

**CALIFORNIA COASTAL COMMISSION**

SAN DIEGO DISTRICT OFFICE  
7575 METROPOLITAN DRIVE, SUITE 103  
SAN DIEGO, CA 92108-4402  
VOICE (619) 767-2370  
FAX (619) 767-2384



# W16b

Date: April 28, 2022

To: COMMISSIONERS AND INTERESTED PERSONS

From: KARL SCHWING, DEPUTY DIRECTOR, SAN DIEGO COAST DISTRICT  
DIANA LILLY, DISTRICT MANAGER, SAN DIEGO COAST DISTRICT  
STEPHANIE LEACH, COASTAL PLANNER, SD COAST DISTRICT

Subject: STAFF RECOMMENDATION ON CITY OF DEL MAR MAJOR  
AMENDMENT NO. LCP-6-DMR-21-0035-1 (5<sup>th</sup> Cycle Housing Element)  
for Commission Meeting of May 11-13, 2022

---

## SYNOPSIS

The subject LCP implementation plan amendment was submitted and filed as complete on April 7, 2021. A one-year time extension was granted on June 10, 2021. As such, the last date for Commission action on this item is June 30, 2022. This report addresses the entire submittal.

### SUMMARY OF AMENDMENT REQUEST

The City of Del Mar is proposing to amend its certified Implementation Program (IP) to create a new Housing Element Implementation Overlay Zone (HEI-OZ). The purpose of this overlay is to facilitate future implementation of housing rezone projects where required to enact the City's Housing Element programs. This new overlay, when applied, will allow for the "by-right" (i.e. ministerially approved) development of multiple dwelling unit residential use at a density of 20-25 dwelling units per acre with 20% of the units earmarked as affordable.

Creation of the new overlay zone requires the addition of a new Chapter 30.92 to the Del Mar Municipal Code (DMMC), as well as the addition of clarifying language to DMMC Section 30.75.080 that requires all development proposed on sites within the Overlay to receive an administrative Coastal Development Permit (CDP). Chapter 30.92 as proposed includes the areas of applicability (i.e. the parcels on which the HEI-OZ is applied), the process for permit approval, development standards for proposed housing projects including "mitigation, monitoring and reporting requirements" associated with potential impacts of these projects. The objective standards that would be included in the HEI Overlay Zone are intended to reflect the standard criteria and protocols that are expected of any such housing project that is required to be processed through an administrative (staff level) ministerial process instead of the City's typical discretionary permit process. The mitigation requirements,

consist of development standards designed to avoid or mitigate impacts to a wide variety of resources, including cultural resources, biological resources (such as wetlands, sensitive habitat, trees, avian and raptor species, and native vegetation), noise, paleontological resources, public views, steep slopes, and risk of hazards, including wildfire.

The LCP amendment would also apply the new HEI-OZ zone to two existing parcels, known as “Watermark,” which fulfills the obligations of Program 2G of the City’s 5<sup>th</sup> Housing Element Cycle. These two parcels are vacant lots that were identified by the City as its “adequate sites” to support the development of affordable housing in the prior 4th Cycle Housing Element, but because no action was taken by the City during that time to implement the housing program on those sites or to otherwise identify and process approval of an equivalent replacement with sufficient density, the City is required to process this action through Program 2G as part of its 5<sup>th</sup> Cycle. While Program 2G required the rezoning of only two parcels, the City created the new overlay in anticipation of applying it to various parcels during the City’s 6<sup>th</sup> Housing Element Cycle (2021-2028). These include, but are not limited to, up to six parcels along Border Avenue/North Bluff and up to three vacant parcels at the south end of Stratford Court.

## **SUMMARY OF STAFF RECOMMENDATION**

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

The new overlay is expected to help achieve the City’s housing goals and encourage the provision of new lower-cost residential units. However, several aspects of the amendment require modification in order to ensure that coastal resources are adequately protected. Commission staff worked with the City to identify suggested modifications that address the protection of biological resources, visual resources, protecting life and property when sited in areas vulnerable to flooding and sea level rise, and cultural and paleontological resources. The suggested modifications add additional protection regarding lighting on sensitive habitat areas, wetlands and buffers, environmentally sensitive habitat area (ESHA) and buffers, appropriate setbacks and noise measures to protect passerine and raptor species, requiring non-invasive plant species for landscaping or revegetation, and protecting sensitive vegetation in areas that may be cleared for fire safety. The suggested modification addressing visual concerns ensures that public views are protected and that appropriate setbacks that protect visual corridors will be incorporated into projects. The suggested modifications addressing development in the floodplain ensures that projects built in hazardous areas as defined by the 2019 FEMA FIRM will be appropriately sited and designed for projected sea level rise, that any rights to hard armoring are waived, and that occupants will be noticed as necessary that the development is located in a flood-prone area. Finally, the suggested modifications for cultural and paleontological resources will emphasize that all development must be designed to avoid and minimize impacts to potential resources, and where impacts do

## LCPA 6-DMR-21-0035-1 (5<sup>th</sup> Cycle Housing Element)

occur, mitigation methods must be utilized. For cultural resources in particular, the suggested modifications emphasize the importance of continued engagement with Native American monitors and/or tribal representatives at every point in project development, from consultation to on-site monitoring to the appropriate method of mitigation.

Additionally, several small corrections to the LCPA are proposed as well as minor modifications to language in order to avoid incorporating portions of the DMMC that are not part of the certified LCP. Of the corrections proposed, two are changes to both the proposed LCPA as well as existing provisions in the certified LCP. In this case, the suggested modifications will correct the appeal period for CDPs to be ten working days instead of ten calendar days as currently written, and that the notice of final action on such CDPs will be provided to the Executive Director within five working days rather than seven calendar days as currently written. It is staff's understanding that the City is in agreement with all suggested modifications.

The appropriate motions and resolutions begin on page 5. The suggested modifications begin on page 6. The findings for denial of the Implementation Plan Amendment as submitted begin on page 28. The findings for approval of the plan, if modified, begin on page 33.

### **ADDITIONAL INFORMATION**

Further information on the City of Del Mar LCP amendment No. LCP-6-DMR-21-0035-1 may be obtained from Stephanie Leach, Coastal Planner, at (619) 767-2370 or [SanDiegoCoast@coastal.ca.gov](mailto:SanDiegoCoast@coastal.ca.gov).

---

## TABLE OF CONTENTS

<b>I. OVERVIEW.....</b>	<b>5</b>
A. LCP HISTORY .....	5
B. STANDARD OF REVIEW .....	5
C. PUBLIC PARTICIPATION .....	5
<b>II. MOTIONS AND RESOLUTIONS .....</b>	<b>5</b>
<b>III. SUGGESTED MODIFICATIONS.....</b>	<b>6</b>
<b>IV. FINDINGS FOR REJECTION OF THE CITY OF DEL MAR IMPLEMENTATION PLAN AMENDMENT, AS SUBMITTED, AND APPROVAL IF MODIFIED .....</b>	<b>21</b>
A. BACKGROUND AND AMENDMENT DESCRIPTION .....	21
B. CONFORMANCE WITH THE CERTIFIED LAND USE PLAN .....	24
<b>V. CONSISTENCY WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) .....</b>	<b>39</b>

### EXHIBITS

[Exhibit 1 – Ordinance 979](#)

[Exhibit 2 – Ordinance 980](#)

## **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**

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. MOTIONS 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. MOTION:**

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

### **STAFF RECOMMENDATION OF REJECTION:**

Staff recommends a **YES** 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. 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.

**2. MOTION:**

I move that the Commission certify the Implementation Program Amendment for the City of Del Mar certified LCP if it is modified pursuant to the staff recommendation.

**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 City of 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. 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**

Staff recommends the following suggested revisions to the proposed Implementation 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.

LCPA 6-DMR-21-0035-1 (5<sup>th</sup> Cycle Housing Element)

1. Revise the chart under Section 30.92.020 (Areas of Applicability) so as to include a fourth column entitled “Overlay” and which will list any special environmental overlay zones that the parcel(s) fall within as described in the LCP.

2. Revise Section 30.92.030(C)(5) as follows:

Once a final decision of approval, conditional approval, or denial is issued by the Planning Director, the notice of final action shall be provided within ~~seven calendar~~ five working days to the Executive Director of the Coastal Commission and to any interested parties who requested notice in writing in accordance with Section 30.75.100.

3. Revise Section 30.92.030(C)(6) as follows:

Within the appealable area of the coastal zone (Section 30603 of the Coastal Act and as generally shown on the City Post Certification Map) property that is located between the first public road and the sea, within 300 feet of a beach or the mean high tide line, and all areas within 100 feet of wetlands and streams), the Planning Director’s decision to approve an Administrative CDP in the Housing Element Implementation Overlay Zone may be appealed to the Coastal Commission within 10 ~~calendar~~ working days in accordance with Section 30.75.110. Proposed development in the Housing Element Implementation Overlay Zone that is located outside of the coastal zone appealable area is not appealable to the Coastal Commission.

4. Revise Section 30.92.030(D) as follows:

Upon issuance of an administrative CDP, the applicant may apply for an administrative level approval of required Construction Permits as applicable ~~in accordance with DMMC Chapter 23.05 (Construction Permits)~~.

5. Revise Section 30.92.040(B)(1)(c) as follows:

Construction, grading, or other encroachment of any kind on substantial steep slopes (as defined in DMMC Section 30.52.060.A.1.b), or within 20 feet of the top or 10 feet of the bottom of substantial steep slopes exceeding 25 percent grade, or the construction of structures which overhang such steep slopes or steep slope setbacks, shall ~~be~~ not be allowed.

6. Revise Section 30.92.040(B)(4)(d) as follows:

New trees shall be non-invasive according to the California Invasive Plant Council guidance ~~regionally native or selected from the City of Del Mar’s Recommended Tree List~~.

7. Revise Section 30.92.040(B)(5)(a) as follows:

Parking shall be provided in accordance with DMMC Chapter 380.80.

8. Revise Section 30.92.040(B)(6)(a) as follows:

All exterior lighting shall be low intensity, shielded, and directed downward, below the horizontal plane of the fixture, to prevent objectionable brightness or light trespass onto adjacent properties. The source of the light bulb must not be visible from adjacent properties or public rights of way. Natural gas lighting shall not be allowed. The color temperature of exterior lighting located adjacent to ESHA, or adjacent to the shoreline, shall be 2700 Kelvin or lower.

9. Add a new subsection (C) to Section 30.92.040 as follows:

C. Minimization of Flood Risk

If a proposed multiple dwelling unit project is located on a parcel that falls entirely or partially within the special flood hazard areas identified on the 2019 FEMA Flood Insurance Rate Map (FIRM), the following shall apply:

- (1) During review of applications for development, the City shall consider the best available science on sea level rise 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), the status of associated adaptation measures (planned or implemented), and analysis of how those adaptation measures minimize projected flood risk. This should include consideration of how projected sea level rise and flooding could affect future provision of services to the site; whether the boundary between public land (tidelands) and private land is projected to shift onto the subject project with rising seas; whether the creation of new lots via subdivision should be limited; and whether additional adaptation strategies should be required as a condition of permit approval to address sea level rise and flooding consistent with the Coastal Act and certified LCP.
- (2) Development shall be sited and designed, including elevation and floodproofing, to minimize flood damage and avoid flood hazards including those from the impacts of projected sea level rise and flooding over the anticipated lifetime of the proposed structure using the best available science on sea level projections and in consideration of applicable adaptation measures.

10. Revise Section 30.92.050(A)(2) as follows:



(2) Native American Consultation

Upon receipt of a development proponent's preliminary application, the City shall request consultation regarding the proposed development with any California Native American Tribe that is traditionally and culturally affiliated with the geographic area, as described in Section 21080.3.1 of the Public Resources Code, and contact the Native American Heritage Commission for assistance in identifying any California Native American Tribe. The City shall provide formal notice for each Tribe traditionally and culturally affiliated with the geographic area of the project site including the location and a description of the proposed development, and an invitation to engage in scoping consultation. The local government shall request that each tribe notify the City if it accepts the invitation to engage in consultation within 30 days, unless additional time is requested. Each Tribe that receives this notice has 30 calendar days to accept the invitation to engage in consultation.

[...]

11. Revise Section 30.92.050(A)(3) as follows, with renumbering of the subsequent items that follow:

(3) Archaeological Survey

- a. Any development project that involves disturbance of soils, including native soils that may have been previously disturbed or compacted, shall be required to submit an archaeological survey report unless previous tribal consultation correspondence for the project site indicates there is no concern with grading activities on site. Where a site has been disturbed from prior development or grading activities, eliminating the possibility of surface archaeological resources to be encountered, an archaeological survey shall not be required.
- b. ~~For all other sites,~~ An archaeological survey report shall be submitted by a Registered Professional Archaeologist.
- c. ~~i.~~ The survey report shall include a record search of known archaeological resources and document results of the field survey including any resources encountered.

(4) Siting and Design

Development shall be sited and designed to avoid adverse impacts to important archaeological resources to the maximum extent feasible. If there is no feasible alternative that can avoid impacts to important or unique archaeological resources, then the alternative that would result in the least adverse impacts to important or

unique archaeological resources that would not result in additional adverse impacts to other coastal resources shall be required.

(5) Testing and Mitigation

- a.     ~~ii. If the surveys find the potential for significant resources~~  
potential impacts to archaeological resources cannot be avoided,  
the Registered Professional Archaeologist shall develop and implement an archaeological testing program. The testing program shall be adequate to allow a determination of significance pursuant to CEQA Guidelines Section 15064.5(b) and shall include a Native American monitor.
- b.     ~~Should~~ Shall-the testing find significant resources are present, a mitigation program shall be implemented consistent with CEQA Guidelines Section 15126.4(b)(3).
- c.     Mitigation shall be designed in compliance with the guidelines of the State Office of Historic Preservation and the State Native American Heritage Commission. Mitigation may include, but is not limited to, conservation and protection of the site in perpetuity, implementation of a data recovery plan, or other on-site preservation methods such as capping.
- d.     In-situ preservation and avoidance of cultural depositions shall be considered the preferred mitigation option.
- i.     For in-situ preservation or reburial, the boundaries of the resource shall be determined and a setback shall be no less than 20 feet and may be larger if necessary to protect the cultural deposit.
- ii.    Where in-situ preservation and avoidance is not feasible, partial or total recovery of important or unique archaeological resources shall be undertaken.
- iii.   Examples of methods to accomplish in-situ preservation or avoidance include, but are not limited to:
- Siting and designing structures to avoid important or unique archaeological resources;
  - Planning construction to prevent contact with important or unique archaeological deposits;
  - Planning parks, green space, or other open space to preserve important or unique archaeological sites;

- “Capping” or covering important or unique archaeological sites with a layer of soil before building tennis courts, parking lots, or similar facilities. Capping may be used where: the soils to be covered will not suffer serious compaction; the cover materials are not chemically active; the site is one in which the natural processes of deterioration have been or can be effectively arrested; and the site has been recorded
  - iv. Although the placement of fill on top of an archaeological site may reduce direct impacts of construction, indirect impacts may result from the loss of access to the site for research purposes and scarification and compaction of soils.
  - v. To mitigate these impacts, a sample of the cultural resource shall be excavated and appropriately curated for research purposes; and
  - vi. Action shall be taking to designate important or unique archaeological sites into permanent conservation easements held for the benefit of the public.
  - e.     iii. A Native American monitor shall be consulted regarding the proposed mitigation plan as well as representatives of Native American groups that agreed to participate in the initial consultation process. If there is disagreement regarding the culturally affiliated tribal government, the Native American Heritage Commission shall be consulted. All reports, methods, testing programs, curation, and other aspects of the archaeological investigation shall follow the Secretary of the Interior's Guidelines for Archaeological Documentation.
12. Section 30.92.050(A)(4) shall be renumbered as 30.92.050(A)(6) and shall be revised as follows:
- (6) Preconstruction Meeting Coordination and Archaeological and Native American Monitoring
- a.     [...]
  - b.     Prior to the start of any ground-disturbing activity, an archaeological and Native American monitor from a traditionally and culturally affiliated tribe that is included on an updated Native American Heritage Commission (NAHC) list, as well as a Native American most likely descendant (MLD) when State Law mandates identification of a MLD, shall be retained to monitor ground-disturbing activities including, but not limited to, grading, excavation, brush clearance, and grubbing. The archaeological

monitor shall conduct preconstruction cultural resources worker sensitivity training to bring awareness to personnel of actions to be taken in the event of a cultural resources discovery.

c. [...]

13. Section 30.92.050(A)(4)(d) shall be renumbered as 30.92.050(A)(7) and revised as follows:

(7) Discovery of Archaeological Resources

a. In the event that archaeological resources are accidentally discovered or unearthed during construction activities, all job operations ~~earth-disturbing work~~ within a 25-meter radius shall be temporarily suspended or redirected until the qualified archaeologist and Native American monitor ~~has~~ haves identified and evaluated the nature and significance of the find, in compliance with CEQA Guidelines Section 15064.5(f).

b. Construction activities shall be redirected to other work areas until the archaeologist and Native American monitor determines that work can resume in the vicinity of the find.

c. If the artifact that is accidentally discovered or unearthed is of Native American origin, the certified archaeologist and a culturally affiliated Native American with knowledge of cultural resources shall be consulted for identification and evaluation.

d. If the discovery is determined significant, a data recovery program or other treatment method determined in consultation with the City and Native American with knowledge of the cultural resources, if applicable, shall be implemented in order to mitigate impacts to the resource.

e. The applicant shall transfer ownership of Native American cultural resources to the appropriate Native American Tribe for proper treatment and disposition, if requested by the Tribe.

14. Section 30.92.050(A)(4)(e) shall be renumbered as 30.92.050(A)(7)(f) and revised as follows, with subsequent renumbering of items that follow:

f. In the event that human remains are discovered or unearthed during construction activities, all job operations ~~earth-disturbing work~~ within a 25-meter radius of the human remains shall be temporarily suspended or redirected and the county coroner must be contacted as required by California Health and Safety Code Section 7050.5.

[...]

15. Add Section 30.92.050(A)(7)(h) as follows:

The City shall notify the Coastal Commission staff that significant archaeological resources were discovered during construction.

16. Revise Section 30.92.050(B)(1) so as to name the section “Required Technical Reports and Surveys.”

17. Revise Section 30.92.050(B)(2) as follows:

(2) Siting, Design, and Monitoring

a. Protection of Wetlands

- i. If wetlands are present on-site the project design shall ensure wetlands are preserved and where appropriate, restored, along with a minimum 100-foot wetland buffer. If wetlands are located off-site, a 100-foot wetland buffer shall be provided from the edge of the off-site wetland to the edge of the development footprint.
- ii. The wetland buffer may be reduced to no less than 50-feet with written concurrence from the California Department of Fish and Wildlife (CDFW) and the California Coastal Commission, and after findings have been made that the physical characteristics of the site, such as the size and dimensions of the property, are adequate to protect the resources of the adjacent wetlands.
- iii. The findings for a reduced wetland buffer shall be based on site-specific factors, such as the type, size and nature of the development proposed, the mitigation measures provided (such as planting of vegetation or construction of fencing); elevation differentials which may exist between the proposed development and wetland areas; the need for upland transitional habitat, or other similar factors which will serve to contribute to the purposes of a wetland buffer area. When making these findings, the recommendations of CDFW and CCC shall be considered.
- iv. Permitted uses in wetlands are specified in DMMC Section 30.53.080.
- v. Wetland buffers shall be consistent with DMMC Section 30.53.090. Public access to wetlands and wetland buffer areas shall be restricted as necessary to maintain the biological productivity of the wetland. This may be

accomplished by landscape berms, fencing, or other suitable barriers.

18. Section 30.92.050(B)(3) shall be renumbered as Section 30.92.050(B)(2)(b) and shall be revised as follows:

(b) Protection of Environmentally Sensitive Habitat Areas (ESHA)

- i. Sensitive habitat areas (including wetlands and wetland buffers) shall be retained or restored to their natural state to ensure the future protection of the designated area(s) from encroachment, disturbance, or degradation
- ii. Prior to the issuance of Certificate(s) of Occupancy, protected habitat areas shall be preserved through recordation of an open space deed restriction, conservation easement, or open space easement over the protected area(s) to ensure their protection and to serve notice to the property owner, subsequent owners or interested parties of the restrictions in effect on such property.
- iii. ESHA shall be protected against any significant disruption of habitat values, and only uses dependent on those resources shall be allowed within those areas.
- iv. 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.
- v. Sensitive habitat shall be protected by appropriate buffers. Encroachment into ESHA buffers shall be avoided, including encroachment for fuel modification and brush management.

19. Section 30.92.050(B)(4) shall be deleted as follows:

~~(4) Impacts to Environmentally Sensitive Habitat Areas shall be avoided to the maximum extent feasible. Where impacts cannot be avoided, the applicant shall identify and implement the mechanism(s) proposed to offset impacts, which may include one or more of the following:~~

- ~~a. Implementation of on-site restoration, including a monitoring and long-term management component.~~
- ~~b. Conservation of habitat on-site.~~

~~c. Purchase of habitat credits at an off-site mitigation bank if onsite restoration and/or conservation of habitat on-site is deemed not suitable by a qualified biologist due to site constraints and/or vegetation.~~

20. Section 30.92.050(B)(5) shall be renumbered as 30.92.050(B)(3) and revised as follows:

(3) Protected Trees

~~Removal of Torrey Pines or Monterrey Cyprus trees ~~protected trees as defined in DMMC Section 23.50.020(E)~~ shall be replaced or mitigated at appropriate ratios as determined by the Planning Director in consultation with consistent with the ratios provided in DMMC Section 23.50.090 or through payment into the City's Tree Mitigation Fund if on-site replacement is deemed not suitable by a qualified arborist due to site constraints and/or vegetation.~~

21. Section 30.92.050(B)(6) shall be renumbered as 30.92.050(B)(5) and revised as follows:

(5) Limits on Construction During Breeding Season

- a. The clearing and grading of trees and shrubs shall occur outside of the avian and raptor breeding season of February 1 ~~January 4~~ through August 31 to avoid damage to nests and nesting birds consistent with the Migratory Bird Treaty Act.
- b. If clearing and grading during the avian breeding season is proposed, then a focused nest survey shall be conducted by a qualified biologist 72 hours prior to the vegetation removal. If active nests are discovered during the nest survey, those nests shall be avoided until the young have fledged.
- c. ~~The qualified biologist shall recommend a~~ Appropriate nest setback distances shall ~~to~~ be implemented during construction ~~that are based on the species of bird and applicability of noise attenuation measures, the topography between the nest and the proposed disturbance activity, and the surrounding vegetation.~~ These setbacks shall be a minimum of 300 feet for passerine species and 500 feet for raptor species, but may be reduced when located in highly urban settings if approved by the Executive Director of the California Coastal Commission.

22. Section 30.92.050(B)(7) shall be renumbered as Section 30.92.050(B)(5)(d) and revised as follows:

- d. Where habitat for California gnatcatcher is present within or adjacent to the project site, breeding season avoidance measures

shall be implemented.

i. If project-related work is to occur during the breeding season for California gnatcatcher (February 15 through August 31), pre-construction protocol-level surveys for California gnatcatcher shall be performed to determine the status of breeding California gnatcatchers on site and within 500 feet of the site.

ii. If a nesting California gnatcatcher pair is detected on site or within 500 feet of the site, noise attenuation measures shall be implemented to ensure that ambient noise levels are equal to or less than 65 ~~60~~ decibels at the nest.

iii. If ambient noise levels before project construction exceed 65 dB, noise attenuation measures shall be implemented to ensure the baseline noise level is not exceeded.

iv. Nest monitoring by an individual holding a Section 10(a) U.S. Fish and Wildlife Service recovery permit for California gnatcatcher shall be conducted to ensure that the nesting California gnatcatchers remain undisturbed by construction.

23. Section 30.92.050(B)(8) shall be renumbered as 30.92.050(B)(4) and shall be revised as follows:

Where landscaping or revegetation is proposed ~~in proximity to native vegetation on or off site~~, the landscaping or revegetation plan shall not include any invasive plant species listed on the California Invasive Plant Council's Invasive Plant Inventory Database or cultivars of any such listed species.

24. Revise Section 30.92.050(D)(1) to name it "Submittal Requirements, Technical Reports, and Surveys."

25. Add a new Section numbered 30.92.050(D)(2), with subsequent renumbering of the items that follow:

(2) Siting and Design

a. New development shall be sited and designed to avoid adverse impacts to paleontological resources to the maximum extent feasible.

b. If there is no feasible alternative that can eliminate all impacts to paleontological resources, then the alternative that would result in the fewest or least significant impacts to resources shall be selected.



- c. Impacts to paleontological resources that cannot be avoided through siting and design alternatives shall be mitigated.
  - d. When impacts to paleontological resources cannot be avoided, mitigation shall be required that includes procedures for monitoring, grading and handling fossil discoveries that may occur during development.
26. Section 30.92.050(D)(2) shall be renumbered as 30.92.050(D)(3) and revised as follows:

(3) Preconstruction Meeting Coordination and Monitoring

- a. Any project that requires disturbance into high or moderate sensitivity paleontological formations shall be required to provide a paleontological monitor during ground disturbing activities. ~~The requirement shall be as follows:~~
  - b. A qualified paleontologist (an individual with an MS or PhD in paleontology or geology who is familiar with paleontological procedures and techniques, who is knowledgeable in the geology and paleontology of San Diego County, and who has worked as a paleontological mitigation project supervisor in the County for at least one year) shall attend the preconstruction meeting to consult with the grading and excavation contractors concerning excavation schedules, paleontological field techniques, and safety issues.
  - c. A paleontological monitor (an individual who has experience in the collection and salvage of fossil materials, working under the direction of a qualified paleontologist) shall be on site on a full-time basis during the original cutting of previously undisturbed deposits of high paleontological resource potential to inspect exposures for contained fossils.
  - d. Grading activities in previously undisturbed deposits of moderate paleontological resource potential shall be monitored on a part-time basis.
27. Section 30.92.050(D)(2)(c) shall be renumbered as Section 30.92.050(D)(4) and revised as follows:

(4) Discovery of Paleontological Resources

- a. ~~Grading activities in previously undisturbed deposits of moderate paleontological resource potential shall be monitored on a part-time basis.~~ In the event that paleontological resources are discovered or unearthed during project subsurface activities, all earth-disturbing work within a 100-meter radius shall be temporarily suspended or redirected until a certified paleontologist has recovered, identified,

and/or evaluated the nature and significance of the find, in compliance with CEQA Guidelines Section 15064.5(f).

- b. Mitigation measures shall be implemented to address the impacts of the construction on the resources following the guidance of 30.92.050(A)(4)(d).
  - c. After the find has been appropriately mitigated, work in the area may resume.
28. Section 30.92.050(D)(2)(d) will be renumbered as Section 30.92.050(D)(4)(d).
29. Section 30.92.050(D)(2)(e) will be revised as follows, with subsequent renumbering of the items that follow:
- e. Fossil remains collected during monitoring and salvage shall be cleaned (removal of extraneous enclosing sedimentary rock material), repaired (consolidation of fragile fossils and gluing together broken pieces), sorted (separating fossils of the different species), and catalogues (scientific identification of species, assignment of inventory tracking numbers, and recording of these numbers in a computerized collection database) as part of the mitigation program. ~~Prepared fossils, along with copies of all pertinent field notes, photos, and maps, shall be deposited (as a donation) in a scientific institution with permanent paleontological collections such as the San Diego Natural History Museum. Donation of the fossils shall be accompanied by financial support for preparation, curation, and initial specimen storage, if this work has not already been completed.~~
  - f. Prepared fossils, along with copies of all pertinent field notes, photos, and maps, shall be deposited (as a donation) in a scientific institution with permanent paleontological collections such as the San Diego Natural History Museum. Donation of the fossils shall be accompanied by financial support for preparation, curation, and initial specimen storage, if this work has not already been completed.
30. Section 30.92.050(D)(2)(f) will be renumbered as Section 30.92.050(D)(4)(g).
31. Section 30.92.050(D)(2)(h) shall be added as follows:
- h. The City shall notify the Coastal Commission staff that significant paleontological resources were discovered during construction.
32. Revise Section 30.92.050(E) as follows:
- Projects shall be designed to ensure that no ~~primary scenic views or~~

scenic views from public streets, roads or pedestrian trails are obstructed, unless there is no feasible alternative siting which eliminates or significantly reduces the obstruction, and that the bulk and scale of the proposed structure have been minimized to the greatest extent feasible commensurate with preserving the physical characteristics of the site. Protection of public views will be evaluated based on consistency with public view protection policies IV-22 through IV-27 of the City of Del Mar Local Coastal Program (LCP) Land Use Plan as well as the appropriate setback(s) that protect public scenic views to the ocean.

33. Revise Section 30.92.050(G) as follows:

To ensure protection of the public health and safety from wildfire, all development within or adjacent to a "Very High" or "High" Fire Hazard Severity Zone shall be required to incorporate enhanced fire safety measures consistent with Section(H) of the Bluff, Slope and Canyon Overlay Zone Regulations found in the certified LCP as well as the State Fire Code and Building Code to the satisfaction of the Fire Marshall and Building Official.

34. Add a new subsection (H) to Section 30.92.050 as follows:

H. Flooding

If a proposed multiple dwelling unit project is located on a parcel that falls entirely or partially within the special flood hazard areas identified on the 2019 FEMA Flood Insurance Rate Map (FIRM), the following shall apply as a condition of Coastal Development Permit approval:

1. The landowner shall record a notice on the property and notice all occupants that:
  - a. The development is located in the Floodplain Overlay Zone(2019 FEMA FIRM), which applies to flood prone properties that are subject to periodic inundation due to flooding, including projected sea level rise;
  - b. The property owner and all successors in interest waive any rights under Coastal Act Section 30235 and related LCP policies to hard shoreline armoring to protect the development.
2. Where necessary to ensure coastal resource protection and compliance with the Coastal Act based on the site-specific context, the notice required per Section 30.92.050(H)(1) shall also reflect the following:
  - a. That sea level rise and flooding could render it difficult or impossible to provide services to the site;

b. That 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; and

c. That additional adaptation strategies may be required in the future to address sea level rise and flooding consistent with the Coastal Act and certified LCP.

3. The permittee shall acknowledge as a condition of permit approval that while the approved development meets all safety requirements applicable at the time of approval, the development may be required to be removed or relocated in accordance with the certified LCP if the Building Official determines the development becomes unsafe for occupancy due to future flood hazard conditions.

35. Revise the chart under Section 30.92.020 Areas of Applicability so that for the two APN parcels associated with the Watermark project, the new Overlay column from Suggested Modification #1 is completed with “Bluff, Slope, and Canyon, Lagoon, and Floodplain.”

36. Revise Section 30.75.100 (Notice of Action on Coastal Development Permit Applications) as follows:

Upon final action on an application for a Coastal Development Permit, the City shall, within ~~seven~~ five working days of the final action, mail notice to the Executive Director of the California Coastal Commission and to interested parties who have requested notice in writing describing the action taken by the City.

37. Revise Section 30.75.110(B) as follows:

The period ~~of~~ for appeal to the Coastal Commission on an action rendered by the City on a Coastal Development Permit application shall be ~~ten calendar~~ working days, commencing on the day after written notice of the City’s final action on the application is received at the staff offices of the Coastal Commission.

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

### **A. BACKGROUND AND AMENDMENT DESCRIPTION**

#### 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 4<sup>th</sup> 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 failed to take action to create adequate sites at sufficient density (allowing at least 20 dwelling units per acre) and provide the units as required. As a result, HCD imposed a requirement per Government Code Sections 65583.2(h) and (i) that required the City as part of the 5<sup>th</sup> Cycle Housing Element, to allow housing "by-right" at a density of 20-25 dwelling units per acre on two parcels (APNs 299-100-47-00 and 299-100-48-00) located at the southeast corner of Jimmy Durante Blvd and San Dieguito Drive in order to create adequate sites at sufficient density (allowing at least 20 dwelling units per acre). The 5<sup>th</sup> Cycle Housing Element Program "2-G" is specifically tied to these two parcels because those vacant lots were identified by the City as its "adequate sites" to support the development of affordable housing in the prior 4<sup>th</sup> Cycle Housing Element, although no action was taken by the City at that time to implement the housing program on those sites or to otherwise identify and process approval of an equivalent replacement with sufficient density.

These two parcels, together known as the Watermark site, are designated for "North Commercial" land uses, and total approximately 2.37 acres in sizes. The property has historically been used for county fair and horse race parking as a grandfathered, limited use. During the 5<sup>th</sup> Cycle, a Watermark Specific Plan was in process via a development application that would have satisfied the 5<sup>th</sup> Cycle Program 2-G rezone requirement. However, on September 8 and October 5, 2020, the City Council voted

to deny approval of a Community Plan Amendment for North Commercial designed properties (including the subject site). Therefore, the property owner (Watermark LP) decided to withdraw the Specific Plan application and pursue a permit application pursuant to Senate Bill 330 for “by-right” processing of a multiple dwelling unit project with affordable units that will be reserved for lower income households. This process “locks in” the development standards for the site based on those applicable on the date of submittal, in this case, November 24, 2020.

Because the development standards for the project have been “locked in,” the Watermark project is being processed entirely separately from the proposed actions and development standards associated with this LCP amendment. However, the City still has a legal obligation to fulfill Program 2G of the 5<sup>th</sup> Cycle Housing Element and to rezone these two sites utilizing the proposed Housing Element Implementation Program Overlay Zone (described below), which will facilitate the provision of by-right housing in other areas in the future.

### Amendment Description

In order to implement the 5th Cycle Program 2-G, the City is proposing to amend the certified Implementation Program (IP) to create a new Housing Element Implementation Overlay Zone (HEI-OZ). The purpose of this overlay is to facilitate future implementation of housing rezone projects where required to enact the City’s Housing Element programs. This new overlay, when applied, will allow for the “by-right” development of multiple dwelling unit residential use at a density of 20-25 dwelling units per acre with 20% of the units earmarked as affordable. “By right” means the City must process a development project ministerially subject to specific objective standards (i.e. the height, floor area ratio, setbacks, design criteria, etc.), while accommodating a project design that can meet the required density range as well as local development standards to the extent feasible. The requirements of the base zone will apply to a proposed development, unless superseded by specific requirements in the HEI Overlay Zone. The objective standards that would be included in the HEI Overlay Zone are intended to reflect the standard criteria and protocols that are expected of any such housing project that is required to be processed through an administrative (staff level) ministerial process instead of the City’s typical discretionary permit process. The City may not apply its discretionary authority to these types of development projects; however, under Section 30603 of the Coastal Act, some projects may nevertheless be appealable to the Coastal Commission.

The HEI-OZ will be applied at the discretion of the City Council and requires the creation of a new Chapter 30.92 in the Del Mar Municipal Code (DMMC) as well as a clarifying addition to DMMC Section 30.75.080 that requires all development proposed on sites within the Overlay to receive an administrative Coastal Development Permit (CDP). Future projects in the HEI-OZ will be reviewed for compliance with specific development standards and mitigation, monitoring, and reporting criteria as proposed in this LCPA.

## LCPA 6-DMR-21-0035-1 (5<sup>th</sup> Cycle Housing Element)

The LCP amendment would also apply the new HEI-OZ zone to the two existing Watermark parcels, which are identified in Chapter 30.92 under “Areas of Applicability.”

Specifically, the proposed amendment would:

- Add new Zoning Chapter 30.92 to the DMMC to create a new Housing Element Implementation Overlay Zone (HEI-OZ) as an overlay zoning tool for future rezone actions when necessary to implement City Housing Element programs.
- Describe the areas of applicability (Section 30.92.020) and process for permit approval (Section 30.92.030), including that administrative level ministerial approvals (including those for Coastal Development Permits (CDP)) shall be issued where the development is found to comply with the development standards of the Overlay.
- Modifies Section 30.75.080 of the existing IP to add the application for by-right multiple dwelling unit development in accordance with the new overlay zone as an application type that will be granted approval by the Director of Planning and Community Development for an administrative CDP.
- Describes the development standards of the Overlay Zone, including that proposed projects must meet the standards of the applicable base zone and overlay zones of the LCP unless otherwise indicated by Section 30.92.040. Standards specifically cited for the Overlay Zone include a density requirement of 20-25 dwelling units per net acre, as well as descriptions of requirements regarding setbacks, building design, auxiliary structures and utilities, landscaping and parking standards, and lighting (Section 30.92.040).
- Establishes new requirements (referred to as “mitigation, monitoring, and reporting” standards that all proposed multiple dwelling unit housing development within the new overlay must comply with, including protections for cultural resources, paleontological resources, public views, steep slopes, biological resources (including wetlands, ESHA, trees, avian and raptor species, and native vegetation), noise reduction measures, and wildfire safety measures (Section 30.92.050).
- Adds two parcels (including their APNs, a description of their location and size, the mechanism for preservation of affordable units, and their base zone) to new Section 30.92.020 (Areas of Applicability) in fulfillment of Program 2G of the City’s 5<sup>th</sup> Housing Element Cycle.

[Exhibits 1 and 2](#) shows the proposed amendment in strike-out/underline.

As mentioned above, development standards applicable to proposed development in the HEI Overlay Zone must be in accordance with the applicable base zone and overlay zones, unless otherwise indicated by the new development standards contained in the new overlay. Existing overlays within the City’s LCP require protection of sensitive coastal resources, such as coastal bluffs, wetlands, floodplains, inland

bluffs, and the beach area. If a proposed development within the HEI-OZ does not meet the applicable design and mitigation standards, it will be subject to the standard procedures for permit approval pursuant to the City's Code.

While Program 2G required the rezoning of two parcels, the City created the new overlay in anticipation of applying it to various parcels during the City's 6<sup>th</sup> Housing Element Cycle (2021-2028). These include, but are not limited to, up to six parcels along Border Avenue/North Bluff and up to three vacant parcels at the south end of Stratford Court.

## **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:

### **B. Land Use Development Goals and Policies – General**

**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.

### **III.B. Shoreline Hazards – Goals and Policies**

**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.C. Coastal Bluffs**

**Goal III-B:** Preserve Del Mar's fragile coastal bluffs as a visual resource and avoid the risks to life and property associated with bluff failure and shoreline erosion.

**Policy III-9(Coastal Bluff Regulations)(a):** A minimum setback of 40 feet from the edge of the coastal bluff top shall be provided in the construction of all principal structures and all accessory structures, such as, but not limited to: pools, spas, storage sheds, gazebos and above grade decks or patios. All new additions to existing structures shall maintain the minimum 40-foot coastal bluff top setback required herein. This requirement shall also apply to the construction or installation of new supporting foundations or other structural supports for existing structures.



[...]

No grading shall be allowed within a minimum setback of 40 feet from the top edge of the coastal bluff top.

**Policy III-9(Coastal Bluff Regulations)(c):** All applications for projects involving new construction on coastal bluff top properties shall be accompanied by a geotechnical report addressing: 1) existing conditions; 2) the suitability of the site for the proposed construction; and 3) the potential of the proposed development to affect bluff stability over a 70-year life span of the project. The report shall also include recommended mitigation measures as they relate to avoidance of risks and preservation of fragile bluff systems. In the event that a submitted report recommends a bluff top setback of a greater distance than otherwise minimally required in this Land Use Plan, the greater distance shall be provided.

### 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. [...]

#### **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-3:** Lateral and vertical access ways to and along the shoreline shall be located where they can safely accommodate public use, and shall be distributed throughout the City as much as possible to prevent overcrowding or degradation of resources, minimize parking and traffic congestion, and the misuse of coastal resources...

**Goal IV-C:** Preserve existing views and view corridors from public vantage points to the maximum extent possible without preventing reasonable use of private property.

**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-25:** Preserve views of the Los Peñasquitos Lagoon and Pacific Ocean from Carmel Valley Road through the application of scenic view easements and related view preservation restrictions for any development proposals located along the south side of the roadway within scenic view corridors.

**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.

## **VI.B. Steep Slope Preservation – Goals and Policies**

**Policy VI-1 (Bluff, Slope and Canyon Overlay Zone Regulations)(E. Development Review):** Within the BSC Overlay Zone, no building improvement, structure, or portion thereof shall be erected, constructed, converted, established, altered, or enlarged, nor shall any lot or premises be excavated or graded for any purpose, including not limited to in-ground structures such as swimming pools or spas, or cleared of vegetation, unless in accordance with this Land Use Plan and the following:

1. In order to preserve viewsheds and the open space appearance of the area from a distance, no structure shall exceed a height of 14 feet as measured pursuant to the provisions of the Del Mar Municipal Code unless it is found that scenic viewsheds and the open space appearance of the area will be less affected by structures of a greater height.

[...]

3. Construction, grading or other encroachments of any kind on substantial slopes exceeding twenty-five percent grade, or within twenty feet of the top and ten feet of the bottom of substantial slopes exceeding twenty-five percent grade or the construction of structures which overhang such slopes or slope setbacks, shall be prohibited, except when specific encroachments are allowed in accordance with the following policies. For purposes of this section, “substantial slopes” shall mean: Any areas of slopes with a gradient of 25% or greater on a site where the total elevation differential within such slope areas themselves is 20 feet or more, or where such slopes on site adjoin contiguous slopes of 25% or greater on adjoining property and together involve an elevation differential of 20 feet or more. “Substantial slopes” shall include smaller, isolated pockets of area with less than 25% grade when surrounded by contiguous “substantial slopes” located either entirely or partially on site.

## **VI.D. Wetlands Preservation – Goals and Policies**

**Policy VI-3:** Ensure the protection of the wetlands of the Los Peñasquitos Lagoon and San Dieguito Lagoon and their sensitive upland habitat by requiring that all development activities taking place in lagoon and uplands areas, designated on the Lagoon Overlay Zone Map (Figure VI-B), conform to the wetland preservation regulations of this chapter. In addition, the City shall implement the Bluff, Slope, and Canyon Overlay Zone regulations of this Land Use Plan to protect sensitive wetland habitat from the impacts of upland development which lies outside of the Lagoon Overlay Zone but within the watershed of San Dieguito and Los Peñasquitos Lagoon.

### Wetland Preservation Regulations

[...]

1. Permitted Uses in Wetlands. Permitted uses in wetland areas shall be limited to the following uses and activities, provided that the implementation of such uses or activities does not involve grading, filling, construction or placement of structures within the boundaries of wetland areas as determined pursuant to the policies of this chapter.
  - a. Aquaculture, provided that it is carried out in such a manner so as to avoid any adverse impacts to the water quality or the biological productivity of the wetlands.
  - b. Scientific research, educational or recreational uses, provided that they do not involve adverse impacts to the natural ecosystem.
  - c. Wetland restoration projects where the primary function is restoration of wetland habitat.
2. Permitted Uses in Wetland Buffer Areas. Permitted uses in wetland buffer areas shall be limited to:
  - a. Passive recreational access paths and viewpoints within the upland half of the buffer, only when designed to assure no adverse impacts to adjacent wetland areas. An exception to allow access paths or viewpoints within the lower half of the buffer may be permitted where there is an elevation difference between the buffer and wetland resources of at least ten feet, or where an existing accessway/viewpoint present will be formalized. Any such permitted new access trail or viewpoint shall be setback at least ten feet from the edge of the bluff/slope. No armoring or reinforcing to either construct or maintain such a trail or viewpoint shall be permitted.
  - b. The placement of improvements necessary to provide protection, preservation or enhancement of adjacent wetland areas. Such improvements shall be located within the upland half of the buffer only, and may include, but are not limited to fencing, creation of landscape berms and placement of signage related to scientific, educational or recreational uses.
  - c. All uses permitted in wetland areas.

[...]

## 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 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, provides additional protection and preservation of coastal resources.

The HEI Overlay Zone includes several development standards with which proposed housing must comply. If not explicitly mentioned in the development standards of the new overlay, the standards of the underlying base zone will apply. In some cases, (such as front and street yard setbacks), the greater of the two standards would apply including proposed new standards relating to density, setbacks, design aspects, and landscaping. Although the City's existing certified LCP includes policies protecting sensitive coastal resources such as coastal bluffs, wetlands, floodplains, inland bluffs, and the beach area, the proposed overlay adds new requirements related to the protection of cultural resources, paleontological resources, public views, steep slopes, biological resources (including wetlands, ESHA, trees, avian and raptor species, and native vegetation), noise reduction measures, and wildfire safety measures. The existing certified parking standards in the certified LCP will apply to all future residential development. If a proposed development within the HEI-OZ does not meet the applicable design and mitigation standards, it will be subject to the standard discretionary procedures for permit approval pursuant to the City's Code. All development that meets the applicable design and mitigation standards of the Overlay will require an administrative CDP.

As described above, the overlay is currently only being applied to two undeveloped parcels in the NC/PC zone south of the San Dieguito River. However, because the intent is to apply the overlay in other areas in the future, it is important that the development standards ensure that all types of coastal resources are protected, from bluffs to scenic corridors, to wetlands, to floodplains. Many of the resource protection standards proposed in the overlay address specific requirements that are not in the City's existing LCP. While overall, the new overlay is expected to help achieve the City's housing goals and encourage the provision of new lower-cost residential units, several aspects of the amendment require additional clarification or modification in order to ensure that coastal resources are adequately protected.

### Biological Resources

The proposed LCPA includes a requirement that wetlands shall be preserved, and where appropriate, restored on site, and that a minimum 100-foot buffer will be provided. This buffer can be reduced to no less than 50 feet in width with concurrence from the California Department of Fish and Wildlife (CDFW). While these requirements largely match what is present in the certified LCP, it does not include a requirement that any reduction in buffer size must include an evaluation of the physical characteristics of the site, such as the size and dimensions of the property to ensure wetlands are adequately protected. Furthermore, the policy of requesting concurrence should be modified to include the California Coastal Commission as an additional party to this request, as the Coastal Commission has a particularly strict standard for the evaluation of wetlands.

As submitted, the LCPA describes that impacts Environmentally Sensitive Habitat Area (ESHA) shall be avoided to the maximum extent feasible, and where impacts cannot be avoided, mitigation measures such as on-site restoration, conservation of habitat, and purchase of credits at an off-site mitigation bank will be identified and implemented by the applicant in order to offset impacts. This section of the proposed

LCPA is not consistent with the resource protection policies of the LUP, which require the protection of sensitive upland habitat. Protection of sensitive upland habitat also requires buffers from the habitat; however, the City's proposed amendment does not contain language that protects such buffer areas.

The LCPA includes several provisions that protect sensitive bird species. While these measures are largely acceptable in describing impacts to nesting bird and raptor species, additional changes are required in order to ensure that the timing for breeding season is accurate, and that adequate buffers from the nest are provided for during construction in order to avoid any disturbance to young birds. These buffers can be reduced under certain circumstances, but agency notification must also be required. For gnatcatchers in particular, construction noise levels should also be considered during its breeding season, and because there is potential for future housing projects to be developed at relatively urbanized sites, additional requirements describing baseline noise levels should be included.

Birds and other animals are also sensitive to lighting. As proposed in the LCPA, exterior lighting will be low intensity and directed downward, and will prevent objectionable brightness or light trespass onto adjacent properties. Additional requirements must be included to ensure that exterior lighting for any housing project located adjacent to ESHA or adjacent to the shoreline is minimized to an acceptable color temperature. Lighting that is 3000K in color temperature is typically the highest color temperature recommended by Commission staff. Lighting with lower color temperatures has less blue in its spectrum and is referred to as being "warm." For the protection of bird species, the Commission's ecologist recommends a correlated color temperature (CCT) of 3,000 Kelvins (K) and preferably less, a range that contains less blue light. Additionally, the City's design guidelines (which are not part of the certified LCP) use a standard of 3000 or less Kelvin, with 2700K being the standard lighting recommended by the City's Design Review Board for discretionary projects.

In addition to potential impacts to biological species based on project lighting, landscaping associated with a housing project also has the potential to introduce invasive species or result in clearing of vegetation. The City's LCPA as proposed does preclude the use of any invasive plant species listed on the California Invasive Plant Council's Invasive Plant Inventory Database, but only where landscaping or revegetation is proposed in proximity to native vegetation on or off-site. This prohibition on invasive species should apply sitewide regardless of the proximity to vegetation and should also include cultivars (a "cultivated variety" of a plant) of invasive species that may have the same detrimental effect as the original plant. The LCPA also states that any development within or adjacent to a "Very High" or "High" Fire Hazard Severity Zone is required to incorporate fire safety measures; however, because fire safety measures typically include clearing of vegetation, additional requirements should be included to ensure that sensitive vegetation is protected from unnecessary modification.

Finally, while Section 30.92.020 of the amendment proposes to add a chart that includes the APN numbers of the parcels to which the Overlay may apply, as well as a description and their base zone, there is no information included in the chart that

## LCPA 6-DMR-21-0035-1 (5<sup>th</sup> Cycle Housing Element)

points to the sensitive environmental resources present on site as indicated by the Overlays of the LCP (such as the Coastal Bluff Overlay, Bluff, Slope, and Canyon Overlay, Lagoon Overlay, Beach Impact Zone, etc.). This includes the addition of the two Watermark parcels to the chart, as they are located within several Overlay Zones where environmental resources are given special protections per the LCP.

### Floodplain

While the goal of increasing housing is supported by the Coastal Act, the proposed amendment requires evaluating hazards. The two parcels where the subject overlay will apply were recently redesignated and rezoned as North Commercial Land Use and Zone. As extensively described in the staff report for LCP-6-DMR-20-0079-3 (North Commercial and Professional Commercial Land Use and Zone) and which was conditionally certified by the Commission on February 10, 2022 and which is hereby incorporated by reference, the City of Del Mar remains one of the most vulnerable areas in San Diego County when taking into account flooding and sea level rise. While the Commission acknowledges the City's need to meet its RHNA obligations and increase its affordable housing supply, 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.

The subject LCPA presents the potential for construction of multi-family residences in areas vulnerable to flooding and sea level rise and which presents an intensification of use in a hazardous area. As was similarly concluded for the North Commercial properties that lie within special flood hazard areas identified on the 2019 FEMA Flood Insurance Rate Map, the proposed 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.

### Visual Resources

The subject LCPA includes a requirement that states that projects must be designed to ensure that no primary scenic views or public scenic views are obstructed unless there is no feasible alternative siting which eliminates or significantly reduces the obstruction. It also states that protection of public views will be evaluated based on consistency with public view protection policies of the LUP. This policy makes reference to primary scenic views, which are essentially private scenic views under the Del Mar Municipal Code. The certified LCP does not protect private views and the inclusion of primary scenic views under the proposed LCPA is incompatible with both the LCP and the Coastal Act. Additionally, while the cited public view protection policies apply only along certain roadways and recommend the use of view protection easements to protect public views towards the ocean and lagoon. A broader statement on the inclusion of public view protection at the time of development is necessary.

### Cultural Resources

As part of the proposed IP amendment, several mitigation, monitoring and reporting requirements are proposed to be added to the certified LCP in Section 30.92.050(A) for the avoidance and minimization of impacts to cultural resources. The cultural resource provisions to be included would be entirely new, meaning there are no existing policies in the LCP to reference. The proposed cultural resource provisions of the LCPA were evaluated by the Commission's Tribal Liaison staff, according to the Tribal Consultation Policy of the Commission. The City has agreed to make several revisions to ensure the City's cultural resource requirements are inclusive of Native American coordination and avoided and minimized impacts wherever possible. These provisions included the 30-day timeframe for requesting initial consultation with tribes traditionally and culturally affiliated with the geographic area of a project, the elimination of the requirement for an archaeological survey on sites that were disturbed due to previous development or grading activities, the mitigation methods proposed, and greater involvement of Native American monitors throughout the consultation and construction process.

### Paleontological Resources

Similar to the Cultural Resources provisions described above, the Paleontological section of the LCPA would incorporate entirely new policies into the LCP. The proposed provisions do not include a general policy that new development should avoid and minimize adverse impacts to paleontological resources to the maximum extent feasible, nor what mitigation measures should be pursued in the event that paleontological resources are unearthed during grading activities. Additionally, there is no provision in place that Coastal Commission will be made aware of paleontological resources discovered during construction. As discussed below under the findings for approval, the City has agreed to make several revisions to address these concerns.

### Removing References Outside of LCP

The City's proposed IP amendment makes two references to Section 23 of the Del Mar Municipal Code in both Sections 30.92.030(D) and 30.92.050(B)(5) for the PC Zone. However, this section (titled Building Construction) is not part of the current certified LCP and its inclusion as a reference within the scope of this amendment is not necessary given small changes in language that accomplish the same goal and recommendations as described in the relevant citations. The LCPA also references the City's Recommended Tree List, which is also not part of the LCP. 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.

### Corrections

Finally, there are several corrections needed within the body of the LCPA, as well as two general corrections to the certified IP. The former are corrections to references within the existing IP, including the reference to the Bluff, Slope, and Canyon Overlay



Zone and the Parking Chapter of the Del Mar Municipal Code. The latter are needed corrections to both the LCPA and the certified IP to reflect the correct number of days with which the Executive Director needs to be noticed after a Notice of Final Action (NOFA) is taken by the City on a CDP within the appeals zone, as well as how many days after the NOFA is received that the CDP itself is finalized with no appeal.

## 2. FINDINGS FOR APPROVAL IF MODIFIED

### Biological

Because the wetland provisions of the submitted LCPA do not match required LCP requirements, **Suggested Modification #17** reorganizes and revises Section 30.92.050(B)(2) to require that wetland buffer reductions to less than 50-feet may take place only after findings have been that made that physical characteristics of the site, such as the size and dimensions of the property, are adequate to protect the resources of the wetlands. The type, size, and nature of the development proposed, the mitigation measures proposed, elevation differentials, upland transitional habitat, and other factors will all be considered when making these findings. While this modification ensures the LCPA matches the current policies of the certified LCP, the LCP in general requires an update in this regard, and accordingly, **Suggested Modification #17** also includes that the California Coastal Commission shall be included as an agency approving the final reduced wetland buffer. As a final note on this section, **Suggested Modification #16** simply adds a title to Section 30.92.050(B)(1) of the proposed amendment without changing the language, per the City's request for reorganizing changes.

On the topic of ESHA protection, **Suggested Modification #18** would incorporate language protecting sensitive habitat and the requirement of buffers. This suggested modification ensures no significant disruption of habitat values will occur and that only resource-dependent uses will be allowed in those areas, and that encroachment into ESHA buffers will be avoided, including for fuel management activities. **Suggested Modification #19** would delete language in the proposed amendment describing maximum avoidance of impacts to ESHA and mitigation options in the event of such impacts. This proposed language is incompatible with the resource protection policies of the LCP as well as Section 30240.

For the protection of sensitive bird species, **Suggested Modification #21** will change the beginning of avian and raptor breeding season from January 1 to February 1 in accordance with guidance from the Commission's biologist, as well as add a minimum nest setback of 300 feet for passerine species and 500 feet for raptor species. This buffer may be reduced when located in a highly urban setting, but the applicant must consult with the California Coastal Commission prior to applying a reduced buffer. For the federally threatened California gnatcatcher, special provisions are also included in the proposed LCPA. This includes pre-construction surveys for gnatcatchers during the breeding season, as well as noise attenuation measures in the case that a nesting gnatcatcher pair is found within 500 feet of the site and ambient noise levels are equal to or less than 65 decibels at the nest. **Suggested Modification #22** would renumber Section 30.92.050(B)(7) as well as slightly revise its requirements in accordance with suggestions by the Commission's biologist, and would require that noise attenuation

measures are implemented if ambient noise levels are equal to or less than 65 decibels (rather than 60) at the nest. This modification also includes a caveat that if ambient noise levels before the project already exceed 65 decibels, noise attenuation measures should ensure baseline noise levels are not exceeded.

To help protect birds and other species sensitive to lighting that may be introduced, **Suggested Modification #8** would revise Section 30.92.040(B)(6)(a) to specify that in addition to being low intensity and directed downward, exterior lighting associated with housing projects developed under the new overlay should also be shielded, and, if located adjacent to ESHA or directly adjacent to the shoreline, should be 2700 Kelvin or lower. As previously described, 3000K is generally the highest color temperature recommended by Commission staff, and lighting of 2700K is preferential for use in sensitive habitat areas such as the beach and wetlands. With the inclusion of this suggested modification, lighting standards that are more protective of sensitive environments and species will be included as part of housing projects developed under the HEI-Overlay Zone.

Landscaping requirements must also be modified to ensure that invasive species and their cultivars are prohibited on any site developed under the new overlay, not just those areas in proximity to native vegetation on or off-site. Accordingly, **Suggested Modification #23** includes renumbering of Section 30.92.050(B)(8) as well as a deletion of language that precludes invasive species planting near native vegetation specifically, and thus makes the requirement to avoid invasive species apply sitewide. At the same time, the suggested modification also clarifies that cultivars of invasive species will also be prohibited. **Suggested Modification #33** also incorporates a reference to Section (H) of the certified LCP into Section 30.92.050(G) of the amendment. This section references the Bluff, Slope, and Canyon Overlay Zone of the LCP, which lists specific measures that development must comply with when protecting sensitive vegetation from unnecessary modification when fire clearance is required on-site. When incorporated into the subject LCPA, this modification will ensure that safety measure enacted for the protection of new housing will not impact sensitive vegetation. The Commission's ecologist has reviewed the proposed LCPA and the suggested modifications and determined that as modified, the LCPA would adequately protect sensitive biological resources as required by the certified LCP.

Finally, in order to make it clear what regulations apply to particular parcels that the Overlay may be placed upon, **Suggested Modification #1** would add a column to the chart proposed in Section 30.92.020 that specifies which environmental overlays of the LCP apply to that property. Because the two Watermark parcels are proposed to be added to the chart, **Suggested Modification #35** would add a reference to the Bluff, Slope, and Canyon, Floodplain, and Lagoon Overlays per the LCP.

### Floodplain

As described in the staff report for LCP-6-DMR-20-0079-3 (North Commercial and Professional Commercial Land Use and Zone), and which was conditionally certified by the Commission on February 10, 2022, it is consistent with the City's hazard policies 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 Ocean Protection Council 2018 projections from the nearest tide gauge to Del Mar, this means planning for up to and including approximately seven 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).

Therefore, in order to address the risks associated with increasing density in a hazardous area, two suggested modifications are proposed that match the modification incorporated into LCP-6-DMR-20-0079-3 for parcels within the NC Zone. With the inclusion of **Suggested Modification #9** as a new subsection in Section 30.92.040 (Development Standards), the City is required to consider several elements during development permit review for any new or converted multiple dwelling unit building sited on a parcel that falls entirely or partially within the special flood hazard areas identified on the 2019 FEMA FIRMs, including the best available science on sea level rise projections, the status of associated adaptation measures, and an analysis of how these adaptation measures minimize projected flood risk, such as the future provisioning of services to the site that may be impacted by sea level rise, as well as if the boundary between public lands and private lands could shift with rising seas, and if additional adaptation strategies should be required as a condition of permit approval. Specifically, **Suggested Modification #9** states that a multi-unit dwelling must include elevation, floodproofing, and/or other measures sufficient to safeguard it from the impacts of projected sea level rise over the anticipated lifetime of the proposed structure using the best available science and in consideration of applicable adaptation measures.

**Suggested Modification #9** would also require the City to consider if the creation of new lots via subdivision should be limited at the time potential development is reviewed for consistency with the LCP. 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. However, in the case of the subject LCP amendment, its very intent is to increase density on which the new HEI-OZ is applied in order to allow for the development of affordable housing, capped at 20-25 dwelling units per acre. Furthermore, the City anticipates that one way it anticipates meeting its affordable housing goals is through the allowance of condominium construction/conversion, which typically require a subdivision. Because the potential for densification of the area is capped at 20-25 units per acre, and, as modified herein, the City would have to review the appropriateness of new lot creation during project review, including incorporating noticing requirements, design and floodproofing utilizing the best available science, a waiver of shoreline protection, and owner acknowledgement that removal or relocation of the building may be necessary, allowing subdivisions in this case is consistent with the coastal resource protection policies of the LCP.

As part of a related Suggested Modification on the floodplain, a new subsection would also be added to Section 30.92.050 (Mitigation, Monitoring, and Reporting) and would reflect the same Suggested Modification incorporated for NC parcels located in the 2019 FEMA FIRM as reviewed under LCP-6-DMR-20-0079-3. With the incorporation of **Suggested Modification #34**, design and noticing requirements will be applied to the development of a multiple dwelling unit building as described above. With the inclusion of **Suggested Modification #34**, landowners will be required to record a notice on their property and notice all occupants that the building is located in the Floodplain Overlay Zone as depicted on the 2019 FEMA FIRM and is therefore on a flood prone property that is subject to periodic inundation due to flooding, including projected sea level rise and that property owner and all successors in interest waive any right under Coastal Act Section 30235 and related LCP policies to hard shoreline armoring to protect the residential building. If permit development review described above indicates that services to the site may be jeopardized by sea level rise, that the boundary between public lands and private land may shift onto the parcel, or that additional adaptation strategies may be required, these disclosures will also be included in the notice. Finally, the suggested modification would require permittee acknowledgement that the structure may need to be removed or relocated if the site becomes unsafe for occupancy due to flood hazard conditions as determination by the Building Official.

### Visual

As noted in the discussion on findings for denial above, the LCPA as proposed includes a requirement that states that projects must be designed to ensure that no primary scenic views are obstructed, a provision that runs contrary to the certified LCP which does not protect private views. It also states that protection of public views will be evaluated based on consistency with public view protection policies of the LUP. While the cited public view protection policies of the LCP are strong, they only apply along certain roadways and advise the use of view protection easements to protect public views towards the ocean and lagoon, and are therefore somewhat limited in their applicability. Accordingly **Suggested Modification #32** deletes the reference to “primary scenic views” from the LCPA and adds the protection that public views will be protected not only through application of the cited view protection policies of the LCP, but also with the application of appropriate setback(s) on a site-by-site basis.

### Cultural

As described above, the suggested modifications for the cultural resources provisions of the LCPA center around an increased inclusion of Native American tribes in every step of the process (from consultation to construction) as well as ensuring that potential impacts to cultural resources are avoided and minimized to the greatest extent possible. In this vein, **Suggested Modification #10** would revise the City’s proposed language that each tribe has 30 calendar days to accept the invitation to engage in consultation to instead state that the local government will request each tribe to notify the City if it accepts the invitation to consult within 30 days unless additional time is requested. **Suggested Modification #11** would remove language

stating that no archaeological survey is required if a site has been previously disturbed from prior development or grading activities, and replace it with language clarifying that any development that involves disturbance of soils, including native soils that may have been previously disturbed, requires an archaeological report unless previous tribal consultation indicates there is no concern with grading on-site. This same suggested modification would add a subsection clarifying that all development should be sited and designed to avoid adverse impacts to archaeological resources to the maximum extent feasible and that if there is no alternative that avoids all impacts, that the alternative that would result in the least adverse impacts to cultural resources and other coastal resources will be chosen. **Suggested Modification #11** also expands upon the acceptable mitigation measures listed in the proposed LCPA, including that in-situ preservation and avoidance of cultural depositions are the preferred mitigation option (including setbacks), and provides examples of methods to accomplish this preferred option, such as “capping” or covering important or unique archaeological sites with a layer of soil where circumstances allow. Where in-situ and avoidance is not feasible, partial or total recovery of cultural resources is permissible. While the City’s proposed language already includes Native American monitor consultation on the proposed mitigation plan, the suggested modification would also add representatives of Native American groups that agreed to participate in the initial consultation process to the review process.

While the City’s proposed LCPA includes that an archaeological and Native American monitor shall be on site to monitor ground-disturbing activities, **Suggested Modification #12** clarifies that the Native American monitor shall be from a traditionally and culturally affiliated tribe included on an updated Native American Heritage Commission (NAHC) list, in addition to a Native American most likely descendant (MLD) when State Law mandates identification of one. The City’s proposed LCPA also specifies that if archaeological resources are unearthed during construction activities, all earth-disturbing work within a 25-meter radius will be temporarily suspended or redirected until the qualified archaeologist have identified and evaluated the nature and significant of the resource unearthed. Construction activities will be redirected to other work areas until the archaeologist determines that work can resume in the area. **Suggested Modification #13** would make several changes to this section of the proposed LCPA, including that all job operations (not only earth-disturbing activities) will cease, and that in addition to the archaeologist evaluating the find and determining when work can resume, a Native American monitor will also be included in making both determinations. The proposed LCPA states that a data recovery program will be implemented in consultation with the City and Native American with knowledge of the cultural resources, and the suggested modification would add that in addition to any mitigation measures necessary, the applicant will transfer ownership of the cultural resources to the appropriate Native American Tribe as requested by the Tribe or as otherwise required by law. Similar to Suggested Modification #13, **Suggested Modification #14** would make an adjustment to the City’s proposed language that all earth-disturbing activities with a 25-meter radius be temporarily suspended or redirected in the event human remains are discovered or unearthed, and specify instead that all job operations should be temporarily suspended.

Finally, **Suggested Modification #15** would require that the City notify Coastal Commission staff if important archaeological resources are discovered during construction.

Paleontological Resources

Similar to several suggested modifications included for cultural resources, eight suggested modifications are included in order to protect paleontological resources. At the City’s request, **Suggested Modification #24** would simply name Section 30.92.050(D)(1) as “Submittal Requirements, Technical Reports, and Surveys” in order to identify this step as the first in a series of procedure. **Suggested Modification #25** would specify requirements of the siting and design phase, including that new development be sited and designed to avoid adverse impacts to the paleontological resources to the maximum extent feasible and that if there is no feasible alternative that can eliminate all impacts to paleontological resources, then the alternative that would result in the fewest or least significant impacts to resources shall be selected. When paleontological resources are impacted, mitigation shall be required that includes procedures for monitoring, grading, and handling fossil discoveries. While the City’s proposed LCPA states that grading activities will be monitored and all earth-disturbing work within a 100-meter radius will be suspended or redirected if resources are unearthed, the proposed language only specifies that a certified paleontologist will evaluate the nature of the find and it shall be appropriately mitigated. **Suggested Modification #26** would essentially be a reorganizing modification requested by the City that would identify existing proposed language as the third step in the protection of paleontological resources, entitled “Preconstruction Meeting Coordination and Monitoring.” **Suggested Modification #27** specifies that the implementation of these mitigation methods will follow the same preferences and guidance as written for the cultural resources section. **Suggested Modifications #28, 29, and 30** are also City-suggested modifications that reorganize and renumber the proposed language of the amendment in order to allow for easier comprehension. Finally, **Suggested Modification #31** states that the City will notify Commission staff that important paleontological resources were discovered during construction in the event that they are unearthed.

Removing References Outside of LCP

As described above, the City’s proposed IP amendment makes two references to Section 23 of the Del Mar Municipal Code in both Sections 30.92.030(D) and 30.92.050(B)(5). However, this section (titled Building Construction) is not part of the current certified LCP. Because of that, **Suggested Modifications #4 and #20** would remove references to these sections of the Del Mar Municipal Code. For Section 30.92.050(B)(5) in particular, Torrey Pines and Monterrey Cyprus trees are called out in particular as protected trees to be mitigated at appropriate ratios as determined by the Planning Director in consultation with an arborist. This language was found acceptable by the City in achieving the same goal as the original language in the municipal code.

The LCPA also references the City's Recommended Tree List in Section 30.92.040(B)(4)(d), which **Suggested Modification #6** proposes to remove as it is not considered part of the LCP. In place of a reference to regionally native trees or those from the recommended tree list, the suggested modification will require non-invasive species are planted in accordance with guidance from the California Invasive Plant Council.

### Corrections

Finally, there are several corrections needed within the body of the LCPA, as well as two general corrections to the certified IP. **Suggested Modification #5** would make a small correction to a reference to the Bluff, Slope, and Canyon Overlay Zone in Section 30.92.040(B)(1)(c) of the LCPA, while **Suggested Modification #7** would correct a reference to the chapter of the Del Mar Municipal Code (and certified IP) that describes parking standards in Section 30.92.040(B)(5)(a) of the LCPA.

Four more corrections must also be made, two of which are to the LCPA and the other to the relevant certified sections of the IP. **Suggested Modifications #2 and #3** will correct Sections 30.92.030(C)(5) and Section 30.92.030(C)(6), respectively, to reflect the legal requirements that notices of final action by the City should be provided to the Executive Director and any interested parties within 5 working days and that the Planning Director's decision to approve an administrative CDP in the HEI-Overlay Zone may be appealed to the Commission within 10 working days. The certified IP also contains incorrect timeframes; accordingly, **Suggested Modifications #36 and #37** correct similar errors within Section 30.75 of the IP, which enumerates the CDP process at the local level.

## **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.

Pursuant to CEQA, the proposed actions have been analyzed and determined to be statutorily exempt pursuant to CEQA guidelines Section 15265 because the proposed action constitutes an amendment to the City's certified LCP and CEQA does not apply to activities or approvals by a local government as necessary for the preparation and adoption of an LCP amendment for review and certification by the CCC as set forth in Section 21080.9 of the Public Resources Code. Accordingly, the certified City of Del Mar LCP constitutes a plan for use in the CCC's regulatory program as certified under Section 21080.5 of the Public Resources Code. The proposed actions include corollary amendments to the City's Municipal Code (Zoning).

Notwithstanding the applicability of the Statutory Exemption, future development of the two parcels included in Program 2G for multiple-dwelling residential use as affected by the proposed actions have been the subject of prior environmental analysis including the Final Program Environmental Impact Report (PEIR) for the Professional Commercial and North Commercial Zoning Code Amendment (SCH #2019029058) certified by the City Council on September 8, 2020 (Resolution 2020-47) and the 6<sup>th</sup> Cycle Housing Element Update Final PEIR (SCH No. 2020029064) certified by the City Council on October 5, 2020 (Resolution 2020-52). Anticipated impacts for the proposed actions have been disclosed in these prior environmental documents and the proposed HEI-OZ incorporates standard Mitigation, Monitoring, and Reporting protocols to ensure impacts are minimized.

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 documents. Impacts include those to aesthetics, biological resources, cultural resources, noise, and paleontological 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.