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Date: January 28, 2022

To: **COMMISSIONERS AND INTERESTED PERSONS**

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Subject: **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)**

SYNOPSIS

The subject LCP Land Use Plan and Implementation Plan amendment was submitted and filed as complete on November 6, 2020. A one-year time extension was granted on February 10, 2021. As such, the last date for Commission action on this item is March 22, 2022.

SUMMARY OF AMENDMENT REQUEST

Currently, properties in the North Commercial (NC) and Professional Commercial (PC) zones can be developed with commercial and professional uses, as well as light industrial uses in the case of the NC Zone. The City is proposing to amend its certified LCP Land Use Plan (LUP) and Implementation Program (IP) to add multiple dwelling unit residential uses at a density of up to 20 dwelling units/acre as a permitted use in the North Commercial (NC) and Professional Commercial (PC) zones. Proposed new and conversion projects for multiple units must include an affordable housing component. The amendment would also allow future dwelling units in both the NC and PC Zones to be used for short-term rentals, excluding the affordable housing units, and would permit emergency shelters in the NC Zone. The amendment would add a new policy to the LUP that identifies a land development goal to increase the City's overall housing capacity and the capability to accommodate housing units in commercial zones while minimizing potential land use compatibility conflicts and assuring priority for coastal-dependent and coastal-related development.

SUMMARY OF STAFF RECOMMENDATION

Staff recommends that, following a public hearing, the Commission deny the proposed City of Del Mar Land Use Plan and Implementation Plan as submitted, and then approve the amendment subject to the suggested modifications listed below.

The primary LCP change proposed allows multiple-dwelling residential for a density of up to 20 dwelling units/acre to be built in the City's existing NC and PC Zones. The intent of this policy is to increase opportunities for the construction of affordable housing, as required by the California Department of Housing and Community Development (HCD). Increasing opportunities for housing is of statewide importance, as is expanding the availability of affordable units. There is currently one affordable housing unit in the City of Del Mar, and the proposed amendment will allow for additional residential development with an affordable housing component in areas largely already developed with commercial uses. Allowing housing in the NC and PC Zones will not displace any existing high priority Coastal Act uses, such as public recreation or visitor-serving uses. No direct impacts to public access, habitat, or visual resources are expected because development proposed on the subject parcels must meet all existing relevant LCP policies relating to parking requirements, scenic view protection and height, and protection of sensitive resources such as wetlands, and coastal and inland bluffs. Although the amendment will increase density on the NC and PC zones, future projects are not expected to impact circulation because there will be less daily traffic under the proposed buildout scenario than either the on-the-ground or existing zoning buildout scenario, and therefore will not significantly impact public access to the coast. Additionally, individual projects would be subject to coastal development permit review.

While the goal of increasing housing is supported by the Coastal Act, the proposed amendment raises concerns related to hazards. The four parcels comprising the PC zone are located well upland of the shoreline and the San Dieguito River. However, the entire land area (a total of 16 parcels) covered by the North Commercial Zone is located in the floodplain as defined in the 2019 FEMA FIRM (Flood Insurance Rate Map) ([Exhibit 6](#)). Allowing new multiple-dwelling unit residential projects to be located in a hazardous area without taking sufficient steps to minimize risks to life and property is inconsistent with the policies of the LUP. Development within the City of Del Mar is vulnerable to the effects of sea level rise and the increased flooding that will result. In this way, not only does allowing for residential density in a hazardous area put that development at risk, but over time, with the increased flooding associated with sea level rise, it also could potentially require shoreline protection that impacts sensitive habit and impedes coastal access.

Nevertheless, there is a tremendous need for affordable housing in coastal communities and Del Mar in particular. The City has been working with HCD to identify areas and strategies to accommodate and incentivize the construction of new residential units throughout the City, and will be bringing forward additional LCP amendment requests related to these efforts over the next several years. The NC/PC zones were identified as the areas of the City with the least physical and structural barriers to construction of new housing; that is, the existing parcels are relatively large and able to accommodate multi-unit development; other than density, no additional development standards (heights,

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setbacks, parking, etc.) need to be amended in order to allow residential development to occur in these zones; and no modifications to environmental protection policies are required.

Thus, the Commission is faced with having to weigh the acute need for new housing with the risk associated with construction in a hazardous area. In this case, staff has evaluated the risk on the subject NC parcels, and found the area may begin to see sea level rise-induced flooding as early as 2060 with 2.5 feet of sea level rise during a 100-year storm. Furthermore, the groundwater table is anticipated to become shallow (1-2 meters in depth) or very shallow (0-1 meter in depth) beneath these parcels with about 1.6 feet or more of sea level rise, which may occur as early as approximately 2045 under the medium-high risk scenario. However, the medium-high risk scenario means there is a 99.5% chance it will occur sometime later than that according to the current best available science. Thus, allowing new residential development in the NC Zone will provide much-needed affordable housing for several decades before the structures are likely to be at serious risk.

Nevertheless, the Commission must consider how to minimize and avoid those risks, and therefore, staff is recommending that several key provisions for multi-dwelling unit residences be incorporated into LCP before this requested additional use can be found allowable. First, for new residential development to be sited appropriately in flood hazard areas, building owners and landowners must take precautions that ensure that development is designed to a level sufficient for the safety of occupants and the public over the lifetime of the structure. Therefore, a suggested modification is proposed that requires a multiple unit residence located within the NC Zone and on a parcel within the flood hazard areas of the 2019 FEMA FIRM, to include design modifications, such as floodproofing and elevation, in order to protect the structure from projected sea level rise based on the best available science. The landowner will also be required to record a notice on the property and notify all occupants that the development is located in a hazardous area, or in an area that may become hazardous, and that sea level rise and flooding may render it difficult or impossible to provide services to the site. The notice will also describe how the boundary between public lands and private lands may shift with rising seas, and the development approval of any structure developed pursuant to this amendment will not be permitted to encroach onto public trust land. Noticing requirements will also include that additional adaptation strategies may be needed in the future consistent with the Coastal Act and certified LCP. Finally, the permittee and their successors would waive the right to hard shoreline protective device for the new residential building, and must acknowledge that the development may need to be removed or relocated if the site becomes unsafe for occupancy due to future sea level rise or flood hazard conditions.

A suggested modification is also needed in order to limit development potential on parcels in the NC Zone that would pose the greatest risk of damage to life and property, as well as impact nearby sensitive environmental resources. To that effect, the density allowance of 20 dwelling units per acre will not be applicable to those parcels located adjacent to the San Dieguito River and Lagoon. Disallowing residential uses on these environmentally constrained parcels was suggested by the City after the LCP Amendment was submitted to the Commission.

A suggested modification to the amendment would also prohibit subdivisions on the parcels of the NC Zone. In accordance with recent Commission guidance, subdivisions in hazardous areas may increase the risk to life and property when located in an area at risk from sea level rise, and would ultimately make any community-wide action more complicated and less effective given a higher number of property interests concentrated in an area known to be hazardous or that will become hazardous.

Two additional suggested modifications delete references in both the proposed NC and PC Zone changes to the City's chapter on affordable housing from their Municipal Code. References to other documents within a City's LCP are typically considered to incorporate those sections by reference. It is staff's understanding that the City did not intend to incorporate the referenced section into the LCP. The specific references can be removed without affecting the subject LCP or the City's existing requirements related to affordable housing, and thus, staff is suggesting their deletion.

Finally, staff proposes two additional suggested modifications that in essence are corrections. The City inadvertently failed to add "multiple dwelling unit residences at a density of 20 dwelling units per acre" to list of Land Use Designations/Allowed Uses in the NC and PC Zones in the LUP, as well as "emergency shelters" for the NC Zone in the same list. These proposed uses were also omitted from the list of Zone Designations/Allowed Uses within the IP. Suggested modifications add these proposed uses to the appropriate sections of the LUP and IP.

Only with the incorporation of these suggested modifications can the amendment be found consistent with the stated goals and policies of the certified LCP and the Coastal Act while still allowing for the number and types of housing units that meet local and regional housing goals.

The appropriate motions and resolutions begin on page 7. The suggested modifications begin on page 9. The findings for denial of the Land Use Plan Amendment as submitted begin on page 18. The findings for approval of the plan, if modified, begin on page 20. The findings for denial of the Implementation Plan Amendment as submitted begin on page 24. The findings for approval of the plan, if modified, begin on page 28.

ADDITIONAL INFORMATION

Further information on the City of Del Mar LCP amendment No. LCP-6-DMR-20-0079-3 may be obtained from Stephanie Leach, Coastal Planner, at (619) 767-2370 or SanDiegoCoast@coastal.ca.gov.

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EXHIBITS

[Exhibit 1 – Ordinance 971](#)

[Exhibit 2 – Ordinance 973](#)

[Exhibit 3 – Proposed Text Changes in Strikeout/Underline](#)

[Exhibit 4 – Professional Commercial \(PC\) Zone Parcels](#)

[Exhibit 5 – North Commercial \(NC\) Zone Parcels](#)

[Exhibit 6 – NC Zone and 2019 FEMA FIRMs](#)

[Exhibit 7 – NC Zone Parcels where Multi-Dwelling Unit Residences is Prohibited](#)

[Exhibit 8 – 2019 FEMA FIRMs](#)

I. OVERVIEW

A. LCP HISTORY

In May 1991, the City of Del Mar submitted its Land Use Plan (LUP) for Commission action. The Commission denied the LUP as submitted, but approved it with suggested modifications in September 1991. The City did not accept the suggested modifications within six months; so, the City resubmitted the same documents and the Commission again approved the LUP with suggested modifications in June 1992. The City Council adopted the modifications within the prescribed time and the Commission effectively certified the LUP in March 1993. The Implementation Plan (IP) was approved with suggested modifications on March 13, 2001. On September 11, 2001, the Commission concurred with the Executive Director's determination to effectively certify the City of Del Mar Local Coastal Program (LCP). The Commission has certified many amendments to the City's LCP since the LUP/IP certifications.

B. STANDARD OF REVIEW

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

Section 30512

(c) The Commission shall certify a land use plan, or any amendments thereto, if it finds that a land use plan meets the requirements of, and is in conformity with, the policies of Chapter 3 (commencing with Section 30200). Except as provided in paragraph (1) of subdivision (a), a decision to certify shall require a majority vote of the appointed membership of the Commission.

Pursuant to Section 30513 of the Coastal Act, the Commission may only reject zoning ordinances or other implementing actions, as well as their amendments, on the grounds that they do not conform with, or are inadequate to carry out, the provisions of the certified land use plan. The Commission shall take action by a majority vote of the Commissioners present.

C. PUBLIC PARTICIPATION

The City has held Planning Commission and City Council meetings with regard to the subject amendment request. All of those local hearings were duly noticed to the public. Notice of the subject amendment has been distributed to all known interested parties.

II. MOTION AND RESOLUTIONS

Following a public hearing, staff recommends the Commission adopt the following resolutions and findings. The appropriate motion to introduce the resolution and a staff recommendation are provided just prior to each resolution.

1. Denial of LUP Amendment as Submitted

MOTION:

I move that the Commission certify the Land Use Plan Amendment for the City of Del Mar certified LCP as submitted.

STAFF RECOMMENDATION OF DENIAL OF CERTIFICATION:

Staff recommends a **NO** vote on the motion. Failure of this motion will result in denial of the land use plan amendment as resubmitted and adoption of the following resolution and findings. The motion to certify as submitted passes only upon an affirmative vote of a majority of the appointed Commissioners.

RESOLUTION TO DENY CERTIFICATION OF LAND USE PLAN AMENDMENT AS SUBMITTED:

The Commission hereby denies certification of the Land Use Plan Amendment for the City of Del Mar certified LCP as submitted and finds for the reasons discussed below that the submitted Land Use Plan Amendment fails to meet the requirements of and does not conform to the policies of Chapter 3 of the California Coastal Act. Certification of the plan would not comply with the California Environmental Quality Act because there are feasible alternatives or mitigation measures that would substantially lessen any significant adverse impact which the Land Use Plan Amendment may have on the environment.

2. Approval of LUP Amendment with Suggested Modifications

MOTION:

I move that the Commission certify the Land Use Plan Amendment for the City of Del Mar certified LCP as submitted if modified in accordance with the suggested changes set forth in the staff report.

STAFF RECOMMENDATION: CERTIFICATION IF MODIFIED AS SUGGESTED:

Staff recommends a **YES** vote on the motion. Passage of the motion will result in certification with suggested modifications of the submitted land use plan amendment and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the appointed Commissioners.

RESOLUTION TO CERTIFY THE IMPLEMENTATION PROGRAM AMENDMENT WITH SUGGESTED MODIFICATIONS:

The Commission hereby certifies the Land Use Plan Amendment for the City of Del Mar certified LCP if modified as suggested and adopts the findings set forth below on grounds that the Land Use Plan Amendment, with the suggested modifications, will meet the requirements of and be in conformity with the policies of Chapter 3 of the Coastal Act. Certification of the land use plan amendment if modified as suggested 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 Land Use Plan Amendment on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.

3. Denial of IP Amendment as Submitted

MOTION:

I move that the Commission certify the Implementation Program Amendment for the City of Del Mar certified LCP as submitted.

STAFF RECOMMENDATION OF REJECTION:

Staff recommends a **NO** vote. Passage of this motion will result in rejection of Implementation Program and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO DENY CERTIFICATION OF THE IMPLEMENTATION PROGRAM AMENDMENT AS SUBMITTED:

The Commission hereby denies certification of the Implementation Program Amendment submitted for the City of Del Mar certified LCP and adopts the findings set forth below on grounds that the Implementation Program as submitted does not conform with, and is inadequate to carry out, the provisions of the certified Land Use Plan as amended. Certification of the Implementation Program would not meet the requirements of the California Environmental Quality Act as there are feasible alternatives and mitigation measures that would substantially lessen the significant adverse impacts on the environment that will result from certification of the Implementation Program as submitted.

4. Approval of the IP Amendment with Suggested Modifications

MOTION:

I move that the Commission certify the Implementation Program Amendment for the City of Del Mar certified LCP if it is modified as suggested in this staff report.

STAFF RECOMMENDATION:

Staff recommends a **YES** vote. Passage of this motion will result in certification of the Implementation Program Amendment with suggested modifications and the adoption of the following resolution and findings. The motion passes only by an affirmative vote of a majority of the Commissioners present.

RESOLUTION TO CERTIFY THE IMPLEMENTATION PROGRAM AMENDMENT WITH SUGGESTED MODIFICATIONS:

The Commission hereby certifies the Implementation Program Amendment for the Del Mar certified LCP if modified as suggested and adopts the findings set forth below on grounds that the Implementation Program Amendment, with the suggested modifications, conforms with and is adequate to carry out the certified Land Use Plan as amended. Certification of the Implementation Program Amendment if modified as suggested 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 Implementation Program Amendment on the environment, or 2) there are no further feasible alternatives and mitigation measures that would substantially lessen any significant adverse impacts on the environment.

III. SUGGESTED MODIFICATIONS

A. Land Use Plan Modifications

Staff recommends the following suggested revisions to the proposed Land Use Plan be adopted. The underlined sections represent language that the Commission suggests be added, and the ~~struck-out~~ sections represent language which the Commission suggests be deleted from the language as originally submitted.

1. Modify the Land Use Designations/Allowed Uses list of the LUP as follows:

- NC Repair shops, Blueprinting, Manufacturing, Restaurants, Art and Technical studios, Offices, Warehouses, Multiple dwelling unit residences at a density of up to 20 d.u./acre, Emergency Shelters, Gasoline service stations*, Bars*, Cocktail lounges*, Theatres*, Hotel/Motel*, Vet clinics*, Kennel*, Refuse recycling centers*.
- PC Offices; professional, medical, dental; banks and financial institutions (exclusive of drive through); Parking lots; Parking garages, Multiple dwelling unit residences at a density of up to 20 d.u./acre.

B. Implementation Program Modifications

Staff recommends the following suggested revisions to the proposed Implementation Program be adopted. The underlined sections represent language that the Commission

suggests be added, and the ~~struck-out~~ sections represent language which the Commission suggests be deleted from the language as originally submitted.

2. Revise Section 30.24.030(C) as follows:

Multiple dwelling unit residential up to a density of 20 dwelling units per acre subject to the following:

1. Proposed projects shall be consistent with the certified Local Coastal Program;
2. The density allowance of 20 dwelling units per acre may not be located on parcels adjacent to the San Dieguito River and Lagoon as depicted in [Exhibit 7](#).
3. No additional subdivisions shall be permitted.
4. If a proposed multiple dwelling unit project is located on a parcel that falls entirely or partially within the flood hazard areas identified on the 2019 FEMA Flood Insurance Rate Map (FIRM), the following shall apply:
 - a. Development shall be sited and designed, including elevation and floodproofing, to ensure safety from the impacts of sea level rise and flooding over the anticipated lifetime of the proposed structure using the best available science on sea level projections (such as the California State Sea Level Rise Guidance (OPC 2018) and the table for La Jolla in Appendix G of the Coastal Commission's 2018 Sea Level Rise Policy Guidance);
 - b. The landowner shall record a notice on the property and notice all occupants that:
 - i. The development is located in the 2019 FEMA FIRM and as such is located in a hazardous area or an area that may become hazardous in the future;
 - ii. Sea level rise and flooding could render it difficult or impossible to provide services to the site;
 - iii. The boundary between public land (tidelands) and private land may shift with rising seas and the development approval does not permit encroachment onto public trust land;
 - iv. Additional adaptation strategies may be required in the future to address sea level rise and flooding consistent with the Coastal Act and certified LCP; and

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v. The permittee and all successors waive any rights under Coastal Act Section 30235 and related LCP policies to hard shoreline armoring to protect the development;

c. The permittee shall acknowledge that the development may be required to be removed or relocated and the site restored if the development becomes unsafe for occupancy due to future sea level rise or flood hazard conditions.

3. Revise Section 30.24.070(A)(1) as follows:

A. Density: Up to a maximum of 20 dwelling units per acre

1. All residential development or conversions shall provide affordable housing, ~~pursuant to Chapter 24.21~~

4. Revise Section 30.25.070(A)(1) as follows:

A. Density: Up to a maximum of 20 dwelling units per acre

1. All residential development or conversions shall provide affordable housing, ~~pursuant to Chapter 24.21~~

5. Modify the Zone Designations/Allowed Uses list of the IP as follows:

NC Repair shops, Blueprinting, Manufacturing, Restaurants, Art and Technical studios, Offices, Warehouses, Multiple dwelling unit residences at a density of up to 20 d.u./acre, Emergency Shelters, Gasoline service stations*, Bars*, Cocktail lounges*, Theatres*, Hotel/Motel*, Vet clinics*, Kennels*, Refuse recycling centers*.

PC Offices; professional, medical, dental; banks and financial institutions (exclusive of drive through); Parking lots, Parking garages, Multiple dwelling unit residences at a density of up to 20 d.u./acre.

IV. FINDINGS FOR DENIAL OF CERTIFICATION OF THE DEL MAR LAND USE PLAN AMENDMENT, AS SUBMITTED, AND APPROVAL IF MODIFIED

A. AMENDMENT DESCRIPTION

The proposed LCP amendment is intended to allow for the development of multiple dwelling unit residences at a density of up to 20 dwelling units/acre for projects that include an affordable housing component as a permitted use in the North Commercial (NC) and Professional Commercial (PC) land use designations/zones. Currently, properties in the NC and PC zones can be developed with commercial and professional uses, as well as light industrial uses in the case of the NC Zone. The amendment is designed to be consistent with the City's General Plan Housing Element and avoid further penalties from HCD related to the lack of affordable housing in the City. Because the City currently has only one affordable housing unit and does not have any existing zones that allow sufficient residential density to accommodate the development of affordable housing, two programs in the City's current General Plan Housing Element (Programs 2-E and 2-F) require the City to amend the NC and PC Zones to add multiple dwelling unit residential as an allowed use within the zones up to a density of 20 dwelling units (du) per acre for projects and to include an affordable housing component. A density of 20 dwelling units per acre is the minimum density necessary as stipulated by HCD in order to create an adequate supply of sites that can accommodate multiple dwelling unit affordable housing in a jurisdiction the size of Del Mar.

There are currently four parcels in the City designated PC, and they are located inland along Camino Del Mar in the South Beach and North Hills neighborhoods. They are currently developed with commercial and office uses. Sixteen parcels designated NC that are located in the North Hills and Valley neighborhoods of the City are currently developed with a mix of uses, including parcels owned by the City, NCTD, and Southern California Edison, as well as various industrial and commercial uses. The City adopted Ordinance No. 971 on September 21, 2020 to amend the LCP consistent with Program 2-F of the 5th Cycle Housing Element as it relates to the four existing parcels of the PC Zone ([Exhibit 1](#)). Ordinance 973 was adopted on October 19, 2020 to similarly amend the LCP consistent with Program 2-E of the 5th Cycle Housing Element for the 16 existing parcels of the NC Zone ([Exhibit 2](#)).

The majority of the LCPA changes are being proposed to the Implementation Plan (IP) section of the LCP. The proposed Land Use Plan (LUP) changes are mainly descriptive and consist of the following modifications to Chapter II Land Use Development policies. Specifically, the proposed amendment would:

- Add a new Policy II-4: Increase the City's overall housing capacity and capability to accommodate housing units in commercial zones while minimizing potential land use compatibility conflicts and assuring priority for coastal-dependent and coastal related development.

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- Amend Policy II-8 of the LUP to include housing and commercial services to the mix of land uses that create a pedestrian-oriented downtown.
- Amends descriptions of the Valley District, North Hills District, and Village Center District to reflect the allowance for residential development in the NC and PC areas, as well as provide general updated descriptions of these districts.

[Exhibit 3](#) shows the proposed amendment in strike-out/underline.

The proposed changes to the LUP (and IP, as discussed later in this report) are fairly straightforward, i.e., allowing high-density residential uses in an existing commercial area. However, the scope of future development potential that could result from the proposed new residential use allowance requires additional clarification.

In determining which properties were potential candidates for residential development, the City considered existing site constraints and development. While a total of 20 parcels in the NC and PC land use designation/zone would be affected by the proposed amendment, less than half of these parcels are actually expected to be developable with high density housing by the City, at least in the near future. In the NC Zone, for example, site constraints associated with natural resources (i.e. the presence of wetlands and adjacency to the San Dieguito Lagoon) has led the City to determine that the six lots immediately adjacent to the river have environmental constraints, and are not appropriate for development ([Exhibit 5](#)). Therefore, as discussed in detail below, suggested modifications disallow residential development on these parcels. Accordingly, the City expects that only 4-6 parcels out of the remaining 10 have a realistic potential of developing future housing in the next 8 years under this proposed amendment (2002 Jimmy Durante Boulevard, 2126 Jimmy Durante Boulevard, 2148 Jimmy Durante Boulevard, 2236 Jimmy Durante Boulevard, 2010 Jimmy Durante Blvd, and 2120 Jimmy Durante Blvd). Furthermore, the 4 parcels in the PC zone also have constraints, given that all four are already developed and would require redevelopment to accommodate a residential use. Nevertheless, the City assumed that within the timeframe of the 6th Housing Element Cycle, future housing would most likely occur on the two largest lots in the PC Zone (807 Camino del Mar and 853 Camino del Mar) ([Exhibit 4](#)). In addition, it is also important to bear in mind that most lots are less than 0.50 acre and, according to the development ratio of 20 dwelling units per acre, would yield less than 10 units.

Thus, the City estimates that for those parcels that have a realistic potential of developing in the next 8 years or so, the total amount of units resulting from the proposed amendment would be approximately 81-111 units. This includes 71-94 units built across 5 parcels within the NC Zone and 10-17 units built across 2 parcels within the PC Zone. These numbers include 35-40 units on the Watermark parcel (discussed below) that is currently under review at the City separately from the subject LCPA.

Of the total units estimated to be built as a result of the proposed amendment, only a percentage of them will ultimately be deemed affordable. To satisfy obligations of the 5th Cycle, the City needs to issue building permits for 22 affordable units, 19 of which are estimated to be built in the NC Zone and the remaining 3 in the PC Zone. The high number

of total units compared to a resulting total of only 22 affordable units is due to both the proposed development ratio of 20 dwelling units per acre as well as the City's inclusionary housing policies, which specify the percentage of new units that need to be set aside as affordable. The City's inclusionary housing policy (which is not part of the LCP) allows for an in-lieu fee option when 2-5 units are created; however, the subject LCPA prohibits the use of this option. Instead, residential development or conversion of 2-5 units in the NC and PC Zones will require providing for one unit at below market rate to a lower-income household or donation of an off-site unit within the City's jurisdiction of a like size and condition to the City or a City-approved organization. In a similar vein, while the LCPA specifies that the short-term rental of units in a multiple dwelling residence is allowable, this use does not extend to those units considered lower-income. Lower-income units will have deed restrictions to ensure they remain available for rental as affordable units.

As a final note, the exception to the discussion above are two parcels located at the intersection of Jimmy Durante Blvd and San Dieguito Drive in the NC Zone, referred to as "Watermark," which the City is required to rezone to allow "by-right" development at 20-25 dwelling units per acre. The applicant is currently pursuing a permit application for "by-right" processing of a 48-unit project that includes 10 units reserved for lower-income households. Ultimately, the Watermark development project is being processed entirely separately from the proposed actions described in this report, but if the project were to be withdrawn or could otherwise not be completed, the provision for a density of 20-25 du/acre would continue to be applicable to these parcels.

B. BACKGROUND

The California Department of Housing and Community Development (HCD) reviews every local government's housing element to determine whether it complies with state law and then submits written findings back to each local government. HCD's approval is required before a local government can adopt its housing element as part of its overall General Plan. Jurisdictions can opt to update their housing elements every five years or every eight years.

The number of housing units each city and county must plan for is determined by HCD every five to eight years, and are referred to as housing "cycles." The California Department of Finance (DOF) as well as HCD forecast the need for housing within each region based on population projections. This process is called the Regional Housing Needs Assessment (RHNA). The regional planning agency for each region, which in this case is the San Diego Association of Governments (SANDAG), then distributes the projected housing among its member local jurisdictions. To date, there have been five previous housing element update cycles. California is now in its sixth housing-element update cycle.

During the 4th Housing Element Cycle (adopted to cover planning years 2005 to 2010), SANDAG assigned the City of Del Mar a RHNA total of 25 units (6 very low income, 4 low income, 5 moderate income, and 10 above moderate income). However, the City could not provide the units as required. In such cases, Government Code Section 65584.09 requires

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a locality that failed to identify or make adequate sites available in a given planning period to zone or rezone adequate sites to address the unaccommodated housing need within the first year of the next planning period (i.e. the 5th Housing Element Cycle). The requirement to address the unaccommodated housing need for the previous planning period is in addition to the requirement to identify sites to accommodate RHNA for the new planning period. In addition to having to rezone/upzone adequate sites for the 5th Cycle, the City was also assessed an additional 15-unit penalty for failure to meet 4th Cycle goals that were to be accommodated in the 5th Cycle.

SANDAG adopted the final RHNA Plan by resolution for the 5th Housing Element Cycle (which ran from April 15, 2013 to April 15, 2021) on October 28, 2011, the result of which was to assign Del Mar 61 units across affordability levels (very low income, low income, moderate income, and above moderate income). The City adopted the 5th Cycle Housing Element on May 20, 2013 and the plan was subsequently certified by HCD on June 6, 2013. In accordance with Government Code Section 65584.09 described above, the City also identified a Sites Inventory as part of their 5th Housing Element Cycle that demonstrated that adequate sites are available in the NC and PC Zones, and could be zoned at densities sufficient to accommodate the projected increase in housing needs. City staff identified potential building sites within these zones, and estimated the dwelling unit potential of those properties. Overall, the City must accommodate 22 affordable dwelling units for rent to lower-income households; twelve of which stem from the 5th Housing Element Cycle needs and 10 of which are shortfall from the 4th Housing Element Cycle. A unit is considered affordable when it is made available to “extremely low,” “very-low,” and “low” income households who earn an annual household income no greater than 80 percent of the area median income for the San Diego County region. Since the beginning of the 5th Cycle, the City has constructed 15 above moderate income units and 1 affordable unit, leaving a total of 60 units required when factoring in the 15-unit penalty from the 4th Cycle.

The City was required to accommodate the shortfall from the 4th Cycle during the first year of the planning period and was required to complete a rezone action for the 5th cycle shortfall, generally within 3 years. However, the planning period began in 2013 and since these dates have lapsed, the California Department of Housing and Community Development (HCD) may revoke the City’s housing element compliance. In addition, requirements pursuant to Government Code Section 65583, subdivision (g), have been triggered limiting the City’s discretion to disapprove a housing development project. On September 30, 2020, the City received an enforcement letter from HCD with written findings citing that the City is out of substantial compliance with Government Code Section 65580 et seq. for failure to implement actions in its existing 5th Cycle Housing Element, including the zoning amendment for the NC Zone. However, given the City’s progress in implementing and scheduling the subject amendment for the addition of multiple dwelling unit residences as an allowable use, HCD continues to monitor the City’s timely implementation.

If this amendment is not certified, the City may be in violation of the No Net Loss Law. No Net Loss requires the maintenance of adequate sites at all times throughout the planning period. When a sufficient number of suitable sites with appropriate densities are not identified to accommodate the RHNA, the housing element must include a program to

make adequate sites available early in the planning period, generally three years for most localities. Additionally, if these programs are not implemented, the City will not have an adequate number of sites with sufficient density to accommodate its required number of affordable units, which most likely would cause the City to be unable to gain timely certification of its 6th Cycle Housing Element (running from April 15, 2021 – April 15, 2029). While the City has been actively processing the NC and PC amendments during its 5th cycle planning period, these amendments were not completed in time to count toward its 5th Cycle. However, the City is obligated to complete the programs at the local level prior to its submission of its 6th Cycle Housing Element update for consideration by HCD. City staff have indicated that HCD would then consider the locally adopted amendments as “Carryover Programs” that must continue to be processed through the certification process by the Commission and fully completed/implemented in the City’s Zoning Code and LCP within one year of adoption of the 6th Cycle Housing Element. Any new units produced within these zones will be able to count towards the housing obligation for the 6th Cycle. As noted above, the City currently has one lower-income unit that counts towards credit with HCD (i.e. affordable units that have been issued a building permit). The unit is an ADU located at 423 Luzon Avenue (issued a local CDP on March 27, 2019) and was deed restricted as low income during the City’s 5th Cycle Housing Element. The City has stated that the NC and PC sites are needed for development that meets the RHNA for at least 22 lower income units to be constructed during the 6th Cycle.

C. CONFORMANCE WITH SECTION 30001.5 OF THE COASTAL ACT

The Commission finds, pursuant to Section 30512.2b of the Coastal Act, that portions of the Land Use Plan as set forth in the preceding resolutions, are not in conformance with the policies and requirements of Chapter 3 of the Coastal Act to the extent necessary to achieve the basic state goals specified in Section 30001.5 of the Coastal Act which states:

The legislature further finds and declares that the basic goals of the state for the Coastal Zone are to:

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

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(e) Encourage state and local initiatives and cooperation in preparing procedures to implement coordinated planning and development for mutually beneficial uses, including educational uses, in the coastal zone.

The Commission therefore finds, for the specific reasons detailed below, that the land use plan does not conform with Chapter 3 of the Coastal Act or the goals of the state for the coastal zone with regards to LCP-6-DMR-20-0079-3.

D. CONFORMITY OF THE DEL MAR LAND USE PLAN WITH CHAPTER 3

Relevant Coastal Act policies include the following:

Section 30222 of the Coastal Act states:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

Section 30240 of the Coastal Act states:

(a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.

(b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which would significantly degrade those areas, and shall be compatible with the continuance of those habitat and recreation areas.

Section 30250 of the Coastal Act states, in relevant part:

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

Section 30251 of the Coastal Act states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas...

Section 30252 of the Coastal Act states, in relevant part:

The location and amount of new development should maintain and enhance public access to the coast by: [...]

(4) providing adequate parking facilities or providing substitute means of serving the development with public transportation...

Section 30253 of the Coastal Act states:

New development shall do all of the following:

[...]

(d) Minimize energy consumption and vehicle miles traveled.

(e) Where appropriate, protect special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses.

Section 30270 of the Coastal Act states:

The commission shall take into account the effects of sea level rise in coastal resources planning and management policies and activities in order to identify, assess, and, to the extent feasible, avoid and mitigate the adverse effects of sea level rise.

Additionally, Coastal Act Section 30604(f) specifically encourages the Commission to approve an increase in density for affordable housing when such housing can be accommodated in a manner otherwise consistent with the resource protection policies of the Coastal Act or a local government's certified LCP. Section 30604(f) of the Coastal Act states:

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

1. FINDINGS FOR DENIAL

The Commission is aware that the state has an affordable housing crisis, and this issue is only more acute in the state's coastal zone. To address this critical need, the state

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legislature has enacted a number of housing laws in the last several years designed to eliminate barriers to the provision of housing, and to help foster additional housing units—particularly critically needed affordable units—where they can be appropriately accommodated by adequate public services and where, in the coastal zone, they will not adversely affect coastal resources. The proposed amendment will allow for additional residential development with an affordable housing component that not only will bring the City closer to achieving its housing goals but also, in many respects, does not pose significant concerns when it comes to the protection and preservation of coastal resources. For example, adding multi-residential dwelling units as an allowed use in the NC and PC Zone will not supersede any existing high priority Coastal Act uses such as public recreation or visitor-serving uses, as the existing development on existing parcels is overwhelmingly commercial and office, and no other permissible uses will be removed from the zoning. Parking regulations of the LCP will also apply to all future development on site and a traffic study has indicated that circulation in the area will not be impacted by the amendment, thus ensuring coastal access is preserved. As multi-unit residential projects are proposed and built on the parcels, site-specific studies tailored to the conditions on the ground as well as the development standards of the relevant zone will ensure new residences are constructed in accordance with the LCP. For both the NC and the PC Zones, the existing land use designations and zones will continue to apply as well as all allowed uses. No change to floor area ratio, lot coverage, setbacks, or height are proposed as part of this LCPA, in either the LUP or IP. Any future housing development must meet the policies of the LCP, including those resource protection policies for inland bluffs, wetlands, and scenic views. The amendment also will not modify CDP requirements.

Nevertheless, harmonizing the state housing law changes with the Coastal Act through review and certification of an LCP amendment is a complex process that must be tailored to the unique situation of each jurisdiction. The Coastal Act encourages the concentration of new development in already developed areas that are able to accommodate it in order to avoid cumulative impacts to coastal resources and minimize vehicle miles traveled (Sections 30250 and 30253(e)). These policies reflect an over-arching acknowledgment that concentrated and well-planned residential development supports the long-term preservation of coastal resources. In the case of Del Mar, there are approximately 2,611 housing units in Del Mar as reported by the San Diego Association of Governments (SANDAG) on January 1, 2015¹, and according to the City's 2013-2021 Housing Element, the majority (70%) of the City's housing stock consists of single-family units, with the remainder comprised of multi-family homes of varying sizes. As described in the Housing Element, the City is largely built out with a few vacant parcels that are physically constrained by steep slopes, floodplains, etc. Not only is there extremely limited land available for building, but the lots themselves generally exceed \$1 million in value and the median price for an existing single-family home was slightly over \$1 million in 2010. The subject LCPA is intended to allow the City to meet its state-mandated housing objectives where no compatibly zoned areas are currently in place to allow for new residential growth. Thus, at a broad level, the proposed LCPA should help achieve the City's housing goals and potentially encourage the provision of a substantial amount of new lower-cost residential units on parcels that are already developed, consistent with the LCP.

¹ https://www.sandag.org/uploads/publicationid/publicationid_2001_20213.pdf

Harmonizing the housing needs of the City with the policies of its certified LCP presents an opportunity to ensure that growth coincides with resource protection. However necessary the LCPA may be in terms of reaching the City's housing goals, the addition of residential units in the NC zone, which is adjacent to the San Dieguito River raises concerns regarding hazards, specifically flooding and sea level rise. However, most of the City's policies regarding flooding are in the certified IP. As noted, the proposed LUP revision simply adds residential uses to the descriptions of the relevant planning areas. Thus, the IP is the most appropriate place to address these issues. However, the LUP does contain a list of allowable uses in each land use designation, and the City inadvertently failed to add the proposed the new allowable use (multi-unit residences at a density of up to 20 d.u./acre) to this list for the NC and PC (as well as emergency shelters for the NC Zone specifically). Without the incorporation of this use in the LUP allowable use section, the amendment would not be internally consistent and would not promote or allow new affordable housing as intended.

2. FINDINGS FOR APPROVAL IF MODIFIED

As described above, the allowable uses list in the LUP does not include either emergency shelters (for the NC Zone specifically) or multiple dwelling unit residences at a density of up to 20 dwelling units per acre for either the NC or PC Zones. With the incorporation of **Suggested Modification #1**, the new allowed uses for the LUP will become memorialized in the Land Use Designations/ Allowed Uses list.

With the suggested modification above, the proposed LUP amendment can be found consistent with the Chapter 3 policies of the Coastal Act.

IV. FINDINGS FOR REJECTION OF THE DEL MAR IMPLEMENTATION PLAN AMENDMENT, AS SUBMITTED, AND APPROVAL IF MODIFIED

A. AMENDMENT DESCRIPTION

While the goals of the overall LCP amendment have been described above, the City of Del Mar proposes to modify specific sections of its Implementation Program (IP) in order to achieve its housing goals. Specifically, it seeks to revise Chapters 30.24 and 30.25 of the IP so that the allowed uses and development standards for the NC Zone and PC Zone reflect the overall goal of expanding availability of housing and affordable units.

Specifically, the proposed amendment would:

- Add residential as an allowed primary use up to a density of 20 du/acre in the NC and PC Zones.

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- Add emergency shelters pursuant to Section 30.24.035 of the Del Mar Municipal Code as an allowable use in the NC Zone.
- Add short term rental of a dwelling unit (except for deed-restricted affordable units) as an allowable use in the NC Zone and PC Zone.
- Adds a development standard in both the NC and PC Zones that all residential development requires affordable housing pursuant to Chapter 24.21 of the Del Mar Municipal Code, as well as specifies that notwithstanding Section 24.21.030, residential development or conversions of two, three, four, or five units on one lot shall set aside one unit for rental at below market rate to a lower-income household or donate off-site unit, within the City's jurisdiction of a like size and condition to the City or a City approved organization to be reserved for use as Affordable Housing. The In-lieu Housing Mitigation fee typically set as a payment option is not allowed.

B. CONFORMANCE WITH THE CERTIFIED LAND USE PLAN

The standard of review for LCP implementation plan submittals or amendments is their consistency with and ability to carry out the provisions of the certified LUP. The certified LUP has a number of goals and policies relevant to the proposed amendment; the most applicable LUP standards are as follows:

II.B. Land Use Development Goals and Policies – General

Policy II-1: Maintain the existing small-scale character of the community and permit only one-and two-story, low intensity development with a maximum allowable height of 26 feet.

Policy II-2: Insure that future development, whether commercial or residential, retains the aesthetic quality of the community by protecting and preserving public views to the ocean and other significant natural resources; and by minimizing the disturbance of natural topography and vegetation.

II.C. Land Use Development Goals and Policies – By District

2. Valley District: This district is also located in the northern section of the City and includes the San Dieguito River, and Lagoon area, the majority of which is designated as Floodway(FW). It also contains an area designated as North Commercial (NC). Any future use in this district shall be consistent with this Land Use Plan. When reviewing development proposals, special attention shall be given to the preservation of sensitive wetland habitat and its immediate uplands, and protection against and avoidance of seismic and flooding hazards.

III.A.3 Flooding

Portions of the San Dieguito River Valley and Floodplain are located within the northern portion of the City. These areas are located along the coastline and extend several miles inland. The area is highly susceptible to damage by storm wave impacts and flooding, flooding from upland areas and, on rare occasions, to tsunamis.

III.B. Shoreline Hazards – Goals and Policies

Goal III-A: Establish a comprehensive program to protect shoreline areas susceptible to storm/flooding hazards

Policy III-2: Conserve the natural character of land, water, vegetative and wildlife resources within the community by ensuring that future development minimizes the disturbance of existing or natural terrain and vegetation, and does not create soil erosion, silting of lower slopes, slide damage, flooding problems and/or cutting or scarring, through application of the following policies:...

III.E. Flood Hazards

Goal III-D: Minimize risks to life and property associated with flooding and flood waters

Policy III-12: Ensure that the development of real property which is subject to floodwaters will not obstruct flood flow; will not create a hazard to life, health, safety, or the general welfare; will reduce the need for the construction of flood control facilities that would be required if unregulated development occurs; and will minimize the cost of flood insurance to Del Mar residents. The following Floodplain (FP) Overlay Zone policies shall be applied to all applications for a Floodplain Development Permit.

[...]

Applications for Floodplain Development Permits shall be reviewed for consistency with the following requirements to be assured that new development will:

- a. Be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
- b. Be constructed with materials and utility equipment resistant to flood damage;
- c. Use methods and practices that minimize flood damage;
- d. Have the lowest floor (including basement) of any residential structure elevated to or above the base flood elevation;
- e. Have the lowest floor (including basement) of any nonresidential structure elevated to or above the base flood level or, together with attendant utility and sanitary facilities, be flood-proofed below the base flood level to the extent that

the structure is watertight with walls substantially impermeable to the passage of water and with structure components have the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy, as certified by a registered professional engineer or architect;

- f. When located in an area of shallow flooding (Zones AO and VO on the community's FIRM), have the lowest floor (including basement) elevated to or above the depth number indicated on the most current FIRM; or if there is no depth number indicated on the most current FIRM, be elevated at least two feet above the highest adjacent grade. As an alternative, nonresidential structures, together with attendant utility and sanitary facilities, may be flood-proofed to that level as specified in subsection "e" above;
- g. [...]

Policy III-13: The preceding floodplain development standards shall not apply to the undeveloped property known as the "railroad triangle" (APNS 299-071-02, 301-010-11; 301-032-5, 10, 11, 12; as shown on Figure III-G) and the floodplain portions of the southern properties in the Lagoon Overlay Zone. Said floodplain properties or areas may only be developed as follows:

- 1. The development is capable of withstanding periodic flooding, and does not require the construction of flood protective works, including but not limited to, filling artificial flood channels, revetments or levees.
- 2. Existing environmentally sensitive habitat areas will not be disturbed.
- 3. Increased flood flow velocities will not occur.
- 4. There will be no adverse water quality impacts to adjacent or downstream wetland areas.

IV.B. Coastal Access

Goal IV-A: Provide physical and visual access to coastal recreation areas for all segments of the population without creating a public safety concern, overburdening the City's public improvements, degrading the City's natural resources, or causing substantial adverse impacts to adjacent private properties.

Policy IV-24: Preserve views of the Pacific Ocean from Camino del Mar through the application of scenic view easements and related view preservation restrictions for development proposals located along the west side of this roadway. In order to preserve such views from Camino del Mar, structures on properties fronting the west side of this roadway within the Central Commercial, Professional Commercial or Visitor Commercial designations shall not exceed a height of 14 feet above the adjacent curb level of Camino del Mar.

Policy IV-26: Retain and enhance the views of San Dieguito Lagoon along Jimmy Durante Boulevard and San Dieguito Drive through the application of scenic view easements and related view preservation restrictions for any development proposals located along the sides of such roadways within scenic view corridors.

Goal IV-D: Maximize the opportunity for access to beach areas by minimizing competition for public on-street parking spaces.

5. FINDINGS FOR DENIAL

The standard of review for LCP implementation submittals or amendments is their consistency with and ability to carry out the provisions of the certified LUP.

Traffic/Public Access

The NC and PC Zones are located along major roads within the City of Del Mar. In the case of the PC Zone, the four parcels are found on either side of Camino Del Mar, the central north-south road within the City's downtown area. In the case of the NC Zone, the 16 parcels are located just south of the San Dieguito River along Jimmy Durante Boulevard, providing access to the beach to the west, the Fairgrounds to the north and Crest Canyon Park to the east along San Dieguito Drive (which ultimately dead ends as Racetrack View Drive within the City of San Diego). Both Camino Del Mar and Jimmy Durante Boulevard are considered coastal access routes, and therefore any increase in development along these transportation corridors must be analyzed for potential impacts to the public's ability to access the shoreline.

As explained above, the City estimates that only a limited number of properties have the potential to develop or redevelop in the next 8 years. This includes 4-6 properties within the NC Zone and 2 in the PC Zone. Given the relatively small size of most of the parcels in question, the total buildout scenario is expected to result in approximately 81-111 units, with most of the lots developing less than 10 units because they are less than 0.5 acre. This prospectively results in 71-94 units built in the NC Zone and 10-17 units in the PC Zone.

In order to analyze the potential impacts of this estimated development on traffic and circulation, a Transportation Impact Analysis for the amendment, dated September 24, 2019, addresses the potential for increased traffic in the area as a result of development under the amendment. Because the estimates of trip generation rates are higher for office and commercial uses than they are for residences, the analysis found that the proposed re-zoning action would generate less average daily traffic (ADT) than either the current on-the-ground development or a buildout of the existing zoning. Utilizing SANDAG trip rates, commercial and office uses can be estimated to generate 20-40 vehicular trips per 1,000 square feet, while for residential uses, the estimate is much lower at an estimated 8 trips per dwelling unit. Because of that, the analysis found that average daily traffic would be significantly reduced if buildout of the NC and PC zones commenced according to the proposed amendment for 20 dwelling units per acre, compared to average daily traffic for both present-day development as well as buildout of the zones under the existing zoning regulations without 20 dwelling units per acre. Thus, the amendment as proposed would not increase traffic in the area or negatively impact coastal access to the ocean and San Dieguito Lagoon.

Similarly, while not specifically an issue of LUP consistency, several residents raised concerns during the City's review process that the presence of multi-unit residences in the

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NC Zone will impact emergency response time for communities at the western end San Dieguito Drive/Racetrack View Drive, an ongoing concern for residents that live on this street that dead ends on the northern side of Crest Canyon Park within a wildfire hazard zone. However, emergency response times are expected to remain the same as existing buildout conditions or to improve due to a decreased ADT volume as a result of the proposed amendment. The Programmatic Environmental Impact Report (PEIR) also states that the amendment would not result in changes in circulation or access, and that all future development would be required to comply with local regulations associated with adequate ingress/egress, fire protection, and emergency response. The Del Mar City Council has also agreed to produce a Wildfire Evacuation Plan for the North Commercial Zone/San Dieguito Drive area and work with both the Del Mar Fire Department as well as residents to produce a comprehensive safety plan in the event of a wildfire evacuation.

Thus, as it relates to traffic and coastal access, the proposed amendment can be found consistent with the LUP.

Visual Resources

Related to the concern with increased density, members of the public also objected to the amendment during the City's review process on the grounds that it will disrupt the community character of the City and result in the creation of large, bulky buildings that impact scenic areas. However, besides the proposed change in allowable density, all of the development standards of the Del Mar Municipal Code, including height, floor area ratio, and setbacks will remain in effect as well as the protective policies of the LCP that govern the preservation of community character, and the protection of scenic public views. Therefore, the proposed amendment can be found consistent with the LUP as it relates to visual resources.

Biological Resources

While the amendment would result in adding residential as a use for the entirety of the NC Zone, the City indicated that due to the environmental constraints on the parcels located directly next to the lagoon and the existing sensitive resource protection policies in the LCP, constructing multi-dwelling units on those is not likely to be feasible. With regard to the other parcels in the NC and PC zone, existing commercial and industrial development already exist on all but one of the parcels likely to be developed, and thus, no impacts to sensitive biological resources are likely. In any case, all policies of the LCP that protect sensitive resources such as the lagoon and the wildlife that inhabit it will remain in full effect; thus, no impact to coastal resources as it relates to public scenic views, lighting, and wildlife are anticipated.

As noted, while the PC Zone is located in the heart of development of downtown Del Mar and therefore has no biological resources that require protection, the NC Zone is located along the banks of the San Dieguito River and Lagoon ([Exhibits 4 and 5](#)). When the proposed action for adding multiple dwelling units as an allowed use in the NC Zone was originally introduced at the City level, members of the public expressed concern that this would result in the addition of over a hundred units in an environmentally sensitive area. The City addressed this concern by proposing that the revised amendment for their

Community General Plan explicitly prohibit the potential for multiple dwelling use on 6 lots in the NC Zone that are located directly next to the Lagoon. This translates to a significant reduction in the potential number of units (136 units), assuming maximum buildout of housing on all parcels in the NC Zone. While the City did not foresee multi-unit development as a realistic outcome on these lots from the onset of site investigations, the revised General Plan amendment officially removed them from consideration and confirmed the City's intent to cluster development along Jimmy Durante Boulevard and away from the lagoon and riverbank edge. However, because this change was made to the City's General Plan after the submittal of the LCP amendment to staff, the LCP did not exclude these parcels from the proposed allowance of residential uses in the subject LCP. Therefore, because the amendment as submitted would still allow residential development on these lots, potentially resulting in impacts to environmental resources located along the San Dieguito River and Lagoon, the amendment cannot be found consistent with the policies of the LUP.

Floodplain

While the Commission acknowledges the City's need to meet its RHNA obligations and increase its affordable housing supply, Del Mar remains one of the most vulnerable areas in San Diego County when taking into account flooding and sea level rise. The standards of the City's existing Floodplain Overlay Zone do not include adequate design or noticing requirements to ensure that new multi-family residences located in hazardous areas are appropriately sited and designed. These requirements could include such measures as designing structures with floodproofing materials and elevating them so as to be able to withstand projected flood levels over the course of their anticipated lifetime. Additional provisions for the development of these residences are necessary, not only to inform the applicant/owner of the safest physical design of the structure over its lifetime, but also to make sure that the occupants are aware of the risks of building and residing in an area that is hazardous or may become hazardous due to flooding and sea level rise.

The NC Zone is vulnerable to the effects of both flooding and sea level rise due to its proximity to the San Dieguito Lagoon. A significant portion of the NC Zone is mapped within special flood hazard area Zone AE (classified as a high risk area with a 1% chance of annual flooding) with a smaller portion is mapped within Zone X (classified as a moderate to low risk area with a 0.2% - 1% chance of annual flooding) on the 2019 FEMA FIRM ([Exhibit 6](#)). In most cases across the state, including in this specific location based on analysis of best available science, sea level rise will exacerbate existing flood hazards and expand the range of these hazards over time. While the exact rate and amount of sea level rise will depend on future greenhouse gas emissions and this uncertainty presents challenges for planning coastal development, it is widely documented that underestimating sea level rise could result in costly damages and adverse outcomes to coastal resources. Planning and development decisions on the California coast must, therefore, be appropriately precautionary and made with the full understanding that sea level rise will change coastal landscapes and hazard conditions. Not only will regulatory review of proposed coastal development influence the future safety of the development and overall resiliency of the California coast, but it will impact the future of coastal resources protected under the Coastal Act. In particular, coastal resources such as wetlands that are located

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along the San Dieguito River could potentially disappear if they are squeezed between rising sea levels and a fixed line of development on the shoreline. Loss of these public resources could have dire implications from an environmental justice standpoint, since coastal open spaces and habitats are an opportunity for all to visit and enjoy the California coast.

Currently, the best available science on sea level rise projections in California is provided in the State of California Sea-Level Rise Guidance (OPC 2018) and is reflected in the Coastal Commission Sea Level Rise Policy Guidance (CCC 2018). These documents recommend analyzing a set of sea level rise projections called the “medium-high risk aversion scenario” for residential and commercial development as they typically have greater consequences and/or lower capacity to adapt to the impacts of sea level rise. Considering the anticipated lifetime of 75-100 years for residential development and utilizing sea level rise projection data from the nearest tide gauge (La Jolla), the NC zone must be analyzed for sea level rise risk out to at least the year 2100. According to OPC 2018, sea level rise has an estimated 5% chance of exceeding 7.1 feet by the year 2100 under the medium-high risk scenario. Site-specific sea level rise risk can be analyzed using Our Coast, Our Future² (OCO²F), a mapping tool developed by Point Blue Conservation Science and USGS Pacific Coastal and Marine Science Center, which reveals that a significant portion of the NC zone is flood-prone with only 6.6 feet of sea level rise and no storm event, which may occur by the year 2100.

Analyzing smaller increments of sea level rise can also show how impacts may unfold at the NC zone over time. According to OCO²F, parcels that the City identified as potentially viable for multi-family residential development are vulnerable to flooding with 2.5 feet of sea level rise during a 100-year storm, which may occur as early as 2060 under the medium-high risk aversion scenario. In addition, sunny day flooding (i.e. flooding during high tides with no storm event) may potentially affect this area as early as 2080 with 4.1 feet of sea level rise under the same scenario³. Groundwater is also expected to rise as sea levels rise, with OCO²F indicating the groundwater table will potentially become shallow (1-2 meters in depth) or very shallow (0-1 meter in depth) beneath those parcels thought likely to be developed with about 1.6 feet or more of sea level rise. Rising groundwater tables can potentially emerge from the ground to cause flooding, as well as cause impacts like damage to development and infrastructure, saltwater intrusion into aquifers, and changing liquefaction risks. Importantly, rising groundwater could also constrain the types of adaptation strategies that can be protective against the future impacts of sea level rise. These projections have important implications not only for residential development in the City but also for coastal access. Throughout the City, rising sea levels and emergent groundwater will impact the public beach areas and cause the migration of the mean high tide line further inland, affecting or prohibiting the public’s ability to utilize the coast in addition to causing residential flooding.

² <https://ourcoastourfuture.org/hazard-map/>

³ Because there is scientific uncertainty about how fast sea levels will rise in the future, state guidance documents provide several different sea level rise rates that are plausible according to the current best available research. To sufficiently protect coastal resources and site development safely, the Commission uses the medium-high risk scenario to analyze residential and commercial development.

The construction of multi-family residences and increase in density within areas vulnerable to flooding and sea level rise presents an intensification of use in a hazardous area. Accordingly, the LCPA is not consistent with Policy III-12, and therefore additional measures are required to both protect coastal resources, including coastal waters, sensitive habitats, coastal access, as well as to safeguard human life and development.

Reference to Chapter 24.21

The City's proposed IP amendment references Chapter 24.21 of the Del Mar Municipal Code in both Sections 30.24.070 for the NC Zone and 30.25.070 for the PC Zone. However, this chapter (titled Dedication: Affordable Housing Mitigation) is not part of the current certified LCP and its inclusion as a reference within the scope of this amendment is not necessary given the general requirement that affordable housing must be provided for all residential development or conversions within the subject zones. References to other documents or code sections within a City's LCP are typically considered to incorporate those sections by reference. It is staff's understanding that the City did not intend to incorporate the referenced sections into the LCP. The specific references can be removed without affecting the subject LCP or the City's existing requirements related to affordable housing, and thus, should be deleted.

Correction to Allowed Uses List

Similar to the inadvertent omission of the proposed allowable land use in the LUP, a description of multi-unit residences at a density of up to 20 d.u./acre must be added to its IP. As with the LUP, the City's IP contains a Zone Designations/Allowed Uses list that does not currently describe either the NC or PC Zone as having an allowable use of multi-unit residences at a density of up to 20 d.u./acre, nor that the NC Zone allows for emergency shelters. Therefore, as proposed, the IP amendment cannot be found consistent with the LUP.

6. FINDINGS FOR APPROVAL IF MODIFIED

Biological Resources

As described above, allowing for residential development on parcels within the NC Zone that are located directly adjacent to the San Dieguito River and Lagoon would be inconsistent with the resource protection policies of the LUP. The City itself recognized the risks to development and natural resources in this area; after submitting the subject LCP amendment request, it passed a Resolution to amend its General Plan and that prohibits multi-unit dwellings on six specified parcels adjacent to the San Dieguito River and Lagoon. The City asked that these parcels also be removed from the residential allowance proposed in the subject LCP Amendment. **Suggested Modification #2** (Item 2) removes the density allowance of 20 dwelling units per acre on parcels adjacent to the San Dieguito River and Lagoon ([Exhibit 7](#)).

Floodplain and Environmental Justice

As detailed above, the Commission has identified concerns regarding coastal hazards and coastal access as presented by the LCPA; specifically, the amendment would allow for the construction of multiple dwelling unit buildings in hazardous areas that are vulnerable to flooding and sea level rise without including additional provisions that would safeguard life, property, and public access to the coast.

It is important to first discuss if and when multiple dwelling units could be found allowable in hazardous areas at all. Many jurisdictions place strict limits on development in the floodplain other than uses and structures that can accommodate periodic flooding, such as stables, parks, golf courses, etc. However, Del Mar has many structures already located in the floodplain. This also raises concerns related to environmental justice, as the majority of the parcels identified for lower-income housing in this amendment are subject to hazards.

The City of Del Mar has several hazards policies in their certified LUP that address development located in areas sensitive to flooding. Goal III-D of the certified LUP states that development in the City must minimize risks to life and property associated with flooding and flood waters, while Policy III-12 specifically states that development of property which is subject to floodwaters will not create a hazard to life, health, safety, or the general welfare. These policies take on added significance in light of the City's description of the area surrounding the San Dieguito River Valley and Floodplain, which it describes as "highly susceptible to damage by storm wave impacts and flooding." The City applies caution to the NC Zone in particular by noting that development proposals in this area should be reviewed for the preservation of sensitive wetland habitat and its immediate uplands, as well as protection from flooding hazards.

Consistent with the City's hazard policies, it is necessary to take into account the effects of sea level rise in coastal resources planning and management policies and activities in order to identify, assess, and, to the extent feasible, avoid and mitigate the adverse effects of sea level rise. Current guidance states that new development should plan for sea level rise over the anticipated lifetime of the structure, which is approximately 75-100 years for residential and commercial development. Based on the OPC 2018 projections from the nearest tide gauge to Del Mar, this means planning for up to and including approximately 7 feet of sea level rise (to occur as soon as 2100), under the medium-high risk aversion scenario (see Table G-11 of the California Coastal Commission Sea Level Rise Policy Guidance, adopted November 7, 2018). The medium high-risk scenario is differentiated from the low risk aversion and extreme risk aversion scenarios by basing its sea level projections on a 0.5% probability that sea level rise will exceed them (versus approx. 17% for the low risk scenario and no probability for the extreme risk scenario). Put another way, there is a 99.5% chance that sea level rise will be lower according to the global climate models that were used to generate the probabilities of the Sea Level Rise Policy Guidance. While these projections have a level of uncertainty and will need to be updated as new research emerges, planning for 7 feet of sea level rise is a sufficiently cautious approach for new development to be allowed in the NC zone by the proposed LCPA.

As seen on [Exhibit 6](#), the NC Zone is located within a vulnerable area. As described above, developable parcels in the NC Zone may begin to see sea level rise-induced

flooding as early as 2060 with 2.5 feet of sea level rise during a 100-year storm. Furthermore, the groundwater table is anticipated to become shallow (1-2 meters in depth) or very shallow (0-1 meter in depth) beneath these parcels with about 1.6 feet or more of sea level rise, which may occur as early as approximately 2045 under the medium-high risk scenario, but again, there is a 99.5% chance it will occur sometime later than that according to the current best available science. Thus, allowing new residential development in the NC Zone will provide much-needed affordable housing for several decades before the structures are likely to be at serious risk. Nevertheless, the Commission must consider how to minimize and avoid those risks pursuant to Section 30270 of the Coastal Act.

Furthermore, the NC and PC zones are not the only areas of the City being considered for new housing. There is a tremendous need for affordable housing in Del Mar, and the City has been working with HCD to identify areas and strategies to accommodate and incentivize the construction of new residential units throughout the City, and over the next several years, will be bringing forward additional LCP amendment requests related to these efforts. The NC/PC zones were identified as the areas of the City with the least physical and structural barriers to construction of new housing; that is, the existing parcels are relatively large and able to accommodate multi-unit development; other than density, no additional development standards (heights, setbacks, parking, etc.) need to be amended in order to allow residential development to occur in these zones; and no modifications to environmental protection policies are required. The NC zone represents perhaps the most feasible land area to target for such development, despite the future hazard risk. Given the primary goal of constructing additional affordable housing as soon as possible, allowing housing to go forward in this area at this time is expected to have a positive impact on the ability of lower-income people to access and recreate on the coast

It is important to note that while potential new residential buildings in the NC Zone are exposed to some level of risk due to sea level rise and more extreme flooding events, there are areas of the City where even greater levels of risk exist. These areas include the North Beach area of the City just west of the NC Zone. This neighborhood, with its line of beachfront homes, currently has large areas of shallow and very shallow groundwater levels that are only expected to grow larger as sea level rise progresses. Flooding in the North Beach area is also worse than the NC Zone, as under current conditions, a 100-year storm is expected to result in more severe flooding conditions. Yet another example of a location more prone to extreme flooding events is the Fairgrounds, where 4.1 feet of sea level rise (with no storm event) sees a significant percentage of the Fairgrounds flooded while the developable parcels of the NC Zone are still comparatively intact. There are limits to where even much-needed housing can be appropriately sited, and any future LCPA or permit action for construction in vulnerable areas must be strictly scrutinized.

The City of Del Mar has acknowledged the threats posed by sea level rise and increased flooding by publishing a Coastal Hazards, Vulnerability, and Risk Assessment report, most recently updated in August 2018. The City submitted an LCP amendment in order to incorporate some of its key findings, but this proposal was withdrawn before the Commission could hear the matter. However, during its review of that submittal, Commission staff suggested the incorporation of the December 2019 FEMA FIRM maps to

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replace the City's original certified Floodplain Overlay Zone map ([Exhibit 8](#)). While these maps do not depict the floodplain associated with extreme flood events that can be expected in the future due to sea level rise, they largely overlap with areas vulnerable to sea level rise identified in the City's coastal hazards study as well as those identified using USGS CoSMoS data in OCOF.

The City of Del Mar also has a Sea Level Rise Adaptation Plan, which, while not part of the certified LCP, is a framework for understanding how the City intends to address the risks associated with sea level rise and flooding in the short-term. A chapter of the plan focuses specifically on those risks associated with increased flooding from the San Dieguito River, which are predicted to occur as a result of more extreme storm events, river discharge, and increased sand deposition in the river channel that would raise the riverbed elevation and increase the flood level. The vulnerability assessment describes risks to Jimmy Durante Boulevard and bridge as well as San Dieguito Drive with 2 to 3 feet of sand deposition in the river channel, as well as that the Fairgrounds to the north and west of I-5 will become highly exposed and vulnerable to flooding with 2 to 3 feet of sea level rise and channel deposition. In studying this risk, the City identified several adaptation strategies, including river channel dredging, reservoir management, elevated structures, and relocated public infrastructure. Of the strategies most relevant to this amendment request, the option to elevate structures is described as the City's strategy to "consider modifying floodplain development policies and regulations to address sea-level rise and facilitating elevating structures over time through redevelopment." The Plan suggests that the ground floor elevation of homes can be raised so as to be above predicted river flood levels of the future. Another adaptation option discussed is the installation of a living levee along the banks of the San Dieguito River to an elevation above anticipated flood levels. When built in conjunction with the restoration of nearby wetland areas, habitat along the river would be enhanced and buffer the effects of high tides, flood events, and gradual sea level rise. Given the extent of the vulnerabilities to sea level rise and flooding mapped by the City as well as several of the adaptation strategies identified above, the suggested modifications concerning elevation, floodproofing, and design measures are largely consistent with the intent and purpose of the City's Plan.

Thus, acknowledging sea level rise scenarios that are deemed relatively safe as well as the adaptation strategies that may temper the impacts of sea level rise, the Commission and the City cannot ignore the risks associated with building residences in an area we know now to be hazardous and will likely only become increasingly so. The allowance for conversion or construction of multiple dwelling unit buildings will only be acceptable if they are designed to withstand the effects of flooding and sea level rise over the course of their anticipated lifetime and to protect human lives. Additional measures must be taken to ensure that any new residences sited in areas vulnerable to flooding and sea level rise will be adequately designed, and that proper notice is given to current and future owners and residents so that the risks associated with the development are safeguarded against and clearly acknowledged.

Therefore, in order to address the risks associated with increasing density in a hazardous area, the inclusion of **Suggested Modification #2** into the LCPA is proposed. This Suggested Modification would modify the requirements of the allowable uses permitted in the NC Zone (30.24.030) so that any new or converted multiple dwelling unit building must

include several standards when sited on a parcel that falls entirely or partially within the flood hazard areas identified on the 2019 FEMA FIRMs. With the incorporation of **Suggested Modification #2**, design and noticing requirements will be applied to the development of a multiple dwelling unit building as described above. Specifically, **Suggested Modification #2** states that a multi-unit dwelling must include elevation, floodproofing, and/or other measures sufficient to safeguard it from the impacts of sea level rise over the anticipated lifetime of the proposed structure using the best available science. These suggested modifications would also require landowners in this area to record a notice on their property and notice all occupants that the building is located in the FEMA FIRM and is in a hazardous area or an area that may become hazardous; that sea level rise could make it difficult or impossible to provide services to the site; that the boundary between tidelands and private land may shift with rising seas and the development approval does not permit encroachment onto public trust land, and that additional adaptation strategies may be required in the future to address sea level rise consistent with the Coastal Act and certified LCP. Finally, the Suggested Modifications would also require that the permittee waive any right under Coastal Act Section 30235 and related LCP policies to hard shoreline armoring to protect the residential building, and permittee acknowledgement that the structure may need to be removed or relocated, and the site restored, if the site becomes unsafe for occupancy due to flooding and sea level rise.

Suggested Modification #2 would also prohibit subdivision of parcels located in the NC Zone. As stated in the Commission's January 21, 2022 memo on the implementation of a new state law (SB 9) in areas vulnerable to sea level rise, the Commission's sea level rise guidance recommends concentrating development away from hazardous areas and limiting subdivisions so as to minimize risks to life and property while assuring stability and structural integrity of the building over its lifetime without relying on shoreline armoring. Subdivisions on these lots may hinder the ability to add on adaptive elements on the site or building into the future as sea level rise progress (for example, development cannot be sited in a more landward or higher elevation location). Lastly, subdivisions increase the amount of property interests in a given area and complicate potential scenarios where management of the area must be addressed on a more comprehensive, community-wide scale while maintaining protection of coastal resources and public access.

Reference to Chapter 24.21

Because the proposed IP amendment references Chapter 24.21 of the Del Mar Municipal Code, which is not considered part of the certified LCP and does not affect the applicability of the affordable housing requirement, **Suggested Modifications #3 and #4** would remove this reference in the NC and PC Zone sections of the IP amendment, respectively. With the inclusion of these amendments, the proposed IP amendment can be found consistent with the certified LUP.

Allowed Uses List

As described above, the list for allowable uses in the IP does not document multiple dwelling unit residences at a density of up to 20 dwelling units per acre for either the NC or

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PC Zones, or the addition of emergency shelters as an allowable use within the NC Zone. With the incorporation of **Suggested Modification #5**, the new allowed uses for the IP will be clearly applicable for the subject zones within the zoning designation lists, and thus be consistent with the certified LUP.

V. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 21080.9 of the California Environmental Quality Act (CEQA) exempts local government from the requirement of preparing an environmental impact report (EIR) in connection with its local coastal program. The Commission's LCP review and approval program has been found by the Resources Agency to be functionally equivalent to the EIR process. Thus, under CEQA Section 21080.5, the Commission is relieved of the responsibility to prepare an EIR for each LCP submission.

At the local level, the City prepared a Program Environmental Impact Report (PEIR) in accordance with CEQA because there are no proposed development applications, project level details, or development plans associated with the proposed program-level action. Resolution 2020-47 certifying the Professional Commercial and North Commercial Zoning Code Amendment was adopted by the City in September 2020 to address potential environmental effects.

Nevertheless, the Commission is required in an LCP submittal or, as in this case, an LCP amendment submittal, to find that the LCP, or LCP, as amended, does conform with CEQA. Several impacts are considered less than significant with mitigation and are described in the PEIR. Impacts include those to aesthetics, cultural resources, noise, and biological resources. The LCP amendment as modified will not have any significant adverse effect on the environment, as each site will be reviewed for regulatory consistency with the relevant standards at the time development is proposed. This review will ensure that no feasible alternatives or feasible mitigation measures are available that would substantially lessen any significant adverse impact on the environment. Therefore, the Commission finds the subject LCP implementation plan, as amended, conforms to CEQA provisions.