

**CALIFORNIA COASTAL COMMISSION**

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**STAFF REPORT: CONSENT CALENDAR**

**Application No.:** 6-22-0490

**Applicant:** City of Del Mar

**Location:** Along the southern shore of San Dieguito Lagoon northeast of San Dieguito Drive, between Grand Avenue Lookout and Racetrack View Drive, Del Mar, San Diego County. (APNs: 299-201-07, 299-200-51, 299-200-72, 299-072-21, 299-072-20)

**Project Description:** Construction of a 2,070-foot-long pedestrian public access trail including 589 feet of decomposed granite trail, 286 feet of at-grade boardwalk decking, and 1,195 feet of elevated boardwalk, as well as approx. 0.33-acre of mitigation.

**Staff Recommendation:** Approval with conditions.

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**SUMMARY OF STAFF RECOMMENDATION**

The City of Del Mar proposes to augment the existing Riverpath public trail system with a third and final segment composed of boardwalk and at-grade sections along the San Dieguito Lagoon. The proposed project would complete the existing Riverpath by extending the trail southeast of the Grand Avenue Lookout for approximately one-half mile until termination at the City limits near the Crest Canyon Trail.

The project has been designed to avoid impacts to sensitive natural resources to the maximum extent feasible; however, the project would impact approximately 26 sq. ft. of coastal brackish marsh, approximately 130 sq. ft. of southern coastal bluff scrub, 13 sq.

ft. of southern willow scrub, and 871 sq. ft. of disturbed Diegan coastal sage scrub. The Commission's ecologist has determined that the habitat affected does not constitute Environmentally Sensitive Habitat Area (ESHA). All impacts will be mitigated by the creation, enhancement, or preservation of habitat at a mitigation site located approximately 225 feet northwest of the project site on the Phase II segment of the trail. To ensure that all impacts to habitat are mitigated appropriately, **Special Conditions #2 and 3** submittal of a final Habitat Mitigation and Monitoring Plan (HMMP). **Special Condition #4** requires the City to submit a replanting landscaping plan that requires only species native to southern California and typical of the on-site vegetative communities be used on the site. **Special Condition #5** requires the City to follow all mitigation measures in its MND to protect sensitive bird species. Due to the proximity of the proposed project to San Dieguito Drive, some temporary lane closures may be necessary during construction. **Special Condition #1** requires the City to submit final staging and storage plans that list all phases of demolition and construction, identify the location of all construction staging, storage, and parking on the subject property, and prohibit the use of public parking for construction vehicles or storage.

The proposed project is located in an area vulnerable to coastal hazards, including sea level rise, although the site is not expected to be at risk for several decades. **Special Condition #10** requires the applicant to waive their rights to future shoreline protection, as well as remove all or a portion of the development and restore the site if the structure is deemed unsafe for use due to coastal hazards, or access to the site can no longer be feasibly maintained, among other requirements. Because periodic storm and flood events are expected to impact the development as sea level rise progresses, **Special Condition #11** requires the applicant to acknowledge the risk of building in a hazardous location and ensures that the risks of property damage or loss arising from sea level rise or other changed circumstances are borne by the applicant.

**Special Condition #9** requires the applicant to adhere to a Cultural Resources Treatment and Monitoring Plan that addresses on-site monitoring by a Cultural Resources Monitor, as well as follow-up procedures and testing plans in the event that cultural resources are uncovered during the course of construction. **Special Condition #8** requires the applicant to submit a final construction phase BMP plan. **Special Conditions #6 and 7** require the City to finalize all easements prior to construction. These conditions require the City to submit documentation demonstrating that the applicant has executed and recorded its acceptance of all easements against the parcels utilized for both habitat restoration as well as the trail alignment. Finally, **Special Condition #12** requires the written approval of a private property owner for the use of a portion of their property as public trail to be conserved under the appropriate easement.

Commission staff recommends that the Commission **APPROVE** coastal development permit application 6-22-0490, as conditioned. The motion is on page 4. The standard of review is Chapter 3 of the Coastal Act, with the City's LCP used as guidance.

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### EXHIBITS

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[Exhibit 2 – Location Maps](#)

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[Exhibit 4 – Project Plans](#)

[Exhibit 5 – Proposed Mitigation Site](#)

## I. MOTION AND RESOLUTION

### Motion:

I move that the Commission **approve** the coastal development permit applications included on the consent calendar in accordance with the staff recommendation.

Staff recommends a **YES** vote. Passage of this motion will result in approval of all the permits included on the consent calendar. The motion passes only by affirmative vote of a majority of Commissioners present.

### Resolution:

The Commission hereby approves the Coastal Development Permit for the proposed project and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit 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 development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

## II. STANDARD CONDITIONS

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the applicant or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the applicant to bind all future owners and possessors of the subject property to the terms and conditions.

### III. SPECIAL CONDITIONS

1. **Final Site and Grading Plans. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and written approval final site plans that substantially conform with the preliminary plans in the Mitigated Negative Declaration dated April 2022 (SCH #2022030141). The final plans shall include, at a minimum, the following:
  - i. Final construction staging and storage plans listing all phases of demolition and construction and identifying the location of all construction staging, storage, and parking on the subject property. No public parking shall be utilized for staging, storage, or employee parking related to the development approved in this permit. Any temporary lane closures during construction shall be designed to minimize impacts to circulation by maintaining at least one lane open for vehicle travel.
  - ii. A site plan showing the location of any signage, fencing, seating, or other site improvements to be erected at the project site.

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission approved amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

2. **Habitat Mitigation Monitoring Plan. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit a Habitat Mitigation and Monitoring Plan (HMMP) to the Executive Director for review and written approval. At a minimum, the HMMP shall include:
  - i. Detailed final site plans of the mitigation site that the Executive Director concludes substantially conform with the site plan submitted to the Commission as part of the Final Mitigated Negative Declaration for the project, dated April 2022 (SCH #2022030141).
    - a. The final plan must delineate all impacts areas (on a map that shows elevations, surrounding landforms, etc.), the habitat types that will be impacted (both permanent and temporary), and the exact acreage of each impact so identified;
    - b. The mitigation site shall include habitat mapping of both the restoration area and the buffer surrounding the restoration area; and
    - c. A description of a pre-approved reference site(s) and associated sampling scheme designed to inform mitigation habitat outcomes regarding species richness and density.
      1. The approved reference site(s) will support similar habitat types to mitigation site and shall be located in close proximity to the mitigation site with regard to geographic location, topographic position and tidal inundation.

- d. The final mitigation site plan shall include: existing and proposed hydrologic, soil and vegetative conditions of the mitigation site(s); engineering/grading plans and schedule; erosion control plans and schedule; weeding plans and schedule; planting plans and schedule; irrigation needs and intended irrigation schedule; on-going maintenance and management plans; and a monitoring plan consistent with Special Condition No. 3.
- ii. A baseline assessment including photographs of the current physical and ecological condition of the proposed restoration site, including as appropriate, a wetland delineation conducted according to the procedures in the certified LCP, a detailed site description and map showing the area and distribution of vegetation types and site topography, and a map showing the distribution and abundance of sensitive species and habitats that includes the footprint of the proposed restoration;
- iii. All habitat impacts shall be mitigated at a ratio of 4:1 for impacts to coastal brackish marsh (minimum 1:1 establishment/re-establishment), 3:1 for impacts to southern coastal bluff scrub (minimum 1:1 establishment/re-establishment), and 2:1 for impacts to coastal sage scrub (minimum 1:1 establishment/re-establishment). For purposes of this Special Condition, removal of invasives and non-native vegetation is not considered an impact to habitat that requires mitigation.
- iv. A description of the goals of the restoration plan and any applicable mitigation ratios. The goals should also include, as appropriate, any changes to site topography, hydrology, vegetation types, presence and abundance of sensitive species, and wildlife usage, and any anticipated measures for adaptive management in response to sea level rise or other climatic changes;
- v. A description of planned site preparation and invasive plant removal;
- vi. A restoration plan including the planting palette (seed mix and container plants), planting design, source of plant material, methods and timing of plant installation, erosion control measures, duration and use of irrigation, and measures for remediation if success criteria (performance standards) are not met. The planting palette shall be made up exclusively of native plants that are appropriate to the habitat and region and that are grown from seeds or vegetative materials obtained from local natural habitats so as to protect the genetic makeup of natural populations. Horticultural cultivars shall not be used;
- vii. A plan for documenting and reporting the physical and biological “as built” condition of the restoration or mitigation site within 30 days of completion of the initial restoration activities. This is a simple report describing the progression of field implementation of the approved Restoration or Mitigation Plan in narrative and photographs, including reporting of any problems in the implementation and their resolution, similarity to the pre-approved reference site(s), and any recommendations for future adaptive management. The “as built” assessment and report shall be completed by a qualified biologist, who is independent of the installation contractor.
- viii. Provisions for submittal of a description of the mitigation site at the end of five years after completion of the initial restoration activities to confirm that the

total acreage mitigated is consistent with required amounts for all habitat types described in the final Mitigated Negative Declaration (i.e. coastal brackish marsh, southern coastal bluff scrub, and coastal sage scrub), and reflects a similar composition and plant density to the pre-approved reference site(s).

The permittee shall undertake development in conformance with the approved final plans. Any substantial changes to the plan require a permit amendment from the Commission. More minor changes to restoration plans may be approved in writing by the Executive Director if it is determined by the Executive Director that no amendment is legally required.

- 3. Habitat Monitoring Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for review and written approval of the Executive Director a final detailed Habitat Monitoring Plan designed by a qualified wetland or restoration ecologist for monitoring of the habitat mitigation site. The monitoring plan shall at a minimum include the following:
- i. A plan for interim monitoring and maintenance of any restoration or mitigation site, including monitoring of a pre-approved reference site(s), including:
    - a. A schedule of all implementation, maintenance, monitoring, and reporting activities for the approved plan(s) duration;
    - b. Interim performance standards
    - c. A description of field activities that includes sampling design, number of samples and sampling methods. The number of samples should rely on a statistical power analysis to document that the planned sample size will provide adequate statistical power to detect the maximum allowable difference between the restored site and a reference site(s);
    - d. A monitoring period not less than 5 years, with a proposal for a second monitoring period if performance standards are not met in the initial time frame;
    - e. Monitoring of changes in sea level rise, sediment dynamics, and the overall health of the wetland and coastal sage scrub community to allow for adaptive management, as needed. Include triggers for implementing adaptive management options; and
    - f. Provision for submission of annual reports of monitoring results to the Executive Director for review and written approval for the duration of the required monitoring period, beginning the first year after submission of the “as-built” report. Each report shall be cumulative and shall summarize all previous results. Each report shall document the condition of the restoration with photographs taken from the same fixed points in the same directions. Each report shall also include a “Performance Evaluation” section where information and results from the monitoring plan are used to evaluate the status of the restoration project in relation to the interim performance standards and final success criteria.

Provisions for the submittal of a revised or supplemental restoration plan to be submitted if an annual monitoring report shows that the restoration

effort is falling below the interim performance standards. Triggers shall be included in the plan to define the level of nonperformance at which the submittal of a revised or supplemental restoration plan will be required. The permittee shall submit a revised or supplementation restoration program plan within 90 days of the latest submittal to address those portions of the original program which did not meet the approved success criteria.

- ii. Final Success Criteria for each habitat type, including, as appropriate:
  - a. Total species richness;
  - b. Total ground cover of all vegetation and of native vegetation;
  - c. Vegetative cover of dominant species;
  - d. Wildlife usage including types and frequency of wildlife species;
  - e. Hydrology, including timing, duration and location of water movement; and
  - f. Presence and abundance of sensitive species or other individual "target" species
- iii. The method by which "success" will be judged, including:
  - a. Types of comparison;
  - b. Identification and description, including photographs, of any high functioning, relatively undisturbed reference sites that will be used;
  - c. Test of similarity with a reference site. This could simply be determining whether the result of a census was above a predetermined threshold. Generally, it will entail a one- or two-sample t-test that determines if differences between the restoration site and the reference site are within the maximum allowable differences for each success criteria (performance standard);
  - d. A statement that final monitoring for success will occur after at least three years after which no remediation or maintenance activities take place other than weeding.
- iv. Provisions for submission of a final monitoring report to the Executive Direction at the end of the final monitoring period. The final report must be prepared by a qualified restoration ecologist. The report must evaluate whether the restoration site conforms to the goals, objectives, and success criteria set forth in the approved final restoration program. The report must address all of the monitoring data collected over the monitoring period.
- v. If the final report indicates that the restoration project has been unsuccessful, in part, or in whole, based on the approved success criteria (performance standards), the applicant shall submit within 90 days of the latest submittal a revised or supplemental restoration program to compensate for those portions of the original plan which did not meet the approved success criteria. The permittee shall undertake mitigation and monitoring in accordance with the approved final, revised habitat restoration or mitigation plan following all procedures and reporting requirements as outlined for the initial plan until all performance standards and success criteria are met. The revised restoration program, if necessary, shall be processed as an amendment to this coastal development permit unless the Executive Director provides a written determination that no permit amendment is legally required



The permittee shall undertake monitoring and other activities listed in the Monitoring Plan in conformance with the approved final plan. Any substantial changes to the plan require a permit amendment from the Commission. More minor changes to restoration plans may be approved in writing by the Executive Director, if it is determined by the Executive Director that no amendment is legally required.

**4. Landscaping Plan. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for review and written approval by the Executive Director, a full-size set of final landscaping plans. The consulting landscape architect or qualified landscape professional shall certify in writing that the final landscaping plans are in conformance with the following requirements:

- a) It shall include a planting schedule that indicates that the planting plan shall be implemented within sixty (60) days of completion of construction/ grading.
- b) Only species native to southern California and typical of coastal brackish marsh, southern coastal bluff scrub, and Diegan coastal sage scrub shall be used, such that the proposed planted areas will be compatible with surrounding natural areas. No plant species listed as “highly” or “moderately” invasive by the California Native Plant Society, the California Invasive Pest Plant Council, (Cal-IPC), shall be employed or allowed to naturalize or persist on the site. No plant species listed as “noxious weed” by the State of California or the U.S. Federal Government shall be utilized within the property. No cultivars shall be utilized within the property. If using potable water for irrigation, the project shall use water-conserving emitters (e.g. microspray) and drip irrigation. Use of weather-based irrigation controllers and reclaimed water for irrigation is encouraged.
- c) All landscaped areas on the project site shall be maintained in a litter-free, weed-free, and healthy growing condition throughout the life of the project and, whenever necessary, shall be replaced with new plant materials to ensure continued compliance with applicable landscape requirements.
- d) The use of rodenticides containing any anticoagulant compounds is prohibited, and the use of fertilizer shall be minimized to the greatest extent feasible.

The permittee shall undertake development in accordance with the approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director provides a written determination that no amendment is required.

**5. Incorporation of Mitigation Measures.** The permittee shall undertake development consistent with all Mitigation Measures identified in the Final Mitigated Negative Declaration (SCH #2022030141), which was adopted on June 6, 2022, to the extent that they are consistent with these Special Conditions.

- 6. Conservation Easement. PRIOR TO CONSTRUCTION**, the applicant shall submit, for review and written approval by the Executive Director, documentation demonstrating that the applicant has executed and recorded its acceptance of all easements against the parcels utilized for the purposes of habitat restoration, as generally depicted in [Exhibit 2](#).

Any change in conservation easement shall require a report to the Executive Director for determination of whether an amendment is legally required.

- 7. Public Access or Trail Easement. PRIOR TO CONSTRUCTION**, the applicant shall submit, for review and written approval by the Executive Director, documentation demonstrating that the applicant has executed and recorded its acceptance of all easements against the parcels governed by this permit and as generally depicted on [Exhibit 2](#).

Any change in conservation easement shall require a report to the Executive Director for determination of whether an amendment is legally required.

- 8. Construction BMPs Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for review and approval of the Executive Director, a Construction Best Management Practices plan. The plan should be in conformance with the following requirements:

- i. No demolition or construction materials, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion. To avoid disposal of construction materials, debris, or waste into the ocean, appropriate catch basins shall be installed prior to commencement of construction.
- ii. Any and all debris resulting from construction activities shall be removed from the project site within 24 hours of completion of the project.
- iii. Construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters.
- iv. All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.
- v. The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
- vi. Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.
- vii. All stockpiles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.
- viii. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.

- ix. The discharge of any hazardous materials into any receiving waters shall be prohibited.
- x. Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible.
- xi. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity.
- xii. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.
- xiii. In order to minimize wildlife entanglement and plastic debris pollution, the use of temporary erosion and sediment control products (such as fiber rolls, erosion control blankets, and mulch control netting) that contain plastic netting, including photodegradable plastic netting, shall be prohibited. Only products that contain loose-wave natural-fiber netting, or that do not contain netting, shall be allowed. Heavy-duty fences reinforced by plastic or metal netting shall also be prohibited. All temporary erosion and sediment control products shall be promptly be removed when no longer required.

The final Construction Best Management Practices plan shall be in conformance with the site/development plans approved by the Coastal Commission. Any changes to the Coastal Commission approved site/development plans shall be reported to the Executive Director. No changes to the Coastal Commission approved final site/development plans shall occur without an amendment to the coastal development permit, unless the Executive Director determines that no amendment is required.

**9. Cultural Resources Treatment and Monitoring Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for the review and approval of the Executive Director an archaeological/cultural resources monitoring plan prepared by a qualified professional, which shall incorporate the following measures and procedures:

- i. The monitoring plan shall ensure that any prehistoric archaeological or paleontological or Native American cultural resources that are present on the site and could be impacted by the approved development will be identified so that a plan for their protection can be developed. To this end, the cultural resources monitoring plan shall require that archaeological and Native American monitors (including a Kumeyaay Cultural monitor) be present during all grading operations and subsurface construction activity that has the potential to impact cultural resources.

- ii. There shall be at least one pre-grading conference with the project manager and grading contractor at the project site in order to discuss the potential for the discovery of archaeological, cultural, or paleontological resources. A Kumeyaay Cultural Monitor and archaeological monitor(s) shall be included and present at this meeting.
- iii. Archaeological monitor(s) qualified by the California Office of Historic Preservation (OHP) standards, a Kumeyaay Cultural monitor, and the Native American most likely descendent (MLD) when State Law mandates identification of a MLD, shall monitor all project grading and subsurface construction activity (such as trenching for utilities) that has the potential to impact cultural resources, as required in the approved cultural resources monitoring plan required above.
- iv. The permittee shall provide sufficient archaeological and Native American monitors to assure that all project grading and subsurface construction activities that has any potential to uncover or otherwise disturb cultural deposits is monitored at all times.
- v. If any archaeological or paleontological, i.e. cultural deposits, are discovered, including but not limited to skeletal remains and grave-related artifacts, artifacts of traditional cultural, religious or spiritual sites, or any other artifacts, all construction shall cease within at least 50 feet of the discovery, and the permittee shall carry out significance testing of said deposits in accordance with the attached "Cultural Resources Significance Testing Plan Procedures" (Appendix B). The permittee shall report all significance testing results and analysis to the Executive Director for a determination of whether the deposits are significant.
- vii. The permittee shall report all discoveries, such as cultural artifacts, cremation sites, or human remains, to the Viejas Band of Kumeyaay Indians.

If the Executive Director determines that the discovery is significant, the permittee shall follow the procedures in Appendix B of this staff report to determine if an amendment to this permit is required. If an amendment to this CDP is required, development within at least 50 feet of the discovery shall not recommence until an amendment is approved, and then only in compliance with the provisions of such amendment.

**10. Waiver of Rights to Future Shoreline Protection.** By acceptance of this coastal development permit, the applicant agrees, on behalf of itself and all successors and assignees, that no shoreline protective device(s) shall be constructed to protect the development approved pursuant to this coastal development permit including but not limited to, the construction of the pedestrian path and any other future improvements, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, liquefaction, sea level rise, or any other coastal hazards in the future. By acceptance of this permit, the applicant

hereby waives, on behalf of itself and all successors and assigns, any rights to construct such devices that may exist under applicable law.

By acceptance of this permit, the applicant further agrees, on behalf of itself and all successors and assigns, that they are required to remove all or a portion of the development authorized by this permit and restore the site, if:

- i. The City or any government agency with jurisdiction has issued a final order, not overturned through any appeal or writ proceedings, determining that the structure is currently and permanently unsafe for use due to damage or destruction from waves, flooding, erosion, landslides, or other hazards related to coastal processes, and that there are no feasible measures that could make the structure suitable for use without the use of bluff or shoreline protective devices;
- ii. Access to the site can no longer feasibly be maintained due to the coastal hazards listed above;
- iii. Removal is required pursuant to LCP policies for sea level rise adaptation planning; or
- iv. The development requires new or augmented shoreline protective devices that conflict with applicable LCP or Coastal Act policies.

Approval of CDP 6-22-0490 does not allow encroachment onto public trust lands. Any future encroachment onto public trust lands shall be removed unless authorized by the Coastal Commission. Any future encroachment would also be subject to the State Lands Commission's (or other designated trustee agency's) leasing approval. The permittee shall obtain a CDP for removal of approved development unless the Executive Director determines that no coastal development permit is legally required.

- 11. Assumption of Risk, Waiver of Liability and Indemnity Agreement.** By acceptance of this permit, the applicant, on behalf of itself, and its successor and assigns, acknowledges and agrees (i) that the site may be subject to hazards from waves, storm waves, flooding and erosion; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards; (v) that any adverse effects to property caused by the permitted project shall be fully the responsibility of the Permittee; and (vi) to agree to include a provision in any subsequent sublease or assignment of the development authorized by this permit requiring the sublessee or assignee to submit a written agreement to the Commission, for the review and approval of the Executive Director, incorporating all of the foregoing restrictions identified in (i) through (v).

**12. Property Owner Agreement. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for the review and approval of the Executive Director, written permission from the property owner of APN 299-200-51 that the City may utilize a portion of the property for trail alignment as recorded according to Special Condition No. 7 above.

## **IV. FINDINGS AND DECLARATIONS**

### **A. Project Description and Background**

The City of Del Mar proposes to augment the existing Riverpath public trail system with a third and final segment composed of both elevated boardwalk and at-grade sections along the southern side of the San Dieguito Lagoon. The existing Riverpath is generally oriented in a northwest to southeast direction between the railroad tracks near Camino Del Mar and the lagoon viewpoint at the Old Grand Avenue Bridge on the eastern side of San Dieguito Drive ([Exhibit 1](#)). The previous construction for Phase I and Phase II of the Riverpath were approved by the Commission under CDPs 6-01-157 and 6-15-0742, respectively. The proposed project (Phase III) would complete the Riverpath by extending the trail southeast of the Grand Avenue Lookout for approximately one-half mile until termination at the City limits near the Crest Canyon Trail ([Exhibit 2](#)). Following construction, the City would oversee perpetual management of the trail segment in conjunction with Phases I and II.

The trail would transition between three types of pathway construction to avoid and minimize impacts to biological resources to the maximum extent feasible, including decomposed granite (DG) trail, an at-grade boardwalk, and an elevated boardwalk. The trail extension would extend a total of 2,070 linear feet and would be comprised of approximately 1,195 linear feet of elevated boardwalk, 286 linear feet of at-grade boardwalk, and 589 linear feet of decomposed granite ([Exhibit 3](#)). Both the elevated and at-grade boardwalk would be constructed with pre-made footings/pins that would extend between 3.5 and 10.5 feet beneath the ground surface ([Exhibit 4](#)). The decking will allow for drainage and sunlight to penetrate to areas below the elevated boardwalk. Elevated boardwalk sections would also include several sections of cable/post fence railing constructed of 10-inch wide and 60-inch tall redwood cable posts which will be open and allow for viewing above and between wires. The fence posts would be drilled approximately 28 inches into the ground with concrete foundations or securely fastened to the elevated boardwalk (where appropriate) with a resulting above ground or above boardwalk height of 36 to 40 inches in height ([Exhibit 4](#)).

Existing parking at the Grand Avenue Overlook would remain open and available for public users throughout the project construction period, and construction workers would not be allowed to park in this area. **Special Condition #1** requires the City to submit final construction staging and storage plans and prohibits the use of public parking spaces for construction related vehicles or equipment. Temporary lane closures and traffic control measures on San Dieguito Drive may be necessary during active work periods to lay down equipment and materials, but as conditioned, at least one lane must

remain open for travel. **Special Conditions #6 and 7** require that the City finalize all easements prior to construction and submit documentation demonstrating that the applicant has executed and recorded its acceptance of all easements against the parcels utilized for the trail alignment and habitat restoration. **Special Condition #12** requires written permission from a private property owner that the City may use a portion of the property for trail alignment as recorded in the easement ([Exhibit 2](#)).

The proposed project would include minor grading and debris removal to accommodate the trail alignment. As discussed in detail below, the project has been designed to avoid impacts to sensitive natural resources to the maximum extent feasible; however, there would be some impacts to sensitive vegetation. However, the Commission's ecologist has determined that the vegetation is not ESHA, and all impacts would be mitigated through the creation, restoration, and preservation of habitat at a nearby mitigation site. No construction activities will occur in any open water or wetland areas, and grading would not be conducted during the LCP-designated rainy season (November 15 to March 31). The operation of the trail will not result in an increase in impervious surface, as the DG trail and boardwalk material are considered permeable. Once construction is complete, no operational BMPs will be required and runoff would continue to be collected and discharged into the lagoon at the two existing drainage outfalls. While the project has been designed to reduce impacts to the lagoon system, in order to further ensure no impacts to water quality occur, **Special Condition #8** requires the applicant to submit a final construction phase BMP plan.

The project area is bisected by the boundary between the retained CDP jurisdiction of the Commission and the CDP jurisdiction delegated to the City of Del Mar by the Commission through the City's Local Coastal Program (LCP). The City has requested the CDP application be consolidated and issued by the Commission. As such, the policies of Chapter 3 of the Coastal Act provide the legal standard of review for a consolidated coastal development permit application submitted pursuant to Section 30601.3, with the local government's certified LCP used as guidance.

## **B. Biological Resources**

Coastal Act policies 30240 and 30251 restrict the alteration of natural landforms and protects sensitive habitats. Section 30231 of the Coastal Act requires that coastal waters are protected and runoff minimized. Section 30233 limits development in open coastal waters, wetlands, estuaries, and lakes to specific permitted uses where there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects.

The proposed project would involve minor grading and vegetation removal that will mostly impact disturbed upland areas; however, sensitive vegetation, such as disturbed coastal sage scrub, southern willow scrub, coastal brackish marsh, and southern coastal bluff scrub will also be affected. The project would impact approximately 26 sq. ft. of coastal brackish marsh, approximately 130 sq. ft. of southern coastal bluff scrub, 13 sq. ft. of southern willow scrub, 871 sq. ft. of disturbed Diegan coastal sage scrub, and 5,227 sq. ft. of non-sensitive vegetation ([Exhibit 4](#)). The site allows for very limited space between the lagoon waters and existing development. San Dieguito Drive is a

narrow two-lane road, and most of the southern edge of the road abuts a combination of hillsides, fences, and driveways associated with private residences. Because of these constraints, a wetland buffer cannot be provided and some minor wetland impacts associated with trail construction are unavoidable.

The project is located within the Lagoon Overlay Zone and is zoned as floodway in the City of Del Mar LCP. Per the wetland preservation regulations of the certified LCP, permitted uses in wetlands are limited to three general categories, one of which includes educational or recreational uses (such as the Riverpath trail), provided that they do not adversely impact the ecosystem. Wetland restoration projects are also allowable. While the Riverpath project does impact wetland resources, the project has been designed to limit the amount of habitat removal as much as possible, and the trail is located as far inland as possible. The installation of the trail in wetland areas would be limited to the placement of pre-made footings, which would substantially avoid and reduce impacts. Also, the Commission has historically allowed passive public recreational uses within wetland buffers in the San Diego area (e.g. CDPs 6-05-128, 6-09-79, 6-04-088), including along the two previously approved sections of the Riverpath trail. The trail constitutes a recreational use, making it an allowable use in the Floodway Zone per the LCP. Finally, the City intends to mitigate for the impacts to habitat, which is an acceptable use per the Lagoon Overlay Zone. The Commission's ecologist has reviewed the project and concurs that the impacts have been minimized and that the impacts to the ecosystem will be less than significant.

As proposed, impacts to coastal brackish marsh will be mitigated at a 4:1 ratio consisting of a minimum 1:1 establishment/re-establishment, impacts to southern coastal bluff scrub will be mitigated at a 3:1 ratio consisting of a minimum 1:1 establishment/reestablishment, and impacts to coastal sage scrub will be mitigated at a 2:1 ratio consisting of a minimum 1:1 establishment/re-establishment. The Commission's ecologist has determined that the proposed mitigation will adequately offset the impacts to sensitive habitat.

A property proposed as a target mitigation site is located approximately 225 feet northwest of the project site on the Phase II segment of the trail ([Exhibit 5](#)). This mitigation property is approximately 0.33 acre and primarily supports nonnative vegetation. A portion of the off-site target mitigation property would be assigned to mitigate for the project (approximately 0.05 acre), and the remaining portion of the property would be available for other mitigation efforts/projects. **Special Condition #2 & 3** require the City to submit a final Habitat Mitigation and Monitoring Plan (HMMP) that delineates all impacted areas, the habitat type and acreage, and a 5-year monitoring plan including a schedule of all implementation, maintenance, monitoring and reporting activities, interim performance standards, and a description of field activities. **Special Condition #4** requires the submittal of a landscaping plan that includes only species native to southern California and which are compatible with the adjacent vegetation communities. **Special Condition #5** specifies that the City will be consistent with all mitigation measures identified in the final MND to the extent that they are consistent with the special conditions of the CDP. The Commission's ecologist has reviewed the



mitigation measures in the MND and found them acceptable. Thus, the project is consistent with the resource protection policies of Chapter 3 of the Coastal Act.

### **C. Public Access**

As conditioned, the proposed development will not have an adverse impact on public access to the coast or to nearby recreational facilities. As conditioned, the proposed development conforms to Sections 30210 through 30214, Sections 30220 through 30224, Section 30252 and Section 30604(c) of the Coastal Act.

### **D. Cultural Resources**

Section 30244 requires that where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required. As conditioned, the proposed development will not have an adverse impact on archeological, cultural or paleontological resources. The Cultural Resources Technical Report prepared for the proposed project includes the results of a records search, Sacred Lands File search, Native American outreach, a review of historic aerial photographs and maps, and pedestrian survey of the area of potential effects. The Cultural Resources Technical Report revealed one historical archaeological site in the project survey area, which consist of concrete blocks and pillars that are likely pieces of possibly historic-period lamp posts. At the request of a consulting tribe, an archaeological and Native American monitoring program has been proposed by the City as a mitigation measure. If cultural deposits are encountered, the monitors may halt or redirect ground disturbing activities while the unearthened materials are assessed and documented. If the resource is determined to be significant, the monitors will coordinate with City staff on appropriate treatment measures and reporting requirements. In order to ensure that the City complies with this mitigation measure, **Special Condition #5** specifies that the City shall be consistent with all mitigation measures identified in their Final MND to the extent that they are consistent with the other CDP special conditions.

In adherence to the Commission's 2018 Tribal Consultation Policy, Commission staff also sent emails and letters offering consultation to those tribes identified by the Native American Heritage Commission as traditionally and culturally affiliated with the geographic area of the project. Staff received three responses for additional information, specifically asking for confirmation that monitors will be on site during ground disturbance and requesting more information on the results of the cultural resources report as well as in the event that any discoveries of artifacts or human remains are made during construction. As a result of these consultation efforts, staff has incorporated **Special Condition #9**, which requires the applicant to adhere to a Cultural Resources Treatment and Monitoring Plan that addresses on-site monitoring by a Cultural Resources Monitor, as well as follow-up procedures and testing plans in the event that cultural resources are uncovered during the course of construction.

Therefore, as conditioned, the proposed development conforms to Section 30244 of the Coastal Act.

## **E. Coastal Hazards**

The proposed project is located within Federal Emergency Management Agency (FEMA) 100-year Flood Zones AE and A, which means that the project site has an annual one percent chance of flooding on any given year. The City estimates the trail has a useful life of approx. 30 years; however, routine maintenance and repairs will significantly lengthen the lifespan. According to the Commission's SLR Guidance, the trail is estimated to be impacted as early as 2140 under the low-risk scenario, or 2090 under the medium-high risk scenario. The City also completed a sea level rise analysis for the project, and estimated that the project's lowest points would only be impacted by SLR in the year 2100, under worst case scenario conditions. Therefore, impacts due to sea level rise are not expected to impact the project for many decades to come.

**Special Condition #10** requires the applicant to waive its rights to construct shoreline protection and requires that the applicant remove all or a portion of the development and restore the site if the structure is deemed unsafe for use, access to the site can no longer be maintained, removal is required pursuant to a future LCP policy or sea level rise adaptation planning, or the development requires a shoreline protective device that is in conflict with the applicable LCP or Coastal Act policies. Because periodic storm and flood events are expected to impact the development as sea level rise progresses, **Special Condition #11** requires the applicant to acknowledge the risk of building in a hazardous location and ensures that the risks of property damage arising from sea level rise or changed circumstances are borne by the applicant. As conditioned, the Commission finds that the development conforms to the requirements of Sections 30235 and 30253 of the Coastal Act regarding the siting of development in hazardous locations.

## **F. Local Coastal Planning**

The project area is bisected by the boundary between the retained CDP jurisdiction of the Commission and the CDP jurisdiction delegated to the City of Del Mar by the Commission through the City's LCP. However, in order to expedite the coastal permitting process, the City has requested the CDP application be consolidated and the Commission be the sole entity responsible for approving a single consolidated CDP. Section 30601.3 of the Coastal Act authorizes the Commission to process a consolidated coastal development permit application when requested by the local government and the applicant and approved by the Executive Director for projects that would otherwise require coastal development permits from both the Commission and from a local government with a certified LCP. In this case, the Executive Director agreed to the processing request. As such, the policies of Chapter 3 of the Coastal Act provide the legal standard of review for a consolidated coastal development permit application submitted pursuant to Section 30601.3, with the City's certified LCP used as guidance.

## **G. California Environmental Quality Act**

Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California

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Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. The City of Del Mar adopted an Initial Study and Mitigated Negative Declaration for the project on June 6, 2022.

The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures, including conditions addressing mitigation, water quality, sea level rise, cultural resources, and shoreline protective devices will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

## **APPENDIX A – SUBSTANTIVE FILE DOCUMENTS**

- CDP 6-01-157 (Riverpath Phase I)
- CDP 6-15-0742 (Riverpath Phase II)
- California Coastal Commission Sea Level Rise Policy Guidance. Adopted on August 12, 2015 and updated November 7, 2018.  
[https://documents.coastal.ca.gov/assets/slr/guidance/2018/0\\_Full\\_2018AdoptedSLRGuidanceUpdate.pdf](https://documents.coastal.ca.gov/assets/slr/guidance/2018/0_Full_2018AdoptedSLRGuidanceUpdate.pdf)

## **APPENDIX B – CULTURAL RESOURCES SIGNIFICANCE TESTING PROCEDURES**

A. An applicant seeking to recommence construction following discovery of cultural deposits shall submit a Significance Testing Plan for the review and approval of the Executive Director. The Significance Testing Plan shall identify the testing measures that will be undertaken to determine whether the cultural deposits are significant. The Significance Testing Plan shall be prepared by the project archaeologist(s), in consultation with the Native American monitor(s), the consulting Tribes(s), and the Most Likely Descendent (MLD) when State Law mandates identification of a MLD. The Executive Director shall make a determination regarding the adequacy of the Significance Testing Plan within 30 days of receipt. If the Executive Director does not make such a determination within the prescribed time, the plan shall be deemed approved and implementation may proceed.

1. If the Executive Director approves the Significance Testing Plan and determines that the Significance Testing Plan's recommended testing measures are de minimis in nature and scope, the significance testing may commence after the Executive Director informs the permittee of that determination.
2. If the Executive Director approves the Significance Testing Plan but determines that the testing measures therein are not de minimis, significance testing may not recommence until after an amendment to this permit is approved by the Commission.
3. Once the measures identified in the Significance Testing Plan are undertaken, the permittee shall submit the results of the testing to the Executive Director for review and approval. The results shall be accompanied by both the Kumeyaay Cultural Monitor's recommendation and the project archaeologist's recommendation as to whether the deposits are significant. The project archaeologist's recommendation shall be made in consultation with the Native American monitors, the consulting Tribe(s), and the MLD when State Law mandates identification of a MLD. The Executive Director shall make the determination as to whether the deposits are significant based on the information available to the Executive Director.
  - i. If the deposits are found to be significant, the permittee shall prepare and submit to the Executive Director and the Kumeyaay Cultural Monitor/MLD a supplementary Archaeological Plan in accordance with subsection B of this condition and all other relevant subsections.
  - ii. If the deposits are found to be not significant, then the permittee may recommence grading in accordance with any measures outlined in the significance testing program. All unearthened archaeological resources or tribal cultural resources will be collected and temporarily stored in a secure location onsite (or as otherwise agreed upon by the archaeological monitor and the traditionally and culturally affiliated Tribe(s)) for later reburial onsite.

B. An applicant seeking to recommence construction following a determination by the Executive Director that the cultural deposits discovered are significant shall submit a Supplementary Archaeological Plan for the review and approval of the Executive Director. The Supplementary Archaeological Plan shall be prepared by the project archaeologist(s), in consultation with the Native American monitor(s), the consulting Tribe(s), the Most Likely Descendent (MLD) when State Law mandates identification of a MLD, as well as others identified in subsection C below. The Supplementary Archaeological Plan shall identify proposed investigation and mitigation measures. The range of investigation and mitigation measures considered shall not be constrained by the approved development plan. Mitigation measures considered may range from in-situ preservation to recovery and/or relocation. A good faith effort shall be made to avoid impacts to cultural resources through methods such as, but not limited to, project redesign, capping, and placing cultural resource areas in open space. In order to protect cultural resources, any further development may only be undertaken consistent with the provisions of the Supplementary Archaeological Plan.

1. If the Executive Director approves the Supplementary Archaeological Plan and determines that the Supplementary Archaeological Plan's recommended changes to the proposed development or mitigation measures are de minimis in nature and scope, construction may recommence after the Executive Director informs the permittee of that determination.
2. If the Executive Director approves the Supplementary Archaeological Plan but determines that the changes therein are not de minimis, construction may not recommence until after an amendment to this permit is approved by the Commission.

C. Prior to submittal to the Executive Director, all plans required to be submitted pursuant to this special condition, except the Significance Testing Plan, shall have received review and written comment by a peer review committee made up of qualified archaeologists convened in accordance with current professional practice. Representatives of traditionally and culturally affiliated Tribes included on an updated NAHC list shall also be given an opportunity to review and submit written comments on the required plans. Names and qualifications of selected peer reviewers shall be submitted for review and approval by the Executive Director. The plans submitted to the Executive Director shall incorporate the recommendations of the peer review committee and Native American representatives or explain why the recommendations were rejected. Furthermore, upon completion of the review process, all plans shall be submitted to the California Office of Historic Preservation (OHP) and the NAHC for their review and an opportunity to comment. The plans submitted to the Executive Director shall incorporate the recommendations of the OHP and NAHC. If the OHP and/or NAHC do not respond within 30 days of their receipt of the plan, the requirement under this permit for that entities' review and comment shall expire, unless the Executive Director extends said deadline for good cause. All plans shall be submitted for the review and approval of the Executive Director.