

CALIFORNIA COASTAL COMMISSION

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Th13d

**LCP-6-DMR-20-0079-3 (North Commercial and Professional Commercial
Land Use and Zone)**

February 10, 2022

CORRESPONDENCE



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February 7, 2022

Stephanie Leach
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California Coastal Commission
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VIA Electronic Mail
SanDiegoCoast@coastal.ca.gov

**RE: Agenda Item TH13d: City of Del Mar Major Amendment
No. LCP-6-DMR-2000079-3 (North Commercial and Professional
Commercial Land Use and Zone Amendment)**

Dear Coastal Commissioners and Staff:

Please accept the following comments regarding item TH13d, *City of Del Mar Major Amendment No. LCP-6-DMR-20-0079-3* on behalf of Coast Law Group client, Watermark D.M., LP, owner of property in the City of Del Mar at the intersection of Jimmy Durante Boulevard and San Dieguito Drive (the "Watermark Property").

Watermark DM, L.P. is supportive of the City's request to rezone the NC Zone but would like to add the following perspectives and context for the Commission's consideration.

The Watermark Project

Generally, the LCP Amendment seeks to add high density multi-family residential use to the City's North Commercial (NC) zone, which includes the Watermark Property. The Watermark project, briefly mentioned in the staff report at pages 13 and 14, is a 50-unit (not 35-40, or 48 as mistakenly represented in the report), three-story over podium multi-family apartment community on 2.37 gross acres. The project is critical to the City's ability to meet its affordable housing obligations and includes 10 deed-restricted affordable units -- six in the *low* affordability category, two designated *very low*, and two *extremely low*.

As the staff report notes, the City is obligated to process the Watermark project "by-right" at a density of 20-25 dwelling units per acre under Government Code sec. 65583(g) due to its failure to meet the NC Rezone timelines contained in its 5th Cycle Housing Element. (Note: the rezone was required to be completed by 2016; see staff report at p. 15). Additionally, the Watermark Project qualifies for relief from existing development standards under state Density Bonus Law and is

requesting a concession to allow greater lot coverage, and waivers of development standards to allow more FAR, increased height, and an additional story of development.

Importantly, the Watermark property contains significant environmental resources to be protected and buffered onsite, resulting in a reduction in developable acreage to approximately 1.5 net developable acres. Environmentally sensitive areas include approximately .14 acres of coastal brackish marsh, .042 acres of southern coastal bluff scrub, and approximately .5 acres of proposed ESHA containing southern coastal bluff scrub with a small assemblage of special status vegetation species (e.g., Torrey pine, Del Mar sandaster, and Chaparral rein-orchid). After multiple meetings and in-depth coordination with representatives of Coastal Commission staff and the California Department of Fish and Wildlife, the proposed project has been designed to include significant buffers between proposed development and the onsite ESHA/wetland resources and to meaningfully improve and restore these existing but degraded natural resources.

As designed, the Watermark project will have no impact on high priority Coastal Act uses such as public recreation, public views, or visitor-serving uses.

Coastal Act and Housing Law Harmonization is Required – Particularly When Affordable Housing is at Stake

Notwithstanding that a prior City of Del Mar City Council in 2013 approved the 5th Cycle Housing Element from which the proposed NC Rezone obligation arises, more recent iterations of the Council have been notably less excited about meeting state mandated housing obligations. However, the 5th Cycle Housing Element was long ago adopted as part of the Del Mar Community Plan (General Plan) -- of which the City's LCP is also a part -- and California Government Code section 65300.5 requires the City's General Plan to be internally consistent. It is therefore presumed that that the Housing Element policies and LCP policies were found by the City's then-empaneled Council to be consistent when the 2013-2021 5th Cycle Housing Element was originally adopted. Specifically, the Housing Element policies supporting construction of affordable housing, the obligation to meet the City's Regional Housing Needs Assessment allocation, and the proposed density of the NC Zone must have been found by the City to be compatible with the policies of the LCP's Land Use Plan.

In considering the proposed rezone and future development of the area, the Commission should also keep in mind the seminal case *Kalnel Gardens, LLC v. City of Los Angeles* (3 Cal.App.5th 927 (2016)). That case addressed the interplay between State housing law (Density Bonus Law) and the Coastal Act as implemented through a local jurisdiction's LCP. There, the Court of Appeals ultimately upheld a denial of a Density Bonus development in the Coastal Zone on the premise that the Density Bonus Law was wholly subordinate to the Coastal Act and LCP policies/design standards. In that instance, the proposed project included both an increase in density beyond that indicated in the LCP, as well as various zoning concessions exceeding development standards contained in the LCP

(specifically, the project did not strictly comply with height, density, and setbacks, and was found incompatible with the existing neighborhood's size, bulk, mass, and scale).

The California Legislature did not agree with the *Kalnel Gardens* Court's determination that, in essence, State Density Bonus Law concessions and waivers were not available in the Coastal Zone if they would be inconsistent with any provisions of an LCP. In direct response to this case's holding, the Legislature passed, and the Governor signed, Assembly Bill 2797 to balance state housing needs with coastal protection policies. Assembly Bill 2797 provides:

It is the intent of the Legislature in amending subdivision (m) of Section 65915 of the Government Code to address the holding and dicta in *Kalnel Gardens, LLC v. City of Los Angeles* (2016) 3 Cal.App.5th 927 regarding the relationship between Section 65915 and the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code). **The Legislature's intent is that the two statutes be harmonized so as to achieve the goal of increasing the supply of affordable housing in the coastal zone while also protecting coastal resources and coastal access.** (Emphasis added).¹

The Coastal Act itself further reflects the importance of providing affordable housing in the Coastal Zone. California Public Resources Code section 30604 states:

(f) The commission shall encourage housing opportunities for persons of low and moderate income. In reviewing residential development applications for low- and moderate-income housing, ... the issuing agency, or the commission on appeal, may not require measures that reduce residential densities below the density sought by an applicant if the density sought is within the permitted density or range of density established by local zoning plus the additional density permitted under Section 65915 of the Government Code, unless the issuing agency or the commission on appeal makes a finding, based on substantial evidence in the record, that the density sought by the applicant cannot feasibly be accommodated

¹ Government Code section 65915:

(m) This section does not supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976 (Division 20 (commencing with Section 30000) of the Public Resources Code). Any density bonus, concessions, incentives, waivers or reductions of development standards, and parking ratios to which the applicant is entitled under this section **shall be permitted in a manner that is consistent with this section and Division 20** (commencing with Section 30000) of the Public Resources Code. (Emphasis added).
(n) If permitted by local ordinance, nothing in this section shall be construed to prohibit a city, county, or city and county from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section.

on the site in a manner that is in conformity with Chapter 3 (commencing with Section 30200) or the certified local coastal program.

(g) The Legislature finds and declares that **it is important for the commission to encourage** the protection of existing and **the provision of new affordable housing opportunities for persons of low and moderate income in the coastal zone.** (Emphasis added).

Following adoption of AB2797, the Coastal Commission has had occasion to interpret the new law in the context of LCP Amendments (LCPAs) seeking to update local Density Bonus ordinances. When the City of Santa Cruz sought an LCPA for its Density Bonus ordinance in September 2019, the Commission agreed with the proposed framework, noting:

The proposed amendment language also states that projects using the State's Density Bonus criteria (i.e., an increase in the number of otherwise allowable residential units and modification of certain development standards to provide for those units in exchange for a certain percentage of those units to be affordable) shall comply with the certified City of Santa Cruz LCP, **except as they relate to certain numeric standards that may be changed through the State Density Bonus provisions. In other words, while some of the more quantitative LCP development standards (e.g., those related to height, density, and parking) may be relaxed so as to accommodate the increased residential density for the affordable housing units pursuant to the State Density Bonus Law, the more qualitative LCP policy requirements to protect coastal resources (e.g., related to protection of environmentally sensitive habitat, provision of public access, protection of public views, etc.) must still be adhered to in all cases, notwithstanding any bonus, concession, incentive, waiver, or reduction in development standards allowed under the State Density Bonus Law.**

(Emphasis added; see attached Exhibit A).

The proposed rezone at issue represents an important balancing and harmonization of state housing law and coastal protection policies reflected in the City of Del Mar's Local Coastal Program. The staff report reflects much of this interplay and correctly identifies that there are a limited number of parcels within the NC Zone that should be excluded from future development. The remaining parcels in the zone are critical if the City is ever going to provide new multi-family housing (with deed-restricted affordable units) as required by, and promised to, the California Department of Housing and Community Development.

Specific Comment's on Staff's Recommendations

Although the staff report correctly indicates the rezone will not apply to the Watermark project as currently being processed, there is the possibility that a future project on the Watermark Property would be subject to the LCPA. Therefore, please consider the following from the Watermark perspective:

1. Base Flood Elevation Mitigation. Given the proximity of the NC Zone to the San Dieguito Lagoon and Pacific Ocean, the Watermark project owners recognize the importance of considering sea level rise in project design. Watermark supports staff's recommendations that development within flood hazard areas include mitigation measures such as elevation and floodproofing. However, the Commission should also note that raising the elevation of properties to appropriately site development footprints out of harm's way may result in the need to alter how building heights are measured if the City is to achieve the contemplated housing units.

2. Traffic. As noted by staff regarding the entire NC Zone, the addition of residential use to the affected parcels will not result in traffic increases beyond current zoning allowances. The Watermark project proves this point, as it will replace a previously entitled commercial office park that would have generated more traffic than the current project proposal.

3. Wildfire Safety. At the request of residents and the City, Watermark has conducted extensive wildfire safety and mitigation investigation over years of consideration. The staff report correctly notes emergency response times will remain the same or improve relative to existing buildout conditions. Inclusion of fire-safe building materials and appropriate management of fuel buildup in open spaces adjacent to structures will further ensure the safety of residents and businesses in the area.

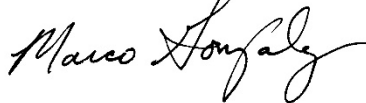
4. Subdivision Prohibition. While not directly applicable to the Watermark project currently, staff's recommendation to include a subdivision prohibition does not appear well supported or necessary. The primary arguments provided are that common ownership will better allow for the addition of adaptive elements on the site and that fewer owners will allow for better community-wide management opportunities. While these issues make sense at first blush, the Commission should also consider how subdivision preclusion may provide a barrier to the future construction of housing units, and in particular affordable units. Often, when affordable housing is constructed with the assistance of tax credits or other government assistance, the affordable units are mapped separately from market rate and commercial units in the same structure. Similarly, within mixed use structures, it is not uncommon for office and commercial units to be individually owned while housing units remain in a common ownership. The language proposed would preclude subdivisions generally but does not provide for parcel map waivers and condo-mapping that would help facilitate future housing units as contemplated by the rezone. This issue should be clarified by the Commission, as HOAs for common interest developments can achieve the goals and desires noted

by staff, but a blanket subdivision prohibition could preclude the construction of individual for-sale residential units or hinder the financing of affordable housing units in multi-family residential projects.

Thank you for the opportunity to provide input on this important LCP Amendment before the Commission.

Sincerely,

Coast Law Group LLP



Marco A. Gonzalez
Attorney for Watermark DM, L.P.

CALIFORNIA COASTAL COMMISSION

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W13e

Prepared August 23, 2019 for September 11, 2019 Hearing

To: Commissioners and Interested Persons
From: Susan Craig, Central Coast District Manager
Ryan Moroney, District Supervisor
Subject: **De Minimis Amendment Determination for City of Santa Cruz LCP Amendment Number LCP-3-STC-19-0104-1-Part A (Affordable Housing Density Bonus)**

City of Santa Cruz Proposed Amendment

The City of Santa Cruz is requesting to amend the Implementation Plan (IP) of its certified Local Coastal Program (LCP) to encourage affordable housing through density bonuses. Consistent with the density bonus requirements specified in the State's Density Bonus law (Government Code Section 65915) and as referenced in Coastal Act Section 30604(f), the proposed amendment provides for increases in otherwise allowed density for affordable housing in residentially designated areas in the coastal zone, while ensuring that such increases in density (which may also include increased height, reduced setbacks, and modified parking standards to accommodate that density) protect coastal resources.

De Minimis LCP Amendment Determination

Pursuant to Coastal Act Section 30514(d), the Executive Director may determine that a proposed LCP amendment is "de minimis." In order to qualify as a de minimis amendment, the amendment must meet the following three criteria:

1. The Executive Director determines that the proposed amendment would have no impact, either individually or cumulatively, on coastal resources, and that it is consistent with the Chapter 3 policies of the Coastal Act;
2. The local government provides public notice of the proposed amendment at least 21 days prior to submitting the amendment to the Commission, by one of the following methods: posting on-site and off-site in the affected area, newspaper publication, or direct mailing to owners and occupants of contiguous property; and
3. The amendment does not propose any change in use of land or water or allowable use of property.

If the Executive Director determines that an amendment is de minimis, that determination must be reported to the Commission. If three or more Commissioners object to the de minimis LCP amendment determination, then the amendment shall be set for a future public hearing; if three or more Commissioners do not object to the de minimis determination, then the amendment is deemed approved, and it becomes a certified part of the LCP ten days after the date of the Commission meeting (in this case, on September 21, 2019).

The purpose of this notice is to advise interested parties of the Executive Director’s determination that the proposed LCP amendment is de minimis. Each of the de minimis criteria is discussed briefly below:

1. No impact to coastal resources and consistency with Chapter 3 of the Coastal Act:

In response to recent changes to the State’s Density Bonus Law,¹ the proposed amendment would add Section 24.16.262 to the City’s IP (see **Exhibit A**) to make clear that the State’s Density Bonus Law is not to in any way lessen or alter the Coastal Act (i.e., density bonuses must be consistent with the Coastal Act’s coastal resource protection requirements). The proposed amendment language also states that projects using the State’s Density Bonus criteria (i.e., an increase in the number of otherwise allowable residential units and modification of certain development standards to provide for those units in exchange for a certain percentage of those units to be affordable) shall comply with the certified City of Santa Cruz LCP, except as they relate to certain numeric standards that may be changed through the State Density Bonus provisions. In other words, while some of the more quantitative LCP development standards (e.g., those related to height, density, and parking) may be relaxed so as to accommodate the increased residential density for the affordable housing units pursuant to the State Density Bonus Law, the more qualitative LCP policy requirements to protect coastal resources (e.g., related to protection of environmentally sensitive habitat, provision of public access, protection of public views, etc.) must still be adhered to in all cases, notwithstanding any bonus, concession, incentive, waiver, or reduction in development standards allowed under the State Density Bonus Law.

In sum, consistent with existing legal requirements, the proposed LCP amendment allows for density bonuses and associated incentives for the provision of affordable housing, while ensuring that such housing is built in a manner consistent with the LCP’s coastal resource protection standards, and is therefore consistent with the Land Use Plan and the Coastal Act as submitted. Thus, the proposed amendment will not adversely affect coastal resources, and it is consistent with the policies of Chapter 3 of the Coastal Act.

¹ In the 2016 *Kalnel Gardens v. City of Los Angeles* decision, the Second District of the California Court of Appeals determined that the Coastal Act takes precedence over the State’s Density Bonus Law. In response to this, the State legislature passed AB 2797 in 2018, which made explicit in the Density Bonus Law that any density bonus, concessions, incentives, waivers or reductions of development standards and parking ratios allowed be permitted “in a manner that is consistent with that law and the California Coastal Act of 1976.” To be clear, AB 2797 does not suggest that the State’s Density Bonus Law takes precedence over the Coastal Act; rather, AB 2797 evinces a clear intent that the State Density Bonus Law and Coastal Act be applied harmoniously.

- 2. Provision of public notice:** The City provided public notice in advance of the Planning Commission hearing (held on March 21, 2019) and the City Council hearings (held on May 14, 2019 and May 28, 2019) where the proposed amendment was considered. For the Planning Commission hearing, a newspaper advertisement notice was printed on March 2, 2019. For the City Council hearings, a newspaper advertisement notice was printed on April 2, 2019, and May 22, 2019. In addition, the proposed text was made available at the City Clerk's office and on the City's website for public inspection, all in advance of the City's hearings. The amendment submittal was subsequently received by the Commission on July 1, 2019 (and filed as complete on July 16, 2019), and therefore, the 21-day noticing requirement has been satisfied.
- 3. No change in use of land or allowable use of property:** No change in use is proposed by this amendment.

California Environmental Quality Act (CEQA)

The Coastal Commission's review and development process for LCPs and LCP amendments has been certified by the Secretary of Resources as being the functional equivalent of the environmental review required by CEQA. Local governments are not required to undertake CEQA environmental analysis of proposed LCP amendments (*see* Pub. Res. Code § 21080.9), although the Commission can and does use any environmental information that the local government has developed, consistent with its CEQA requirements, in consideration of approving and certifying an LCP proposal. Here, the City exempted the proposed amendment from environmental review under CEQA pursuant to Section 15265 of Chapter 3 of the California Code of Regulations (State CEQA Guidelines). This report has discussed the relevant coastal resource issues with the proposal, and has concluded that the proposed LCP amendment is not expected to result in any significant adverse impact on the environment. Thus, it is unnecessary for the Commission to suggest modifications to the proposed amendment to address adverse environmental impacts because the proposed amendment, as submitted, will not result in any significant environmental effects for which feasible mitigation measures would be required.

Coastal Commission Concurrence

The Executive Director will report this de minimis LCP amendment determination, and any comments received on it, to the Coastal Commission at its September 11, 2019 meeting in Newport Beach. If you have any questions or need additional information regarding the proposed amendment or the method under which it is being processed, please contact Ryan Moroney at the Central Coast District Office in Santa Cruz. If you wish to comment on and/or object to the proposed de minimis LCP amendment determination, please do so by 5:00 p.m. on September 6, 2019.

Procedural Note - LCP Amendment Action Deadline

This proposed LCP amendment was filed as complete on July 16, 2019. It amends the IP only and the 60-working-day action deadline is September 14, 2019. (*See* Coastal Act Sections 30513, 30514(b).) Thus, unless the Commission extends the action deadline (it may be extended by up to one year per Coastal Act Section 30517), the Commission has until September 14, 2019 to take a final action on this LCP amendment.

Exhibit

Exhibit A: Proposed IP Section 24.16.262

Section 24.16.262 – Local Coastal Plan Consistency of Part 3 of Chapter 24.16 of the City of Santa Cruz Municipal Code is hereby amended as follows:

24.16.262 LOCAL COASTAL PLAN CONSISTENCY.

1. State density bonus law provides that it shall not be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act of 1976.
2. For development within the coastal zone, the requested density bonus and any requested incentive, concession, waiver, modification, modified parking standard, or commercial development bonus shall be consistent with State Density Bonus criteria. All applicable requirements of the certified Santa Cruz local coastal program shall be met (including but not limited to sensitive habitat, agriculture, public viewshed, public recreational access, and open space) with the exception of the numeric standards changed through State Density Bonus provisions.

FW: Agenda item TH13d

ExecutiveStaff@Coastal <ExecutiveStaff@coastal.ca.gov>

Mon 2/7/2022 4:27 PM

To: Lilly, Diana@Coastal <Diana.Lilly@coastal.ca.gov>; Leach, Stephanie@Coastal <stephanie.leach@coastal.ca.gov>

 2 attachments (606 KB)

Coastal commission 1.pdf; Coastal commission.pdf;

From: Barbara <bfmyers@gmail.com>

Sent: Monday, February 7, 2022 1:16 PM

To: ExecutiveStaff@Coastal <ExecutiveStaff@coastal.ca.gov>

Subject: Agenda item TH13d

Agenda item# TH13d

LCP AMENDMENT NO. LCP-6-DMR-20-0079-3

Barbara & Doug Myers

My Position - I fully support all CCC Staff recommendations as to limitations, restrictions and controls on building within this flood zone area. Protecting the health, safety and welfare of all who might live in this area, including others and our unique environment for all and future generations is what needs to be protected.

This is a rare, precious and beautiful environment to be protected, preserved and always safe for all.

Respectfully,
Barbara & Doug Myers

attached

FW: Agenda item# TH13d LCP AMENDMENT NO. LCP-6-DMR-20-0079-3

ExecutiveStaff@Coastal <ExecutiveStaff@coastal.ca.gov>

Mon 2/7/2022 4:27 PM

To: Lilly, Diana@Coastal <Diana.Lilly@coastal.ca.gov>; Leach, Stephanie@Coastal <stephanie.leach@coastal.ca.gov>

Fyi -

From: Weare, John <jweare@ucsd.edu>**Sent:** Monday, February 7, 2022 3:01 PM**To:** ExecutiveStaff@Coastal <ExecutiveStaff@coastal.ca.gov>**Subject:** Agenda item# TH13d LCP AMENDMENT NO. LCP-6-DMR-20-0079-3**Agenda item# TH13d
LCP AMENDMENT NO. LCP-6-DMR-20-0079-3
From John Weare (former Mayor of Del Mar)****My Position** – I Fully support the suggested limitations restriction and controls contained in

STAFF RECOMMENDATION ON CITY OF DEL MAR MAJOR AMENDMENT NO. LCP-6-DMR-20-0079-3 (North Commercial and Professional Commercial Land Use and Zone Amendment) for Commission Meeting of February 9-11, 2022)

As a Del Mar resident who originally campaigned for the California Coastal Act in the 1970s and as a former Mayor of Del Mar, I know how important the work of the CACC is to the preservation of California's fragile environment.

I am also familiar with the project area because of my long support and work for the Del Mar Lagoon preservation project just adjacent to this project.

This project is in an area that has been selected as a nature preserve for all California residents and may be subject to rather severe flooding particularly with predicted sea water rise. If such an event were to occur any residents in that area will be subject to severe access issues (medical, fire, etc.). In addition, mitigation measures are apt to significant effect the adjacent Del Mar Lagoon Nature preserve. Their impact should be carefully reviewed.

This will be the highest density residential use in an area where any residential use is already questionable.

Respectfully,

John Weare

Former Mayor of Del Mar and Participating writer of the Del Mar Community Plan

FW: Agenda item# TH13d

ExecutiveStaff@Coastal <ExecutiveStaff@coastal.ca.gov>

Mon 2/7/2022 4:28 PM

To: Lilly, Diana@Coastal <Diana.Lilly@coastal.ca.gov>; Leach, Stephanie@Coastal <stephanie.leach@coastal.ca.gov>

Fyi -

From: Beth Westburg <bethwestburg@yahoo.com>

Sent: Monday, February 7, 2022 12:33 PM

To: ExecutiveStaff@Coastal <ExecutiveStaff@coastal.ca.gov>

Subject: Agenda item# TH13d

TO: California Coastal Commission

executivestaff@coastal.ca.gov

(415)904-5202

Agenda item# TH13d

LCP AMENDMENT NO. LCP-6-DMR-20-0079-3

Beth and Reid Westburg

My Position - I fully support all CCC Staff recommendations as to limitations, restrictions and controls on building within this flood zone area. Protecting the health, safety and welfare of all who might live in this area, including others and our unique environment for all and future generations is what needs to be protected.

This is a rare, precious and beautiful environment to be protected, preserved and always safe for all.

Respectfully,
Beth and Reid Westburg
Del Mar, CA