LUP ([Exhibit 2](#)).

#### **B. LEGISLATIVE GOALS OF THE COASTAL ACT**

Pursuant to Section 30512.2(b) of the Coastal Act, the Commission may find a land use plan is in conformance with the policies and requirements of Chapter 3 of the Coastal Act

only to the extent necessary to achieve the basic state goals specified in Section 30001.5 of the Coastal Act. Section 30001.5 states:

The Legislature further finds and declares that the basic goals of the state for the coastal zone are to:

- a) Protect, maintain and, where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and manmade resources.
- b) Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state.
- c) Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resource conservation principles and constitutionally protected rights of private property owners.
- d) Assure priority for coastal-dependent and coastal-related development over other development on the coast.
- e) Encourage state and local initiatives and cooperation in preparing procedures to implement coordinated planning and development for mutually beneficial uses, including educational uses, in the coastal zone.

For the specific reasons detailed below, the Commission finds that the land use plan amendment submitted as LCP-6-DMR-18-0097-3 conforms with Chapter 3 of the Coastal Act to the extent necessary to achieve the goals of the state for the coastal zone.

**C. CONFORMITY OF THE CITY OF DEL MAR LAND USE PLAN AMENDMENT WITH CHAPTER 3**

The standard of review for land use plans, and their amendments, is found in Section 30512 of the Coastal Act. This section requires the Commission to certify an LUP or LUP amendment if it finds that it meets the requirements of and conforms to Chapter 3 of the Coastal Act.

Relevant Coastal Act policies include the following:

Section 30250 states, in relevant part:

- (a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources...*

Section 30252 states, in relevant part:

*The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads...*

The proposed changes to the LUP are consistent with Coastal Act requirements related to new development. Chapter 3 of the Coastal Act requires that new development be sited in previously developed areas with adequate public services and transit in order to minimize impacts to coastal resources, including public access.

The City's original intent with its adoption of the Downtown Initiative Overlay Zone was to protect the small town qualities of Del Mar, including scenic views and open space, as well as to mitigate traffic impacts and establish "an appropriate level of residential serving businesses." The subject amendment would repeal this Ordinance due to a recent 2017 court case (*The Park at Cross Creek LLC vs. City of Malibu*, 12 Cal.App.5th 1196), which ruled that an essentially identical ordinance in the City of Malibu was unconstitutional. After a legal review by the City Attorney as well as outside counsel, the City has deemed that the ordinance is likely unenforceable and the City submitted the subject LCP Amendment to delete references to the Initiative from the LUP and repeal the Overlay Zone from the IP.

Nonetheless, there are other certified LUP provisions that address Sections 30250 and 30252 of the Coastal Act and provide appropriate policy guidance to protect the City's downtown core and its coastal resources, including public access and recreational amenities.

Relevant LUP Policies and Goals include the following:

Policy II-1 states:

*Maintain the existing small-scale character of the community and permit only one- and two-story, low intensity development with a maximum allowable height of 26 feet.*

Policy II-2 states:

*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.*

Policy II-3 states:



*Establish controls to prevent office development which is incompatible with the existing residential and visitor-serving character of the community.*

Goal IV-A states:

*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.*

In addition to the above-cited provisions, Policy IV-30 covers the City's off-street parking requirements, which addresses the City's goal of traffic mitigation that was also pursued through adoption of the Downtown Initiative Overlay Zone.

The proposed changes do not modify these other policy directives and the amendment would not result in any new permitted uses, or an increase in commercial uses and development that would have an adverse effect on coastal access or coastal resources. Therefore, the proposed amendment can be found consistent with the applicable Chapter 3 policies and the City's LCP amendment can be approved as submitted.

#### **PART IV. FINDINGS FOR APPROVAL OF THE CITY OF DEL MAR IMPLEMENTATION PLAN AMENDMENT, AS SUBMITTED**

##### **A. AMENDMENT DESCRIPTION**

The proposed amendment would make changes to the IP that correspond with LUP changes proposed herein, including repealing Chapter 30.54 of the Del Mar Municipal Code in its entirety (see [Exhibit 4](#)).

##### **B. FINDINGS FOR APPROVAL**

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, as amended herein.

###### **a) Purpose and Intent of the Ordinance.**

The purpose and intent of Ordinance No. 945 is to repeal DMMC Chapter 30.54.

###### **b) Major Provisions of the Ordinance.**

As proposed, the revisions would remove Chapter 30.54 of the DMMC, which contains implementing guidelines for the Downtown Initiative Overlay Zone.

c) **Adequacy of the Ordinance to Implement the Certified LUP Segments.**

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. In this particular case, the proposed changes have been reviewed for their consistency with the Land Use Plan as proposed to be amended. The proposed IP amendment will repeal the City's Downtown Initiative Overlay Zone in its entirety. The City's certified LUP, as amended herein, has also been modified to delete references to the initiative and overlay zone. Therefore, the proposed IP amendment can be found consistent with the certified LUP, as amended.

From a broader perspective, the City's planning goals to maintain the downtown's character, protect coastal resources and ensure public mobility will be met and implemented through other IP elements that remain unchanged and in place. In accordance with the above-mentioned LUP policies and goals as well as other provisions which include, but are not limited to, scenic resource protection, appropriate off-street parking regulations, design review, and the bluff/canyon overlay zone, the IP will continue to conform to the LUP in carrying out the stated goals and objectives. Therefore, the proposed amendment can be found consistent with, and adequate to carry out, the City's certified LUP and it may be approved as submitted.

**PART 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 of Del Mar determined that Ordinance No. 945, which approved the repeal of Measure B and Chapter 30.54 of the Del Mar Municipal Code as well as the amending of the LCP, is exempt from the environmental review requirements of CEQA. 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 provisions. In this particular case, the LCP amendment will not have any significant adverse effects on the environment and no significant coastal resource impacts are anticipated. Therefore, the Commission finds the subject LCP Amendment conforms with CEQA provisions.