

**CALIFORNIA COASTAL COMMISSION**

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# Th12a

Date: May 26, 2022

**TO: COMMISSIONERS AND INTERESTED PERSONS**

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**SUBJECT: STAFF RECOMMENDATION ON CITY OF DANA POINT MAJOR LCP  
AMENDMENT REQUEST NO. LCP-5-DPT-20-0080-2 (Flood Plain Overlay District) for  
Commission Meeting of June 9, 2022.**

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## SYNOPSIS

The subject City of Dana Point (City) Local Coastal Program (LCP) Implementation Plan (IP) amendment was filed as complete on May 6, 2021. A one-year time extension was granted by the Coastal Commission on June 9, 2021. The date by which the Coastal Commission must take action is August 1, 2022.

The City of Dana Point certified LCP is comprised of two groups of documents, that apply to two separate geographical areas of the City. The two are known as: 1) the Dana Point Specific Plan LCP or “1986 LCP,” and 2) the “1996 LCP.” The proposed amendment would affect the Implementation Plan of the 1996 LCP (which also serves as the City’s zoning code).

### **SUMMARY OF LCP AMENDMENT REQUEST NO. LCP-5-DPT-20-0080-2**

Local Coastal Program Amendment Request No. LCP-5-DPT-20-0080-2 (LCPA) proposes changes to Chapter 9.31 Flood Plain Overlay District and Chapter 9.75 Definitions and Illustrations of Terms. Chapters 9.31 and 9.75 are contained in Dana Point’s 1996 LCP Implementation Plan (IP), which also serves as the City’s zoning code. The proposed changes are intended to conform the City’s Flood Plain Overlay District to Federal Emergency Management Agency (FEMA) requirements regarding development in the flood plain. The City has requested action on the proposed LCPA via City Council Resolution No. 19-03-19-01 ([Exhibit 1](#)), which is included as Exhibit A, Ordinance No. 19-01 ([Exhibit 2](#)).

### **SUMMARY OF STAFF RECOMMENDATION**

Staff is recommending denial of the IP amendment as submitted and certification with suggested modifications. Much of the area of the City mapped as flood hazard areas on the FEMA Flood Insurance Rate Maps (FIRMs) are located within the coastal zone, and much of that area is zoned Coastal High Hazard. However, the LCPA does not recognize future sea level rise (SLR) and its associated impacts. Expected future impacts due to SLR include increased hazards and risks to development located nearest the ocean. Such hazards may

generate increased requests for shoreline protective devices and other measures intended to protect development in hazardous coastal areas. It makes sense that language to address SLR be introduced into the sections of the IP that specifically address flood hazards, particularly Coastal High Hazard zones. However, as proposed, the LCPA, which proposes changes in the IP section that deals with Coastal High Hazard zones (among others), would continue to remain silent on SLR. SLR impacts are potentially devastating, and more so the longer we wait to recognize and address them. For these reasons, modifications are suggested that would address SLR. These modifications are necessary to make the LCPA conform to the policies of the certified 1996 Land Use Plan (LUP). In particular, the modifications are necessary for the LCPA to conform with the LUP policies that require minimization of hazards and risk, and that discourage shoreline protective devices to protect new development. The suggested modifications are also necessary to carry out the LUP policies regarding preservation of natural landforms, maximizing public access, and protecting public views.

The recommended suggested modifications would: identify specific information to be included with permit applications for development in flood hazard areas; delete the requirement that decks and other accessory structures must be constructed on caissons in areas of flood hazard; and generally acknowledge that SLR will need to be a consideration with future development and require that SLR impacts be considered over the expected life of development.

Coastal Commission staff have worked with City staff to narrow differences regarding the recommended suggested modifications (Appendix A). There remain only two suggested modifications that City staff objects to. The first is a requirement that development in Coastal High Hazard zones be required to disclose, in a recorded document, that the property is located in an area where the boundary between public and private land may shift with rising seas (Section 9.31.060(g)(13)). City staff have indicated their concern is that potentially affected properties have specific boundaries recorded through the original Tract Map; and that the question of public land shifting with rising seas has not been adjudicated. However, Commission staff continues to recommend including this on the list of items to be disclosed. This section requires only *acknowledgement* that the boundary *may* shift. It is important that current and future property owners be made aware that future actions may affect their property. It does not at this point draw any conclusion as to what specifically will happen in the future.

The second suggested modification the City disagrees with has to do with exceptions to the flood plain overlay district requirements (Section 9.31.070(a)(4)). As currently written, an exception may be issued for development on lots of one half-acre or less, regardless of location or degree of potential impacts. All of the residentially zoned lots mapped as Coastal High Hazard zones are less than one half acre in size (they are generally approximately one fifth of an acre in size). As written, this section could effectively defeat the purpose of the Coastal High Hazard zones by encouraging exceptions from the Flood Plain Overlay District on these lots. Commission staff is recommending modifications that would recognize that exception may be considered (rather than issued) when Sections 9.31.050 and 9.31.060 (wherein lies the Coastal High Hazard standards) are complied with (rather than considered). These limited changes will raise the standard for when exceptions to the requirements of the

Flood Plain Overlay District may be granted. Commission staff continues to support this suggested modification.

If modified, the Flood Plain Overlay District and Definitions LCPA to the City of Dana Point's certified 1996 LCP IP can be found consistent with and adequate to carry out the 1996 LUP policies that require minimization of hazards and risk, and that discourage shoreline protective devices to protect new development; as well as the 1996 LUP policies regarding preservation of natural landforms, maximizing public access, and protecting public views.

The appropriate motions and resolutions begin on page 6. The suggested modifications are found in Appendix A. The findings for denial of the Implementation Plan Amendment as submitted begin on page 10. The findings for approval of the plan, if modified, begin on page 15.

### **ADDITIONAL INFORMATION**

The file is available for review at the South Coast District office located at 301 East Ocean Blvd., Suite 300, Long Beach, 90802. The staff report can be viewed on the Commission's website: <http://www.coastal.ca.gov/mtgcurr.html>. For additional information, contact Meg Vaughn in the South Coast District office at [meg.vaughn@coastal.ca.gov](mailto:meg.vaughn@coastal.ca.gov) or (562) 590-5071.

**Note:** This LCPA originally also requested action on Ordinance Nos. 18-01 and 18-07. Both those ordinances were withdrawn by the City on January 11, 2022. The ordinances were withdrawn due to discrepancies between what was reflected in the ordinances as language certified by the Coastal Commission versus what had actually been certified. There are a number of discrepancies between the City's Zoning Code (which is also the Implementation Plan for the 1996 LCP) and the certified 1996 LCP Implementation Plan (IP). The City is currently developing an LCPA submittal to address all IP-wide discrepancies.

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## EXHIBITS

1. City Council Resolution No. 19-03-19-01
2. City Council Ordinance No. 19-01/Zoning Text Amendment No. 19-0001

## APPENDIX A – Suggested Modifications

## **I. OVERVIEW**

### **A. LCP HISTORY**

The City of Dana Point certified LCP is comprised of two groups of documents. An older set of documents containing a LUP and IP were originally certified when Dana Point was unincorporated and within the jurisdiction of the County of Orange. These documents were adopted by the City when it incorporated. This is the LCP that still applies (as amended) to the central geographic area of the City (i.e., that area generally located between Monarch Beach to the north and Capistrano Beach to the south). This older set of documents are referred to as the Dana Point Specific Plan Local Coastal Program or 1986 LCP. In addition, there is a more recent group of documents that includes three elements of the City's General Plan (the Land Use Element, Urban Design Element, and Conservation Open Space Element) that make up the LUP. The City's Zoning Code, the Monarch Beach Resort Specific Plan, the Town Center Specific Plan, Dana Point Harbor Revitalization Plan, and the Headlands Development Conservation Plan comprise the IP. These more recent documents apply to those areas of the City which are not covered by the 1986 LCP; and are collectively referred to as the 1996 LCP. The subject LCPA proposes changes to the 1996 LCP IP/zoning code.

### **B. STANDARD OF REVIEW**

The standard of review for the proposed amendment to the IP/zoning code for the 1996 LCP, is the certified LUP of the 1996 LCP. The 1996 LUP is comprised of the Conservation Open Space Element; the Urban Design Element; and the Land Use Element of the City's General Plan.

### **C. PUBLIC PARTICIPATION**

Section 30503 of the Coastal Act requires local governments to provide the public with the maximum opportunities to participate in the development of the LCP amendment prior to submittal to the Commission for review. The City of Dana Point Planning Commission held a public hearing for the LCP amendment on February 11, 2019. The City Council held a public hearing on March 19, 2019. Both local hearings were duly noticed to the public in a newspaper of general circulation. Notice of the subject amendment has been distributed to all known interested parties.

### **D. DEADLINE FOR COMMISSION ACTION**

On September 3, 2020, the City submitted the LCP amendment request for Coastal Commission certification via City Council Resolution No. 19-03-19-01. On May 6, 2021, the LCPA submittal was deemed complete. On June 9, 2021, the Commission authorized a one-year extension for action on the LCP Amendment request. As such, the deadline for Commission action on this item is August 1, 2022.

## 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 Implementation Plan Amendment No. LCP-5-DPT-20-0080-2 as submitted by the City of Dana Point.

Staff recommends a **YES** vote of the motion. Passage of this motion will result in rejection of the IP Amendment as submitted and adoption of the following resolution and findings. The motion passes only by an affirmative vote of the majority of the Commissioners present.

### **Resolution To Deny Certification of the Implementation Plan Amendment as Submitted:**

The Commission hereby denies certification of Implementation Plan Amendment No. LCP-5-DPT-20-0080-2 as submitted by the City of Dana Point and adopts the findings set forth below on grounds that the amendment does not conform with the provisions of the certified Land Use Plan. Certification of the Implementation Plan amendment would not comply with the California Environmental Quality Act because there are feasible alternatives or mitigation measures which could substantially lessen any significant adverse impact which the Implementation Plan Amendment may have on the environment.

### 2. MOTION:

I move that the Commission certify Implementation Plan Amendment No. LCP-5-DPT-20-0080-2 for the City of Dana Point if it is modified as suggested in this staff report.

Staff recommends a **YES** vote. Passage of this motion will result in the certification of the IP Amendment with suggested modifications and adoption of the following resolution and findings. The motion to certify with suggested modifications passes only upon an affirmative vote of the majority of the appointed Commissioners.

### **Resolution to Certify the Implementation Program Amendment If Modified as Suggested:**

The Commission hereby certifies Implementation Plan Amendment No. LCP-5-DPT-20-0080-2 for the City of Dana Point if modified as suggested and adopts the findings set forth below on grounds that the Implementation Plan Amendment with the suggested modifications conforms with, and is adequate to carry out, the provisions of the certified Land Use Plan. Certification of the Implementation Plan Amendment if modified as suggested complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to

substantially lessen any significant adverse effects of the plan on the environment, or  
2) there are no further feasible alternatives and mitigation measures that would  
substantially lessen any significant adverse impacts which the Implementation Plan  
Amendment may have on the environment.

### III. SUGGESTED MODIFICATIONS

See [Appendix A](#).

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

### A. AMENDMENT DESCRIPTION

Local Coastal Program Amendment Request No. LCP-5-DPT-20-0080-2 (LCPA) proposes changes to Chapter 9.31 Flood Plain Overlay District and Chapter 9.75 Definitions and Illustrations of Terms. Chapters 9.31 and 9.75 are contained in the 1996 LCP IP, which also serves as the City's zoning code. The proposed changes are intended to conform the City's Flood Plain Overlay District to FEMA requirements regarding development in the flood plain. Regarding the genesis for this LCPA, the City's LCPA submittal includes the following statement: "FEMA's Compliance Specialist noted that minor revisions are necessary to comply with minimum NFIP [National Flood Insurance Program] requirements pursuant to Title 44 of the Code of Federal Regulations (CFR), Sections 59, 60.3-60.6 and 65.3. Consequently, a LCPA and ZTA are necessary to revise the text of the Chapters 9.31 and 9.75 City's Zoning Code, which comprises a portion of the City's Local Coastal Program." The City has requested action on the proposed LCPA via City Council Resolution No. 19-03-19-01 ([Exhibit 1](#)), which included as Exhibit A, Ordinance No. 19-01 ([Exhibit 2](#)). The changes proposed by the City are shown in Appendix A as: underlined text for additions and ~~strike-through~~ text for deletions.

More specifically, the LCPA proposes the following changes to **Chapter 9.31** Flood Plain Overlay District:

Add a new paragraph to the Intent and Purpose section **9.31.010**, recognizing the City's ability to adopt regulations;

Add new subsections to **9.31.050** Administration subsection (b) Duties of Community Development Director (who is the Flood Plain Overlay administrator), as follows:

Add new subsection **9.31.050(b)(4)(A)** to include: for base flood elevation changes due to physical alterations, assure that technical or scientific information be sent to FEMA within six months for a Letter of Map Revision (LOMR). And add new subsection **9.31.050(4)(B)** that all LOMR's for flood control projects be: approved prior to issuance of building permits; no building permit will be issued based on Conditional LOMRs (CLOMRs); and that approved CLOMRs allow construction of proposed flood

control projects and land preparation consistent with the “start of construction” definition;

Add new subsections **(e)(1) & (2)** to **9.31.060** Provisions for Flood Hazard Reduction to provide Standards for Recreational Vehicles;

Modify subsection **(a)(4)** of Section **9.31.070** Exception Procedure to change “cover” to “considered” and correct a cross reference; and to modify subsection **(b)(7)** to correct a cross reference.

In addition, the LCPA proposes the following changes to **Chapter 9.75** Definitions & Illustrations of Terms:

In Section **9.75.130 “M”** replace “National Geodetic Vertical Datum (NGVD 1929)” with “North American Vertical Datum (NAVD) of 1988 within the definition for “mean sea level”;

In Section **9.75.140 “N”** within the definition for “New Construction in the Floodplain Overlay Districts” replace general date (“the effective date of a floodplain management regulation adopted by the City”), with the specific date “September 14, 1979 (the effective date the area within the City’s boundaries were first included on the Flood Insurance Rate Maps (FIRM)).” This definition applies specifically only in the Flood Plain Overlay District.

In **Section 9.75.190 “S”** add a new definition for “Historic Structures in the Floodplain Overlay District.”

The proposed amendment makes changes to the 1996 LCP IP only. Changes proposed by this LCPA to the 1996 LCP IP are contained entirely within Chapter 9.31 and portions of Chapter 9.75. No other changes to other areas within the 1996 LCP IP are proposed or would result from this LCPA. No changes are proposed to the 1996 LUP.

It has been discovered that there are numerous discrepancies between what the City has been using as their IP/zoning code and the certified version of the IP. These discrepancies occur throughout the IP/zoning code and are a result of changes made by the City to its zoning code that were never forwarded for action by the Coastal Commission. There is only one area of this LCPA affected by these extensive discrepancies: Section 9.31.050(c)(3), which is described later in this report. No other IP/zoning code discrepancies effect this LCPA.

## **B. CONFORMANCE WITH THE CERTIFIED LAND USE PLAN**

The standard of review for LCP IP amendments is their consistency with and adequacy to carry out the provisions of the certified LCP LUP. The certified 1996 LUP is comprised of the Land Use Element, the Conservation Open Space Element, and the Urban Design Element of the City’s General Plan. The 1996 LCP LUP mirrors policies in the Coastal Act that encourage minimization of hazards and risk, discourage shoreline protective devices to

protect new development, protection of public views, and maximizes public access. The certified LUP includes a number of policies relevant to the proposed amendment; the most applicable LUP policies are cited below.

Applicable policies of the City's 1996 LCP LUP include the following:

**Land Use Element Policies**

**LUE Policy 4.2:** Consider the constraints of natural and man-made hazards in determining the location, type and intensities of new development.

**LUE Policy 4.5:** Consider the environmental impacts of development decisions.

**LUE Policy 4.10:** Regulate the construction of non-recreational uses on coastal stretches with high predicted storm wave run-up to minimize risk to life and property damage.

**Conservation Open Space Element Policies**

**COSE Policy 2.1:** Place restrictions on the development of floodplain areas, beaches, sea cliffs, ecologically sensitive areas, and potentially hazardous areas.

**COSE Policy 2.2:** Site and architectural design shall respond to the natural landform whenever possible to minimize grading and visual impact.

**COSE Policy 2.5:** Lessen beach erosion by minimizing any natural changes or man-caused activities which would reduce the replenishment of sand to beaches.

**COSE Policy 2.7:** Require geotechnical studies for developments that are proposed for steep slopes (4:1 or steeper), on or adjacent to coastal or inland bluffs, and where geological instability may be suspected.

**COSE Policy 2.8:** Minimize risks to life and property, and preserve the natural environment, by siting and clustering new development away from areas which have physical constraints associated with steep topography and unstable slopes; and where such areas are designated as Open Space or include bluffs, beaches, or wetlands, exclude such areas from the calculation of net acreage available for determining development intensity or density potential.

**COSE Policy 2.9:** Preserve significant natural features as part of new development. Permitted development shall be sited and designed to minimize the alteration of natural landforms. Improvements adjacent to beaches shall protect existing natural features and be carefully integrated with landforms.

**COSE Policy 2.14:** Shoreline or ocean protective devices such as revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply and minimize adverse impacts on public use of sandy beach areas.

**COSE Policy 2.15:** Assure that public safety is provided for in all new seaward construction or seaward additions to existing beachfront single family structures in a manner that does not interfere, to the maximum extent feasible, with public access along the beach.

**COSE Policy 2.16:** Identify flood hazard areas and provide appropriate land use regulations, such as but not limited to the requirement that new development shall have the lowest floor, including basement, elevated to or above the base flood elevation, for areas subject to flooding in order to minimize risks to life and property.

**COSE Policy 6.4:** Preserve and protect the scenic and visual quality of the coastal areas as a resource of public importance as depicted in figure CO-5 “Scenic Overlooks from Public Lands”, of this Element. Permitted development shall be sited and designed to protect public views from identified scenic overlooks on public lands to and along the ocean and scenic coastal areas, to minimize the alteration of natural landforms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

**COSE Policy 6.7:** Evaluate non-developable or constrained areas for possible use as open space or recreational use.

## **1. FINDINGS FOR DENIAL AS SUBMITTED**

The proposed LCP Amendment, as submitted, is not consistent with and is not adequate to carry out the LUP policies that require minimization of hazards and risk and discourage shoreline protective devices to protect new development. It is also not adequate to carry out the LUP policies regarding preservation of natural landforms, maximizing public access, and protecting public views. The following discussion explains how the proposed LCPA is not consistent with and not adequate to carry out the policies of the LUP cited above.

The proposed amendment would modify Chapter 9.31 Flood Plain Overlay District and portions of Chapter 9.75 Definitions & Illustrations of Terms (regarding terms related to the Flood Plain Overlay District). Much of the areas of the City mapped as flood hazard areas on the FEMA FIRM<sup>1</sup> are located within the coastal zone, and much of that area is zoned Coastal High Hazard. However, the LCPA does not recognize future SLR and its associated impacts. Expected future impacts due to SLR include increased hazards and risks to development located nearest the ocean. Such hazards may generate increased requests for shoreline protective devices and other measures intended to protect development in hazardous coastal areas.

As sea level rises, beaches will correspondingly narrow, reducing the area of beach available to the general public. This creates negative impacts on public access. Shoreline protective devices also create negative impacts to public access, for various reasons, including accelerating the narrowing of the beach, and depending upon placement, may actually displace public beach area. Shoreline protective devices and narrower beaches also negatively impact public coastal views.

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<sup>1</sup> <https://msc.fema.gov/portal/search?AddressQuery=dana%20point#searchresultsanchor>

It makes sense that language to address SLR be introduced into the sections of the IP that specifically address flood hazards, particularly Coastal High Hazard zones. However, as proposed, the IP would continue to remain silent on SLR. SLR impacts are potentially devastating, and more so the longer we wait to recognize and plan for them.

The City has prepared a Sea Level Rise Vulnerability Assessment and Adaptation Plan (SLR VAAP), supported in part by grants from the Coastal Commission. The City is in the process of preparing an LCPA based on the SLR VAAP that would address SLR and incorporate measures and adaptations into the LCP. City staff have indicated they hope to submit the future SLR LCPA by about mid-summer; however, actual submittal of an LCPA that addresses SLR for Coastal Commission action is uncertain and, given the consequences of SLR and the necessity to consider it when planning future development, the Commission recognizes the importance of acknowledging SLR and addressing it when opportunities are presented, such as with this current LCPA.

In this case, the proposed LCPA addresses flood hazards and includes all the oceanfront areas of the City. These are the very areas most susceptible to SLR. It is important to consider these impacts as soon as possible because development contemplated now will very likely be impacted by SLR over its expected life (typically considered to be 75 years). Recognition of future impacts due to SLR is necessary for safety (minimize risk and hazard) and for protection of coastal resources.

The areas of the City most likely to be threatened by SLR fall within or adjacent to what the Flood Plain Overlay District identifies as Coastal High Hazard zones (FEMA Zones AE and VE), designated with the suffix FP-3 (Flood Plain District 3). These areas of the City include the homes along Beach Road (between Pacific Coast Highway and the sea), Orange County Parks Capistrano Beach Park (just upcoast of the Beach Road homes), Doheny State Park on either side of the mouth of San Juan Creek, Dana Point Harbor, and the beaches at the upcoast end of the City, including Dana Strands and Salt Creek. The areas designated Coastal High Hazard in the Flood Plain Ordinance are based on FEMA's Flood Insurance Rate Maps (FIRMs). The FIRMs do not account for SLR. Other than the homes along Beach Road, most of the development located in the FP-3-suffixed areas are public and, other than the Dana Point Harbor Marina, development is primarily limited to public beach and park uses. The FP-3 designated areas are described below:

**Beach Road:** In the Beach Road area of the City of Dana Point over the past year, chronic erosion in the larger stretch of beach from San Juan Creek through San Clemente has resulted in extremely narrow beach widths. Recent observations during high tides and south swells show little to no dry beach fronting the homes along Beach Road. Even under the lower sea level rise ranges available on CoSMoS<sup>2</sup> (e.g., 0.8 - 2.5 ft), the model shows significant landward shifts in maximum wave runup, flooding, and Mean High Water shoreline. Under the higher SLR ranges available on CoSMoS (e.g., 3.3 – 6.6 ft), especially

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<sup>2</sup> The U.S. Geologic Survey Coastal Storm Modeling System (CoSMoS), a regional sea level rise modeling tool, includes projected changes to the average mean high water (MHW) shoreline. It also provides predictions of wave runup and flooding that may be used to ascertain the potential effects from wave conditions.

in combination with storm events, the potential inundation, shoreline retreat and beach loss are extreme. With 6.6 ft. of sea level rise (the closest available projection to 7.1 ft., which is the maximum projection under a medium-high risk aversion scenario) and an annual storm event, CoSMoS projects inundation up to the line of existing development with no sandy beach visible. Flooding may be further exacerbated by beach erosion. This information suggests that public tidelands could push landward to, or under, Beach Road properties by 2100.<sup>3</sup>

**Capistrano Beach Park:** This beach park currently provides a beachfront bike path, picnic tables, and public beach parking lot. Capistrano Beach has experienced the effects of significant coastal erosion over the last few decades, especially since 2015. These coastal erosion events, caused by high tide and winter storm events, caused damage to and removal of public walkways, a wooden bulkhead, a public restroom and associated utilities, stairs, a basketball court, approximately 55 parking spaces, approximately 20 trees (mostly palm trees), public beach showers, firepits, and light poles.<sup>4</sup>

**Doheny State Beach Park & Campground:** This oceanfront park includes two sections separated by the mouth of San Juan Creek. The northernmost section includes the park entrance and a day use area with a sandy beach, several large expanses of grass, picnic tables, restrooms, small park office with interpretive center, food concessions, and the North Day Use parking. The southern portion includes a campground, restrooms, a day use area and the South Day Use parking. Altogether, the park has 1,267 existing parking spaces.<sup>5</sup> Most of the park is in the flood hazard area, with the seaward portion of this park is located in the Coastal High Hazard zone.

**Dana Point Harbor:** The harbor includes over 2,250 recreational boat slips, 16 commercial fishing slips, 16 sportfishing charter slips, 1 dock-and-dine guest dock, a fuel dock and emergency dock, a bait dock, transient guest docks, boater service buildings, 1,410 designated boater parking spaces, park spaces, public access areas and walkways adjacent to the water, and public parking.<sup>6</sup> In addition, on the landside of the harbor, there are many visitor amenities including, a hotel, restaurants, boating and other recreational rental venues, an interior harbor beach known as Baby Beach, and the Ocean Institute, a science and history museum open to the public. Only the water area of the harbor is subject to the Flood Plain Overlay District, designated with the FP-3 suffix, mapped as an AE zone in the inner harbor and a VE zone in the outer harbor, breakwater, and seaward of the breakwater on FEMA's FIRM map. AE and VE are Coastal High Hazard zones.

**Dana Strands Beach:** There is a revetment present at the base of the bluff along much of this beach. There is a public walkway atop the revetment. A public parking lot is available, inland on the bluff top level. It is likely that in the future, if the bluff at the subject site continues to be armored and sea levels continue to increase as predicted, the beach fronting the revetment will be impassible at all but the lowest tide cycles. The Mean High Water

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<sup>3</sup> Staff Report for Appeal No. A-5-DPT-21-0056.

<sup>4</sup> Staff Report for Coastal Development Permit Application No. 5-19-0345.

<sup>5</sup> Staff Report for Coastal Development Permit Application No. 5-19-0225.

<sup>6</sup> Staff Report for Coastal Development Permit Application No. 5-19-0971.

(MHW) line at the subject site is +4.5 ft. NAVD88. With current, typical summer sand levels, there is available recreational beach area for typical summer conditions. However, with current, typical winter sand levels, there tends to be little beach area between the MHW line and the revetment slope. When storm waves add to the winter high tide, there will often be little if any dry winter beach area. Under a high emissions scenario with medium-high risk aversion, sea levels are expected to rise 0.7 ft. by the year 2030. The beach slope will steepen to adjust to the higher water levels. However, the revetment will prevent the beach from migrating inland and within a decade, the subject beach would be flooded during the average daily high tide in the winter. Under a high emissions scenario with medium-high risk aversion, sea levels are expected to rise 5.4 ft. by the year 2090, the subject beach would be flooded during the average daily high tide in the summer and waves would routinely break on the revetment face during many winter tide conditions.<sup>7</sup> Residential development is present on the landward side of the revetment.

**Salt Creek Beach:** There is a public walkway along the beach atop a revetment, and a grassy park area between the beach level and the public beach parking lot at the bluff top level. The Ritz Carlton Hotel is located on the bluff above the downcoast end of this beach. Residential development and a golf course are located upcoast of Salt Creek Park, inland of this beach.

Concentrations of atmospheric greenhouse gases have been increasing substantially in recent centuries, largely due to human-induced greenhouse gas emissions, which has resulted in considerable warming of the Earth and ocean. This global warming is causing and will continue to cause, among other things, sea levels to rise due to a combination of thermal expansion of ocean water and melting land ice. Depending on current and future concentrations of greenhouse gas emissions, scientists have developed projections of future sea level rise scenarios based on different emission scenarios and existing development. Sea level rise projections for Los Angeles, provided in the 2018 Ocean Protection Council Sea Level Rise Guidance, range from approximately 3.2 feet (low risk aversion) to 6.7 feet (medium-high risk aversion) to 9.9 feet (extreme risk aversion) by 2100.

As our understanding of SLR continues to evolve, it is possible that SLR projections will continue to change as well. While uncertainty will remain with regard to exactly how much sea levels will rise and when, the direction of sea-level change is clear and it is critical to continue to assess SLR vulnerabilities when planning for future development. Importantly, maintaining a precautionary approach that considers high or even extreme SLR rates and includes planning for future adaptation will help ensure that decisions are made that will result in a resilient coastal California.

Statewide, SLR is increasing the risks of flooding, inundation, coastal erosion, and saltwater intrusion into freshwater supplies. In Dana Point, these hazards have the potential to threaten many of the resources that are integral to the California coast, including coastal development, coastal access and recreation, habitats (e.g., coastal bluffs and beaches), water quality and supply, cultural resources, community character, and scenic quality. In addition, many possible responses to SLR can have adverse impacts on coastal resources, whereas other

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<sup>7</sup> Staff Report for Coastal Development Permit Application No. 5-19-0288.

adaptation options may preserve or enhance coastal resources. For example, beaches, backed by fixed or permanent development such as shoreline protective devices will not be able to migrate inland as sea level rises, and will become permanently inundated over time, which in turn presents serious concerns for future public access, recreational opportunities, environmental justice, and scenic and visual qualities of the coast. Thus, SLR heightens a long-standing challenge along the California coast generally, and in Dana Point specifically: how to balance the protection of coastal development with the protection of coastal resources.

The Coastal Act mandates the protection of public access and recreation along the coast, coastal habitats, and other sensitive resources, as well as providing priority for visitor-serving and coastal-dependent or coastal-related development while simultaneously minimizing risks from coastal hazards. Accordingly, the Act places a strong emphasis on minimizing risks associated with such hazards, ensuring stability and structural integrity for development over time, and avoiding adverse impacts to natural processes and coastal resources. The Act also recognizes that shoreline-altering development, such as protective devices, can cause significant adverse impacts to coastal resources such as sand supply and ecology, public access, coastal views, natural landforms, and shoreline processes, and thus requires approvable shoreline protective devices to avoid or minimize coastal resource impacts and mitigate those that are unavoidable.

These concerns are carried over into the policies of the certified Dana Point 1996 LUP, in particular in certified LUP Land Use Element Policies 4.2, 4.5, and 4.10 (cited above), which require that hazards constraints be considered in determining the location, type, and intensity of new development; that environmental impacts be considered with development proposals; and that construction of non-recreational uses on coastal stretches with predicted high storm wave run-up be regulated to minimize risk to life and property. In addition, these concerns are carried over in certified LUP Conservation Open Space Element policies 2.1, 2.8, 2.14, 2.15, and 2.16 which require that restrictions be placed on development in floodplain, beaches and hazardous areas; that risks to life and property be minimized; that shoreline and ocean protective devices be limited; that public safety be assured with all new seaward construction or additions on beachfront homes in a manner that limits interference with public access along the beach; and that flood hazard areas be identified and regulated appropriately.

In summary, the LUP policies on coastal resource protection and minimizing risks from coastal hazards – combined with the increasing scientific certainty that SLR is and will continue to increase coastal hazards along the shoreline – elevates the need for local governments to incorporate sea level rise planning within LCPs. Without such adaptation planning, SLR could push local governments into situations where coastal resources are being lost and potentially placing new development in overly hazardous areas. Such actions would be inconsistent with the policies of the certified LUP cited above.

As stated above, the City of Dana Point has prepared a SLR VAAP. The SLR VAAP describes vulnerabilities to SLR within the City, as well as adaptation approaches. Although the City does plan to incorporate the findings of the SLR VAAP in a future LCPA, the IP currently does not address SLR in any way. The proposed LCPA will apply to areas of flood hazard, including Coastal High Hazard zones, but it does not recognize the effects SLR will

have on those hazard areas. As proposed, the LCPA will not incorporate any measures to address SLR, even though it will apply directly to areas of flood and coastal hazard. Although it may not be necessary to entirely update the LCP to address SLR with the current LCPA because a more expansive SLR LCPA is expected in the relative near term, it is nevertheless appropriate to address some of the issues related to SLR in the current LCPA.

In summary, the areas of the City of Dana Point that will be the subject of the flood plain LCPA include the areas most at risk from SLR, but the LCPA as proposed includes no recognition of that SLR risk. Therefore, the LCPA is not adequate to carry out the policies of the certified LUP regarding minimizing hazards and risk, limiting shoreline protective devices, protecting public visual opportunities, and maximizing public access.

## **2. FINDINGS FOR APPROVAL IF MODIFIED**

There are a number of sections throughout the LCPA as submitted where making changes to recognize the threat of SLR would result in adequacy to carry out the certified LUP. While more detailed and definitive language to address SLR more broadly and with more specific requirements in the LCP will occur with the City's anticipated SLR LCPA, inserting references and a few requirements relative to SLR now will recognize the subject as an issue needing consideration and attention. To this end, modifications are suggested to the current LCPA now because most of the areas identified on the FEMA FIRM maps are located in the Coastal High Hazard zone, which will be subject to impacts from SLR (with the exceptions being those areas along inland San Juan Creek). The suggested modifications identify specific information to be included with permit applications for development in flood hazard areas, delete the requirement that decks and other accessory structures be constructed on caissons in areas of known flood hazard, and generally acknowledge that SLR could affect future development and therefore needs to be considered when planning future development over the expected life of the proposed development.

Recommended suggested modifications include changes in existing Section 9.31.060(g) Standards in Coastal High Hazard Areas, which are the areas most likely to be impacted by SLR. In addition, inserting references throughout the LCPA to SLR helps to ensure that it will be considered with development where appropriate. Likewise, adding language regarding the limits on shoreline protective devices also makes property owners aware of limitations that may apply in the future, depending on site and development specifics. The suggested modifications to the LCPA (Appendix A) are necessary for the proposed IP amendment to adequately carry out the policies of the certified LUP, in particular those policies cited earlier in this report. In Appendix A, suggested modification additions are shown in **bold, underline** text; suggested deletions are shown in **~~bold, strike-through~~** text. The more significant of the recommended suggested modifications are generally described below.

### **Chapter 9.31 Flood Plain Overlay District** **Suggested Modifications City Disagrees With**

9.31.060 Provisions for Flood Hazard Reduction  
(g) Coastal High Hazard Areas  
(13) Disclosure Requirements.

Subsection (13) is all part of a suggested modification that lists the information that must be disclosed as a condition of approval when a permit is granted in the Coastal High Hazard Area. The suggested modification includes disclosure that the property is located in: (a) the Flood Plain Overlay District; (b) a hazardous area; (c) an area where flood related hazards, including with consideration of sea level rise, could render it difficult or impossible to provide services to the site, thereby constraining allowed uses or rendering it uninhabitable; (d) an area where the boundary between public land and private land may shift with rising seas; and, (e) an area where the structure may be required in the future to adapt to sea level rise consistent with the LCP and Zoning Code. Of these five required disclosures, the City objects to (d) regarding the potential shifting of the private/public boundary. City staff have indicated their concern is that potentially affected properties have specific boundaries recorded through the original Tract Map; and that the question of public land shifting with rising seas has not been adjudicated. However, Commission staff continues to recommend including this as information that must be disclosed. This section requires only *acknowledgement* that the boundary *may* shift. It is important that current and future owners be aware that future actions may affect their property. It does not at this point draw any conclusion as to what specifically will happen in the future.

#### 9.31.070(a)(4) Exception Procedure

Subsection (4) would generally allow that an exception may be issued for development on lots of one half-acre or less, regardless of location or degree of potential impacts. All the non-public areas within the City mapped Coastal High Hazard on the FIRM are residential areas comprised of lots less than one half-acre (they are generally approximately one fifth of an acre in size). The one half-acre or less threshold is too broad a standard, especially given the lot size pattern. Moreover, it does not consider whether these lots are located in areas currently susceptible to risk and that may become more so with sea level rise. As written, this section could effectively defeat the purpose of the Coastal High Hazard zones by encouraging exceptions from the Flood Plain Overlay District on these lots. Modifications are suggested that would recognize that exceptions may be considered (rather than issued) when Sections 9.31.050 and 9.31.060 (wherein lies the Coastal High Hazard standards) are complied with (rather than considered). These limited changes will raise the standard for when exceptions to the requirements of the Flood Plain Overlay District may be granted.

#### Suggested Modifications Acceptable to the City

##### 9.31.010 Intent and Purpose

Adds additional language to the Intent and Purpose section to make clear that the Flood Hazard Overlay District's purpose includes avoiding risks to life and property associated with flooding, wave attack, storm events, and shoreline erosion, and that these risks may increase with sea level rise. As well as adding language to make clear the intent includes prohibiting incompatible development in hazardous areas, and that new development be appropriately sited and designed to minimize damage, avoid hazards, and reduce the need for shoreline protective devices that would alter natural shoreline processes.

##### 9.31.020 General Provisions

Within Section 9.31.020(a) language is recommended stating that the areas subject to Chapter 9.31 Flood Plain Overlay District include all areas of special flood hazards, flood-

related erosion hazards, and areas of mudslide/mudflow hazards, **including as influenced by sea level rise according to best available science** (bolded language to be added).

Within Section 9.31.020(b) language is recommended to make clear that any updates to the FIRMs shall be incorporated into Chapter 9.31 through an LCPA, within one year of FEMA update action. Supplemental studies related to the FIRM update and LCPA must be based upon best available science.

#### 9.31.050 Administration

Language is recommended to be added to Section 9.31.050(a) to the list of information to be submitted with a permit application, with new subsection (7) which requires submittal of a study, prepared by a registered professional engineer with expertise in coastal processes, analyzing the proposed siting and design against expected impacts of SLR over the life of the development and lists the information to be included within that study. And new subsection (8) is recommended which requires an assessment of the potential impacts a proposed development may have on public access, public views, ecological resources, and cultural resources. New subsection (8) would apply only to development that requires a Coastal Development Permit.

Language is recommended to be added to section 9.31.050(b)(1), which lists the determinations that the Community Development Director (who is the Flood Plain Administrator) must make in reviewing a permit application in the Flood Plain Overlay District, specifically to section 9.31.050(b)(1)(C), not only that the site is safe from flooding, but that it is safe from flooding **over the life of the structure without reliance of shoreline protection devices** (bolded language to be added).

Recommends the addition of new subsection 9.31.050(b)(1)(E), which requires the Director of Community Development (Flood Plain Administrator), when considering permits, to determine that the development will, if appropriate, incorporate siting and design modifications, such as elevating and/or flood proofing habitable areas, to ensure safety from the impacts of flooding, including as influenced by sea level rise, over the anticipated life of the proposed structure (minimum 75 years) without reliance on existing or new shoreline armoring, or at a minimum, be designed such that those design modifications can be implemented in the future.

Adds new subsection 9.31.050(b)(1)(G), which requires the permit Issuing Authority to impose conditions on the permit as necessary and/or authorized to ensure the project's continued compliance with the provisions of the Flood Plain Overlay District.

Within Section 9.31.050(b)(4) regarding base flood elevation changes due to physical alteration, adds new subsection (C) which states that Letters of Map Revision (LOMRs) shall not change the boundaries of Special Flood Hazard Areas (SFHAs) without an approved LCP Amendment.

In subsection 9.31.050(c) Nonconforming Uses and Structures in the Floodplain Overlay Districts, in Section 9.31.050(c)(3)(B),<sup>8</sup> adds language requiring that when a non-conforming structure in the Flood Plain Overlay District is destroyed or damaged by flood or wave action, the structure may be allowed a fifty percent (50%) building valuation increase without any change in the structure's footprint once in a twelve month period, **provided that such improvement conforms to applicable existing zoning requirements and is sited and designed to minimize risks to life and property.** (bolded language to be added)

#### Section 9.31.060 Provisions for Flood Hazard Reductions

##### Section 9.31.060(a) Standards for Construction

##### 9.31.060(a)(3) Elevation and Floodproofing

At Section 9.31.060(a)(3)(A) regarding elevating new development, adds a new sentence that requires **“When applicable studies of sea level rise demonstrate the need for elevation above the base flood elevation, that elevation shall be implemented in project design as feasible, or the project shall be designed such that it can accommodate additional elevation or other adaptation strategies in the future.”** (bolded language to be added)

##### 9.31.060(a)(3)(B)

Regarding the lowest floor elevation in new residential construction in Zone AO or A, replaces “about [sic] the highest adjacent grade at least as high as the depth number specified in feet on the FIRM, or at least two (2) feet if no depth number is specified” with **“at least as high as the site elevation plus the flow depth specified on the FIRM, or if no flow depth is specified, at least two (2) feet above the highest adjacent grade.”** (replacement language is bolded).

##### 9.31.060(c) Standards for Subdivisions

Modify subsection (5) to reflect that “All subdivisions shall provide adequate drainage to reduce exposure to **on-site and off-site** flood hazards.” (bolded language to be added).

Also in Section 9.31.060(c), add new subsection (6) to prohibit new subdivisions unless all parcels created meet the standards for new development, including the applicable resource protection and hazard avoidance measures of the LCP, and the subdivision provides safe, legal, all-weather access to each parcel created, without the need for shoreline protection.

##### 9.31.060(d) Standards for Manufactured Homes

Modify subsection (d), to add new subsection (3) to require that manufactured homes be removable if it is legally determined that the structure is unsafe for occupancy or use due to natural hazards including, but not limited to, waves, erosion, storm conditions, or sea level rise, and there are no measures that could make the structure suitable for use without the use of shoreline protective devices.

##### 9.31.060(g) [formerly (f)] Standards that apply in Coastal High Hazard Areas.

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<sup>8</sup> Section 9.31.050(c)(3) was formerly (absent the suggested modifications) Section 9.31.050(c)(4). But that numbering changed with the deletion of subsection (3) because it had been deleted via a previous LCPA and accepted by the City as deleted. This is discussed later in this report.

Subsection (g)(8)(A) and (B) modification to delete the current requirement that decks be constructed on caissons or piles and also require that concrete decks constructed on existing grade be removed if damaged or threatened.

Subsection (g)(9) will require that accessory structures, such as awnings, patio covers, trellises, etc. be adequately anchored and shall be removed when they become threatened. (bolded language is to be added)

Subsection (g)(12), regarding garages constructed at the existing beach elevation and below base flood elevation, will be modified to require that the portions of the garage located below the base flood elevation must be built using flood resistant materials, and that any mechanical and utility equipment must be elevated or floodproofed to or above the base flood elevation adjusted to reflect future sea level rise.

New subsection (g)(13) will establish disclosure requirements for development in Coastal High Hazards zones. These disclosures will be required to be recorded on the title to the property and will disclose that the property is located in: the Flood Plain Overlay District; a hazardous area or an area that may become hazardous in the future; an area where flood-related hazards, as may be exacerbated by SLR, could render it difficult or impossible to provide services to the site (e.g., maintenance of roadways, utilities, sewage, or water systems), thereby constraining use of the site and rendering it uninhabitable; an area where the boundary between the public land (tideland) and private land may shift with SLR and development approval does not permit encroachment onto public trust land; and, an area where the structure may be required in the future to adapt to SLR consistent with the certified LCP and Zoning Code.

New subsection (g)(14) requires permittees to assume the risk of development and that that Assumption of Risk be recorded on the title to the property, which shall acknowledge the site may be subject to hazards associated with SLR; to waive any claim of damage or liability against the City or Coastal Commission; and to assume the risks of injury and damage from such hazards.

New subsection (g)(15) requires the permittee to waive the right for new development to future shoreline protective devices that alter natural shoreline processes; and that that waiver be recorded on the title to the property. Subsection (15) also recognizes that this waiver does not preclude the ability of a property owner to submit a future permit application to protect existing development.

Various Locations throughout Chapter 9.31

Recommends that language be added stating that, in addition to a Site Development Permit, other permits or entitlements (such as a coastal development permit), must also be obtained. This is intended to assure that the requirements of this Chapter will clearly be applicable to CDPs. As proposed, this Chapter refers only to the City's Site Development Permits.

Recommends that Base Flood Elevations (BFE) be adjusted for SLR over the life of the project.

The suggested modification recommends replacing the term “mean sea level” with “NAVD88” in Chapter 9.31. NAVD88 is the official vertical datum of the State of California and the United States and is more precise than the term “mean sea level” which was previously used to refer to a historic vertical datum: NGVD29. FIRMs created prior to 1993 used NGVD29 or “mean sea level” to refer to elevations however the most recent FIRMs use NAVD88. The difference between the two is over two feet and contemporary use of “mean sea level” most often refers to the tidal datum which changes with sea level rise. The City had proposed changing the definition of “mean sea level” in Chapter 9.75 Definitions and Illustrations of Terms by replacing “National Geodetic Vertical Datum (NGVD) of 1929” with “North American Vertical Datum (NAVD) of 1988.” However, a modification is suggested to clarify the difference and temporal use of the various datums by adding language to the definition of “mean sea level” clarifying that it refers to NGVD 1929 and was used on FIRMs prior to 1993 and adding a definition for North American Vertical Datum of 1988 (NAVD88), which recognizes this is the datum used on FIRMs after 1992. These changes acknowledge the temporal use of the two datums (mean sea level / NGVD29 & NAVD88) in efforts to modernize the LCP while maintaining clarity and consistency with other chapters.

#### Chapter 9.31.070 Exception Procedure

As currently written this section seemingly uses the terms “exception,” “appeal,” and “exemption” interchangeably. This is unclear and leads to confusion. To address this, the City has suggested replacing the terms “appeal” and “exemption” with the term “exception.” “Exception” is defined in Section 9.75.050 of the LCP Implementation Plan as: “a grant of relief from the requirements of Chapter 9.31 which permits construction in a manner that would otherwise be prohibited by Chapter 9.31.” Thus, the term “exception” adequately captures the meaning as intended in Section 9.31.070. A modification is suggested to replace the terms throughout so that only the term “exception” appears.

#### Clean-up mods:

Some modifications are suggested to correct typos in the existing text. One suggested modification would re-insert a subsection heading that was inadvertently omitted in the City’s Ordinance No. 19-01 which identifies the City’s requested LCPA changes. The suggested modification would re-insert the subheading to correct the inadvertent omission. This occurred in subsection 9.31.060(i) [formerly, subsection (h)]. The heading to be re-inserted is “Flood-Related Erosion-Prone Areas.”

In addition, LCPA Ordinance No. 19-01 includes language that was deleted from the IP pursuant to a suggested modification to LCPA 1-98. The suggested modification was accepted by the City pursuant to Ordinance No. 99-05. To correct this error, a modification is suggested that would re-delete the previously deleted language. This language, currently not certified and to be deleted per suggested modification, appears in Ordinance No. 19-01 as subsection 9.31.050(c)(3), states:

Notwithstanding other standards of the Local Coastal Program. The Floodplain Overlay District regulation for non-conforming Structured [sic] set forth in the

Capistrano Beach Specific Plan/Local Coastal Program and Dana Point Specific Plan/Local Coastal Program remain in effect.

If not re-deleted via suggested modification, this LCPA would result in certifying language that had previously been deleted by the Coastal Commission, with no explanation or support for re-insertion.

Finally, it is recognized that some re-numbering may be needed as the suggested modifications are incorporated into Chapter 9.31. As long as the re-numbering does not alter the intent of the Chapter as modified, re-numbering by the City in accepting the suggested modifications is acceptable.

### **Chapter 9.75 Definitions and Illustrations of Terms**

All suggested modifications are acceptable to the City.

#### Section 9.75.170

Modify the definition of “mean sea level” for purposes of the National Flood Insurance Program to acknowledge that that was the term used prior to 1993 and incorporated by reference “National Geodetic Vertical Datum (NGVD) of 1929, as described earlier.

#### Section 9.75.180

Add a new definition for North American Vertical Datum of 1988 (NAVD88), to apply for purposes of the National Flood Insurance Program after 1992, as also described earlier.

Both of the above recommended modifications will better reflect the current datum used on the Flood Insurance Rate Map over time.

#### Section 9.75.190 – definition of “Substantial Improvement”

Modifications to add “Coastal Overlay District” to the zones in which this definition would apply (currently applies only in the Flood Plain Overlay District); to add, at new subsection 2, a second definition in addition to the existing one, that defines “substantial improvement” to include additions, exterior and/or interior renovations, and/or demolition or replacement of an existing principal structure or portions thereof which results in 50% or more alteration to any of the following: replacement of any major structural component; increase in gross floor area; and replacement of less than 50% of a major structural component where the proposed replacement would result in cumulative alterations exceeding 50% or more of that major structural component; an alteration of less than 50% increase in floor area where the proposed alteration would result in a cumulative addition of 50% or greater of the floor area. Either of the two (existing or suggested modification) definitions may be applied.

Adds, at subsection 3, for the purpose of the Substantial Improvement definition, “principal structure” **shall mean a building or structure in which the primary use of the lot on which the building is located is being conducted**” to the existing description of “substantial improvement”, which is otherwise to remain as is.

#### Conclusion

If modified as suggested (Appendix A), the Implementation Plan Amendment can be found to be consistent with and adequate to carry out the provisions of the certified Land Use Plan, including those policies regarding risk and hazard minimization, limitations on shoreline protective devices, maximization of public access, and preservation of public views.

### **V. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

Section 21080.9 of the California Public Resources Code – within the California Environmental Quality Act (CEQA) – exempts local governments from the requirement of preparing an Environmental Impact Report (EIR) in connection with its activities and approvals necessary for the preparation and adoption of an LCP. 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 Section 21080.5 of CEQA, the Commission is relieved of the responsibility to prepare an EIR for each LCP.

Nevertheless, the Commission is required in approving an LCPA submittal to find that the LCP as amended does conform with the provisions of CEQA, including the requirement in CEQA section 21080.5(d)(2)(A) that the amended LCP will not be approved or adopted as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment [California Code of Regulations Sections 13542(a), 13540(f), and 13555(b)]. The City of Dana Point LCP Amendment No. LCP-5-DPT-20-0080-2 consists of an amendment to the Implementation Plan (IP) for the 1996 LCP.

As outlined in this staff report, the proposed IP Amendment if modified as suggested will be consistent with the policies of the LUP. Thus, the Commission finds that the IP Amendment, if modified as suggested, is in conformity with and adequate to carry out the land use policies of the certified LUP. Therefore, the Commission finds that approval of the LCP Amendment as modified will not result in significant adverse environmental impacts under the meaning of CEQA. Therefore, the Commission certifies LCP Amendment request No. LCP-5-DPT-20-0080-2 if modified as suggested herein.