Th9d

LCP-6-DMR-20-0005-1 (Sea Level Rise)

June 10, 2021

CORRESPONDENCE
June 3, 2021

California Coastal Commission  
455 Market Street, Suite 300  
San Francisco, CA 94105

RE: City of Del Mar Sea Level Rise Amendment LCP-6-DMR-20-0005-1

Dear Chair Padilla and Members of the Commission,

Prior to the Coastal Commission hearing on this item, the Del Mar City Council will hold a public meeting via teleconference on Monday, June 7, 2021 to hear from the community on this important topic.

Community input and feedback from stakeholders has been an important part of Del Mar’s sea level rise planning since August 2014 when we first convened the Sea Level Rise Technical Advisory Committee (STAC) with all stakeholders represented. STAC included Del Mar residents and homeowners, the Fairgrounds, our neighbors in Solana Beach, the Surfrider Foundation, and the Coastal Commission, as well as experts from the Scripps Institution of Oceanography. These stakeholders – including the representative from the Coastal Commission – met regularly for 4 years to study Del Mar’s vulnerabilities and develop comprehensive, science-based, feasible adaptation strategies. The resulting Adaptation Plan and consequent Local Coastal Program Amendment (LCPA) were the product of much discussion, debate, and deliberation for years. Del Mar’s June 7\textsuperscript{th} public hearing will be their first and only opportunity to provide the City Council with feedback since the Coastal Commission staff report was posted on May 28, 2021.

As part of the public meeting, the City Council will review Commission staff’s suggested modifications to the City’s LCPA and provide direction on next steps for participation in the June 10\textsuperscript{th} Coastal Commission hearing.

A copy of the City’s meeting notice is attached for your reference.

Sincerely,

Terry Gaasterland  
Mayor

encl: Del Mar City Council Public Meeting Notice
COURTESY NOTICE

Notice is hereby given that the City of Del Mar City Council will hold a public meeting on Monday, June 7, 2021 at 4:30 p.m., by teleconference only, where the City Council will receive a status update regarding the City’s Sea Level Rise Local Coastal Program Amendment (LCPA) submittal, review the California Coastal Commission (CCC) report and recommendations, and provide direction to staff on next steps for participation in the CCC public hearing scheduled for June 10, 2021 where a CCC decision on the City’s LCPA submittal is pending.

Project: City of Del Mar Sea Level Rise Planning LCPAs
Applicant: City of Del Mar
Description: This is an opportunity for public discussion and City Council direction related to next steps on the City's pending Sea Level Rise LCPAs. The item is being held in accordance with City Council direction on October 15, 2018, per the adopted “Commitment Resolution” 2018-72 affirming the City Council's intent to support and defend the adopted Sea Level Rise Adaptation Plan and LCPAs throughout the CCC certification process. LCPA preparation began in 2014 when the City conducted a multi-year planning effort to study projections for sea level rise and associated flooding and erosion through the year 2100. After disclosing the projected risks and options to minimize risk, the City adopted an Adaptation Plan to ensure the City remains viable over the long term. In October 2018, the City Council rejected the concept of “managed retreat” in Del Mar and took the following actions to formalize the City’s position: 1) adopted LCPA 16-005 via Resolution 2018-67 adopting the Adaptation Plan and supporting technical studies including the Vulnerability and Risk Assessment with Addendum, Sediment Management Plan, and Lagoon Wetland Habitat Migration Assessment; 2) adopted amendments to the existing certified LCP Land Use Plan establishing updated policies via Resolution 2018-68 as part of LCPA 18-002; and 3) adopted Ordinance 943 amending the Floodway Zone, Floodplain Overlay Zone, and Coastal Bluff Overlay Zone establishing updated implementing regulations within the City’s LCP as part of LCPA 18-002. Since October 2019, following City Council direction, the City and CCC held at least eight staff-level coordination meetings to try and reach common ground with the goal of gaining LCPA certification and honoring the City’s Commitment Resolution. CCC action on the City’s LCPA is scheduled for a CCC public hearing on Thursday, June 10, 2021 (see Item Th9d at www.coastal.ca.gov/meetings/agenda/#/2021/6 for more information). At the June 7, 2021 City Council meeting, staff will be requesting City Council direction on next steps for participation in the CCC public hearing including City Council’s position on the suggested modifications, any edits to the suggested modifications, and/or withdrawal of the submitted LCPAs.

Environmental Status: The proposed City Council action does not constitute a “project” under the definition set forth in California Environmental Quality Act (CEQA) Guidelines Section 15378 because it will not have a potential to result in a direct or indirect physical change in the environment and is, therefore, not subject to CEQA. No further action under CEQA is required.

Contact Person: Amanda Lee, Principal Planner alee@delmar.ca.us

PUBLIC MEETING DATE, TIME AND LOCATION:
This item is scheduled on the agenda as Council Business before the City Council on June 7, 2021 at 4:30 p.m.
By teleconference only
http://delmar.12milesout.com/Video/Live and on Cable TV Spectrum Ch. 24, AT&T Ch. 99 starting at 4:30 PM.
PUBLIC HEARING NOTICE

Those desiring to be heard in on this item will be given an opportunity to do so by commenting telephonically during the meeting or by submitting written comment. Those desiring to make a telephonic comment should visit the City's website for instructions and to submit a tele-comment request form by 12:00 PM the day of the meeting: http://www.delmar.ca.us/publiccomment. Comments submitted via email should be sent to cityclerk@delmar.ca.us by 12:00 PM the day of the meeting. For emailed comments, the subject line of your email should clearly state the item number you are commenting on. All comments received by the deadline will be transmitted to the City Council prior to the start of the meeting. Written comments may also be submitted by mail to the City Council at 1050 Camino del Mar, Del Mar, CA, 92014. Attention: Administrative Services Director/City Clerk. On any correspondence, please reference the hearing title and date. Materials related to this public hearing, will be available at least 72 hours in advance of the meeting on the City’s website, http://www.delmar.ca.us/AgendaCenter, and at the Del Mar Library during their limited hours of operation.

Under California Government Code 65009, if you challenge the nature of the proposed action in court, you may be limited to raising only those issues you or someone else raised telephonically at the public hearing described in this notice, or written correspondence delivered to the City at, or prior to, the public hearing.
June 2, 2021

Delivered via email
To: Chair Steve Padilla, California Coastal Commission
CC: Jack Ainsworth, Executive Director, California Coastal Commission; Karl Schwing, Deputy Director, California Coastal Commission, San Diego Coast District

Re: City of Del Mar Major Amendment LCP-6-DMR-20-0005-1

Dear Chair Padilla,

The Surfrider Foundation is a non-profit, environmental organization dedicated to the protection and enjoyment of the world's oceans, waves, and beaches for all people, through a powerful activist network. With nearly 70 miles of coastline to protect, the Surfrider Foundation San Diego County Chapter is the largest and most active chapter in the country. We are a grassroots organization, which means the people working to protect our local ocean, waves, and beaches are volunteers who care about the San Diego County coastline and want to make a difference.

Studies have repeatedly shown that not only is sea level rise inevitable – and every new study forecasts increasingly dire scenarios – but sea level rise is also likely to cost the State of California even more than earthquakes or wildfires. With such a threat steadily marching toward us, every action the Coastal Commission takes to address it (or not) is what will save our beaches (or not). The pending decision regarding the City of Del Mar’s Local Coastal Program Amendment (LCPA) has repercussions for everyone who enjoys the coast in Del Mar, as well as the rest of our region where many cities are in the process of updating their LCPs.

Support for staff’s suggested modifications

We agree with staff that Del Mar’s proposed amendments to their Land Use Plan (LUP) and Implementation Plan (IP) should be rejected as submitted. Staff hits the mark when stating that extensive work has been done in Del Mar to understand its serious vulnerabilities to Sea Level Rise (SLR), and it is imperative that this important planning document address those hazards.

There are several Suggested Modifications that are imperative to preserve public
rights and ability to access beaches in the future. These modifications are necessary for our support of the plan, but they could be further strengthened:

**Suggested Modification No. 11 and 16: Modifications related to the definition of existing development.**

We support staff’s recommendation to remove the ill-conceived definition of existing development. It is particularly important to define existing development accurately, as there have been multiple development projects proposed since this LCP draft was first submitted, including residential development and the Marisol proposal (otherwise known as the Zephyr development) above Dog Beach.

Further, the definition of existing development should be strengthened. A specific definition of existing development based on actual legislative intent would provide critical guidance to Del Mar as it accepts and implements its LCP. The Commission should go further and define existing development as development that existed prior to the Coastal Act passage in 1977. Per Sections 30235 and 30253 of the Coastal Act and the Commission’s SLR Policy Guidance document, new development should not require seawalls, and any development after 1977 is considered new development.

The 1977 definition of existing development is also upheld in the 2019 decision concerning the Lindstrom CDP and the Commission’s Sea Level Rise Policy Guidance document. As detailed in the Staff Report, the Commission interprets the term “existing structures” in Section 30235 of the Coastal Act as structures that were in existence on January 1, 1977—the effective date of the Coastal Act. This should be explicitly confirmed as the definition in Del Mar’s LCP as well.

**Suggested Modification No. 17. Modification related to the definition of “Substantial Improvement”**

We agree with staff’s suggested modification that generally strengthens the definition of “substantial improvement.” This loophole is currently actively being exploited in the neighboring city of Solana Beach to effectively construct new structures behind the protection of seawalls intended for existing structures.

Including 50% thresholds for substantial improvements or development of existing structures is important to prevent the indefinite extension of an existing structure’s economic lifetime. However, we think the policy should be further clarified to include replacement work undertaken on or after January 1, 1977 (effective date of the coastal act), rather than September 11, 2001 (date of LCP certification).

We object to the proposed dates used in Section 30.56.030 b iii and iv:
iii. Replacement (including demolition, renovation, reinforcement, or other type of alteration) of less than 50% of a major structural component where the proposed replacement would result in cumulative alterations exceeding 50% or more of that major structural component, taking into consideration previous replacement work undertaken on or after September 11, 2001 (the date of certification of the LCP); or

iv. an alteration that constitutes less than 50% increase in floor area where the proposed alteration would result in a cumulative addition of 50% or greater of the floor area, taking into consideration previous additions undertaken on or after September 11, 2001 (the date of certification of the LCP), January 1, 1977 (effective date of the Coastal Act).

We find no basis in law or policy to justify the use of the LCP certification’s date as the basis for determining substantial improvement. Instead, January 1, 1977 - the effective date of the Coastal Act - should be used as the cutoff date when considering whether ‘substantial improvement’ has occurred. The 2001 date must otherwise be justified.

**Importance of maintaining other critical modifications**

We also stress the importance of the following Suggested Modifications:

**Suggested Modification No. 2. related to Chapter III’s goals and Policies.**
Staff correctly incorporates the goals of the 2018 Del Mar Sea Level Rise Adaptation Plan as policy. In particular, we stress the importance of including maintenance of a walkable beach as a primary goal. Del Mar’s Sea Level Rise Technical Advisory Committee determined unanimously at its formation that a walkable beach should be a founding principle guiding its work, so it is logical to include this as a stated goal of the proposed amendments.

**Suggested Modification No. 3. Mandating periodic and threshold-based updates to the LCP.**
Requiring further updates to the LCP based on concrete thresholds and time spans gives the city more flexibility to adjust to changing conditions. The specific thresholds suggested by the staff report are based in reality and science, and they also reflect the findings of the City’s own Vulnerability Assessment. The City and SANDAG have been working to fast-track a plan to remove the LOSSAN railroad from the bluffs. The importance of this long-term project has been repeatedly demonstrated in the last year, as bluff collapses along the tracks have interrupted
the trains travelling this corridor. Given the city's current support for relocation of the Del Mar section of the LOSSAN railroad tracks, as well as the changes to our environment due to SLR, it is reasonable to mandate periodic updates of the LCP to address any additional changed circumstances beyond the immediate need to relocate the railroad tracks.

**Suggested Modifications No. 4 and No. 12 concerning setbacks.**
As staff suggested, it is imperative that SLR, time (75 years), and slope stability all be incorporated into the calculation of coastal bluff setbacks. It’s also important to remove any alternative stability requirements, as we have seen countless times how an applicant’s geotechnical ‘experts’ will come up with whatever number is convenient to the private property owner, not the beach going public.

SLR, time (75 years), and slope stability are consistent with guidance from the 2003 document by Dr. Mark Johnsson titled “Establishing development setbacks from coastal bluffs” and the Commission’s Sea Level Rise Policy Guidance, which we detailed in our 2019 Letter to the Commission regarding this LCP. The modifications are also necessary in order to comply with Section 30253 and other Coastal Act Policies.

Broad community support for effective setback standards was very recently demonstrated by the defeat of Measure G: Marisol Specific Plan by the residents of Del Mar. Surfrider wrote a letter to the City on February 3, 2020 outlining our concerns about the Draft EIR and specific plan amendments. A major concern we had was the EIR’s utilization of very optimistic and weak setback calculations.

We do support further modifications to the setback policies proposed. Staff suggested adding a route to smaller setbacks to mitigate potential claims of takings associated with setbacks. However, we feel this modification as drafted could ignore the perils of SLR, 75 years of projected bluff erosion, and inclusion of a factor of safety when calculating setbacks. Staff suggests adding the following to Chapter 30.55 Coastal Bluff Overlay Zone, Section 30.55.050 Development Regulations for the Coastal Bluff Overlay Zone:

> d. If application of the minimum 40-foot setback would preclude reasonable use of the property such that it would constitute a taking of private property, a smaller setback may be permitted if the proposed development is setback as far landward as feasible and its footprint is minimized.

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2. [https://drive.google.com/file/d/1NCTTLbB1mdsgCt_trK9CJ4L68akMPxT3/view](https://drive.google.com/file/d/1NCTTLbB1mdsgCt_trK9CJ4L68akMPxT3/view)
Based on past history in surrounding neighborhoods like Solana Beach and Encinitas, this argument will be consistently misused to completely negate all of the important setback calculations. This conflicts directly with staff’s suggested amendments for setbacks concerning SLR and factor of safety. It is probable that a minimum 40 ft setback will not meet the more stringent requirements of safety over 75 years when sea level rise is taken into account. This loophole should be removed entirely. Otherwise it should include a condition that any permit for New Development - regardless of setback calculations - explicitly waives the right to any future armoring and is subject to removal of threatened portions if at any time it is threatened by erosion.

**Suggested Modification No. 5 and No. 13 concerning development location.**
Staff was correct when acting to strengthen the LCP to require that development be located to eliminate the need for protective devices. It is important that any loopholes that could be interpreted to allow new structures protective devices be removed.

**Suggested Modification No 19 concerning floodplain development permits.**
It is important here to specify that development in the floodplain is a hazardous proposition, and that because of the goals stated elsewhere in the LCP concerning relocation of public infrastructure, it may be impossible to provide public infrastructure to private residences located in a floodplain.

We are generally in agreement with all of the remaining Suggested Modifications.

**Support for the City’s amendments regarding track relocation**
In addition to suggested modifications by staff, we support the relocation of the railroad tracks, as proposed by the City and agreed to by staff in the staff report:

Amendment to Policy III-2 of the certified Land Use Plan:

> f. Support relocation of the railroad and other public infrastructure from vulnerable bluff areas.

Relocation is supported by our regional metropolitan planning organization, SANDAG. Presenting at the May 3, 2021 Del Mar City Council Meeting, SANDAG staff confirmed that realignment “was a priority moving forward’ and presented alignment options³. The Director of the organization was recently quoted⁴ in a news article:

³https://www.delmar.ca.us/AgendaCenter/ViewFile/Agenda/_05032021-2737
article this March:

“You can fight nature, but nature is going to win at the end of the day,” said Hasan Ikhrata, executive director of SANDAG. “We are absolutely intending to have part of the regional transportation plan in May release a project that would move the tracks off the bluff once and for all. Yes, it’s expensive, yes it’s going to take a long time, but that is the right thing to do for the region.”

Relocation of the tracks was also supported unanimously by the Del Mar City Council at the April 19, 2021 meeting:

IT WAS MOVED BY MAYOR GAASTERLAND, SECONDED BY COUNCILMEMBER DRUKER TO REAFFIRM GETTING TRAINS OFF THE BLUFF AS SOON AS POSSIBLE. (VOTE 5-0) (4/19/2021 approved minutes)

To restore lateral and vertical beach access, we also believe the LCPA should include provisions mandating the removal of all stabilization measures for the rail as soon as they are no longer required for the safety of the railroad. Additionally, fencing and stabilization measures in the interim period should be discouraged or prohibited where possible. If fences or additional interim stabilization is required, mitigation must be required in the LCPA with in-place and not in-kind access both vertically from the bluff to the beach and along the bluff. Examples of improved access include tunnels or stairs and at-grade crossings and additional signaling.

Conclusions

Del Mar’s Sea Level Rise Technical Advisory Committee, the City, and Coastal Commission staff have done important work to amend the city’s LCP. Altogether, this work represents an important first step in recognizing the difficult choices we will have to face in the near future with accelerating SLR and climate change.

We support staff’s suggested modifications to the LCP. We also ask that the following changes be made to the Del Mar LCP to further strengthen the protection of the public’s beach:
- **Redefine existing development:** Existing development should be defined per the original intent of the Coastal Act, as supported by the recent decision concerning the Lindstrom CDP and the Commission's Sea Level Rise Policy Guidance document. January 1, 1977 - the effective date of the Coastal Act - should be used as the cutoff date when considering whether ‘substantial improvement’ has occurred.

- **Strengthen definition of substantial improvement:** We find no basis in law or policy to justify the use of the LCP certification’s date as the basis for determining substantial improvement. Instead, January 1, 1977 - the effective date of the Coastal Act - should be used as the cutoff date when considering whether ‘substantial improvement’ has occurred.

- **Remove the setback loophole:** Regulations specifying blufftop setbacks in Section 30.55.050 Development Regulations for the Coastal Bluff Overlay Zone should not be weakened by adding a decreased setback loophole. Setbacks should only take SLR, projected 75 year erosion, and factor of safety into account. A smaller setback should not be permitted. If such setback is permitted, it must include a condition for removal of threatened structures or portions of structures if they are ever threatened by erosion in the future. This condition should apply to all setbacks associated with New Development.

- **Strengthen railroad relocation LCPA policies to include mitigation for temporary stabilization measures and fencing:** Temporary railroad stabilization measures should be removed and temporary impacts to access should be mitigated.

In a broader context, it is the Coastal Commission’s duty to ensure that local jurisdictions’ plans will adequately plan and respond to sea level rise. We understand and support the sentiment from the City of Del Mar in wanting to make locally relevant decisions pertaining to broad questions surrounding sea level rise and erosion. We believe the current version of the LCP, with staff’s suggested modifications, allows the City room to do this while ensuring a check and balance to protect the public beach.

Staff’s modifications are a compromise that moves the City in the right direction toward an adequate plan by including thresholds for considering a wider suite of adaptation options and by providing an avenue for the City of Del Mar to commit to incorporating updated sea level rise science into its planning on a regular basis.

California’s voters and the Coastal Act created the Coastal Commission as a check and balance to prevent local jurisdictions from ceding the public’s coast and beach to private property interests. We respectfully request that you accept staff’s suggested modifications to ensure equitable access to our beaches.
Sincerely,

Kristin Brinner  
Member of Del Mar's Sea Level Rise Technical Advisory Committee  
Resident of Solana Beach  
Co-Lead of the Beach Preservation Committee  
San Diego County Chapter, Surfrider Foundation

Jim Jaffee  
Resident of Solana Beach  
Co-Lead of the Beach Preservation Committee  
San Diego County Chapter, Surfrider Foundation

Laura Walsh  
Policy Coordinator  
San Diego County Chapter, Surfrider Foundation