

CALIFORNIA COASTAL COMMISSION

SAN DIEGO DISTRICT OFFICE
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SAN DIEGO, CA 92108-4402
VOICE (619) 767-2370
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F8a

A-6-DMR-22-0020 (Watermark DM, L.P.)

November 15-17, 2023

EXHIBITS

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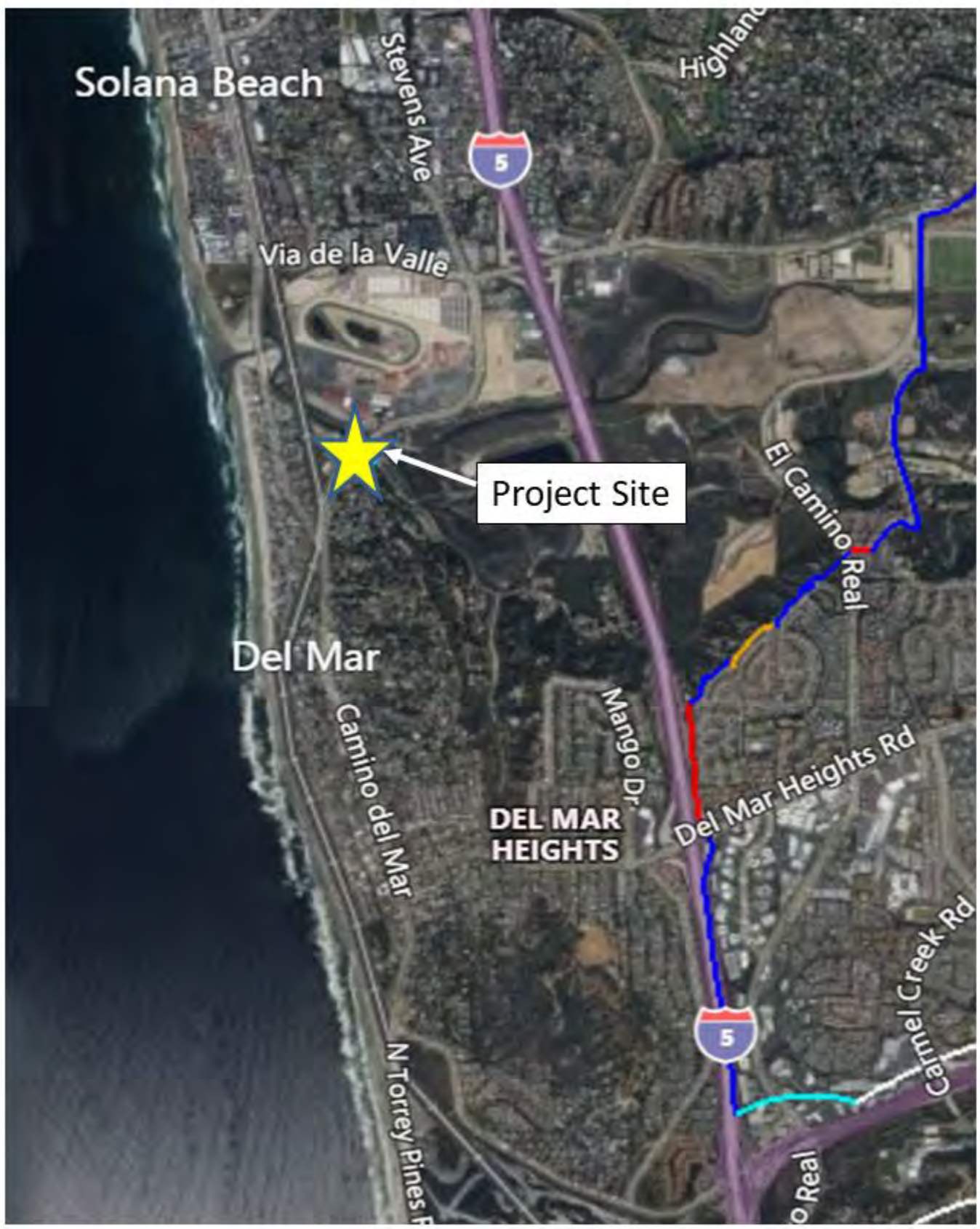


EXHIBIT NO. 1
APPLICATION NO. A-6-DMR-22-0020
Vicinity Map
 California Coastal Commission



EXHIBIT NO. 2
APPLICATION NO.
A-6-DMR-22-0020
Site Location
 California Coastal Commission

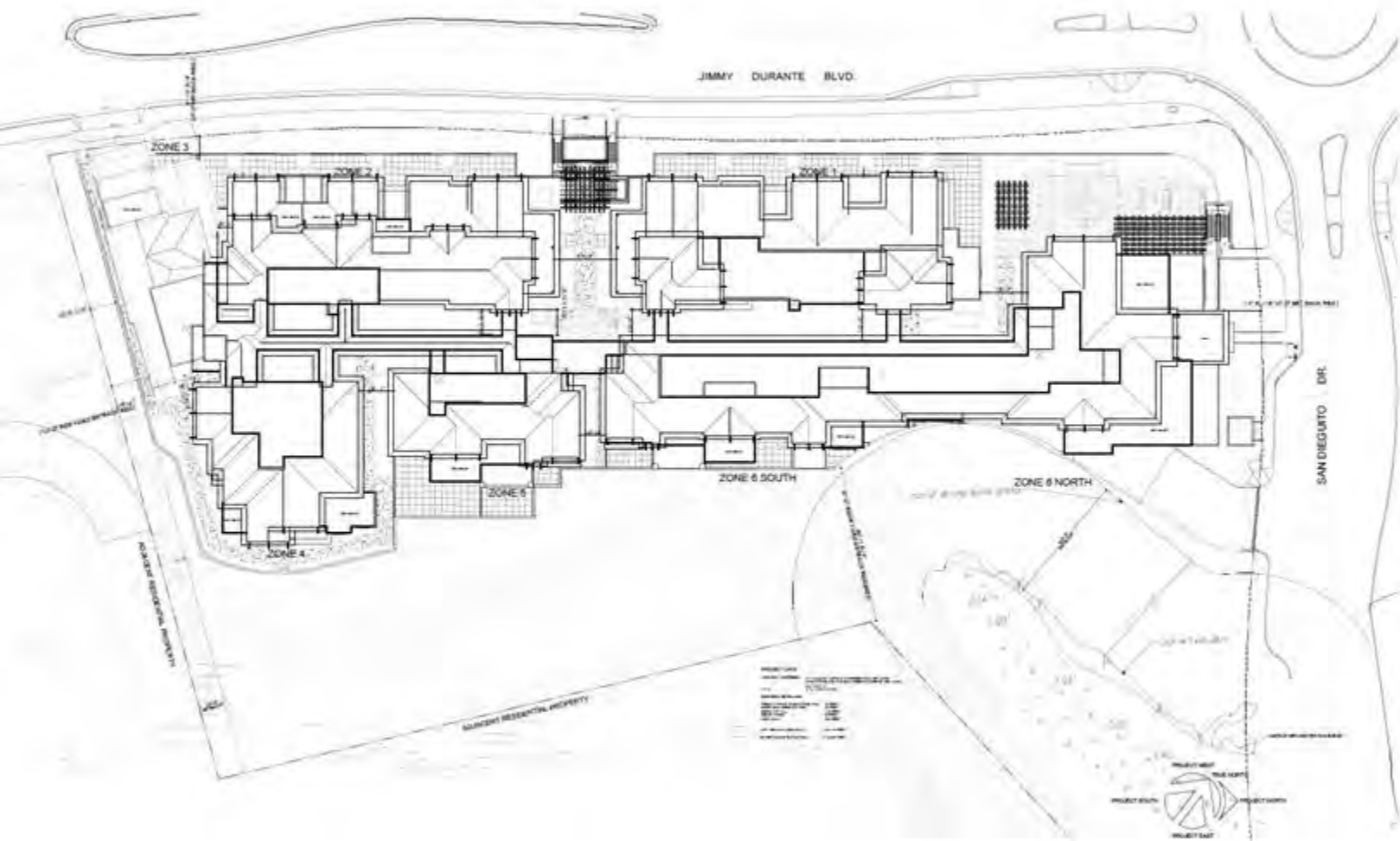


EXHIBIT NO. 3

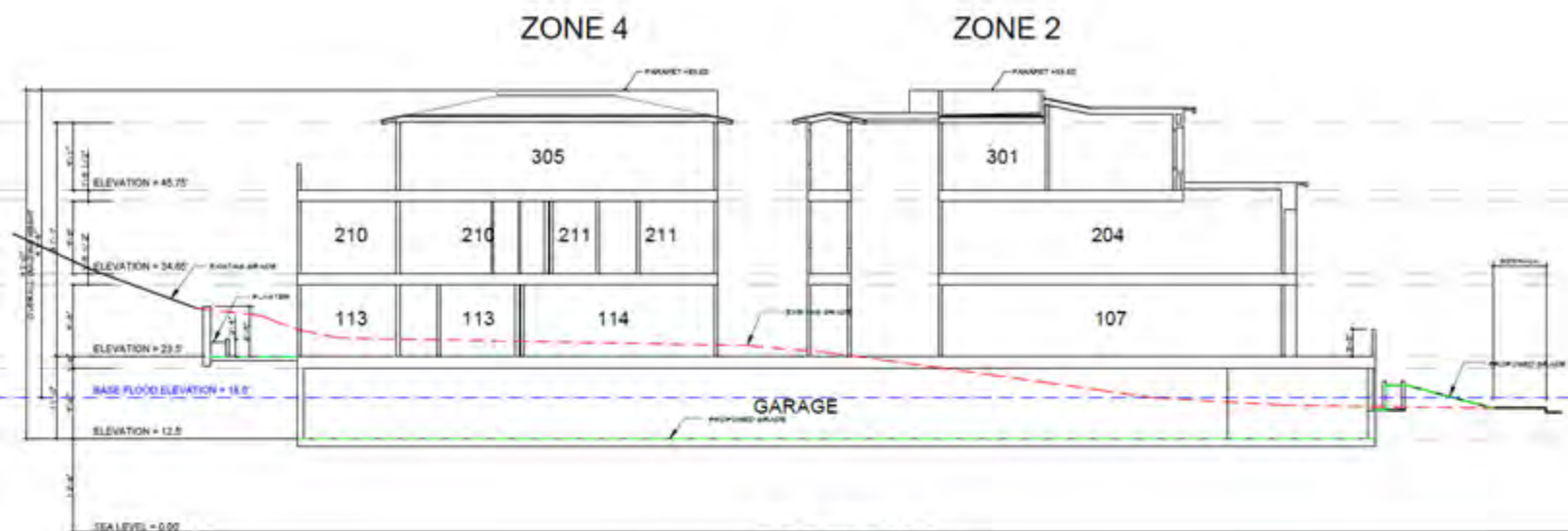
APPLICATION NO.

A-6-DMR-22-0020

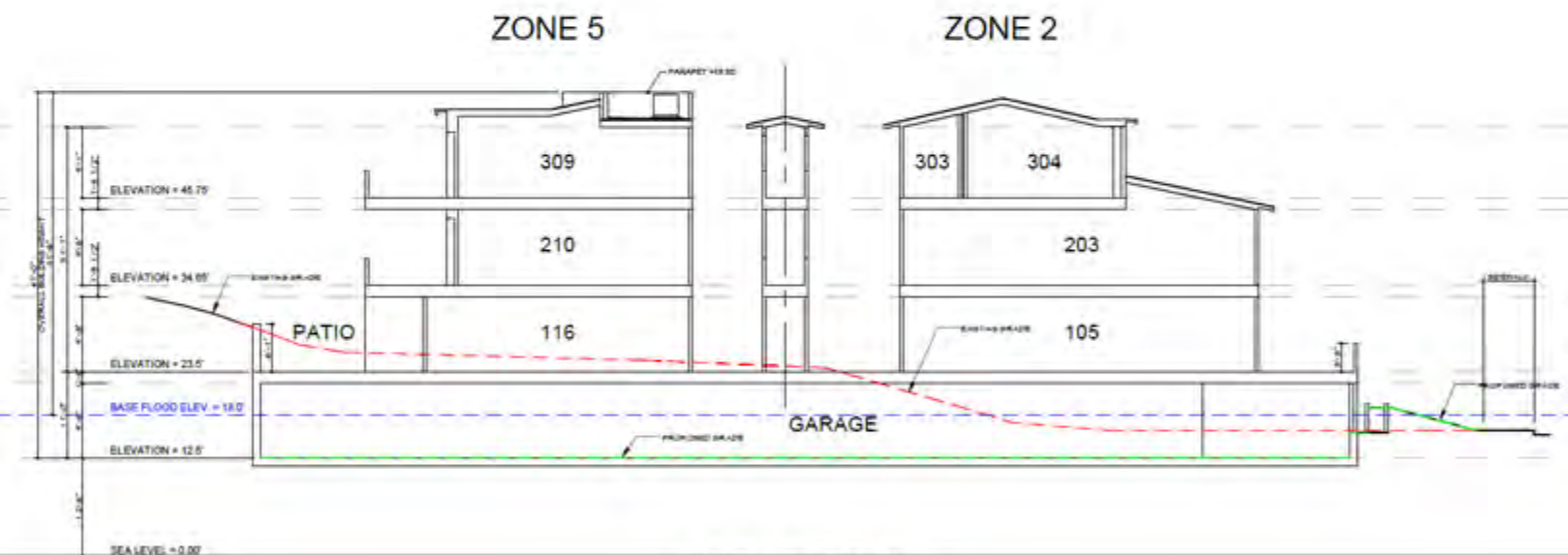
Site Plan



California Coastal Commission



SECTION A



SECTION B

Existing Grade

Base Flood Elevation

Proposed Grade



EXHIBIT NO. 4

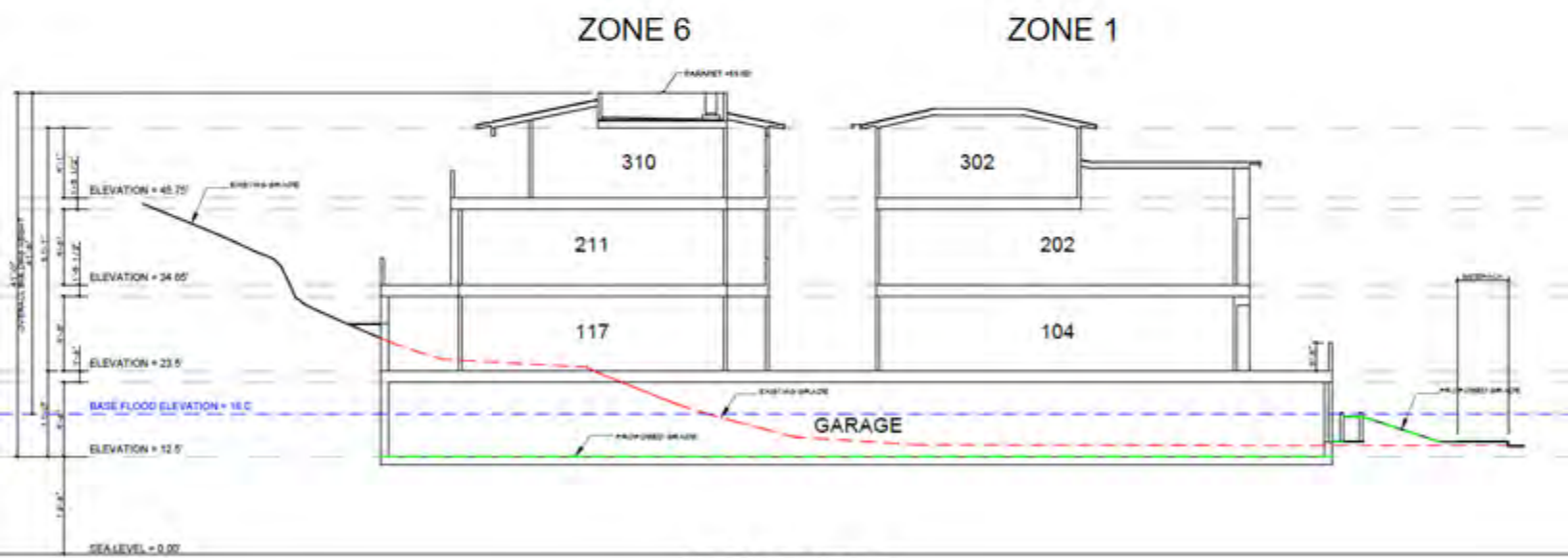
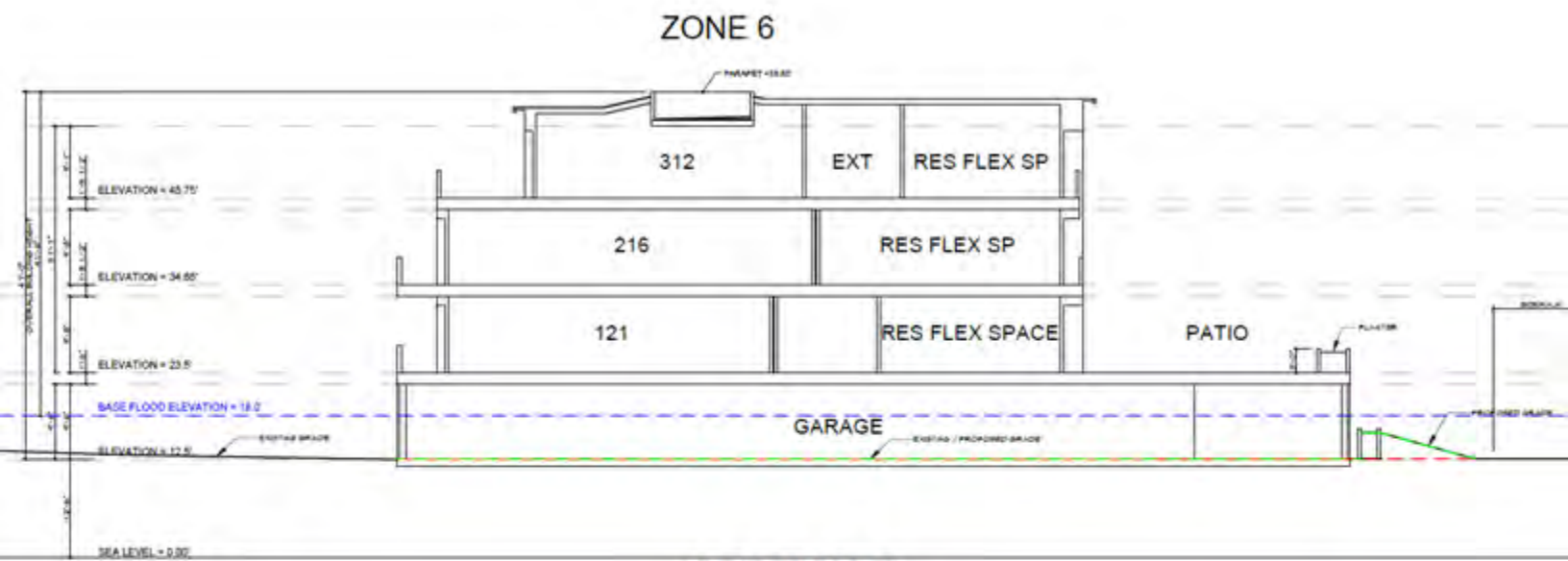
APPLICATION NO.

A-6-DMR-22-0020

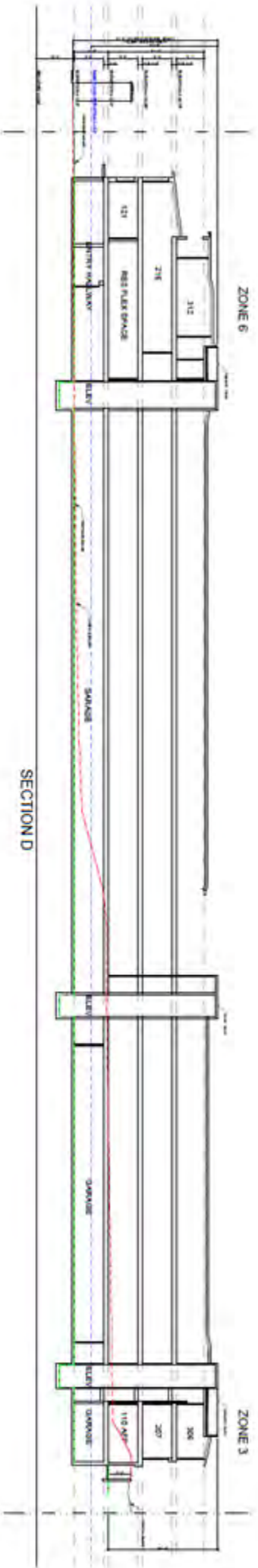
Building Sections



California Coastal Commission



Existing Grade	---
Base Flood Elevation	---
Proposed Grade	---



Existing Grade
Base Flood Elevation
Proposed Grade

CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST DISTRICT OFFICE
7575 METROPOLITAN DR., SUITE 103
SAN DIEGO, CA 92108-4421
(619) 767-2370
SANDIEGOCOAST@COASTAL.CA.GOV

**APPEAL FORM****Appeal of Local Government Coastal Development Permit****Filing Information (STAFF ONLY)**

District Office: San Diego Coast

Appeal Number: _____

Date Filed: _____

Appellant Name(s): _____

APPELLANTS

IMPORTANT. Before you complete and submit this appeal form to appeal a coastal development permit (CDP) decision of a local government with a certified local coastal program (LCP) to the California Coastal Commission, please review [the appeal information sheet](#). The appeal information sheet describes who is eligible to appeal what types of local government CDP decisions, the proper grounds for appeal, and the procedures for submitting such appeals to the Commission. Appellants are responsible for submitting appeals that conform to the Commission law, including regulations. Appeals that do not conform may not be accepted. If you have any questions about any aspect of the appeal process, please contact staff in the Commission district office with jurisdiction over the area in question (see the Commission's [contact page](#) at <https://coastal.ca.gov/contact/#/>).

Note regarding emailed appeals. Please note that emailed appeals are accepted ONLY at the general email address for the Coastal Commission district office with jurisdiction over the local government in question. For the San Diego Coast district office, the email address is SanDiegoCoast@coastal.ca.gov. An appeal emailed to some other email address, including a different district's general email address or a staff email address, will be rejected. It is the appellant's responsibility to use the correct email address, and appellants are encouraged to contact Commission staff with any questions. For more information, see the Commission's [contact page](#) at <https://coastal.ca.gov/contact/#/>.

EXHIBIT NO. 5
APPLICATION NO. A-6-DMR-22-0020
Appeals
 California Coastal Commission

Appeal of local CDP decision

Page 2

1. Appellant information¹

Name: _____

Mailing address: _____

Phone number: _____

Email address: _____

How did you participate in the local CDP application and decision-making process?

Did not participate Submitted comment Testified at hearing Other

Describe: _____

If you did *not* participate in the local CDP application and decision-making process, please identify why you should be allowed to appeal anyway (e.g., if you did not participate because you were not properly noticed).

Describe: _____

Please identify how you exhausted all LCP CDP appeal processes or otherwise identify why you should be allowed to appeal (e.g., if the local government did not follow proper CDP notice and hearing procedures, or it charges a fee for local appellate CDP processes).

Describe: _____

¹ If there are multiple appellants, each appellant must provide their own contact and participation information. Please attach additional sheets as necessary.

Appeal of local CDP decision

Page 3

2. Local CDP decision being appealed²

Local government name: _____

Local government approval body: _____

Local government CDP application number: _____

Local government CDP decision: CDP approval CDP denial³

Date of local government CDP decision: _____

Please identify the location and description of the development that was approved or denied by the local government.

Describe: _____

² Attach additional sheets as necessary to fully describe the local government CDP decision, including a description of the development that was the subject of the CDP application and decision.

³ Very few local CDP denials are appealable, and those that are also require submittal of an appeal fee. Please see the [appeal information sheet](#) for more information.

Page 4

Applicant name(s): _____

Applicant Address: _____

For appeals of a CDP approval, grounds for appeal are limited to allegations that the approved development does not conform to the LCP or to Coastal Act public access provisions. For appeals of a CDP denial, grounds for appeal are limited to allegations that the development conforms to the LCP and to Coastal Act public access provisions. Please clearly identify the ways in which the development meets or doesn't meet, as applicable, the LCP and Coastal Act provisions, with citations to specific provisions as much as possible. Appellants are encouraged to be concise, and to arrange their appeals by topic area and by individual policies.

[illegible]

4 Attach additional sheets as necessary to fully describe the grounds for appeal.

Appeal of local CDP decision

Page 5

5. Identification of interested persons

On a separate page, please provide the names and contact information (i.e., mailing and email addresses) of all persons whom you know to be interested in the local CDP decision and/or the approved or denied development (e.g., other persons who participated in the local CDP application and decision making process, etc.), and check this box to acknowledge that you have done so.



Interested persons identified and provided on a separate attached sheet

6. Appellant certifications

I attest that to the best of my knowledge, all information and facts in this appeal are correct and complete.

Print name Del Mar Hillside Community Association

Arnold Weiss

Signature

Date of Signature

5-6-2022

7. Representative authorizations

While not required, you may identify others to represent you in the appeal process. If you do, they must have the power to bind you in all matters concerning the appeal. To do so, please complete the representative authorization form below and check this box to acknowledge that you have done so.



I have authorized a representative, and I have provided authorization for them on the representative authorization form attached.

§ If there are multiple appellants, each appellant must provide their own certification. Please attach additional sheets as necessary.

§ If there are multiple appellants, each appellant must provide their own representative authorization form to identify others who represent them. Please attach additional sheets as necessary.

CALIFORNIA COASTAL COMMISSION

455 MARKET STREET, SUITE 300
SAN FRANCISCO, CA 94105-2219
VOICE (415) 904-5200
FAX (415) 904-5400

**DISCLOSURE OF REPRESENTATIVES**

If you intend to have anyone communicate on your behalf to the California Coastal Commission, individual Commissioners, and/or Commission staff regarding your coastal development permit (CDP) application (including if your project has been appealed to the Commission from a local government decision) or your appeal, then you are required to identify the name and contact information for all such persons prior to any such communication occurring (see Public Resources Code, Section 30319). The law provides that failure to comply with this disclosure requirement prior to the time that a communication occurs is a misdemeanor that is punishable by a fine or imprisonment and may lead to denial of an application or rejection of an appeal.

To meet this important disclosure requirement, please list below all representatives who will communicate on your behalf or on the behalf of your business and submit the list to the appropriate Commission office. This list could include a wide variety of people such as attorneys, architects, biologists, engineers, etc. If you identify more than one such representative, please identify a lead representative for ease of coordination and communication. You must submit an updated list anytime your list of representatives changes. You must submit the disclosure list before any communication by your representative to the Commission or staff occurs.

Your Name Del Mar Hillside Community Association

CDP Application or Appeal Number CDP21-005; APN: 299-100-47 and 299-100-48

Lead Representative

Name Everett DeLano of DeLano & DeLano
Title Attorney
Street Address 104 W. Grand Ave, Ste A
City Escondido
State, Zip CA, 92025
Email Address everett@delanoanddelano.com
Daytime Phone (760) 741-1200

Your Signature 

Date of Signature 5/9/2022

Additional Representatives (as necessary)

Name _____
Title _____
Street Address. _____
City _____
State, Zip _____
Email Address _____
Daytime Phone _____

Name _____
Title _____
Street Address. _____
City _____
State, Zip _____
Email Address _____
Daytime Phone _____

Name _____
Title _____
Street Address. _____
City _____
State, Zip _____
Email Address _____
Daytime Phone _____

Name _____
Title _____
Street Address. _____
City _____
State, Zip _____
Email Address _____
Daytime Phone _____

Your Signature _____

Date of Signature _____

Identification of Interested Persons

1. City of Del Mar, Matt Bator, AICP, Principal Planner | mbator@delmar.ca.us | 1050 Camino del Mar, Del Mar, CA 92014
2. Watermark DM, L.P., Don Glatthorn | 9330 Scranton Road, Suite 100, San Diego, CA 92121
3. Merkel & Associates, Inc., Amanda K. Gonzales | agonzales@merkelinc.com | 5434 Ruffin Road, San Diego, CA 92123
4. Hamilton Biological, Robert A. Hamilton | robb@hamiltonbiological.com | 316 Monrovia Avenue, Long Beach, CA 90803



DELANO & DELANO

May 9, 2022

California Coastal Commission
San Diego Coast District
7575 Metropolitan Drive #103
San Diego, CA 92108

Re: Reasons Supporting Appeal of City of Del Mar Administrative Coastal Development Permit No. 21-005

Dear Coastal Commission:

This letter is submitted on behalf of Del Mar Hillside Community Association in connection with the appeal of the City of Del Mar's ("City") approval of Watermark Del Mar Project's ("Project") Administrative Coastal Development Permit ("CDP") for a new 50-unit, 132,894 square-foot residential development on two legal lots consolidated into one development site located at the southeast corner of Jimmy Durante Boulevard and San Dieguito Drive. Due to the entirely administrative nature of this permit approval process the City did not allow public participation. Del Mar Hillside Community Association did, however, submit via email comments and a letter regarding the biological issues of the Project to City staff. The grounds for appeal are as follows.

The Project is inconsistent with specific provisions of the City's Local Coastal Program ("LCP") identified below. The Project also violates the Public Access provision of the California Coastal Act.

Accordingly, Del Mar Hillside Community Association asks the Coastal Commission to find substantial issue with the Project and conduct a *de novo* hearing.

I. The Project Is Inconsistent with the City's LCP

The California Coastal Act obliges each local government within a coastal zone to either prepare or request preparation of a "local coastal program for that portion of the coastal zone within its jurisdiction." Cal. Pub. Res. Code § 30500(a). After a local coastal program has been certified by the Coastal Commission, and "all implementing actions within the area affected have become effective, the development review authority...shall at that time be delegated to the local government that is implementing the local coastal program." Cal. Pub. Res. Code § 30519(a). The Coastal Act grants local governments authority and direction to issue a coastal development permit only when the proposed

development conforms with the certified local coastal program. Cal. Pub. Res. Code § 30604(b).

The “Land Use Plan” portion of the City’s LCP was certified by the Coastal Commission in 1993 with the overarching policy to “ensure that all land use and development activities...[conform] with the policies of the California Coastal Act.” City of Del Mar Local Coastal Program, “Land Use Plan,” at 5. The “Implementing Ordinances” by which the City enforces the LCP policies are contained in corresponding, certified provisions of the Del Mar Municipal Code (“DMMC”).

The Project is inconsistent with the three following provisions of the LCP.

A. The Project Is Inconsistent with Protections of Coastal Lagoon Areas and Wetland Resources

The City’s LCP defines the Lagoon Overlay Zone, composed of properties located directly in or in proximity to the Los Peñasquitos and San Dieguito Lagoons. DMMC § 30.53.010. The purpose of the Lagoon Overlay Zone is to “protect the wetland resources of these lagoon areas and their sensitive upland habitats” by requiring all development in the zone to be “designed and implemented in a manner that is consistent with wetland habitat protection and enhancement.” DMMC § 30.53.010.

Due to its proximity to the San Dieguito Lagoon, the site is considered a “Wetland Buffer,” defined as “lands which provide a buffer between human development activity and wetland areas and which serve to protect the environmental and functional habitat values of the wetland.” DMMC § 30.53.030(A)(2).

Permitted uses and activities in wetland buffer areas are limited to “passive recreational access paths and viewpoints” or the “placement of improvements necessary to provide protection, preservation, or enhancement of adjacent wetland areas” as well as all uses permitted in wetland areas. DMMC § 30.53.090(A)(1)-(3). Additionally, development projects sited on or in proximity to wetland habitat shall include a “continuous wetland buffer” 100 feet in width, minimum, reduced only by special authorization. DMMC § 30.53.100(A)-(B).

The Applicant requested a concession for a wetland buffer reduction from 100 feet to 50 feet. Such a reduction requires consultation with and approval from the California Department of Fish and Wildlife (“CDFW”) and the City. The City must find and the CDFW shall concur that the “physical characteristics of the site...are adequate to protect the resources of the adjacent wetlands, based on site-specific factors.” DMMC § 30.53.100(B). Even though the CDFW approved the concession for a reduced 50-foot buffer, the physical characteristics of the site are still not adequate to protect the wetland resources. In fact, the opposite is true: “The measurable physical factors on this site are dramatically affected by human alterations of the site’s hydrology, soils, and vegetation.”

Hamilton Biological, *Review of Merkel & Associates Biological Reports, Watermark Del Mar Project*, Nov. 24, 2021, (“Hamilton Review”), at 15. “At a bare minimum, delineation of wetlands on the project site must include the areas of standing water and/or predominantly wetland indicator plants shown in [various photos within the report].” Hamilton Review, at 12. Despite the fact that “obvious, unambiguous wetland characteristics have persisted [on] site for at least four years,” the Biological Report and Wetland Delineation submitted by the Applicant failed to complete “any field data sheets in this part of the property.” Hamilton Review, at 12.

Not only are the physical characteristics of the site inadequate to protect the adjacent wetlands if the wetland buffer is reduced from 100 to 50 feet, but the report upon which such a finding was made failed to adequately delineate and analyze the wetland property. For the foregoing reasons, the Project fails to conform with required protections of the Lagoon Overlay Zone contained in the City’s LCP.

B. The Project Is Inconsistent with Protections of Steep Slopes and Bluffs

The City’s LCP defines and protects the Bluff, Slope and Canyon Overlay Zone, with a general policy to preserve and protect sensitive slopes, associated bluff and canyon areas, and downstream resources. City of Del Mar Local Coastal Program, “Land Use Plan,” at 100. The Bluff, Slope and Canyon Overlay Zone is “designed to protect the health, safety, and general welfare, and to control the development of properties within the designated zone in order to preserve the scenic sandstone bluffs and related canyons and steep slopes which characterize the area within the zone,” in addition to “protect downstream resources from the adverse impacts of erosion and sedimentation.” DMMC § 30.52.010(A). “Construction, grading, or other encroachment of any kind on substantial steep slopes exceeding 25% grade...shall be prohibited except where allowed in accordance with this Chapter.” DMMC § 30.52.060(A)(1). Encroachments shall be permitted only if the Coastal Commission finds “no feasible alternative siting which eliminates or substantially reduces the need for such construction or grading,” and “that the amount of encroachment into steep slope areas associated with the proposed development has been minimized to the greatest extent feasible commensurate with preserving the physical characteristics of the site.” DMMC § 30.52.060(A)(1)(a).

The Project, sited at the corner of Jimmy Durante Blvd and San Dieguito Drive, is located within the Bluff, Slope and Canyon Overlay Zone and thereby shall conform to the LCP prohibition on construction, grading, or encroachment on substantial steep slopes. The site elevation ranges from a “high of approximately 90 feet above mean sea level [] at the top of the sandstone bluff, to 12 feet above [mean sea level] at the top of the slope near Jimmy Durante Boulevard.” Merkel & Associates, Inc., *Jurisdictional Resources Delineation Report and Environmentally Sensitive Habitat Area (ESHA) Evaluation*, Dec. 6, 2018, (“Merkel Report”), at 14. Slopes on the bluff particularly range from 9-50% and are already severely eroded. Merkel Report, at 14.

The Project is inconsistent with the LCP protections of the Bluff, Slope and Canyon Overlay Zone due in part to its steep slope encroachment. Applicant requested and was granted a waiver for an allowance of up to 10% encroachment into steep slopes within the Bluff, Slope and Canyon Overlay Zone. Applicant provided neither evidence showing an absence of a feasible alternative siting that would eliminate or substantially reduce the need for such an allowance, nor proof that the Project development has been minimized to preserve the site's physical characteristics. For instance, one possible alternative to consider is the "clustering" approach found in the Bluff, Slope and Canyon Overlay Zone section of the LCP, which requires projects involving more than one dwelling unit to be "clustered" in order to minimize the disturbance of natural landforms and habitat. DMMC § 30.52.060(A)(3). This requirement is dependent upon whether the City finds it practicable and desirable. *Id.* "Clustering" in this context refers to "the siting of dwelling units in proximity to each other to maximize the amount of undeveloped open space." *Id.* Other alternative designs with potential to minimize the Project's steep slope encroachment might include redesigning the Project's rectangular, parallel orientation to better fit within the site's natural characteristics, reorienting the direction of the specific units within the encroaching zones, or altering the sited location of such units to the empty space located in the top right corner of the Project site plan (see Map: Watermark Exhibit 5, included as Enclosure 3).

There is no evidence that, despite the multiple dwelling unit Project sited within the Bluff, Slope and Canyon Overlay Zone, the Applicant or the City considered the clustering approach, or any other project design alternatives, that would minimize the Project development to preserve the site's physical characteristics and protect the sensitive slope area. In addition to a lack of consideration of alternative design, it is noteworthy that the maintenance of a 100-foot wetland buffer, as opposed to the 50-foot reduction, would effectively preclude almost all of the encroachment upon the sensitive slopes (see Map: Watermark Exhibit 5, included as Enclosure 3).

The Project is also inconsistent with the LCP protections of the Bluff, Slope and Canyon Overlay Zone due to its drastic allowable height increase. The Applicant requested and was granted a significant concession for "an increase in maximum allowed height from 14-feet in the Bluff, Slope, Canyon Overlay Zone to 47-feet, 6-inches." City of Del Mar Director of Planning and Community Development, Administrative CDP Resolution (CDP21-005), at 4. The LCP, however, prohibits any erection, construction, altering, or enlarging of buildings "until a Design Review Permit is first obtained." DMMC § 30.52.080. Specifically, this section limits structures to a height of 14 feet "in order to preserve view sheds and the open space appearance of the area from a distance" unless the Design Review Board finds that "scenic view sheds and open space appearance will be less affected by higher structures." DMMC § 30.52.080(A). Without Design Review Board approval, which has not been granted for this Project, the height limit for the Project remains 14 feet. With the significant height concession, the Project is inconsistent with the LCP.

For the reasons stated above, the Project development is not minimized to the extent feasible as required by the LCP to preserve the site's sensitive slopes. The Project also violates the LCP's maximum allowable height requirement. As a result the Project is inconsistent with the LCP provisions protecting the Bluff, Slope and Canyon Overlay Zone.

C. The Project Is Inconsistent with Protections of Floodplain Zones

The LCP defines the Floodplain Overlay Zone, composed of "those properties located within the 100-year floodplains of the San Dieguito River and the Los Peñasquitos Lagoon...subject to periodic inundation due to flooding." DMMC § 30.56.010. The corresponding policy set forth in the Land Use Plan portion of the LCP is to minimize flood hazards in part by regulating development within the Floodplain Overlay Zone. City of Del Mar Local Coastal Program, "Land Use Plan," at 45-46. The City implements this policy by prohibiting development that would result in "increases in erosion or flood levels through the inappropriate placement of fill or barriers" as well as prohibiting or restricting "uses, which would otherwise be incompatible with flood prone areas." DMMC § 30.56.010. Pursuant to the LCP implementing regulations, development of any project within the Floodplain Overlay Zone is unlawful without a Floodplain Development Permit. DMMC § 30.56.045.

The Project is located partially within the San Dieguito River's 100-year floodplain. Merkel Report, at 14. Despite its location within the Floodplain Overlay Zone and consequent regulatory requirement to obtain a Floodplain Development Permit, the Applicant has not submitted proof of a permit approval, or such proof has not been made public. The application materials listed in the City's Administrative CDP Resolution as submitted and reviewed for the Administrative CDP do not include a submitted, pending, or approved Floodplain Development Permit. City of Del Mar Director of Planning and Community Development, Administrative CDP Resolution (CDP21-005), at 5. As a result, the Project, located within the Floodplain Overlay Zone but without proof of a Floodplain Development Permit, violates the floodplain regulatory requirements of the LCP.

II. The Project Is Inconsistent with the California Coastal Act Public Access Provision

Chapter 3, Article 2 of the California Coastal Act contains the Public Access provision, which requires: "maximum access" and "recreational opportunities" to be provided for "all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse." Cal. Pub. Res. Code § 30210. Additionally, "wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area." Cal. Pub. Res. Code § 30212.5.

The Coastal Act regulates coastal development in order to protect public access: “development shall not interfere with the public’s right of access to the sea,” which includes but is not limited to “the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.” Cal. Pub. Res. Code § 30211. As such, the Coastal Act obligates “any person...wishing to perform or undertake any development in the coastal zone...[to] obtain a coastal development permit.” Cal. Pub. Res. Code § 30600(a). In enacting the Coastal Act, it was the Legislature’s intent that the “public access policies of this article be carried out in a reasonable manner that considers the equities and that balances the rights of the individual property owner with the public’s constitutional right of access.” Cal. Pub. Res. Code § 30214(b).

The Project is inconsistent with the Public Access provision of the Coastal Act because it results in a loss of public parking, thereby impeding upon the public’s right of access to coastal recreation. As provided in section 30212.5, parking is a relevant factor to public access considerations. Provisions for public parking facilitate public access, while loss of public parking inhibits public access. Furthermore, the Coastal Act defines ‘public access’ to include ‘recreational opportunities,’ with a special consideration to balance the equities between property owners and the constitutionally protected public right of access. The Project site has been used for public parking, particularly during events at the Del Mar Fairgrounds, for approximately 15 years. *See* Merkel Report, at 19. The public thereby has a constitutionally protected right to coastal recreation that extends to a protection of the right to attend and recreate at the coastally situated Del Mar Fairgrounds. The significant loss of 15-years’ worth of public parking will hinder the public’s access, resulting in a violation of the California Coastal Act Public Access provision.

III. Conclusion

The Project is inconsistent with the three LCP provisions as described above and violates the Public Access provision of the California Coastal Act. Accordingly, Del Mar Hillside Community Association respectfully requests the Coastal Commission to find substantial issue with the Project and conduct a *de novo* hearing.

Please contact our office if you have any questions regarding this appeal.

Thank you for your consideration of the above concerns.

Sincerely,

A handwritten signature in black ink, appearing to read 'Everett DeLano', with a stylized flourish at the end.

Everett DeLano

Enclosures:

1. Hamilton Biological, *Analysis of Biological Resource Issues Draft EIR for the Proposed Watermark Del Mar Specific Plan Project* (Nov. 13, 2017)
2. Hamilton Biological, *Review of Merkel & Associates Biological Reports, Watermark Del Mar Project* (Nov. 24, 2021)
3. Map: Watermark Exhibit 5: Proposed Modifications To Project Site Plan (Apr. 15, 2020)

ENCLOSURE 1



HAMILTON BIOLOGICAL

November 13, 2017

Everett DeLano
DeLano & DeLano
220 W. Grand Ave.
Escondido, CA 92025

**SUBJECT: ANALYSIS OF BIOLOGICAL RESOURCE ISSUES
DRAFT EIR FOR THE PROPOSED
WATERMARK DEL MAR SPECIFIC PLAN PROJECT**

Dear Mr. DeLano,

At your request, Hamilton Biological, Inc., has reviewed the Draft EIR (DEIR) for the Watermark Del Mar Specific Plan project, located in the City of Del Mar, San Diego County, California. Specifically, Robert Hamilton, President of Hamilton Biological, Inc., reviewed and analyzed DEIR Section 4.3 (Biological Resources), Section 7.3.3 (Cumulative Impacts, Biological Resources), and Section 8 (Alternatives), and DEIR Appendix D (Biological Technical Report and Jurisdictional Delineation by Cummings and Associates, dated June 5, 2017).

Hamilton Biological is a consultancy specializing in field reconnaissance, regulatory compliance, preparing CEQA documentation, and providing third-party review of CEQA documentation. This review has the following purposes:

- To identify any areas in which the CEQA document reaches conclusions not supported by adequate field work and/or thorough review of the scientific literature.
- To identify and discuss any biological impact analyses not treated in a manner consistent with CEQA, its guidelines, or relevant precedents.
- To recommend changes to impact analyses, project design, mitigation measures, and/or resource management practices to avoid or minimize to the maximum extent practicable potentially significant impacts to biological resources, as required under CEQA or other relevant resource-protection regulations.

HAMILTON BIOLOGICAL'S REVIEW PROCESS

To provide context for my evaluation of the current DEIR, I reviewed the relevant portions of the 2017 DEIR and its technical appendices, plus the following technical reports, prepared for various development projects proposed for this project site:

Merkel & Associates, Inc. 2000. Biological Resources Report, Del Mar Office Project. Report dated May 5, 2000, prepared for Ocean Properties Development, San Diego, CA.

Merkel & Associates, Inc. 2004. Biological Resources Report, Jefferson Property. Report dated June 28, 2004, prepared for Batter Kay and Associates, Del Mar, CA.

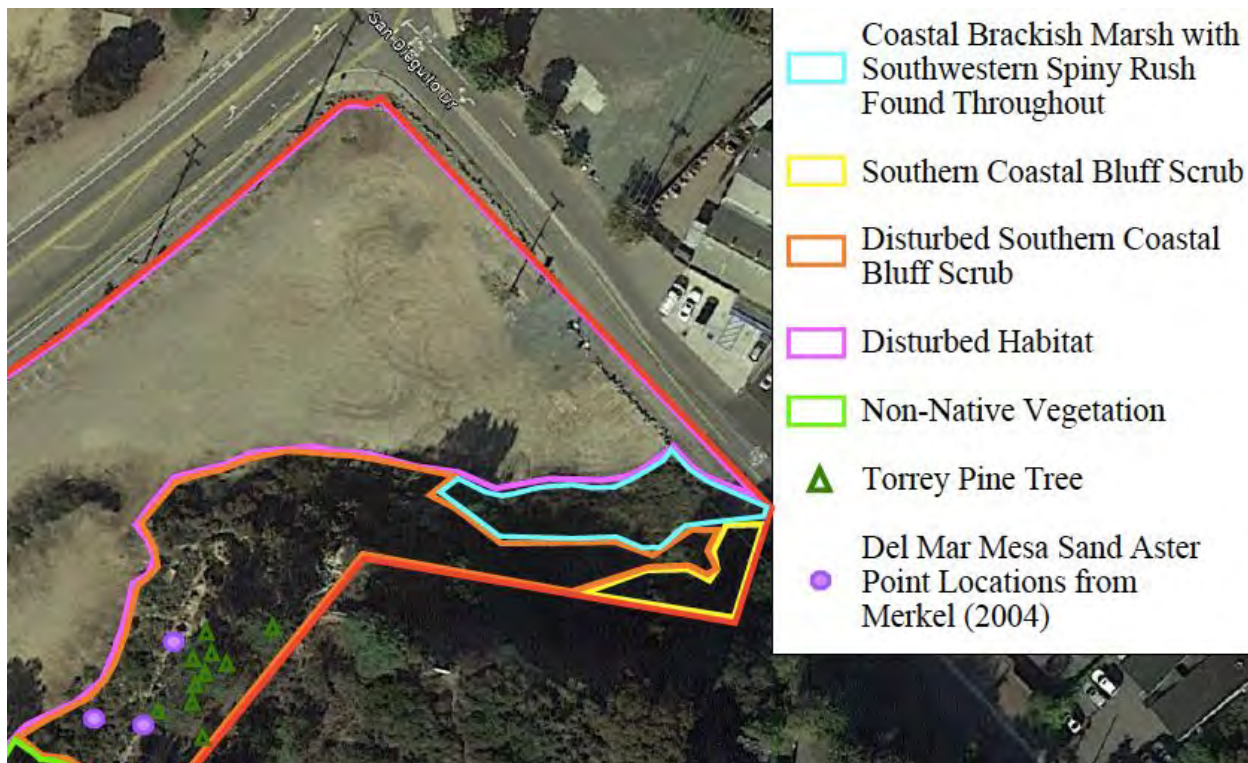
Dudek. 2006. Biological Resources Survey Letter, Riverside Office Development Project, City of Del Mar, California. Report dated January 30, 2006, prepared for Gatzke, Dillon & Balance, Carlsbad, CA.

Cummings & Associates. 2014. Wetland Delineation for the Over APNs 299-100-47 and 299-100-48, City of Del Mar, California. Report dated October 21, 2014, prepared for Watermark DM, L.P., Del Mar, CA. (This

In order to view the current conditions, I visited the project site and neighboring areas for 1.5 hours on November 7, 2017.

IMPROPER AND INADEQUATE DELINEATION OF WETLANDS

Several jurisdictional delineations have been conducted on the project site. The DEIR utilizes a delineation completed by Cummings and Associates (2014). Figure 4 from that report shows a very limited area of jurisdictional wetland in the eastern part of the site:



Reproduction of part of Figure 4 from Cummings and Associates (2014). The area of jurisdictional wetland (i.e., coastal brackish marsh) is limited to the vegetated area outlined in pale blue.

The wetland jurisdiction by Cummings & Associates (2014) updated an earlier unspecified delineation from 2004 – apparently Merkel and Associates (2004). Merkel and Associates' 2004 delineation, and the update by Cummings & Associates (2014) employed "routine on-site determination methods" (Environmental Laboratory. 1987. Corps of Engineers Wetlands Delineation Manual. Technical Report Y-87-1, U.S. Army Engineer Waterways Experiment Station, Vicksburg, MS). In order for "routine on-site determination methods" to be used in a given area, the relevant vegetation, soils, and hydrological indicators must be present and visible. In areas where "positive indicators of hydrophytic vegetation, hydric soils, and/or wetland hydrology could not be found due to effects of recent human activities or natural events," the Corps' "Atypical Situation" methodology should be applied (Environmental Laboratory 1987, p. 73).

In this case, because the wetland delineator failed to detect wetland indicators in the flat area adjacent to the on-site marsh, the delineator has assumed that this area fails to satisfy wetland criteria. But that area is flat due to extensive human modification and ongoing disturbance, actions that have removed or obscured the relevant wetland indicators, site-specific factors that should have led the delineator to employ Atypical Situation methodology.

Several of the Wetland Determination Data Forms that Cummings & Associates completed on the site in 2012 and 2014 include the following information in the "summary of findings":

SUMMARY OF FINDINGS – Attach site map showing sampling point locations, transects, important features, etc.

Hydrophytic Vegetation Present?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Is the Sampled Area within a Wetland?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Hydric Soil Present?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		
Wetland Hydrology Present?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		
Remarks: - drought conditions - source of water unknown - soil at edge of wetland vege has been amended with gravel fill			

The excerpt shown above, from data sheet A-6, shows that the spot in question was delineated as wetland, but that "soil at edge of wetland vege[tation] has been amended with gravel fill." The gravel-amended soils outside of the area delineated as wetland should not be considered appropriate for a "routine" delineation.

Apart from this critical error in the methodology used, the EIR preparer took a risk in not updating the wetland delineation in 2017. Most of the wetland data points were collected in 2012, and only one data point was updated in 2014. As shown above, the data sheets state that the site was delineated under "drought conditions," when the groundwater table may have temporarily dropped. In cases where drought conditions have affected the normal hydrology, and where the soils have been altered and vegetation removed adjacent to the delineated wetland area, there is no way of discerning, through such indirect indicators as soils or vegetation, the actual limits of the area that would satisfy the criteria of a jurisdictional wetland under non-drought circumstances.

During the field visit on November 7, 2017, the most direct and irrefutable wetland indicator — saturation of the upper 12 inches of the soil profile — was clearly visible well outside of the delineated wetland area. Limited areas also supported wetland-indicator plants. See photos 1-6, below:



Photo 1. Facing east toward San Dieguito Drive on 11-7-17. The dark-colored soil shown ranged from moist to muddy.



Photo 2. Close-up view of muddy and moist soil in the area shown in Photo 1, taken on 11-7-17.



Photo 3. Facing north-east toward San Dieguito Drive on 11-7-17. The dark-colored soil shown ranged from moist to muddy.



Photo 4. Standing water and *Salicornia pacifica*, an obligate wetland indicator plant, at the eastern edge of the project site, along San Dieguito Drive, on 11-7-17.

[THIS AREA INTENTIONALLY BLANK]



Photo 5. *Jaumea carnosa* and *Distichlis spicata*, both wetland indicators, growing at the eastern edge of the project site, along San Dieguito Drive, on 11-7-17. Note also dark-colored soil in background.

Photo 6. Close-up view of *Jaumea carnosa* and *Distichlis spicata* in the area shown in Photo 5, taken on 11-7-17.



The wettest areas shown in these photos, as well as the areas vegetated with predominantly wetland-indicator plants, appear to satisfy the California Coastal Commission's one-parameter wetland definition.

During the field visit on November 7, 2017, I used an aerial-based GPS unit to map the approximate northerly limit of standing water, muddy soil, and wetland indicator plants in the northeast part of the project site. See Figure 1, below.



Figure 1. The yellow line shows the approximate northern limit of muddy or moist soil, and wetland indicator plants, observed during the field visit on November 7, 2017.

Given that no appreciable precipitation fell locally for at least several weeks prior to the field visit on November 7, 2017 (<http://w2.weather.gov/climate/index.php?wfo=sgx>), the areas of moist soil apparently represent a high groundwater table.

To determine the actual extent of wetlands — i.e., areas where the root zone remains saturated for at least 15 straight days per year — in areas that have been substantially altered by human activities, a qualified wetland delineator will typically install an array of shallow monitoring wells (i.e., perforated PVC pipes). The wells are monitored for the duration of a normal (non-drought) rainy season to map out the area that satisfies the wetland hydrology criterion under normal, or near-normal, environmental conditions. Without such a direct observation of wetland hydrology, there may be no way to reliably delineate the wetlands on this site, where both soils and vegetation indicators have been substantially altered or obscured.

Because it relies upon an inadequate wetland delineation, the DEIR contains inadequate evidence to support its conclusions about the extent of the wetlands and potential impacts to wetland resources. The available evidence suggests that wetland conditions extend well beyond the delineated area shown in the DEIR.

DEIR'S TREATMENT OF SENSITIVE PLANT SPECIES

Torrey Pine

The DEIR identifies a total of 13 Torrey Pines (*Pinus torreyana* ssp. *torreyana*) on the project site. The California Native Plant Society (CNPS) assigns this species Rank 1B.2, meaning that it is "rare or endangered in California and elsewhere" and "moderately threatened in California." As noted on Page 4.1-3 of the DEIR, Torrey Pine is "the rarest pine in North America," and naturally occurs only within a very limited range in coastal San Diego County that includes the project site. Review of the Consortium of California Herbaria web page shows that scientific collections of Torrey Pine in Del Mar date back to 1933, when Lyman Benson recorded the species on an ocean bluff within a half-mile of the project site. See (http://ucjeps.berkeley.edu/cgi-bin/new_detail.pl?accn_num=POM370044&YF=1):

Specimen number	POM370044
Determination	<i>Pinus torreyana</i> <small>More information: Jepson Online Interchange</small>
Collector, number, date	Lyman Benson, 4287, 4 2 1933
County	San Diego
Locality	US 101 Del Mar.
Elevation	30m
Habitat	Pacific Ocean watershed, upper Sonoran, sandy soil
Coordinates	32.96022 -117.26792 <small>BerkeleyMapper [or without layers, here]</small>
Datum	WGS84; ER = 805 m
Coordinate source	Google Earth
	<i>phenology</i> fertile
	<i>other</i>
Voucher information	<i>label</i> 9f152bc0-07b6-4371-ba1f-6a35b8b4189c
	<i>numbers</i>
	100
Annotations and/or curatorial actions	: <i>Pinus torreyana</i> , Steve Boyd, 2002-02 current determination (uncorrected): <i>Pinus torreyana</i>
Notes	Ocean bluff.;

While acknowledging that they failed to determine whether this species was planted on and around the project site, or occurs there naturally, or some combination, the biologists of Merkel & Associates (2000) treated the trees on the project site as naturally occurring. Subsequent reports by Merkel & Associates (2004) and Dudek (2006) simply noted the species' presence and did not offer an opinion on the matter. At several points in the DEIR, the project biologists identify the Torrey Pines occurring on the site as a "sensitive species," rather than simply a landscaping element (see, for example, Pages 2-2, 4.3-5, 4.3-16).

Page 4.3-13 of the DEIR states:

Chapter 23.50 of the City of Del Mar's Municipal Code contains a number of codes regarding protected trees. The City of Del Mar Community Plan has as one of its major goals the preservation of natural vegetation, including tree species. The Tree Removal Ordinances identified in Chapter 23.50 identify protected trees, define acceptable reasons for removing

protected trees, and define when a Tree Removal Permit is required. **The Torrey Pine species is of particular significance to the City, and is therefore protected from removal without City authorization for just cause.** [emphasis added]

Page 4.1-4 states, "The Torrey pine is indigenous to this region and has become an iconic and protected tree by the City of Del Mar."

Despite the "particular significance" of this "iconic and protected tree" in the City of Del Mar, the DEIR's impact analysis writes off the 13 mature representatives of this rare species that exist on the project site:

According to the MSCP, the only naturally occurring population of Torrey Pines occurs at Torrey Pines State Preserve. As such, the Torrey Pines on-site are considered planted and are not naturally occurring.

The MSCP does not appear to provide a detailed analysis in support of its conclusion that Torrey Pines occur naturally only within Torrey Pines State Preserve, and other sources suggest that small numbers may naturally occur outside of the Preserve. For example, the IUCN Red List of Threatened Species provides the following analysis:

Urbanization is encroaching on the mainland population (ssp. *torreyana*) with the effect that trees outside the Torrey Pines State Park are still disappearing. There is also an acute risk of a major fire wiping out a large part of the population, a risk that is known to increase for various reasons where housing developments are near the population in a potentially fire-prone area. The present decline is probably slow, but ongoing in one of the two subspecies (mainland population). The actual area of occupancy is very small for the two subspecies combined, less than 1 km² and definitely less than 10 km². The population is severely fragmented (two subpopulations on an island and two on the mainland) and there is continuing decline. So although the island subspecies is listed as Vulnerable, the species as a whole qualifies for listing as Critically Endangered. If, the species in future is completely confined to the protected areas i.e. all plants outside of those areas have been lost, then the species status might well change to Vulnerable under criterion D2.

Regardless of whether the Torrey Pines on the project site are planted, they are mature, healthy specimens of a very rare tree species, growing in suitable coastal scrub habitat within the species' historical range. If the City is serious about preserving healthy examples of this "iconic and protected tree," the site plan should be revised to avoid the 13 Torrey Pines now proposed for removal or relocation.

Del Mar Mesa Sand Aster

The CNPS assigns this species Rank 1B.1, meaning that it is "rare or endangered in California and elsewhere" and "seriously threatened in California." This taxon is known from only a handful of sites between Point Loma and Encinitas, with most records in the Del Mar area (<http://www.calflora.org>). Rather than avoiding impacts to this extremely rare plant, the proposed project would remove all 40 plants known from the site and then attempt to relocate them "to a preserved area on site within the disturbed southern coastal bluff scrub or within the disturbed habitat to be enhanced to southern

coastal bluff scrub within the 50-foot wetland buffer.” Such translocation efforts have a spotty track record of long-term success, at best. Given the rarity of this plant, it would be preferable to avoid the existing plants and preserve them in place.

More importantly, an adequate CEQA document would acknowledge that the California Coastal Commission typically recognizes areas that support CNPS Rank 1B.1 plants as Environmentally Sensitive Habitat Area (ESHA). In a unanimous decision published earlier this year, the California Supreme Court held in *Banning Ranch Conservancy v. City of Newport Beach* that CEQA requires EIRs to identify potential ESHA and account for those areas in their analysis of project alternatives and mitigation measures. See:

<https://m.lw.com/thoughtLeadership/california-supreme-court-CEQA-requires-study-potential-impacts-ESHA>

The relevance is that, if the Coastal Commission were to conclude (as they normally do with regard to CNPS Rank 1B.1 plants) that areas supporting Del Mar Mesa Sand Aster satisfy ESHA criteria, Mitigation Measure MM-BIO-3 would be rendered inoperable. See *Bolsa Chica Land Trust v. Superior Court*:

. . . the language of section 30240 does not permit a process by which the habitat values of an ESHA can be isolated and then recreated in another location. Rather, a literal reading of the statute protects the area of an ESHA from uses which threaten the habitat values which exist in the ESHA. Importantly, while the obvious goal of section 30240 is to protect habitat values, the express terms of the statute do not provide that protection by treating those values as intangibles which can be moved from place to place to suit the needs of development. Rather, the terms of the statute protect habitat values by placing strict limits on the uses which may occur in an ESHA and by carefully controlling the manner uses in the area around the ESHA are developed.

Thus, were the Coastal Commission to identify as ESHA the on-site habitat of the Del Mar Mesa Sand Aster, no mechanism would be available under the Coastal Act to permit relocation of the 40 Del Mar Mesa Sand Aster plants to a more convenient location.

Since the DEIR fails to identify potential ESHA, in the form of disturbed coastal bluff scrub habitat occupied by the Del Mar Mesa Sand Aster, and does not account for that potential ESHA in its analysis of project alternatives and mitigation measures, the DEIR is deficient per the California Supreme Court’s unanimous published opinion in *Banning Ranch Conservancy v. City of Newport Beach*.

Cooper’s Rein Orchid

This plant is assigned CNPS Rank 4.2, referring to species of limited distribution in California that should be monitored regularly; moderately threatened in California.

Cooper’s Rein Orchid was previously reported to occur on the project site (Merkel & Associates 2000, 2004; Dudek 2006), but the DEIR fails to mention it. What is the known and potential status of this sensitive species on the project site, and what steps, if any, are being taken to avoid potentially significant impacts to Cooper’s Rein Orchid?

SUMMARY AND CONCLUSION

As discussed herein, the DEIR for the Watermark Del Mar Specific Plan Project contains two major deficiencies:

1. The DEIR's wetland delineation was conducted during drought conditions using routine methods not appropriate for use in a disturbed area that lacks the field indicators (vegetation, soils, and hydrology). cursory examination of the site on November 7, 2017, showed that moist/muddy soil, standing water, and wetland indicator plant species occur well outside of the delineated jurisdictional wetland. In order to provide the required avoidance of wetlands, plus a minimum 50-foot buffer, a completely revised wetland delineation must be completed using appropriate "Atypical Situation" methodology.
2. The DEIR fails to identify potential ESHA, in the form of habitat for the Del Mar Mesa Sand Aster, a CNPS Rank 1B.1 plant, and does not account for that potential ESHA in its analysis of project alternatives and mitigation measures. The DEIR is, therefore, inconsistent with the California Supreme Court's direction to CEQA Lead Agencies in *Banning Ranch Conservancy v. City of Newport Beach*.

These flaws in the CEQA analysis are so fundamental that they cannot be adequately addressed through response to comments and minor project alterations. Additional field work, analysis, and site-appropriate project design and mitigation planning will be required. At that point, a revised DEIR should be recirculated for another round of public review.

I appreciate the opportunity to evaluate the CEQA documentation for this important project. Please call me at 562-477-2181 if you have questions or wish to further discuss any matters; you may send e-mail to robb@hamiltonbiological.com.

Sincerely,



Robert A. Hamilton, President
Hamilton Biological, Inc.
<http://hamiltonbiological.com>

attachment: Curriculum Vitae

cc: David Mayer & Marilyn Fluharty, California Dept. of Fish & Wildlife

Karl Schwing, Deborah Lee, Erin Prahler, Gabriel Buhr, Jonna Engel, Laurie Kooten, Lauren Garske-Garcia, California Coastal Commission

ENCLOSURE 2

November 24, 2021

Joseph Smith, Planning Director
City of Del Mar
1050 Camino del Mar
Del Mar, CA 92014

**SUBJECT: REVIEW OF MERKEL & ASSOCIATES
BIOLOGICAL REPORTS, WATERMARK DEL MAR PROJECT**

Dear Mr. Smith,

Hamilton Biological is a consultancy specializing in field reconnaissance, regulatory compliance, preparing CEQA documentation, and providing third-party review of biological technical reports and CEQA analyses. In 2017, Hamilton Biological reviewed biological issues raised in the Draft EIR (DEIR) for the Watermark Del Mar Specific Plan project, located in the City of Del Mar, San Diego County, California. This letter, prepared for the law firm of DeLano & DeLano, reviews two biological reports prepared by Merkel & Associates in 2018 and 2020.

Copies of the letter are being sent to DeLano & DeLano and to relevant staff at CDFW and the California Coastal Commission, State agencies that may have a role to play in the permitting of any project on this site.

REVIEW METHODS

For my 2017 review, I conducted a site visit for 1.5 hours on November 7, 2017 and evaluated relevant portions of the 2017 DEIR and its technical appendices, as well as the following technical reports:

Merkel & Associates, Inc. 2000. Biological Resources Report, Del Mar Office Project. Report dated May 5, 2000, prepared for Ocean Properties Development, San Diego, CA.

Merkel & Associates, Inc. 2004. Biological Resources Report, Jefferson Property. Report dated June 28, 2004, prepared for Batter Kay and Associates, Del Mar, CA.

Dudek. 2006. Biological Resources Survey Letter, Riverside Office Development Project, City of Del Mar, California. Report dated January 30, 2006, prepared for Gatzke, Dillon & Balance, Carlsbad, CA.

Cummings & Associates. 2014. Wetland Delineation for the Over APNs 299-100-47 and 299-100-48, City of Del Mar, California. Report dated October 21, 2014, prepared for Watermark DM, L.P., Del Mar, CA. (This

For the current review, I visited the project site and vicinity for 1.5 hours on October 21, 2021 and reviewed the most recent biological reports prepared in support of the currently proposed project:

Merkel & Associates, Inc. 2018. Watermark Del Mar Project, Jurisdictional Resources Delineation Report and Environmentally Sensitive Habitat Area (ESHA) Evaluation. Report dated December 6, 2018, prepared for Watermark DM L.P. Del Mar, CA.

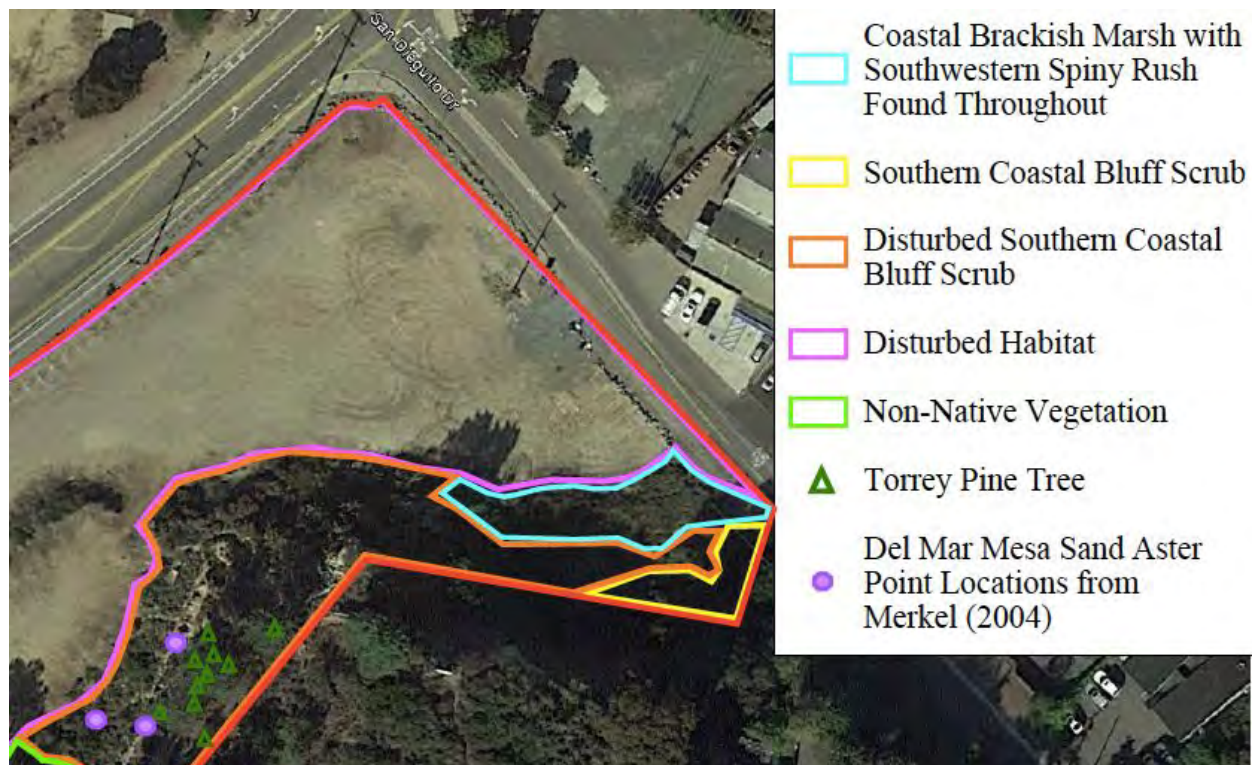
Merkel & Associates, Inc. 2020. Addendum to the Jurisdictional Resources Delineation Report and Environmentally Sensitive Habitat Area (ESHA) Evaluation (M&A December 2018) for the Watermark Del Mar Project. Report dated March 31, 2020, prepared for City of Del Mar, Planning and Community Development Director, Del Mar, CA.

REVIEW OF WETLAND DELINEATION

This review starts by summarizing my earlier (2017) critique of the previous delineation (Cummings & Associates 2014).

Review of Cummings & Associates Delineation (2014)

Figure 4 from Cummings & Associates (2014), reproduced below, identified only a very limited area of jurisdictional wetland in the eastern part of the site.



Reproduction of part of Figure 4 from Cummings and Associates (2014). The area of jurisdictional wetland (i.e., coastal brackish marsh) is limited to the vegetated area outlined in pale blue.

Cummings & Associates (2014) determined the area of jurisdictional wetlands using “routine on-site determination methods” (Environmental Laboratory. 1987. Corps of Engineers Wetlands Delineation Manual. Technical Report Y-87-1, U.S. Army Engineer Waterways Experiment Station, Vicksburg, MS). As noted in my 2017 review, “routine on-site determination methods” require the relevant vegetation, soils, and hydrological indicators to be present and visible. In areas where “positive indicators of hydrophytic vegetation, hydric soils, and/or wetland hydrology could not be found due to effects of recent human activities or natural events,” the Corps’ “Atypical Situation” methodology should be applied (Environmental Laboratory 1987, p. 73).

Because they failed to detect wetland indicators in the flat area adjacent to the area they delineated as coastal brackish marsh, Cummings & Associates (2014) assumed that the area failed to satisfy wetland criteria. As I noted in 2017, that area is flat due to extensive human modification and ongoing disturbance, actions that have removed or obscured the relevant wetland indicators. For example, several of their Wetland Determination Data Forms include the following information in the “summary of findings”:

SUMMARY OF FINDINGS – Attach site map showing sampling point locations, transects, important features, etc.

Hydrophytic Vegetation Present?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	Is the Sampled Area within a Wetland? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Hydric Soil Present?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
Wetland Hydrology Present?	Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
Remarks: - drought conditions - source of water unknown - soil at edge of wetland vege has been amended with gravel fill		

The excerpt shown above, from data sheet A-6, completed on August 21, 2012, shows that the spot in question was delineated as wetland, but that “soil at edge of wetland vege[tation] has been amended with gravel fill.” Due to the presence of gravel-amended soils in the area being evaluated as a potential wetland, the delineator was not justified in conducting a routine delineation. Furthermore, most of the wetland data points used in the 2014 delineation were collected in 2012, and only one data point was updated in 2014. As shown above, the data sheets state that the site was delineated under “drought conditions,” which affects the site’s hydrology. In cases where drought conditions have affected the normal hydrology, and where the soils have been altered and vegetation removed adjacent to the delineated wetland area, there may be no reliable way of discerning, through such indirect indicators as soils or vegetation, the actual limits of the area that would satisfy the criteria of a jurisdictional wetland under non-drought circumstances and without the placement of gravel fill. These site-specific factors should be addressed by using Atypical Situation methodology.

During my earlier field visit on November 7, 2017, I observed saturation of the upper 12 inches of the soil profile — the most direct and irrefutable wetland indicator — well outside of the area delineated as wetland. Limited areas outside of the delineated wetlands also supported wetland-indicator plants. See photos 1–6, on the following pages.



Photo 1. Facing east toward San Dieguito Drive on 11-7-17. The dark-colored soil shown ranged from moist to muddy.
Photo: R. A. Hamilton.

Photo 2. Close-up view of muddy and moist soil in the area shown in Photo 1, taken on 11-7-17.
Photo: R. A. Hamilton.



Photo 3. Facing northeast toward San Dieguito Drive on 11-7-17. The dark-colored soil shown ranged from moist to muddy. *Photo: R. A. Hamilton.*



Photo 4. Standing water and *Salicornia pacifica*, an obligate wetland indicator plant, at the eastern edge of the project site, along San Dieguito Drive, on 11-7-17. Photo: R. A. Hamilton.

Photo 5. *Jaumea carnosa* and *Distichlis spicata*, both wetland indicators, growing at the eastern edge of the project site, along San Dieguito Drive, on 11-7-17. Note also dark-colored soil in background. Photo: R. A. Hamilton.



Photo 6. Close-up view of *Jaumea carnosa* and *Distichlis spicata* in the area shown in Photo 5, taken on 11-7-17. Photo: R. A. Hamilton.

As stated in my 2017 review, the wettest areas shown in Photos 1–6, as well as the areas vegetated with predominantly wetland-indicator plants, appeared to satisfy the California Coastal Commission’s one-parameter wetland definition.

During the field visit on November 7, 2017, I used an aerial-based GPS unit to map the approximate northerly limit of standing water, muddy soil, and wetland indicator plants in the northeast part of the project site. See Figure 1, below.

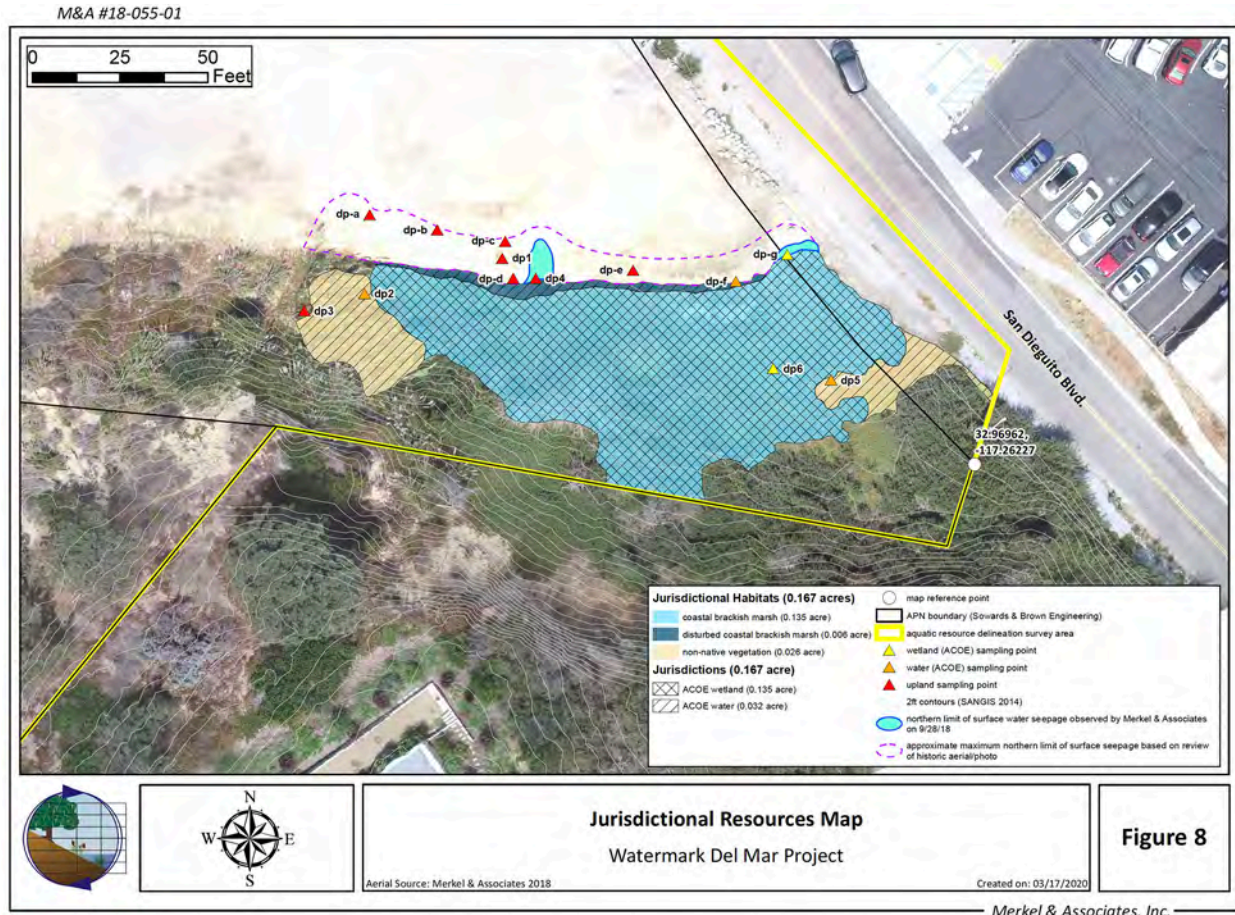


Figure 1. The yellow line shows the approximate northern limit of muddy or moist soil, and wetland indicator plants, observed by Robert Hamilton during the field visit on November 7, 2017.

My 2017 review of Cummings & Associates (2014) concluded that, because the wetland delineation by was conducted using routine methodology — despite major disturbances to soils, vegetation, and hydrology — that delineation provided inadequate evidence to support the project biologists’ conclusions about the limited extent of the wetlands and potential impacts to wetland resources. The evidence available at that time led me to conclude that wetland conditions extended beyond the area delineated by Cummings & Associates (2014).

Review of Merkel & Associates Wetland Delineation (2018, 2020)

The exhibit reproduced below (Figure 8 from Merkel & Associates 2020) shows the extent of jurisdictional wetlands currently delineated by Merkel & Associates.



Page 4 of Merkel & Associates' 2018 delineation report states:

As discussed within Section 2.0 of this report, the history of the site use, site grade modifications, and source of hydrology makes the delineation efforts complex; however, the area has not been classified as "significantly disturbed" or "naturally problematic", rather the conditions are expected to be considered relatively "normal".

On pages 31–32, the authors reject my contention that delineation of this area should be accomplished using Atypical Situation methodology:

In reviewing previous documents prepared for the project site, photos of the site taken on November 7, 2017 seem to show seepage/sheet flow conditions within the disturbed habitat (Hamilton Biological 2017, photo 1). This boundary in combination with the potential boundary evident on the Google Earth image is presented on Figure 8. The document prepared by Hamilton Biological states that the site should be classified as "atypical" per the 1987 USACOE Wetland Delineation Manual due to the extensive human modification and ongoing disturbance, which in Hamilton's opinion have removed or obscured the relevant wetland indicators, thereby classifying the area as atypical.

However, as discussed in Section 2.1.3 of this report, the site conditions at this location of being level and unvegetated appear to be consistent since the 1964 image, and to some degree the 1953 image. Further, results from delineations conducted over the past 18 years have not noted substantive changes in site use or site conditions.

As discussed on page 3 of this letter, the wetland delineation data sheets completed by Cummings & Associates on August 21, 2012, stated “soil at edge of wetland vegetation] has been amended with gravel fill.” Local resident Arnold Wiesel (pers. comm.) reports having observed trucks dumping gravel across the northern part of the property in early 2021. **The placement of any type of fill in a wetland is a “substantive change in site use or site conditions.”** Remarkably, however, Merkel & Associates (2018:22) characterizes the dumping of gravel on this site as simply a standard “dust control” measure:

Since approximately 2003, the level unvegetated areas on the site have been used as overflow parking for the Del Mar Fairgrounds. During this time, portions of the site have been modified to support vehicle parking uses inclusive of **dust control such as application of gravel**, placement of large boulders along the northern perimeter, and demarcation of parking spots with white chalk. [emphasis added in bold]

Spreading large volumes of gravel across the northern part of the site, where the soil is moist and muddy, is not simply a “dust control” measure. It is the placement of artificial fill in a potential wetland. See, for example, Photos 7–9 and Figures 2 and 3, below.



Photo 7. View from the western edge of the property, near Jimmy Durante Blvd., facing northeast, on 10-21-21. As shown, a large volume of pea gravel had been spread across the northern part of the site.
Photo: R. A. Hamilton.

Photo 8. View from San Dieguito Drive, near the northern edge of the property, facing southwest, on 10-21-21. The gravel dumped on this part of the site is larger than the pea gravel shown in Photo 7. *Photo: R. A. Hamilton.*





Photo 9. View from the southern part of the property facing north toward the intersection of Jimmy Durante Blvd. and San Dieguito Drive, during a rain event on 10-25-21. The rectangular pool of rain water, its northern limit forming an unnaturally straight line, demarcates the limit of where gravel was most recently dumped to raise the elevation of the northern part of the site.

Photo: Arnold Wiesel.



Figure 2. Aerial image dated December 23, 2014, showing extensive areas of dark soil in the northern 0.5 acre of the parking lot area. Gravel had been dumped at the parking lot entrance, near the area where persistent wetland conditions have been documented along the shoulder of San Dieguito Drive (see Photos 4–6 on page 5 and Photos 10–12 on page 12 of this letter). *Aerial source: Google Earth Pro.*



Figure 3. Aerial image dated November 8, 2016, showing that some time after December 23, 2014, light-colored gravel was spread across the northern part of the property, raising the elevation of approximately 0.5 acre of the site and burying the areas of dark soil shown in Figure 2 on the previous page. The darker gravel placed at the parking lot entrance off San Dieguito Drive is also apparent. *Aerial source: Google Earth Pro.*

Page 35 of Merkel & Associates (2018) described the City's Vector Habitat Remediation Project:

Minor changes to the jurisdictional boundary between the multiple surveys from 2000 to 2018 are primarily a result of change in mapping capabilities over the 18 year period. However, the significant change along the property boundary, near San Dieguito Drive is expected to be the direct result of the City's Vector Habitat Remediation Program, implemented in 2013 which removed jurisdictional resources and was intended to capture surface water seepage into a French Drain system.

The City's project to remove standing water from the main brackish marsh area and pipe it into San Dieguito Creek represents a human-caused change in the natural hydrology of this area. Even if the French Drain system failed to work as intended, the trenching alone and placement of a large volume of gravel along the shoulder of San Dieguito Drive undoubtedly affected the site's hydrology.

Page 32 of Merkel & Associates (2018) states:

Even if this area were classified as a "problem area" or similar, the procedures for evaluating difficult wetland situations per the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Arid West Region confirm that wetland hydrology is not present due to the lack of hydric soils and hydrophytic vegetation. Further the moisture in the soils

at this location are not due to a high water table that exists at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes.

Repeatedly dumping of gravel across the northern part of the site over a period of many years has fundamentally changed the site's topography, drainage patterns, soil characteristics, and capacity to support vegetation. The City's installation of a French Drain system also altered the site's hydrology. In addition, operating the site as a commercial parking lot has compressed the soil, further inhibiting the growth of vegetation. Nevertheless, as Photos 10-12 show, placement of a line of boulders along the shoulder of San Dieguito Drive has locally mitigated these human alterations, allowing the expression of unambiguous wetland characteristics — such as standing water and obligate wetland indicator plant species — outside of the limited portion of the property delineated as wetlands/waters by Merkel & Associates (2018, 2020).



Photo 10. Showing *Jaumea carnosa*, an obligate wetland indicator plant species, growing north of delineated wetlands, 10-21-21. Photos 5 and 6 on page 5 show *Jaumea carnosa* growing in the same location in 2017. Note also large areas of gravel spread on either side of the line of boulders.
Photo: R. A. Hamilton.

Photo 11. *Salicornia pacifica*, an obligate wetland indicator plant species, growing north of the delineated wetlands along San Dieguito Drive, 10-21-21. The salt crust evident in this photo may be considered an indicator of wetland hydrology.

A slight increase in ground elevation can be seen on the right side of the photo, where gravel has been spread across the parking lot.

Photo: R. A. Hamilton.





Photo 12. *Distichlis spicata*, a facultative wetland indicator plant species, growing in standing water north of the delineated wetlands along San Dieguito Drive, 10-21-21. *Distichlis spicata* is also coming up through the gravel spread along the road shoulder. Photo 4 on page 5 shows standing water in the same area in 2017. Photo: R. A. Hamilton

At a bare minimum, delineation of wetlands on the project site must include the areas of standing water and/or predominantly wetland indicator plants shown in Photos 4–6 and 10–12. Given that obvious, unambiguous wetland characteristics have persisted in this part of the site for at least four years — and were specifically called out and photographed in my letter report dated November 13, 2017 — why did Merkel & Associates (2018, 2020) fail to complete any field data sheets in this part of the property?

The larger question is how to properly determine the limits of jurisdictional wetlands in the low-lying half-acre of the property that has been subjected to repeated dumping of gravel to raise the soil surface elevation above the level of the wetlands that persist along San Dieguito Drive.

Figure 1 and Photos 1–3 in this letter show a large area of muddy/moist soil, and wetland indicator plants, that I documented on the site on November 7, 2017, under drought conditions¹. Figure 2 in this letter shows dark areas of soil in the northern part of the site in December 2014, also under drought conditions¹. Local resident Arnold Wiesel reports that dark, moist soil continues to appear in large patches across the northern part of the site during high tides, suggesting that the site's hydrology may be tidally influenced. Please see Photos 13–15, on the next page, which provide additional recent evidence of dark areas of moist soil not associated with a rainfall event¹.

¹ <https://www.weather.gov/wrh/climate?wfo=sgx>



Photo 13. Facing north toward San Dieguito Drive on 10-2-19. This photo, showing an extensive area of dark, moist soil was taken at approximately 8:31 a.m., 157 minutes ahead of a 6.2-foot high tide in the San Diego area. *Photo: Arnold Wiesel*

Photo 14. Facing northeast toward San Dieguito Drive on 11-16-21. This photo, showing extensive patches of dark, moist soil and extensive gravel was taken at approximately 8:19 a.m., 73 minutes after a 6.1-foot high tide in the San Diego area. *Photo: Arnold Wiesel*



Photo 15. Facing east toward San Dieguito Drive on 11-16-21. This photo, showing extensive patches of dark, moist soil and extensive gravel at the entrance to the parking lot area was taken at approximately 8:19 a.m., 73 minutes after a 6.1-foot high tide in the San Diego area. *Photo: Arnold Wiesel*

Page 17 of Merkel & Associates' 2018 jurisdictional delineation states:

As part of Geocon's groundwater evaluation, seven borings (B-6 through B-12) were performed and one monitoring well (MW-1) was installed near the identified wetlands in the northeastern portion of the site. Groundwater depth in Borings B-6 through B-12 ranged from 12 to 15 feet below grade and from about 8.5 to 11 feet below grade several hours after drilling. Based on Geocon's findings, groundwater in the northeastern portion of the Project site was determined to be at a depth of approximately six feet below existing grade.

This may be true, so far as it goes, but this discussion leaves a number of relevant questions unanswered. See, for example, page 22 of Merkel & Associates (2018), which offers the following unsatisfying explanation for the appearance of dark-colored soils in parts of the site:

It also appears from some of the photographs reviewed and based on site reviews that a dust control agents or soil binders may have been applied in the past. This is suggested by dark patterning in some photographs from the mid-2000s (most specifically Google Earth January 3, 2006) as well as color and texture of some areas not within low points or areas that would be expected to collect moisture. The appearance of the material is similar to that produced by lignin based dust control agents or magnesium chloride dust control agents. The relevance of the potential past treatment of the site by dust control agents is that these agents influences soil color making it darker, diminish permeability increasing run-off, and scavenge moisture from the air and surrounding soil due to hygroscopic properties. The present mottled distribution of dark and light soils and large expanses of dark soil observed in the mid-2000s suggest such treatments may have been previously applied.

The above-quoted discussion is limited to historical aerial imagery from the mid-2000s, yet extensive areas of dark, moist soil continue to be observed to this day. They are limited to the northern part of the site and often seem to be associated with high tides (Arnold Wiesel pers. comm.). Observations of standing water, muddy soil, and obligate wetland plants outside of the delineated wetlands, as well as the repeated dumping of large amounts of gravel across the northern part of the site, all indicate that the area of wetlands — at least those satisfying Coastal Commission criteria — is more extensive than has been delineated to date. Does a perched water table exist in any part of the site? Is there greater seepage of surface water across the surface of the site than has been recognized? Do tidal fluctuations and/or capillary action contribute to the periodic appearance of dark, moist soil?

The reports by Merkel & Associates (2018, 2020) fail to adequately address these questions. Furthermore, I find it concerning that Merkel & Associates (a) failed to evaluate the areas of apparent wetland depicted in Photos 4–6 and 10–12 of this letter, and (b) argued that the parking of vehicles on the site, the widespread dumping of gravel across the northern part of the site, and even the installation of a French Drain in the northeastern part of the site do not represent human alterations of sufficient magnitude to disqualify delineation of the site's wetlands using routine methods. The story does not add up.

Finally, consider the following conclusion presented on page 35 of the Merkel & Associates 2018 delineation report:

Based on the results of the current investigation, while portions of the disturbed habitat support surface saturation/muddy conditions (refer to Data Point 4), these conditions do not meet the wetland hydrology indicator of Saturation (A3) since the saturation is from surface runoff from the marsh habitat and not associated with an existing water table (i.e., no water within the soil pit even with a depth of 18 inches) located immediately below the saturated zone. In addition, ordinary high water marks (e.g., natural line impressed on the bank, shelving, bed and banks, etc.) are not present. Hydric soils are not present nor are hydrophytic vegetation present (at the surface or in the soil profile).

Section 13577 of the California Code of Regulations states:

Wetland shall be defined as land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or to support the growth of hydrophytes, and shall also include those types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent and drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentrations of salts or other substances in the substrate. Such wetlands can be recognized by the presence of surface water or saturated substrate at some time during each year and their location within, or adjacent to, vegetated wetlands or deep-water habitats.

For purposes of this section, the upland limit of a wetland shall be defined as:

(A) the boundary between land with predominantly hydrophytic cover and land with predominantly mesophytic or xerophytic cover;

(B) the boundary between soil that is predominantly hydric and soil that is predominantly nonhydric; or

(C) in the case of wetlands without vegetation or soils, the boundary between land that is flooded or saturated at some time during years of normal precipitation, and land that is not.

As discussed herein, predominantly hydrophytic vegetation has developed in a limited portion of the flat, northern part of the site that has not been subject to extensive and repeated disturbance by the dumping of gravel and parking of vehicles; see Photos 4–6 and 10–12. Criterion (C) also identifies as coastal wetlands areas with “surface water or saturated substrate at some time during each year.” Section 13577 does not state or imply that areas saturated by a perched water table do not satisfy wetlands criteria.

Page 4 of Merkel & Associates (2020) states:

As we understand, the applicant is looking to adjust the jurisdictional boundary in effort to find a path forward. However, it is our recommendation that the width of the buffer be adjusted as it is a matter of policy application, while the jurisdictional boundary is a matter of measureable [stet] physical factors.

The measurable physical factors on this site are dramatically affected by human alterations of the site’s hydrology, soils, and vegetation. As reviewed in this letter, the available evidences suggests that the jurisdictional boundary recognized by Merkel & Associ-

ates has been artificially established by the repeated dumping of large volumes of gravel on the adjacent parking lot over a period of decades. Parking cars and installing a French Drain on the site have also affected the site's physical factors. In a limited area along San Dieguito Drive where boulders were placed, locally inhibiting the dumping of gravel and parking of cars, unambiguous physical factors characteristic of wetlands have developed well outside of the wetland boundary delineated by Merkel & Associates (see Photos 4–6 and 10–12).

Recommendations for Evaluating Disturbed Wetlands

To address the relevant questions unanswered by Merkel & Associates (2018, 2020), I recommend that geotechnical site testing be conducted to determine how far down gravel fill has penetrated native soil across the northern part of the site. On November 24, 2021, I spoke with Torin Ng, Staff Engineer at Associated Soils Engineering, Inc., in Signal Hill, CA (<http://www.associatedsoils.com/>). Mr. Ng indicated that such an investigation could be readily conducted by drilling down through the gravel-filled area and drilling into the nearby wetlands that have not been subject to fill. By comparing the results, a geotechnical engineer could evaluate the extent to which the northern part of the site has been artificially raised by the repeated placement of fill over the years. He estimated that his company could complete such an investigation and report for a cost of approximately \$4,000 to \$5,000.

I also recommend establishing an array of shallow (15-inch-deep) piezometers across the northern part of the project site². Monitoring the shallow piezometers through the rainy season — taking readings at low and high tides — would provide important data on the site's hydrology within the root zone across the disputed northern part of the site.

In my opinion, these types of detailed investigations are needed to provide a valid basis for determining the extent of Coastal Commission jurisdictional wetlands on this heavily altered site.

REVIEW OF MERKEL & ASSOCIATES ESHA OPINIONS

Section 30107.5 of the California Coastal Act defines “Environmentally Sensitive Area” (also referred to as Environmentally Sensitive Habitat Area or ESHA) as “any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments.”

² See, for example, https://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/nrcs142p2_052914.pdf

Section 30240 of the California Coastal Act requires that proposed new development be located outside of ESHA, with appropriate project design and designation of buffers adequate to ensure that development does not degrade ESHA. I have evaluated the arguments set forth by Merkel & Associates (2018, 2020) in support of their opinion that no portion of the project site warrants designation as ESHA.

Coastal Wetland ESHA

Merkel & Associates (2020) identified 0.17 acre of jurisdictional wetlands/waters on the project site. As discussed herein, their delineation understates the area of wetlands/waters by an unknown amount, depending upon how areas subjected to dumping of gravel and other disturbances are ultimately delineated. As quantified by Merkel & Associates (2018:39), the site's wetlands support approximately 195 individuals of a special-status plant species, Southwestern Spiny Rush (*Juncus acutus* ssp. *leopoldii*), which is given Rank 4.2 by the California Native Plant Society (CNPS), a watch-list for moderately threatened plants. Page 50 of Merkel & Associates (2018) suggests that "the site is not expected to contribute to the long-term viability of southwestern spiny rush," but does not explain the basis for this conclusion.

Even small coastal wetlands may be designated as ESHA by the Coastal Commission, and the limited area of wetlands delineated by Merkel & Associates appears to satisfy the requirements for ESHA, supporting at least one special-status plant species and occurring at the base of a bluff vegetated with disturbed native coastal scrub that includes multiple additional special-status plant species, including a healthy stand of Torrey Pine (*Pinus torreyana*). I do not believe that Merkel & Associates (2018, 2020) adequately explained why the site's coastal wetlands fail to satisfy ESHA criteria.

Coastal Wetland Buffer

Appeal of the proposed project to the California Coastal Commission would subject the project to *de novo* review to determine whether the project complies with the California Coastal Act, but the Commission often refers to the local jurisdiction's certified Local Coastal Program for guidance. The topic of wetland buffers in the City of Del Mar (regardless of whether the wetland is designated as ESHA) is addressed in Section 30.53.100 of the City's Local Coastal Program Implementing Ordinances:

- A. To protect wetland areas, all new development projects which are located on property which includes or lies in proximity to wetland habitat, as defined in this Chapter, shall include the provision of a continuous wetland buffer. Unless otherwise specified herein, the wetland buffer shall be a minimum of 100 feet in width. The wetland buffer shall be measured landward from the boundary of wetlands as delineated on plans required pursuant to the application submittal requirements of this Chapter.
- B. A wetland buffer of less than 100 feet in width shall be allowed only with the concurrence of the California Department of Fish and Game [now California Department of Fish and Wildlife or CDFW] and when the Planning Commission makes the following findings:

1. 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, based on site-specific factors.

a. When making such a finding, the Planning Commission shall, in consultation with the California Department of Fish and Game, consider site-specific factors such as the type and size 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.

b. When making a finding regarding the use of a buffer of less than 100 feet in width, the Planning Commission shall consider and defer to any recommendations provided by representatives of the California Department of Fish and Game.

C. In no event shall a wetland buffer be reduced to a width of less than 50 feet.

D. Authorization which has been granted by the Planning Commission to provide a wetland buffer of less than 100 feet for one aspect of a development proposal, shall not be construed as an authorization to provide a buffer of less than 100 feet in width for other aspects of the proposal unless such authorization has been specifically enumerated in the findings required pursuant to this Section.

Thus, the default finding is that a 100-foot wetland buffer is required on the project site, regardless of whether the wetland is designated as ESHA. Approval of a smaller wetland buffer would require consultation with and approval from CDFW.

Coastal Bluff Scrub/Torrey Pine ESHA

Merkel & Associates (2018) identified 0.04 acre of southern coastal bluff scrub and 0.41 acre of disturbed southern coastal bluff on the site. The site's southern coastal bluff scrub (disturbed and undisturbed) supports several special-status plant species, including Del Mar Sand Aster (*Corethrogyne filaginifolia* var. *filaginifolia*) and Torrey Pine (*Pinus torreyana* ssp. *torreyana*), both of which are ranked 1B.1 by CNPS, referring to species considered rare and endangered in California and elsewhere; seriously threatened in California. Typically, the Coastal Commission recognizes habitat that supports one or more CNPS Rank 1B.1 plants as ESHA.

A third special-status plant known to persist in the site's uplands, Sea Dahlia (*Leptosyne maritima*), has a CNPS rank of 2B.2, referring to species considered rare, threatened, or endangered in CA but more common elsewhere; moderately threatened in California. The Coastal Commission may also recognize areas that support CNPS Rank 2B.2 plants as ESHA.

A fourth special-status species, Cooper's Rein-Orchid (*Piperia cooperi*), with CNPS Rank 4.2, has also been observed in the site's uplands, although recent surveys have not been conducted at an appropriate time of year to find this species.

Merkel & Associates (2018, 2020) argue that the resources in these communities do not satisfy ESHA criteria contained in Section 30107.5 of the California Coastal Act ("any area in which plant or animal life or their habitats are either rare or especially valuable because of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments"). Specifically, they argue that previous human alterations of the site disturbed the habitat to such a severe degree that it no longer warrants recognition as ESHA.

Having read Merkel & Associates' characterization of the extensively disturbed quality of native habitat on the site's uplands, I was surprised to find that San Diego Dudleya (*Dudleya edulis*), a native succulent species not typically associated with heavily disturbed and degraded coastal scrub, is fairly widespread across the site's upland slopes. I also observed Torrey Pine, Del Mar Sand Aster, and Sea Dahlia on the site.

The case against recognizing the site's Torrey Pines as ESHA rests on raising doubts about whether the species occurs there naturally (while simultaneously admitting their uncertainty on this point). For example, see Merkel & Associates (2018:49):

The origin of the onsite Torrey pine are unknown; however, historic community records do not identify these trees whereas trees within the Torrey Pine State Reserve and elsewhere in the nearby community are noted in publicly available and City documents.

Contrary to this assertion, the California Consortium of Herbaria online database includes a 1936 specimen record³ from the "South bank of San Dieguito Creek," near the project site:



the nat SD - SD Herbarium, San Diego Natural History Museum (SD)

Occurrence ID: D30FFD65-2A45-4D69-948A-1DAF40540162
Secondary Catalog #: SD16011
Taxon: *Pinus torreyana* Parry ex Carrière
Family: Pinaceae
Collector: Frank F. Gander
Number: 2581
Date: 1936-06-09
Verbatim Date: 9-Jun-36
Locality: United States, California, San Diego, South bank of San Dieguito Creek, at northern edge of Del Mar (IPB 5/07)
32.96805 -117.26113 +-402m. WGS84
Elevation: meters **Verbatim Elevation:** unknownft.
Reproductive Condition: VEG
Usage Rights: CC BY-NC (Attribution-Non-Commercial)
Record ID: 8791dca6-ad56-44e0-ad46-d799f9412bb7
Click [here](#) to contact Layla Aerne Hains about this specimen.

³ <https://www.cch2.org/portal/collections/individual/index.php?occid=411478>

Figure 4, below, shows the mapped location of Gander's 1936 collection.



Figure 4. Map from the California Consortium of Herbaria showing the location of a 1936 collection of Torrey Pine by Frank F. Gander. The location shown is approximately 430 (\pm 402) meters southeast of the project site.

I asked Layla Aerne Hains of the San Diego Natural History Museum Herbarium whether any additional relevant information was known about this early collection, and she replied in an email dated November 18, 2021:

Frank Gander was heavily active at that time in San Diego County. Frank Gander was not known to collect planted/horticultural specimens as he was documenting the flora of the county (based on the numerous specimens collected). I also spoke with a colleague who worked on a project looking into the early distribution of the Torrey Pines and this falls well within the known distribution of where early Torrey Pines have been documented historically.

Thus, while aerial imagery provided in Figure 6 of Merkel & Associates' 2018 report indicates that mature Torrey Pines were not present on the site as of 1953, we do not know what the site looked like before that time, and we do not know how a stand of mature Torrey Pines came to be present there now. The collection by Gander documents the natural occurrence of this species within approximately 430 meters of the project site — and as close as 18 meters from the site, factoring in the stated mapping error range of 402 meters. Whatever the case, pine seeds may have been transported to the site by birds or other wildlife. It is also possible that some or all of the site's trees were planted. What is certain is that a healthy stand of Torrey Pines is present there now.

Importantly, while on the project site, I observed multiple young sprouts and saplings of Torrey Pines growing naturally downslope of the tall, mature trees (see Photos 16 and 17, below).



Photo 16. Torrey Pine seedling growing up through pine needles on the project site, 10-21-21. *Photo: Robert Hamilton*

Photo 17. Torrey Pine sapling growing on the lower slopes of the project site, 10-21-21. Torrey Pine distribution on the site extends downslope, south and west of the stand of mature trees near the site's southern border.
Photo: Robert Hamilton



Successful natural reproduction of Torrey Pines, as documented in Photos 16 and 17, demonstrates that the site's upland slopes provide the proper soil and climatic conditions needed to support a self-sustaining stand of this extremely rare tree.

Torrey Pine is the rarest species of pine in North America. The IUCN Red List of Threatened Species⁴ provides the following analysis:

Urbanization is encroaching on the mainland population (ssp. *torreyana*) with the effect that trees outside the Torrey Pines State Park are still disappearing. There is also an acute risk of a major fire wiping out a large part of the population, a risk that is known to increase for various reasons where housing developments are near the population in a potentially fire-

⁴ <https://www.iucnredlist.org/species/42424/2979186#conservation-actions>

prone area. The present decline is probably slow, but ongoing in one of the two subspecies (mainland population). The actual area of occupancy is very small for the two subspecies combined, less than 1 km² and definitely less than 10 km². The population is severely fragmented (two subpopulations on an island and two on the mainland) and there is continuing decline. So although the island subspecies is listed as Vulnerable, the species as a whole qualifies for listing as Critically Endangered. If, the species in future is completely confined to the protected areas i.e. all plants outside of those areas have been lost, then the species status might well change to Vulnerable under criterion D2.

Page 49 of Merkel & Associates (2018) states, “the site is not expected to contribute to the viability of Torrey pine.” In fact, current research⁵ identifies the Torrey Pine as a “genetically depauperate species” and suggests that conserving genetic diversity of Torrey Pines, or even engaging in “genetic rescue via intraspecific hybridization,” may be required to help ensure the species’ long-term survival:

One of the major outstanding questions in the conservation of rare species is whether these species have the necessary variation to evolve in response to changing environmental conditions. This study indicates population variance can be highly structured. There is within-population variability; however, the mainland population harbors the majority of variability and the island population exhibits significantly reduced variation. Consequently, conservation management strategies may consider maintenance of the locally adapted diversity within the mainland and island populations.

Thus, the above-quoted statement by Merkel & Associates (2018:49) contradicts the best available scientific information. A self-sustaining population of Torrey Pines growing along the coast of Del Mar, within its extremely limited natural range, certainly contributes to the overall viability of this critically endangered tree species.

Section 30107.5 of the Coastal Act expressly *does not* limit ESHA to undisturbed habitat. The very definition of ESHA is that it (a) supports “rare or especially valuable” species or habitats that (b) “could be easily disturbed or degraded by human activities and developments.” In this case, non-native, invasive plants planted on and around the project site have been allowed to proliferate and progressively choke out the lower-growing rare plants, Del Mar Sandaster and Sea Dahlia. Yet populations of these and other rare plants persist on the site, and Torrey Pines are successfully reproducing there. So long as the specialized habitat that supports these rare species is preserved and appropriately buffered from proposed development, the potential exists to effectively conserve the site’s rare plant populations through responsible management in the future.

For reasons detailed herein, the project’s southern coastal bluff scrub and disturbed southern coastal bluff scrub communities should be recognized as satisfying the ESHA criteria identified in Section 30107.5 of the California Coastal Act. That is, they are areas “in which plant or animal life or their habitats are either rare or especially valuable be-

⁵ Hamilton, J. A., R. Royauté, J. W. Wright, P. Hodgskiss, and F. T. Ledig. 2017. Genetic conservation and management of the California endemic, Torrey Pine (*Pinus torreyana* Parry): Implications of genetic rescue in a genetically depauperate species. *Ecology and Evolution* 7(18):7370-7381.

cause of their special nature or role in an ecosystem and which could be easily disturbed or degraded by human activities and developments." Proposed development must be designed and adequately buffered to ensure the preservation and biological integrity of all parts of the site that satisfy ESHA criteria. The limits of ESHA should encompass the full distribution of Torrey Pines on the site, including the seedlings and saplings growing downslope of the mature trees.

The City's certified Local Coastal Program does not specify a minimum buffer distance for ESHA, but such buffers typically measure 50-100 feet. The buffer should be measured from the edge of the disturbed southern coastal bluff scrub habitat, all of which represents suitable habitat for the Torrey Pines that are persisting and regenerating on the site.

CONCLUSION

I appreciate the opportunity to provide this independent third-party review. Please call me at 562-477-2181 if you have questions or wish to further discuss any matters; you may send e-mail to robb@hamiltonbiological.com.

Sincerely,



Robert A. Hamilton, President
Hamilton Biological, Inc.
<http://hamiltonbiological.com>

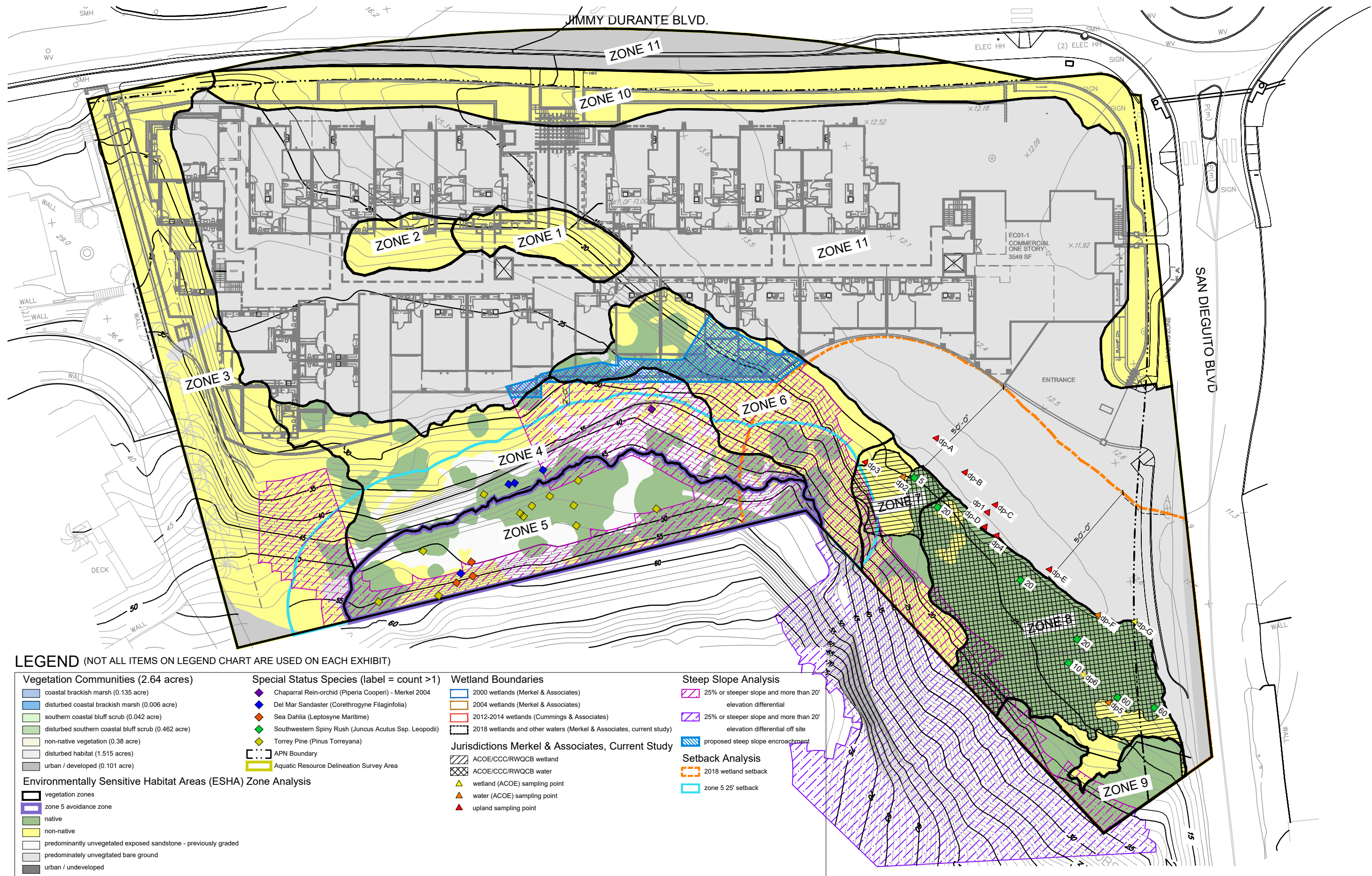
cc: Ashley Jones, Del Mar City Manager

David Mayer & Marilyn Fluharty, CDFW

Karl Schwing, Deborah Lee, Diana Lilly, Erin Prahler, Gabriel Buhr, Jonna Engel,
Laurie Koteen, Lauren Garske-Garcia, California Coastal Commission

Everett DeLano, DeLano & DeLano

ENCLOSURE 3



CALIFORNIA COASTAL COMMISSION

SAN DIEGO COAST DISTRICT OFFICE
7575 METROPOLITAN DRIVE, SUITE 103
SAN DIEGO, CA 92108-4421
(619) 767-2370
SANDIEGOCOAST@COASTAL.CA.GOV

**APPEAL FORM****Appeal of Local Government Coastal Development Permit****Filing Information (STAFF ONLY)**

District Office: San Diego Coast

Appeal Number: A-6-DMR-22-0020

Date Filed: May 9, 2022

Appellant Name(s): Jill Schulz

APPELLANTS

IMPORTANT. Before you complete and submit this appeal form to appeal a coastal development permit (CDP) decision of a local government with a certified local coastal program (LCP) to the California Coastal Commission, please review [the appeal information sheet](#). The appeal information sheet describes who is eligible to appeal what types of local government CDP decisions, the proper grounds for appeal, and the procedures for submitting such appeals to the Commission. Appellants are responsible for submitting appeals that conform to the Commission law, including regulations. Appeals that do not conform may not be accepted. If you have any questions about any aspect of the appeal process, please contact staff in the Commission district office with jurisdiction over the area in question (see the Commission's [contact page](#) at <https://coastal.ca.gov/contact/#/>).

Note regarding emailed appeals. Please note that emailed appeals are accepted ONLY at the general email address for the Coastal Commission district office with jurisdiction over the local government in question. For the San Diego Coast district office, the email address is SanDiegoCoast@coastal.ca.gov. An appeal emailed to some other email address, including a different district's general email address or a staff email address, will be rejected. It is the appellant's responsibility to use the correct email address, and appellants are encouraged to contact Commission staff with any questions. For more information, see the Commission's [contact page](#) at <https://coastal.ca.gov/contact/#/>.

Appeal of local CDP decision

Page 2

1. Appellant information¹

Name: Jill Schulz

Mailing address: 2188 Heather Lane, Del Mar, CA 92014

Phone number: (805) 358-1900

Email address: jill@awsproductions.com

How did you participate in the local CDP application and decision-making process?

☒ Did not participate ☐ Submitted comment ☐ Testified at hearing ☐ Other

Describe: _____

If you did *not* participate in the local CDP application and decision-making process, please identify why you should be allowed to appeal anyway (e.g., if you did not participate because you were not properly noticed).

Describe: The City of Del Mar issued an administrative coastal

development permit with a ministerial process that did not

provide an opportunity for public participation.

Please identify how you exhausted all LCP CDP appeal processes or otherwise identify why you should be allowed to appeal (e.g., if the local government did not follow proper CDP notice and hearing procedures, or it charges a fee for local appellate CDP processes).

Describe: I should be allowed to appeal the coastal development

permit because there is no opportunity or requirement to

exhaust LCP CDP appeal processes when the City issues

an administrative coastal development permit.

¹ If there are multiple appellants, each appellant must provide their own contact and participation information. Please attach additional sheets as necessary.

Appeal of local CDP decision

Page 3

2. Local CDP decision being appealed²

Local government name: City of Del Mar

Local government approval body: Director of Planning and Community Development

Local government CDP application number: CDP21-005

Local government CDP decision: ☒ CDP approval ☐ CDP denial³

Date of local government CDP decision: April 19, 2022

Please identify the location and description of the development that was approved or denied by the local government.

Describe: Consolidation of two lots into one development site and
construction of a four-story, 50-unit, 132,894 square foot residential
development with 10 affordable units and 109 parking spaces.
The project encroaches into steep slopes, exceeds the height
limit and is only set back 50 feet from the wetland.
The project is located in the southern corner of Jimmy
Durante Boulevard and San Dieguito Road.

² Attach additional sheets as necessary to fully describe the local government CDP decision, including a description of the development that was the subject of the CDP application and decision.

³ Very few local CDP denials are appealable, and those that are also require submittal of an appeal fee. Please see the [appeal information sheet](#) for more information.

Appeal of local CDP decision

Page 4

3. Applicant information

Applicant name(s):	Watermark, DM, L.P.; c/o Kitchell Development Co.
	9330 Scranton Road, Suite 100
Applicant Address:	San Diego, CA 92121

4. Grounds for this appeal⁴

For appeals of a CDP approval, grounds for appeal are limited to allegations that the approved development does not conform to the LCP or to Coastal Act public access provisions. For appeals of a CDP denial, grounds for appeal are limited to allegations that the development conforms to the LCP and to Coastal Act public access provisions. Please clearly identify the ways in which the development meets or doesn't meet, as applicable, the LCP and Coastal Act provisions, with citations to specific provisions as much as possible. Appellants are encouraged to be concise, and to arrange their appeals by topic area and by individual policies.

Describe: The project is not consistent with the certified LCP and will have a significant negative impact on coastal resources.
See attached for further explanation.

⁴ Attach additional sheets as necessary to fully describe the grounds for appeal.

Appeal of local CDP decision

Page 5

5. Identification of interested persons

On a separate page, please provide the names and contact information (i.e., mailing and email addresses) of all persons whom you know to be interested in the local CDP decision and/or the approved or denied development (e.g., other persons who participated in the local CDP application and decision making process, etc.), and check this box to acknowledge that you have done so.

☐

Interested persons identified and provided on a separate attached sheet

6. Appellant certifications

I attest that to the best of my knowledge, all information and facts in this appeal are correct and complete.

Print name Jill Schulz


Signature

Date of Signature May 9, 2021

7. Representative authorization⁶

While not required, you may identify others to represent you in the appeal process. If you do, they must have the power to bind you in all matters concerning the appeal. To do so, please complete the representative authorization form below and check this box to acknowledge that you have done so.

☒

I have authorized a representative, and I have provided authorization for them on the representative authorization form attached.

⁵ If there are multiple appellants, each appellant must provide their own certification. Please attach additional sheets as necessary.

⁶ If there are multiple appellants, each appellant must provide their own representative authorization form to identify others who represent them. Please attach additional sheets as necessary.

CALIFORNIA COASTAL COMMISSION

455 MARKET STREET, SUITE 300
SAN FRANCISCO, CA 94105 2219
VOICE (415) 904 5200
FAX (415) 904 5400

**DISCLOSURE OF REPRESENTATIVES**

If you intend to have anyone communicate on your behalf to the California Coastal Commission, individual Commissioners, and/or Commission staff regarding your coastal development permit (CDP) application (including if your project has been appealed to the Commission from a local government decision) or your appeal, then you are required to identify the name and contact information for all such persons prior to any such communication occurring (see Public Resources Code, Section 30319). The law provides that failure to comply with this disclosure requirement prior to the time that a communication occurs is a misdemeanor that is punishable by a fine or imprisonment and may lead to denial of an application or rejection of an appeal.

To meet this important disclosure requirement, please list below all representatives who will communicate on your behalf or on the behalf of your business and submit the list to the appropriate Commission office. This list could include a wide variety of people such as attorneys, architects, biologists, engineers, etc. If you identify more than one such representative, please identify a lead representative for ease of coordination and communication. You must submit an updated list anytime your list of representatives changes. You must submit the disclosure list before any communication by your representative to the Commission or staff occurs.

Your Name J Schu z

CDP Application or Appeal Number CDP 21-005

Lead Representative

Name Ju e M. am ton
Title Attorney
Street Address. 501 W. Broadway, Su te 800
City San D ego
State, Zip CA 92101
Email Address ju e@jmham ton aw.com
Daytime Phone (619) 787-3901

Your Signature

A handwritten signature in cursive script, appearing to read "Julie M. Hamton".

Date of Signature May 9, 2022

Additional Representatives (as necessary)

Name _____
Title _____
Street Address. _____
City _____
State, Zip _____
Email Address _____
Daytime Phone _____

Name _____
Title _____
Street Address. _____
City _____
State, Zip _____
Email Address _____
Daytime Phone _____

Name _____
Title _____
Street Address. _____
City _____
State, Zip _____
Email Address _____
Daytime Phone _____

Name _____
Title _____
Street Address. _____
City _____
State, Zip _____
Email Address _____
Daytime Phone _____

Your Signature

Date of Signature



The Law Office of
Julie M. Hamilton

May 9, 2022

Stephanie Leach
California Coastal Commission
San Diego District Office
7575 Metropolitan Drive, Suite 103
San Diego, CA 92108-2384
SanDiegoCoast@coastal.ca.gov

VIA EMAIL

**RE: Appeal of Watermark Project, City of Del Mar Coastal Development
Permit No. 21-005.**

Dear Ms. Leach:

On behalf of my client, Jill Schulz, I offer the following grounds for appeal of the above coastal development permit.

The Project is Inconsistent with the Certified Local Coastal Program (“LCP”)

The proposed project is not consistent with many requirements of the implementing ordinances of the LCP. The City of Del Mar relies on the provisions of Senate Bill 330 to grant concessions and waive requirements that are incorporated into the LCP. However, SB330 is clear, the law shall not be construed to relieve the local agency from complying with the Coastal Act. (Gov. Code §65589.5(a)(1)(e).) Compliance with the Coastal Act requires the City comply with the requirements of the LCP. The City of Del Mar has approved this coastal development permit in reliance upon SB330 without regard for the regulations of the LCP as follows:

- The project site is zoned NC, multi-family residential uses are not an allowed use in the NC zone. (Del Mar Municipal Code (“DMMC”) §30.24.030.)
- The project requires a conditional use permit due to encroachment into steep slopes and insufficient buffer from wetlands. (DMMC §§30.52.060.A., 30.53.070.)
- The project requires a Floodplain Development Permit. (DMMC §30.56.045.A).
- The project height of 47’6” exceeds the maximum allowable height of 14’. (DMMC §30.52.080.A.)
- The four-story project exceeds the maximum allowed of two stories. (DMMC 30.86.110.A.1.)

Stephanie Leach

May 9, 2022

Page 2

- The project lot coverage of 51% exceeds the maximum allowed of 40%. (DMMC §30.24.070.C.4.)
- The project FAR of 1.29 exceeds the maximum allowed of .3. (DMMC §30.24.070.C.3.)
- The project does not comply with the required 100' buffer from wetlands. (DMMC §30.53.100.)
- The project illegally encroaches into substantial steep slopes. (DMMC §30.52.060.A.1.)

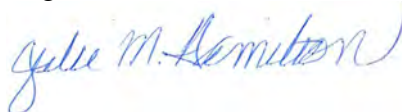
The Project is not Consistent with Coastal Act Policies

- The project site does not observe a 100-foot buffer from the onsite wetlands, causing potential impacts to biological resources in violation of Section 30240 of the Coastal Act.
- The project site contains nesting habitat for passerine species and foraging roosts for raptors. The project may have a significant impact on biological resources in violation of the resource protection policies of the Coastal Act.
- The project site currently provides parking for the Coast to Crest Trail, the beach and the fairgrounds. Loss of this parking will have a significant negative effect on public access, including access to lower cost visitor and recreational facilities in violation of Coastal Act Sections 30211, 30212, 30212.5 and 30213.
- The proposed project will block views of a significant inland bluff and visually degrade one of three entrances to the unique community of Del Mar in violation of Coastal Act Sections 30251.30253.
- The proposed project will encroach into significant steep slopes in violation of Coastal Act Sections 30252 and 30253.

The City of Del Mar approved an administrative coastal development permit through a ministerial process that is not consistent with the applicable LCP implementing ordinances or Chapter Three of the Coastal Act. Ms. Schulz is properly appealing this decision to the Coastal Commission and asks the Commission take substantial issue with the City's approval and hold a de novo hearing on the application for a coastal development permit. At that hearing, Ms. Schulz will ask the Commission to deny the permit.

Thank you for your time and consideration of the issues raised in this letter. Please feel free to call me if you have any questions of need further clarification.

Regards,



Julie M. Hamilton
Attorney for Jill Schulz

RECEIVED

APR 25 2022

CALIFORNIA
COASTAL COMMISSION
SAN DIEGO COAST DISTRICT

CITY OF DEL MAR PLANNING DEPARTMENT
1050 CAMINO DEL MAR, DEL MAR, CA 92014 (858) 755-9313

**NOTICE OF FINAL ACTION ON
COASTAL DEVELOPMENT PERMIT APPLICATION**

Date: April 19, 2022

A Coastal Development Permit application for the project listed below has been acted upon by the City of Del Mar's:

- ☒ Director of Planning and Community Development
☐ Design Review Board
☐ Planning Commission
☐ City Council

On: April 19, 2022

Action:

- ☐ Approved
☒ Approved with conditions
☐ Denied

APPLICATION NUMBER, PROJECT SITE AND DESCRIPTION OF DEVELOPMENT PROPOSAL:

CDP21-005
BA22-001

APN: 299-100-47 and 299-100-48

Location: SE Corner of Jimmy Durante Blvd. and San Dieguito Drive

Owners/Applicants: Watermark DM, L.P.

Applicant's Representative: Don Glatthorn

Zone: North Commercial

Overlay Zones: Bluff, Slope and Canyon; Floodplain; and Lagoon

Environmental Status: Exempt

Staff Contact: Matt Bator, AICP, Principal Planner

Description: Construction of a new 50-unit, 132,894 square-foot residential development with an affordable housing component (10 units) and performance of associated site improvements on two legal lots consolidated into one development site.

Findings: See attached Resolution for findings

Conditions of Approval (if any): See attached Resolution for conditions of approval.

As noted below, the development may be located in an area of the City of Del Mar's Coastal Zone where, pursuant to Coastal Act Section 30603 and Chapter 30.75 of the Del Mar Municipal Code, an aggrieved person may appeal this decision in writing to the California Coastal Commission. The appeal period runs 10 (ten) days, commencing from the date upon which the Coastal Commission receives notice of the City's final action on the application.

Project site located:

- ☒ Within the City of Del Mar's Coastal Development Permit Appeals Zone (appealable)
☐ Outside of the City of Del Mar's Coastal Development Permit Appeal Zone (not appealable)

Applicant/Owner Address:

Watermark DM, L.P. c/o Kitchell Development
9330 Scranton Road, Suite 100
San Diego, CA 92121

Agent Address:

Don Glatthorn
PO Box 1204 Solana Beach
92075

EXHIBIT NO. 6
APPLICATION NO. A-6-DMR-22-0020
City Notice of Final Action
 California Coastal Commission

DECISION ON ADMINISTRATIVE COASTAL DEVELOPMENT PERMIT
CDP21-005

A STATEMENT OF THE CITY OF DEL MAR'S DIRECTOR OF PLANNING AND COMMUNITY DEVELOPMENT REGARDING ADMINISTRATIVE COASTAL DEVELOPMENT PERMIT CDP21-005 SETTING FORTH FINDINGS AND A DECISION TO APPROVE THE REQUESTED APPLICATION FOR THE CONSOLIDATION OF TWO LOTS INTO ONE DEVELOPMENT SITE AND THE CONSTRUCTION OF A MULTI-UNIT RESIDENTIAL DEVELOPMENT LOCATED WITHIN THE CALIFORNIA COASTAL ZONE AND THE CITY'S NORTH COMMERCIAL ZONE, FLOODPLAIN OVERLAY ZONE, LAGOON OVERLAY ZONE, BLUFF SLOPE AND CANYON OVERLAY ZONE, AND THE APPEALS JURISDICTION OF THE CALIFORNIA COASTAL COMMISSION AT THE SOUTHERN CORNER OF JIMMY DURANTE BOULEVARD AND SAN DIEGUITO DRIVE, IN DEL MAR, CALIFORNIA (APN(S) 299-200-47 AND 299-100-48)

WHEREAS, the City of Del Mar is mandated by the State of California to provide a "Housing Element" to its General (Community) Plan that conforms with the regulatory requirements set forth in the California Government Code, and update its Housing Element in eight year planning periods (Cycles); and

WHEREAS, 5th Cycle Housing Element Program 2G requires, pursuant to California Government Code Sections 65583.2(h) and (i), that the City rezone APNs 299-100-47 and 299-100-48 located in the North Commercial Zone to allow multiple dwelling unit residential use "by-right" at a density range of 20-25 dwelling units per acre with an affordability component; and

WHEREAS, the term "by-right" within the context of Government Code Sections 65583.2(h) and (i) shall have the meaning as to be processed and approved by "ministerial" action; and

WHEREAS, pursuant to the California Environmental Quality Act (CEQA), the approval of a ministerial action is Statutorily Exempt from environmental review pursuant to CEQA Guideline Sections 15268 (a); and

WHEREAS, Effective January 1, 2020 and through its expiration on January 1, 2025 (five years), California Senate Bill SB 330 (the "Housing Crisis Act of 2019" - Government Code Section 65941.1) expands and amends existing State legislation, including the Permit Streamlining Act and Housing Accountability Act, with the broad goals of facilitating increased production of new residential units, protecting existing units, and providing for an expedited review and approval process for housing development projects through submittal of a "Preliminary Application" prior to submittal of any required development permits; and

WHEREAS, on November 24, 2020, the Watermark DM, LP (Applicant) applied for a Preliminary Application (PDA20-001) in conformance with the Housing Crisis Act of 2019, for development of a new 48-unit, 131,389 square-foot residential development with an affordable

housing component (10 units), and to perform associated site improvements on two legal lots to be consolidated into one development site and located within the California Coastal Zone and the City's North Commercial (NC) Zone, Floodplain Overlay Zone, Lagoon Overlay Zone, Bluff Slope and Canyon Overlay Zone and the Appeals Jurisdiction of the California Coastal Commission at the southern corner of Jimmy Durante Boulevard and San Dieguito Drive, (APN'S 299-100-47 and 299-100-48); and

WHEREAS, pursuant to the Housing Crisis Act of 2019, the City's acceptance of Preliminary Application PDA20-001, assures the Applicant that all continued review of the project submitted will be conducted pursuant to the ordinances, standards, and policies in effect as of November 24, 2020; and

WHEREAS, pursuant to the Housing Crisis Act of 2019, the City's acceptance of PDA20-001 started a 180-day period in which the Applicant was to submit to the City any and all required entitlement applications for the project, provided that the number of residential units or square footage of construction not change by 20 percent or more, exclusive of any increase resulting from the receipt of a density bonus, incentive, concession, waiver, or similar provision; and

WHEREAS, on April 8, 2021, Watermark DM, LP (Applicant), applied for an Administrative Coastal Development Permit (CDP21-005) to construct a new 50-unit, 132,894 square-foot residential development with an affordable housing component (10 units), and to perform associated site improvements on two legal lots to be consolidated into one development site and located within the California Coastal Zone and the City's North Commercial (NC) Zone, Floodplain Overlay Zone, Lagoon Overlay Zone, Bluff Slope and Canyon Overlay Zone and the Appeals Jurisdiction of the California Coastal Commission at the southern corner of Jimmy Durante Boulevard and San Dieguito Drive, (APN'S 299-100-47 and 299-100-48); and

WHEREAS, on April 8, 2021, the Applicant applied for a Boundary Adjustment (BA22-001) to consolidate the two parcels located at the southern corner of Jimmy Durante Boulevard and San Dieguito Drive (APN'S 299-100-47 and 299-100-48) into one legal development site; and

WHEREAS, the proposed development can further be described as a three-story multi-family residential project with associated recreational facilities over an open parking garage podium, at a resulting density of 21.1 dwelling units per net acre, and consistent with Del Mar Municipal Code Section 24.21.030, containing six units to be designated affordable in the "low" income category, two units in the "very low" income category, and two units in the "extremely low" income category; and

WHEREAS, the proposed development site totals approximately 2.37 acres, or 103,282 square-feet of area, and contains environmental resources in the forms of jurisdictional wetland (coastal brackish marsh) and steep slopes in potential Environmentally Sensitive Habitat Area (ESHA), reducing the net developable area to approximately 1.52 acres; and

WHEREAS, the proposed development site is located within the City's Lagoon Overlay Zone, which requires a minimum non-developable buffer of at least 50-feet from the extent of any mapped wetland; and

WHEREAS, the proposed development site is located within the City's Bluff, Slope and Canyon Overlay Zone, which limits by-right development to a height limit of 14 feet above natural or finished grade, whichever is lower; and

WHEREAS, the proposed development site is located in the City's Floodplain Overlay Zone, meaning the site is designated by FEMA's Flood Insurance Rate Map (FIRM) as special flood hazard area (AE) Zone and must have the "lowest floor" of its first-level dwelling units elevated between 0-6 feet above existing grade in order to comply with FEMA design standards for development within the AE Zone; and

WHEREAS, given that there are topographical, environmental, flood hazard constraints to developing and achieving a density of 20-25 dwelling units per acre on the site, as required by the City of Del Mar 5th Cycle Housing Element Program 2G, the Applicant submitted a Density Bonus Report seeking certain "concessions" and "waivers" from development standards currently in place; and

WHEREAS, California Government Code Section 65915 (State Density Bonus Law) provides the granting of concessions and incentives that result in identifiable and actual cost reductions to provide for affordable housing costs; and

WHEREAS, pursuant to State Density Bonus Law a proposed project is entitled to two concessions/incentives if the project includes at least 17% of the total units for lower income households. The proposed project includes 20% of the total units for lower income households and is therefore entitled to two concessions or incentives; and

WHEREAS, the Applicant is requesting two concessions, as are allowed per State Density Bonus Law to increase the maximum Lot Coverage allowed for the project site from 40 percent to 51 percent; and to allow a reduction in the required on-site wetland buffer from 100-feet to 50-feet; and

WHEREAS, based on City staff analysis and the applicant's justification documented in the Density Bonus Report, it has been determined that the Applicant has provided adequate justification that the requested concessions would result in identifiable and actual cost reductions to provide for affordable housing costs; and

WHEREAS, pursuant to Government Code Section 65915(e)(1), the Applicant is entitled to request a waiver or reduction of development standards that would have the effect of physically precluding the construction of the development at the density allowed and sought for the production of affordable housing; and

WHEREAS, the applicant is requesting the following waivers from development standards of the DMMC in order to physically construct the proposed 50-unit development on approximately 1.52 (net) acres of developable area located within a special flood hazard area:

1. An increase in maximum number of stories from a maximum allowance of two to four (includes parking level below podium).
2. An increase in maximum allowed height from 14-feet in the Bluff, Slope and Canyon Overlay Zone to 47 ft, 6 inches.
3. Allowance for up to 10% encroachment into substantially steep slopes, as defined in the Bluff, Slope and Canyon Overlay Zone.
4. An increase in maximum floor area ratio (FAR) from 0.3 to 1.29

WHEREAS, due to the topographical, environmental and flood hazard site constraints and the Applicant's justifications documented in its Density Bonus Report, application of the development standards sought to be waived would, in fact, physically preclude the construction of the development at the densities permitted and with the concessions requested; and

WHEREAS, Del Mar Municipal Code (DMMC) Section 24.70.030(A) specifies that the Director of Planning and Community Development shall serve as the issuing authority on the application for a Lot Line Adjustment which also includes a Boundary Adjustment; and

WHEREAS, on April 19, 2022 the Director of Planning and Community Development of the City of Del Mar considered and conditionally approved application BA22-001; and

WHEREAS, Del Mar Municipal Code (DMMC) Section 30.75.080(E)(2) specifies that the Director of Planning and Community Development shall serve as the issuing authority for Coastal Development Permits for Lot Line Adjustments which includes Boundary Adjustments; and

WHEREAS, the project site is located within the California Coastal Zone and is subject to compliance with the City of Del Mar's certified Local Coastal Program (LCP), Land Use Plan (LUP), and Implementing Ordinances, therefore, while the development of the site is also subject to California Government Code Sections 65583.2(h) and (i) and the "by-right" provisions that Code affords, the proposed lot consolidation and development are required to obtain an Administrative Coastal Development Permit issued by the Director of Planning and Community Development, and shall not be subject to jurisdictional appeal; and

WHEREAS, a Coastal Development Permit shall be approved if findings can be made in accordance with DMMC Section 30.75.140 that the proposed development is consistent with the requirements of the certified Local Coastal Program and, for properties located between the nearest public road and the sea, the proposed development conforms with the public access and public recreation policies of Chapter 3 (commencing with Section 30200); and

WHEREAS, the property is located within the Appeals Jurisdiction of the California Coastal Commission (CCC); and

WHEREAS, the Director of Planning and Community Development decision of CDP21-005 is appealable to the California Coastal Commission in accordance with DMMC Section 30.75.030(B)(1); and

WHEREAS, application materials submitted and reviewed for Administrative Coastal Development Permit CDP21-005 included the following plans and documents:

- Preliminary architectural and civil engineering plans(1/17/2022)
- Preliminary landscape plans (1/12/2022)
- Density Bonus Report (11/15/2021)
- Public View Analysis (7/16/2021)
- Biology Report and Wetland Delineation (12/6/2018)
- Wetland ESHA Analysis (12/6/2018)
- Biology Report Addendum (11/16/2021)
- Geotechnical Report and Update (5/28/2021)
- CDFW Correspondence (1/18/2022)

NOW THEREFORE, based on the project information and materials received, the Director of Planning and Community Development makes the following findings with respect to Administrative Coastal Development Application CDP21-005 and the consistency of said application with the applicable standards of the review contained in the certified City of Del Mar Local Coastal Program (LCP), including the LCP Implementing Ordinances:

1. The use for which the CDP is requested, a 50-unit residential development with a 20% affordable housing component (10 units) and associated site improvements, is a permitted use within the underlying zoning classification of North Commercial (NC) Zone and the Bluff Slope and Canyon (BSC-OZ), Lagoon (L-OZ), and Floodplain Overlay Zones (FP-OZ) due to compliance with the City of Del Mar 5th Cycle Housing Element Program 2G, which requires, pursuant to California Government Code Sections 65583.2(h) and (i), that the City rezone APNs 299-100-47 and 299-100-48 (subject site) located in the North Commercial Zone to allow multiple dwelling unit residential use “by-right” at a density range of 20-25 dwelling units per acre with an affordability component; and
2. As conditioned, the proposed project meets the criteria of the standards of review of the applicable Chapters of the LCP Land Use Plan and Implementing Ordinances. Specifically, although there are sensitive resources in the form of wetlands and steep sloping hillsides on the site, the project has been designed, to the maximum extent possible, to avoid and protect these valuable on-site resources. Further, approval of the Coastal Development Permit application has been conditioned to ensure that construction activities will be designed and implemented in a manner that will avoid encroachment upon or impact to sensitive resources; and
3. As conditioned, the granting of such Administrative Coastal Development Permit will be in conformity with the certified City of Del Mar Local Coastal Program (LCP) in that, as conditioned, the project does not violate any of the provisions of the applicable chapters of the certified LCP Implementing Ordinances; and
4. For all development proposals located seaward of the first public roadway, such as the one proposed in Administrative Coastal Development Permit CDP21-005, the proposed development, as conditioned, is consistent with and implements the applicable requirements

for provision of public access contained in Title 30 of the Del Mar Municipal Code and in the public access and public recreation policies of Chapter 3 of the California Coastal Act. The project would not result in any change to public access routes to or along coastal areas; and

5. The proposed project site is located within the Coastal Commission Appealable Jurisdiction, pursuant to Public Resources Code Section 30613; and
6. The project does not involve the construction or placement of a shoreline protection device; and
7. Based on the "View Study for the Watermark Del Mar Apartment Project dated July 16, 2021," the project is consistent with and implements the provisions of public view protection policies of the City of Del Mar LCP, including Policies IV-22 through IV-27 of the LCP Land Use Plan. There are no identified public views of the coast over or across the site from adjoining public streets that would be impeded by the proposed development; and
8. The project site contains a coastal brackish marsh (wetland) and the proposed development is consistent with and implements the applicable provisions of the Lagoon Overlay Zone in that the wetland resource will be preserved and protected through the implementation of a 50-foot wetland buffer, for which the California Department of Fish and Wildlife has provided acceptance of the proposed buffer width.

Density Bonus – Concessions and Waivers

1. The Project qualifies under State Density Bonus Law for incentives and waivers as it provides 20% of the total number of units for lower income households.
2. The two requested concessions included an increase of the maximum Lot Coverage allowed for the project site from 40 percent to 51 percent; and to allow a reduction in the required on-site wetland buffer from 100-feet to 50-feet. Based on staff analysis the requested concessions would result in identifiable and actual cost reductions to provide for affordable housing costs.
3. Requested waivers include the following:
 - a. An increase in maximum number of stories from a maximum allowance of two to four stories.
 - b. An increase in maximum allowed height from 14-feet in the Bluff, Slope and Canyon Overlay Zone to 47 ft, 6 inches.
 - c. Allowance for up to 10% encroachment into substantially steep slopes, as defined in the Bluff, Slope and Canyon Overlay Zone.
 - d. An increase in maximum floor area ratio (FAR) from 0.3 to 1.29

Based on State Density Bonus Law the City may not apply any development standard that will have the effect of physically precluding the construction of development which includes affordable housing units at the density and with the concessions requested pursuant to State

Density Bonus Law (Government Code section 65915(e)(1)). Where an Applicant provides justification for the conclusion that the development standards would physically preclude construction the project at the density and with the concessions requested the City must approve the waivers. *Wollmer v. City of Berkely* (2011) 193 CA4th 1329; *Bankers Hill v. City of San Diego* (2022) The requested waivers are approved based on the analysis and justification provided by the Applicant's Density Bonus Report and confirmed by staff that due to the topographical, environmental and flood hazard site constraints the application of the development standards sought to be waived would, in fact, physically preclude the construction of the development at the densities permitted and with the concessions requested.

BASED ON THE ABOVE FINDINGS, THE DIRECTOR OF PLANNING AND COMMUNITY DEVELOPMENT APPROVES ADMINISTRATIVE COASTAL DEVELOPMENT APPLICATION CDP21-005, SUBJECT TO THE FOLLOWING CONDITIONS:

General Conditions

(Note: gaps in lettering and numbering are intentional)

G-1 *[Business License]*

Prior to commencement of any work on site, all contractors and subcontractors shall obtain a valid City of Del Mar Business License. The general contractor shall be responsible for ensuring that all subcontractors obtain required Business License and shall retain copies of said permits on site for verification by City staff.

G-2 *[Utility Undergrounding Threshold]*

If the total cost of new construction exceeds \$7,500 (as determined by the Building Department), all new utility service connections shall be placed underground consistent with the provisions of Section 30.86.210 of the Del Mar Municipal Code.

G-3 *[Development Authorization Limited to Plan Set]*

This permit is granted based on submitted plans dated **January 17, 2022** and so identified by the staff of the Del Mar Planning and Community Development Department. Revisions to these plans and/or any proposals for modification shall require review and prior authorization from the appropriate entities of the City of Del Mar.

G-4 *[Encroachment Permit for Work in Right-of-Way]*

Any work proposed or required within a City of Del Mar public right-of-way or access easement, or required within a public right-of-way or access easements pursuant to the conditions of approval of this Permit, shall be subject to the prior receipt of a City of Del Mar Encroachment Permit. Applications for Encroachment Permits shall include plans depicting all proposed private and public improvements including, but not limited to, improvements involving drainage, grading and/or public utilities. The required Encroachment Permit shall be subject to review and approval by the City of Del Mar in accordance with the procedures set forth in the DMMC and may include requirements for inspections and/or submittal of a security deposit(s). Please note that Design Review Board or Planning Commission approval of plans indicating right-of-way improvements does not constitute approval of the separately required Encroachment Permit.

G-5 *[Requirement for Building Permits]*

Prior to commencement of work, the applicant or agent shall obtain all required Building Permits.

G-6 *[Construction and Demolition Waste Recycling Requirement]*

Owners and builders generating any construction and demolition debris on a project must comply with the minimum requirements regarding recycling or reuse for salvage set forth in the 2016 California Green Building Standards Code, Title 24, Part 11. This includes, but is not limited to, the submittal of a Construction Waste Management Plan and a minimum diversion of 65% of non-hazardous construction and demolition waste. Signage shall be posted on-site with information identifying materials to be diverted.

G-7 *[Code Compliance]*

Approval of this application shall not waive the requirement for compliance with the provisions of the Del Mar Municipal Code or other applicable City regulations in effect at the time of Building Permit issuance, unless specifically waived in this permit authorization.

G-8 *[Height and Setback Certifications Prior to Framing Sign-off]*

Prior to sign-off on the framing inspection for the project, the applicant shall provide a statement from a Licensed Surveyor certifying that the building height and setbacks are in conformance with the approved plans for the project. The survey required herein shall be prepared using City of Del Mar approved vertical benchmarks for building height certification and reported to 0.01 of a foot. The setback certification shall be based on surveyed property corners as necessary to establish property lines and reported to 0.01 of a foot.

G-9 *[Fence/wall Height Limitations]*

All fencing, walls, and gates shall conform with all applicable fence height and pool security fencing requirements of the DMMC.

G-11 *[Plan for Construction-Phase Impacts]*

Prior to issuance of Building Permits or commencement of project implementation (whichever comes first), the applicant shall provide a plan for construction-phase parking and equipment/materials storage for the project. The plan must include the following:

- a. Identification of an on-site material storage location;
- b. Identification of an on-site equipment storage location;
- c. Identification of at least two on-site parking space which will remain available throughout the duration of the project;
- d. Location of any temporary sanitary facilities;
- e. A note stating that "If on-street parking is utilized, a minimum street access clearance of 20ft. will be maintained";
- f. Map displaying any/all haul routes; and
- g. Contact information (phone number and Email) for the on-site supervisor(s);
This information must also be posted on-site in a location which is readily visible from the public right-of-way for the duration of the project.

The plan required herein shall be subject to the review and written approval of the Planning and Community Development Director, working in consultation with Community Services Parking Enforcement and Public Works Departments. Haul routes and work and/or storage of material or equipment within a City right-of-way will require an Encroachment Permit. The requirements mentioned above may be modified by the Planning and Community Development Director upon a determination that sufficient alternatives have been proposed which achieve a similar level of compliance.

G-11A In addition to the submittal of a Construction Phase Impact Plan, the applicant must place a Construction Parking Placard in all vehicles associated with the project which will be parked off-site. The placard must remain in plain view on the dashboard of the vehicle throughout the duration of the project. A Construction Parking Placard can be obtained from the City of Del Mar Planning Department.

G-13 *[Permit Expiration]*

This permit shall expire three years from the date of approval, on [insert date] unless a Building Permit has been issued (if required by the DMMC) and substantial construction has been accomplished in reliance upon the permit. Pursuant to the DMMC, substantial construction is defined as: completion of a minimum of 10% of the total amount of construction authorized by the permit, based on the monetary value of construction costs including grading, site preparation and construction but specifically excluding all costs associated with the acquisition of interest in the project site and all costs associated with the preparation and processing of permits or plans.

G-14 *[Preconstruction Meeting]*

Prior to any demolition, construction, and/or land disturbances occurring on-site, a pre-construction meeting shall be held. Attendees to this meeting shall include representatives from the City of Del Mar's Planning and Community Development Department, City Engineer, the Project Contractor/Superintendent, the Project Architect, the Project Engineer, the property owner and any others essential for the proper implementation and completion of this project. At a minimum, the following issues shall be reviewed at this meeting:

- a. City of Del Mar inspection requirements.
- b. Process for requests for plan modification and determinations of substantial conformance.
- c. Discretionary permit conditions and requirements.
- d. Construction hour limitations and noise standards.
- e. Construction access and parking including equipment/materials storage and maintenance.
- f. Work within public rights-of-way and/or easements.
- g. Stormwater Best Management Practices.
- h. Tree-preservation requirements.
- i. Demolition permit requirements.
- j. Signage requirements/limitations.
- k. Neighborhood impact issues.
- l. Key contact information.
- m. Business license requirements.

- n. Construction and demolition waste diversion requirements
- o. Any other pertinent construction related activities and or information.

G-16 [Compliance with City Noise Regulations]

The applicant and all parties involved with implementation of the project shall comply with the regulations of the DMMC with regard to construction noise. The regulations stipulate that all construction activities are limited to the following periods: between 7:00 a.m. and 7:00 p.m. / Monday through Friday and between 9:00 a.m. and 7:00 p.m. on Saturdays. Construction activities are prohibited during other hours and on Sundays and City Holidays. The City's Noise Ordinance, Chapter 9.20 of the Del Mar Municipal Code, includes the dates of City Holidays, and can be viewed on the City's web page (www.delmar.ca.us).

G-17 [Dig Alert]

Prior to excavation or trenching, the applicant shall call Underground Service Alert of Southern California (Dig Alert- 1-800-227-2600) for a mark out of service utilities.

G-18 [Rules for Construction-related Signage]

All construction-related signage posted at the project site shall comply with DMMC Chapter 30.84 (Signs). The pertinent sections of the Sign Chapter allow installation of a total 5.5 square feet of temporary signage on a residential property (that is cumulative of all signs posted). Such signs may be posted for a maximum of sixty (60) days in a calendar year.

The restrictions noted above do not apply to the Development Pending, Construction Noise Notice and Building Permit signs required by the City as part of the project review process.

All construction related signage, including City required signs, shall be removed prior to final approval of the project.

Engineering Department Conditions

E-1 [Roadway/Utility Plan]

Prior to issuance of Building Permits, the applicant shall prepare and receive approval for surface improvements of both Jimmy Durante Blvd. and San Dieguito Drive. The Improvement Plan shall include the installation of those measures necessary to provide sewer, water, storm drain, and other utilities to serve the proposed project.

In addition to identifying the manner in which access and utilities are to be provided via Jimmy Durante Blvd. and San Dieguito Drive, the Improvement Plan required herein shall address the following:

- E-1A The manner in which storm water from the project site and its impervious surfaces will be collected and conveyed onto the public right-of-way;
- E-1B The location of the existing or proposed water and sewer laterals to serve the proposed project;
- E-1C The location of all required access, utility, drainage, or other easements, if required;

- E-1D The applicant shall construct street repairs/improvements for full width on that portion of San Dieguito Drive that abuts the corresponding frontage of the property. The required repairs/improvements shall include dig-out and replacement of deteriorated sections of the roadway along San Dieguito Drive and shall include all other improvements as deemed necessary by the City Engineer. Said improvements shall be subject to inspection and approval by the City Engineer;
- E-1E All proposed utilities within the project shall be installed underground in accordance with current utility engineering practices. Existing aerial utilities (to the project) shall be removed and/or placed underground, as required by the City Engineer;
- E-1F The plans shall comply with all applicable NPDES requirements to the satisfaction of the City Engineer;
- E-1G Improvement Plan shall indicate the site distance for vehicles exiting the proposed underground parking. Provide delivery truck turning radii in and out of the proposed parking structure and onto San Dieguito Drive;
- E-1H Provide a pedestrian friendly cover for the sewer manhole at the southeast corner of Jimmy Durante Blvd. and San Dieguito Drive;
- E-1I Applicant shall install a "NO U TURN" and "RIGHT TURN ONLY" signs, in the median island, adjacent to the emergency exit along Jimmy Durante Blvd, at the southwest portion of the site;
- E-1J Following construction completion, the project Engineer shall inspect as-built improvements. Significant discrepancies, if any, between the approved plans and as-built conditions shall be brought to the attention of the Planning and Community Development Department and City Engineer. An as-built plan prepared by the project Engineer will be required. Prior to final sign-off by the City Engineer, the project designer shall sign the as-built plan indicating that the project was completed in accordance with said plan; and
- E-1K The public improvements listed above the applicant shall post a security in the form of a bond or cash deposit valued at 150% of the estimated costs of the required improvements. The development agreement shall include the stipulation that all improvements for which security is being posted will be completed within 24 months of the date of approval of the plans. Upon completion of the work to the satisfaction of the City Engineer, the cash deposit or security shall be returned to the applicant, less any amount utilized by the City as outlined in the agreement, and less 25% of approved engineer's estimate, which will be retained as a warranty security. The warranty security shall be held pending City inspection one (1) year following completion of the work. The warranty security may be used at that time to correct deficiencies, if any, and the remainder returned to the applicant. Agreements shall be of a form and type acceptable to the Planning and Community Development Director, City Engineer and City Attorney.

- a) Full width grind and overlay together with dig-out repairs of San Dieguito Drive adjacent to property and areas damaged by construction.
- b) Replace all concrete sidewalk or asphalt pavement adjacent to property frontage along Jimmy Durante Blvd that is damaged by construction.

E-2 *[Separate Permits for Off-site Work]*

All improvements to off-site facilities, including the provision of access road and/or utility lines as proposed or required pursuant to the conditions of this Permit, shall be subject to the receipt of separate City permits, as applicable.

E-3 *[Engineering Fee]*

Prior to issuance of Building Permits, the applicant shall provide fees as delineated in the City's Engineering Review Fee Schedule as funds necessary for Engineering Department review of the proposed site improvements. If additional review beyond the scope outlined in the Engineering Review Fee Schedule becomes necessary, a supplemental deposit(s) will be required.

E-5 *[Private Drains]*

Unless specifically authorized in permit plans, drains in landscape areas discharging to public rights-of-way shall not be allowed. Drains discharging into public rights-of-way may be authorized, subject to review by the City Engineer and only if warranted by unique site conditions. In such cases, design elements shall be incorporated into the plans which reduce the potential for stormwater pollution and nuisance drainage to the maximum extent practicable. The project engineer's evaluation shall include, but not be limited to, consideration of the potential effect of proposed construction on site groundwater and moisture conditions. All hardscape drains, roof drains, wall drains, and other private drains shall be shown in detail on improvement plans. Site drainage shall be designed such that, in the event of plugged or overloaded inlets/outlets, storm flows will be conveyed in a manner that is not detrimental (including flooding and erosion) to the site or other properties. Drainage offsite shall be conveyed to the nearest storm drain facility.

E-6 *[Grading Calculations and Requirements for a Grading Permit]*

Prior to the issuance of Building Permits, the applicant shall provide grading calculations, including cross sections, and other supporting documentation, to verify the quantity of earthwork proposed outside the building footprint(s). If over 200 cubic yards, or five (5) vertical feet of earthwork is proposed, the applicant shall obtain a Grading Permit. Additionally, a Land Conservation (LC) permit may be required, pursuant to the provisions of the Del Mar Municipal Code (DMMC).

E-7 *[Grading]*

The grading for the project shall be performed under the observation of a Registered Civil Engineer and/or a Geotechnical Engineer whose responsibility shall be to coordinate site inspection and testing to ensure compliance with the approved Grading Plan. The project Engineer shall submit reports to the City Engineer to verify compliance, as deemed necessary.

E-8 *[Grading Plan]*

Prior to issuance of Building Permits, the applicant shall obtain a Grading Permit from the City. A Grading Plan shall be prepared in accordance with the latest edition of City's "Applicant's Guide to Procedures for a Grading Permit." The Grading Plan shall be prepared to the satisfaction of the City Engineer and shall:

- E-8A Be prepared in accordance with the City's "Applicant's Guide to Procedures for a Grading Permit," latest edition. In addition, a topographic map shall be prepared by a Registered Civil Engineer or a Licensed Land Surveyor. The topographic map shall indicate property lines, topographic features and existing and/or proposed structures. Said map shall include two-foot contour lines and/or sufficient spot elevations to clearly represent existing and proposed topographical features, and existing and proposed drainage patterns. Survey shall extend minimum 25 feet beyond limits of work. Said map shall also show entire property boundary including any assumed found monuments, and bearings and distances based on record information;
- E-8B Depict the location of property lines and topographic features of the site that adequately address how private storm water is to be collected, conveyed, and discharged on or across the subject site with respect to the proposed project;
- E-8C Include a grading cost estimate for review, based on the City of San Diego's Unit Price List;
- E-8D Depict the limits of grading and all three levels of the proposed site together with a minimum of two cross section;
- E-8E Include provisions to collect, convey, and discharge storm water in an appropriate manner, considering the added impact of impervious surface area to the site;
- E-8F Include provisions to ensure that storm water will not be concentrated and discharged across adjacent properties;
- E-8G Include a Hydrology/Hydraulic Report prepared by a Registered Engineer that addresses how storm water will be adequately collected and conveyed on and across the subject property. The Report shall also address:
 - a) The tributary area for run-off directed to and across the subject property.
 - b) Calculations and details demonstrating that if proposed inlets/outlets, etc. are plugged or overloaded, the site is capable of conveying storm flows in a manner that is not detrimental (including flooding and erosion) to surrounding properties.
 - c) Shall address both existing and proposed conditions.

- d) Shall provide calculations for the 2-year, 10-year and 100-year events for pre and post conditions.
 - e) Emergency/secondary overflow safeguards are you proposing for the cistern in the parking garage.
 - f) Shall provide sizing of sump pump with 100% backup;
- E-8H Incorporate all recommendations pursuant to the Hydrology/Hydraulic Report prepared for the project;
- E-8I Include mitigation measures and project modifications as recommended in the required Geotechnical Report prepared for the project;
- E-8J Depict the location of existing or proposed easements within the property boundary;
- E-8K Depict the existing sewer and water mains and laterals serving the residence, and if they are to be replaced;
- E-8L Depict the location of erosion control devices to be implemented in the event of rainfall;
- E-8M The methods for providing temporary erosion control during the construction phase of the project, complete with the inclusion of standard grading and erosion control notes on the plans;
- E-8N Ensure that the development will minimize the amount of impervious surface area and maximize the on-site dissipation of storm water run-off;
- E-8O Include methods to ensure retaining wall sub-drains and sump pumps will not discharge onto City streets, as they contribute to nuisance water. Sub-drains and sump pumps shall discharge on private property to allow percolation back into the soil;
- E-8P Include storm drain run-off "Best Management Practices" that minimize the volumes of urban run-off discharge to City rights-of-way, as acceptable to the City Engineer;
- E-8Q Include landscaping plans with characteristics that maximize infiltration, provide retention, reduce irrigation and storm water run-off, use efficient irrigation, rain harvesting and minimize the use of fertilizers, herbicides and pesticides;
- E-8R Include plans showing source control BMPs in place with an accompanying certified letter noting the implementation plans for said BMPs;
- E-8S Ensure that the grading and other construction activities meet the provisions specified in the California Regional Water Quality Control Board (RWQCB),

San Diego Region, Order R9-2013-0001, NPDES No. CAS0109266 – Section D.2 and subsequent orders;

- E-8T The following note shall be added to the plans since shoring is required: “Unless a shorter duration is recommended by the geotechnical engineer, the proposed temporary shoring shall remain for no longer than 60 calendar days. At the conclusion of the originally allotted time, 30-day extensions may be obtained if acceptable to the City Engineer, Director of Public Works and the project geotechnical consultant. At the conclusion of the permitted time period, the temporary shoring shall be replaced with an approved permanent structure in accordance with the structural and geotechnical engineer’s recommendation.”

All excavation slopes should meet the minimum requirements of the Occupational Safety and Health Association (OSHA) Standards. Maintaining safe and stable slopes and shoring on excavations is the responsibility of the contractor and will depend on the nature of the soils and groundwater conditions encountered and the method of excavation. Excavations during construction should be carried out in such a manner that failure or ground movement will not occur.

A survey-monitoring program shall be implemented to monitor shoring displacements during construction. In addition, nearby improvements shall also be surveyed and photographs and/or video taken to document baseline conditions, prior to commencement of grading operations. The deflection at the top of the shoring should be limited to 1 inch. If the shoring exceeds 1 inch or if distress or settlement is noted adjacent to the top of shoring, an evaluation should be performed and corrective measures taken;

- E-8U Following construction completion, the project designer shall inspect as-built improvements. Significant discrepancies, if any, between the approved plans and as-built conditions shall be brought to the attention of the Planning and Community Development Department and City Engineer. An as-built plan prepared by the project designer will be required. Prior to final sign-off by the City Engineer, the project designer shall sign the as-built plan indicating that the project was completed in accordance with said plan; and

- E-8V Prior to issuance of Building Permits, the applicant shall post a security in an amount approved by the City Engineer for the proposed grading. Said security shall be in a form acceptable to the City and shall remain in place until completion of the grading and final approval by the City.

E-9 *[Geotechnical Report Requirement]*

Prior to issuance of Building Permits, the applicant shall provide a Geotechnical Report for the project. The Report shall be prepared, signed and sealed by a Certified Engineering Geologist and a Geotechnical Engineer or Registered Civil Engineer. This Report shall be subject to review and approval by the City Engineer, City Building Department, and if deemed necessary, a third-party with expertise in geotechnical issues. The report required herein shall:

- E-9A Include all standard information as required by the City's Grading Ordinance;
- E-9B Evaluate existing site constraints;
- E-9C Evaluate potential effect of proposed construction on nearby slopes, sensitive topographic features and neighboring properties;
- E-9D Include a geotechnical evaluation of the long term stability of adjacent slopes;
- E-9E Provide any mitigation measures as necessary;
- E-19F Provide recommendations for any special construction methods as necessary;
- E-9G Include the preparation of field tests to be performed at the site during construction, so as to ensure that field conditions are suitable for the approved construction. The results of such tests may necessitate revisions to the project with such revisions subject to review by the appropriate City entities;
- E-9H If retaining walls are required, give recommendations for back-cuts for the construction of retaining walls. These recommendations shall include a time limit that the back-cuts can remain in place without either creating a stable backfill, or completing construction of the approved retaining walls. If the recommended time deadlines are not met, the applicant, by signing these conditions, grants the City permission to work on their private property to secure the back-cuts, and use the cash security to perform the work;
- E-9I If temporary shoring is required, the geotechnical consultant shall provide necessary geotechnical parameters and recommendations, including maximum cuts and time limits;
- E-9J Address the feasibility of long term infiltration of stormwater runoff onsite, and if sub-drains will be required for any proposed infiltration BMPs;
- E-9K Address the presence of groundwater and the need to provide sub-drains for groundwater extraction. If extracted groundwater is discharged to surface waters, the project must comply with State RWQCB Order No. R9-2008-0002; and
- E-9L Provide R values for pavement sections of San Dieguito Drive;
- E-10 *[Authorization for Off-site Work]*
 - E-10A Prior to the issuance of Building Permits, the applicant shall obtain letters of permission from any affected property owners if construction or construction access is required across property lines. This includes temporary rights of access; and
 - E-10B The following note shall be included on the plans for the Permit: "No grading shall occur outside the limits of the approved grading plan unless prior written

authorization is obtained from the City and the owners of any other affected properties.”

E-11 *[Grading – Separate Permits for Borrow or Disposal Site]*

A separate Grading Plan shall be submitted and approved and a separate Grading Permit issued for any off-site borrow or disposal site, if located within City limits. An Encroachment Permit will be required to identify the haul route proposed for this purpose. If the borrow or disposal site is located outside of the City, the applicant shall provide evidence of receipt of required permits/authorizations. A haul route shall be submitted and approved by the City Engineer.

E-11A A log documenting the dates of hauling and the number of trips (i.e. trucks) per day shall be available on the job site at all times.

E-11B The applicant shall identify a construction manager and provide a telephone number for any inquiries or complaints from residents regarding construction activities. The telephone number shall be posted at the site readily visible to any interested party during site preparation, grading and construction.

E-11C Trucks shall be spaced so as to discourage a convoy effect.

E-11D There shall be no staging of hauling trucks on any streets adjacent to the project, unless specifically approved as a condition of an approved haul route.

E-12 *[Hold Harmless Agreement for Off-site Drainage]*

Prior to issuance of Development Permits, the applicant shall process, execute, and record a hold harmless Agreement with the City of Del Mar regarding off-site drainage associated with the project. The form and content of said agreement shall be prepared to the satisfaction of the City Engineer and the Planning and Community Development Director.

E-13 *[Priority Storm Water Mitigation Plan (SWMP)]*

Prior to issuance of Development Permits, the applicant shall submit a Priority SWMP for City review and approval that addresses the following:

E-13A Control the post-development peak storm water run-off discharge rates and velocities to maintain or reduce pre-development downstream erosion;

E-13B Minimize pollutants of concern from urban runoff through implementation of source control BMPs;

E-13C Remove pollutants of concern from urban runoff through implementation of structural BMPs;

E-13D Include storm drain stenciling and signage;

E-13E Include properly designed outdoor material storage areas;

E-13F Include properly designed trash storage areas; and

E-13G Ensure that post-development runoff does not contain pollutant loads which have not been reduced to the maximum extent practicable.

E-13H Comply with the City Standard Urban Stormwater Mitigation Plan (SUSMP);

E-13I Include a detailed Operations and Maintenance Plan (O&M Plan) for all treatment control BMPs, that includes a minimum, the designated responsible parties to manage the stormwater BMPs, employee training program and duties, operating schedule, maintenance frequency, routine service schedule, specific maintenance activities, copies of any additional required permits; cost estimate for implementation of the O&M Plan. Demonstrate the funding mechanism to ensure ongoing long-term maintenance of all structural post construction Best Management Practices (BMPs);

E-13J Identify affected receiving water bodies; and

E-13K Include an exhibit that clearly shows the limits and quantities of impervious area in both the pre and post development conditions.

The structural BMPs required herein shall be designed so as to filter or treat the volume or flow outlined in the numeric sizing criteria outlined below:

Volume

Volume-based BMPs shall be designed to filter or treat the volume of runoff produced from a 24-hour 85th percentile storm event, as determined from the local historical rainfall record; or

E-14 *[BMP details]*

Prior to issuance of Development Permits, all post construction BMPs shall be shown in detail on the construction plans and submitted to the City for review and approval. For all post-construction treatment control BMPs, submit an operation and maintenance manual detailing requirements for the property owner to maintain BMPs into perpetuity. An easement shall be granted to the City for inspection of post-construction treatment control BMPs as needed. The project shall comply with the existing and subsequent Del Mar Jurisdictional Urban Runoff Management Plan and the State of California and National Pollutant Discharge Elimination System (NPDES).

E-15 *[Soil Stabilization]*

The applicant shall utilize sediment controls only as a supplement to erosion prevention for keeping sediment on-site during construction – NEVER as a single or primary method.

E-18A The applicant shall clear and grade only the areas on the project site that are necessary for construction. These areas shall be clearly denoted on the plans;

E-18B The applicant shall minimize exposure time of disturbed soil areas;

E-18C The applicant shall submit a schedule to the City for review and approval, with proposed dates, demonstrating the minimization of grading during the wet season and coinciding the grading with dry weather periods, permanent revegetation and landscaping as early as feasible, temporary stabilization and reseeding of disturbed soil areas as early as feasible; and

E-18D The applicant shall stabilize all exposed slopes per City approved method.

E-16 *[Required Backflow Prevention]*

If the project authorized by this permit will involve installation or retention of any plumbing drainage fixtures at a level below that of the PUBLIC sewer main serving the project site, the applicant shall install a private backflow prevention device on their private lateral per the requirements shown below.

The plans shall be submitted prior to the issuance of Building Permits and shall be according to the Uniform Plumbing Code and subject to the review and written approval of the Planning and Community Development Director and City Engineer. Once installed, the private backflow prevention device(s) shall be subject to inspection by the City Engineer prior to final sign off for the project.

E-17 *[Access to Water Meters]*

Access to proposed or existing water meters located on or immediately adjacent to the property shall remain open and unobstructed at all times. Prior to the issuance of Building Permits, the applicant shall demonstrate that no structure or vegetation is proposed so as to restrict access to the water meter. In the event access is blocked by project implementation, the applicant shall be responsible for the removal any obstruction at his/her expense or shall pay for the cost of relocating the water meter to allocation acceptable to the Public Works Department.

E-18 *[Updated Title Report]*

Prior to the issuance of Building Permits, the applicant shall prepare an updated title report for the property.

E-19 *[Compliance with City of Del Mar JURMP]*

This project shall conform to the construction component in the latest edition of the City's Jurisdictional Urban Runoff Management Program (JURMP).

E-20 *[Compliance with Floodplain Regulation]*

Prior to issuance of Building Permits, project plans shall be designed to comply with all the requirements and terms of the City's Floodplain Overlay Zone and Federal Emergency Management Agency (FEMA) regulations, and shall be subject to the review and approval of the City Engineer and Planning and Community Development Department Director.

E-21 *[Design of inlets/outlets]*

Site drainage shall be designed such that, in the event of plugged or overloaded inlets/outlets, storm flows will be conveyed in a manner that is not detrimental to the site or other properties.

E-22 *[Sewer Service]*

The sewer connection to the public main must be a gravity connection. If a pump is required in order to service the residence, it must transition to gravity flow prior to connection to the public system. A sewer backflow prevention device will also be required if a pump is proposed. The existing Sewer lateral shall be videoed and certified clear of obstructions or damage by a licensed plumber. Should the lateral be damaged, a new lateral shall be installed to service the residence.

E-23 *[Backflow Prevention]*

A reduced pressure backflow prevention device is required for the water system and must be designed to the satisfaction of the City Engineer, Public Works, and Building Department.

E-24 *[Sight Distance Analysis]*

Due to the restricted access of the driveway in San Dieguito Drive, a sight distance analysis will be required at the point of entry to public street traffic. The analysis (exhibit) will require review and approval prior to issuance of Building Permit. The sight distance exhibit should demonstrate that the minimum sight distance in both directions from the proposed driveway can be achieved to the satisfaction of the City Traffic Engineer.

E-25 *[Proposed Retaining Wall]*

The proposed retaining walls shall be designed and constructed completely within the property. No portion of the wall or footing shall extend across the property line. The limits of the footing of the proposed retaining walls shall be depicted on the grading plan. The limits of any retaining wall footing shall be depicted on the grading plan. The applicant shall provide a plan and profile view of the proposed retaining wall that will depict top of wall and top of footing elevations.

E-26 *[Peak Runoff Mitigation]*

The proposed improvements shall result in a net decrease in impervious area. If this is considered infeasible, the applicant must submit a Hydrology and Hydraulics report. The report must demonstrate that the project mitigates the increase in peak runoff through the use of acceptable LID features.

E-27 *[Public Improvements]*

The public Street Improvements for this project shall be per a separate Improvement Plan set. A separate cost estimate is required for the work within the public right-of-way. Additional review fees will be required based on the City's standard fee schedule for public improvements.

E-28 *[Existing Easements]*

Prior to issuance of Building Permits the applicant must provide a letter from any easement holder authorizing the proposed improvements within the existing easement.

E-29 *[Maneuverability Exhibit]*

The applicant must provide a maneuverability ("turning template") exhibit to the satisfaction of Public Works, Planning, and Traffic Engineering. The exhibit must show the path of vehicular egress from the proposed garage to San Dieguito Drive.

E-30 *[Material Hauling and Construction Worker Parking]*

For material delivery vehicles equal to, or larger than two-axle, six-tire single unit truck (SU) size or larger as defined by FHWA Standards, the applicant shall submit a truck hauling route that conforms to City of Del Mar Municipal Code or to the approval of the City Engineer. A letter from the applicant confirming the intention to use this hauling route shall be submitted to the Department of Public Works and the City Engineering Department, and approved, prior to the issuance of any City permits. All material hauling activities including but not limited to, adherence to the approved route, hours of operation, staging of materials, dust control and street maintenance shall be the responsibility of the applicant. All storage and office trailers will be kept off the public right-of-way. Tracking of dirt onto City streets and walks will not be allowed. The applicant must provide an approved method of cleaning tires and trimming loads on-site. Any job-related dirt and/or debris that impacts the public right-of-way shall be removed immediately. No wash down of dirt into storm drains will be allowed. All material hauling activities shall be done in accordance with applicable City ordinances and conditions of approval. Violation of such may be cause for suspension of work.

The applicant shall provide a construction-parking plan that minimizes the effect of construction worker parking in the neighborhood and shall include an estimate of the number of workers that will be present on the site during the various phases of construction and indicate where sufficient off-street parking will be utilized and identify any locations for off-site material deliveries. Said plan shall be approved by the Department of Public Works and the City Engineer prior to issuance of City permits and shall be enforced during construction. Failure to enforce the parking plan may result in suspension of the City permits.

E-31 *[Site conditions]*

E-31A Per DMMC Chapter 9.20 (Noise Regulations) the applicant shall restrict hours of work for the use of heavy equipment during grading and improvements between the hours of 7AM to 7PM Monday -Friday and 9 AM- 7PM Saturdays, this includes the warmup of equipment. Sunday and City holiday work is prohibited;

E-31B Any relocation or under grounding of SDG&E facilities or other utilities shall be done at the applicant's expense;

E-31C All construction activities undertaken shall comply with the City's General Plan and Municipal Code. In cases of conflict between the City's Municipal Code, these standard conditions of approval, the governing priority shall be, to the extent legally permitted, as follows: 1) City's Municipal Code regulations; 2) City's General Plan; 3) Standard Conditions; and

E-31D Pedestrian access along the Jimmy Durante Blvd., property frontage, shall be maintained at all times unless material is being deliver to the site. Covered walkways shall be provided where pedestrians are exposed to potential injury from falling objects.

E-31E At least three (3) months prior to the opening of the County Fair and the Del Mar Racing season, the applicant (or applicants' contractor) shall contact the Del Mar Department of Public Works, to coordinate the installation of any necessary

traffic controls, warning and speed limit signs, crosswalk and pavement markings required to continue construction activities and not hinder traffic to the fair grounds. The Department of Public Works, in consultation with the City Traffic Engineer, shall determine what signs, pavement markings, and other traffic control measures should be installed by the applicant prior to the County Fair and the Del Mar Racing season.

E-42 *[Survey Monuments]*

E-42A The perpetuation of survey monuments is required and intended to protect both public and private property rights in accordance with federal and state law. Monument perpetuation shall be performed with every Drainage/Grading Plan and Street Improvement Plan. A land surveyor shall, upon completion of Drainage/Grading Plan, or new improvements, reset any monuments that have been destroyed due to the construction of the project and must file a post-construction Corner Record or Record of Survey with the County Surveyor.

E-42B A hold will be placed on the final inspection for all right of way permits and other types of permits that affect survey monuments. When Engineering Department receive confirmation of the filing of the post-construction Corner Record, Record of Survey or Parcel/Final Map from the land surveyor, the hold will be released, and final inspection can be performed.

Fire Department Conditions

F-1 *[Class A Roof]*

All structures shall be provided with a Class "A" Roof covering to the satisfaction of the California Building and Fire Code. NO wood shake shingles are allowed.

F-2 *[Access Road Minimum Dimensions]*

Fire apparatus access roads shall have an unobstructed improved width of not less than 20 feet; curb line to curb line, and an unobstructed vertical clearance of not less than 13 feet 6 inches. Access roads shall be designed and maintained to support the imposed loads of not less than 75,000 pounds and shall be provided with an approved paved surface to provide all-weather driving capabilities.

F-3 *[Wet Standpipe System]*

A Class I wet standpipe system is required. Standpipe system shall be designed and installed per NFPA 14 and Del Mar Fire Department requirements.

F-4 *[Fire Hydrants and Fire Flows]*

The applicant shall provide fire hydrants of a type, number, and location satisfactory to the Del Mar Fire Department and Del Mar Municipal Code 10.04. A letter from the water agency serving the area shall be provided that states the required fire flow is available. Fire hydrants shall be of a bronze type. Multi-family residential or industrial fire hydrants shall have two (1) 4" inch and two (2) 2 ½" inch NST outlets. Residential fire hydrants shall have one (1) 4" inch NST outlet, and one (1) 2 1/2" inch NST outlets.

F-5 *[Fire Alarm System]*

A California State Fire Marshal listed fire alarm system is required and shall be designed and installed per NFPA 72 and Del Mar Fire Department requirements. Plans shall be submitted for approval prior to building permit issuance.

F-6 *[Posting or Striping Public and Private Roadways "No Parking Fire Lane"]*

Fire Department access roadways shall be properly identified in accordance with Del Mar Fire Department standards. The means by which fire lanes are designated shall be maintained in a clean and legible condition at all times and be replaced or repaired when necessary to provide adequate visibility.

F-7 *[Gates]*

All gates or other structures or devices, which could obstruct fire access roadways or otherwise hinder emergency operations, are prohibited unless they meet standards approved by the Fire Department. An approved emergency key-operated switch and/or an approved emergency traffic control-activating strobe light sensor shall be installed per Del Mar Fire Department standards.

F-8 *[Grade]*

The gradient for a fire apparatus access roadway shall not exceed 20.0%. Grades exceeding 15.0% (incline or decline) shall not be permitted without mitigation. Minimal mitigation shall be a surface of Portland cement concrete, with a deep broom finish perpendicular to the entire direction of travel. The angle of departure and angle of approach of a fire access roadway shall not exceed seven degrees (12 percent).

F-9 *[Construction Materials]*

Prior to delivery of combustible building construction materials to the project site all of the following conditions shall be completed to the satisfaction of the Fire Department:

1. All wet and dry utilities shall be installed and approved by the appropriate inspecting department or agency;
2. As a minimum the first lift of asphalt paving shall be in place to provide a permanent all weather surface for emergency vehicles; and
3. Water supply for fire protection (fire hydrants and standpipes) shall be installed, in service and accepted by the Fire Department and applicable water district.

F-10 *[Address Numbers]*

STREET NUMBERS: Approved numbers and/or addresses shall be placed on all new and existing buildings and at appropriate additional locations as to be plainly visible and legible from the street or roadway fronting the property from either direction of approach. Said numbers shall contrast with their background, and shall meet the following minimum standards as to size: 4" high with a ½" inch stroke width for residential buildings, 8" high with a ½" stroke for commercial and multi-family residential buildings, 12" high with a 1" stroke for industrial buildings. Additional numbers shall be required where deemed necessary by the Fire Marshal, such as rear access doors, building corners, and entrances to commercial centers.

F-11 *[Dead Ends]*

All dead-end fire access roads in excess of 150 feet in length shall be provided with approved provision for the turning around of emergency apparatus. A cul-de-sac shall be provided in residential areas where the access roadway serves more than four (4) structures. The minimum unobstructed paved radius width for a cul-de-sac shall be 36 feet in residential areas with no parking.

F-12 *[Automatic Fire Sprinkler System]*

All structures shall be protected by an automatic fire sprinkler system designed and installed to the satisfaction to the satisfaction of the Del Mar Fire Department.

F-17 *[Basement]*

All basements shall be designed and equipped with emergency exit systems consisting of operable windows and lightwells. All lightwells if serving as one or more exits from a basement shall be equipped with fixed metal ladders as part of the exit. Lightwells that intrude into sideyard or backyard setbacks of five feet or less shall require a hinged grating covering the lightwell opening. The grating shall be capable of supporting a weight of 250 pound person; yet able to be opened by someone of minimal strength with no special knowledge, effort or key or tool. Any modification of previously approved plans related to this condition (F-17) shall be subject to re-submittal and review by appropriate City of Del Mar staff (Fire, Planning and Building).

F-18 *[Roadway Clearance During Construction]*

In accordance with the California Fire Code and California Vehicle Code, during project construction, all roadways shall maintain a minimum travel clearance width of 20 feet, with such area free of project equipment or materials, including the parking of construction-related vehicles.

F-21 *[Solar Photovoltaic Installations - Solar Panels]*

Solar Photovoltaic Systems shall be installed per California State Fire Marshal installation guidelines.

F-22 *[Response Maps]*

Any new development, which necessitates updating of emergency response maps by virtue of new structures, hydrants, roadways or similar features, shall be required to provide map updates in one of the following formats (AutoCad, DWG, DXF, ESRI shapefile, ESRI personal geodatabase, or XML format) and shall be charged a reasonable fee for updating all response maps.

Floodplain Conditions

FP-1 *[Plan review Federal Emergency Management Agency (FEMA) compliance]*

Prior to the issuance of Building Permits, the project plans shall be subject to the review and approval of the City Engineer. The City Engineer shall review all aspects of the project plans to ensure conformance with all applicable flood protection requirements. Pursuant to the requirements of FEMA, the plans shall be subject to the review and approval by the City Engineer to specify that:

FP-1 A *[Mechanical equipment elevation]*

No machinery or equipment shall be installed within the attached garage, (including, but not limited to furnaces, air conditioners, heat pumps, hot water heaters, washers, dryers, elevator lift equipment, electrical junction and circuit breaker boxes, or food freezers), shall be placed, installed, or constructed below the level of the base flood elevation of [18.00] NGVD.

FP-1 B *[Restriction on improvements below base flood elevation]*

All interior wall, floor, and ceiling materials located below the base flood elevation of [18.00] feet NGVD shall be unfinished and resistant to flood damage.

FP-1 C *[Flotation/lateral movement construction]*

The walls of any enclosed area below the base flood elevation of [18.00] feet NGVD shall be constructed in a manner to prevent flotation, collapse, and lateral movement of the structure.

FP-1 D *[Flood proofing]*

The walls of any enclosed area below the base flood elevation of [18.00] feet NGVD shall be constructed and flood-proofed so as to be in conformance with FEMA regulation #44 CFR 60.3(c)(5).

FP-2 *[Finished floor certification]*

Per the requirements of the Federal Emergency Management Agency, prior to final approval/Certificate of Occupancy, the applicant shall submit an Elevation Certificate prepared by a licensed surveyor or registered civil engineer, certifying the elevation of the lowest floor elevation(s) of the structure.

Housing Condition

H-1 *[Reservation of housing units]*

Prior to the issuance of Grading Permit, the developer shall execute and record an Affordable Housing Agreement satisfactory to the City Attorney reserving **10 units** of the project as affordable housing units in accordance with the provisions of the State Density Bonus Law and Del Mar Municipal Code. Said Agreement shall include language specifying that these inclusionary (affordable) housing units will be reserved for at least 55 years and shall consist of six units to be designated affordable in the “low” income category, two units in the “very low” income category, and two units in the “extremely low” income category.

Landscape Conditions

L-1 *[Landscape Improvements in the Right-of-way]*

Provided an Encroachment Permit is obtained, as may be required by the Municipal Code, the applicant may make landscape improvements in City rights-of-way and easements compatible with those on the adjacent private property. The landscape improvements shall be detailed in a Landscape/Irrigation Plan submitted for City review and approval. Large or fast growing trees or shrubs which could affect power or other utility lines, vehicle travel way, parking, or site

distances shall be prohibited. Unless otherwise authorized via written City approval, turf areas shall be limited and maximum use shall be made of drought tolerant ground cover and shrubs. Where no formal improved sidewalk is provided, any vegetation to be installed within five (5) feet of the improved street edge shall be “walkable” groundcover appropriate for pedestrian travel. The property owner shall also be required to maintain installed trees, shrubs, turf, ground cover, irrigation, and other improvements in the right-of-way to the City’s satisfaction and may be required to record a Covenant Agreement memorializing this requirement.

L-2 [Torrey Pine tree fencing/replacement of damage trees]

Prior to the issuance of Building Permits or site grading/disturbance, whichever comes first, a temporary fence shall be placed around all Torrey Pine trees to be retained on-site. Any Torrey Pine tree proposed for retention that is irreparably damaged due to implementation of the project shall be replaced in accordance with determinations by the City Landscape Architect regarding the appropriate size and siting of the replacement tree.

L-3 [Torrey Pine Tree Preservation Plan]

Prior to the issuance of Building Permits or site grading/disturbance, whichever comes first, the applicant shall submit a Tree Preservation Plan for the review and approval of the Planning and Community Development Director. The plan shall address construction methodologies and construction-phase measures to be implemented to ensure preservation, in a healthy and thriving condition, of those Torrey Pine trees to be retained on the property pursuant to the approved plans for the project.

LCP Conditions

LCP-1 [Prohibition on grading during the rainy season]

In accordance with DMMC Sections 30.52.120 A-4 and 30.53.140-C, no grading shall occur between November 15th of any year and March 31st of the following year, unless specifically authorized through the written approval of the Planning and Community Development Department Director.

LCP-2 [Retained Open Space Deed Restriction – Wetland and Buffer]

Prior to issuance of the building permits for the project, the applicant shall record an open space deed restriction against the deed for the property, to the satisfaction of the City Attorney. The open space deed restriction shall apply to the area of on-site wetland and 50-foot wetland buffer.

The purpose of the deed restriction is to ensure the future protection of the wetland/buffer from encroachment, disturbance, or degradation. The deed restriction shall prohibit the development and/or placement of structures or landscaping in the affected area, unless approved by the appropriate entity of the City of Del Mar.

LCP-3 [Retained Open Space Deed Restriction – Substantially Steep Slopes]

Prior to issuance of the building permits for the project, the applicant shall record an open space deed restriction against the deed for the property, to the satisfaction of the City Attorney. The open space deed restriction shall apply to the area of substantial steep slopes as indicated on submitted plans and contained within project files. The deed restriction shall also apply to those

steep slope setback areas of a minimum 20-foot width, unless encroachment into such setback has otherwise been permitted by the City.

The purpose of the deed restriction is to preclude development that would encroach into or cause erosion or destabilization of the steep slopes. The deed restriction shall prohibit the development and/or placement of structures or landscaping in the affected area, unless approved by the appropriate entity of the City of Del Mar subject to a finding that such development will not contribute to the de-stabilization or steep slopes.

LCP-4 [*Landscape Plan Review*]

Prior to the issuance of building permits, the applicant shall submit a detailed landscape plan for review by the Planning and Community Development and Fire Department to ensure that all re-vegetated areas incorporate native and naturalized, low fire fuel materials that integrate with the adjacent natural canyon and hillside environment.

Special Conditions

SC-1 [*Certificate of Compliance*]

Prior to the issuance of a Grading Permit, the applicant shall submit evidence, in the form of a *Certificate of Compliance* document recorded with the County of San Diego, that parcels 299-100-47 and 299-100-48 have been consolidated in accordance with application BA22-001 into one legal parcel.

Water Conservation Conditions

WC-01 [*Compliance with City and State Water Conservation Policies and Regulations*]

Prior to issuance of building permits, the applicant shall provide a Landscape Documentation Package (LDP) for the project prepared by a landscape architect or landscape contractor licensed by the State of California. The LDP required herein shall include anticipated water use calculations for the project's landscape and irrigation components. The LDP shall be accompanied by a certification from the preparer that the LDP is in compliance with the City's adopted water conservation policies in effect at the time of LDP preparation, including Del Mar Municipal Code Chapter 23.60 (Water Efficient Landscape Ordinance) and any guidelines adopted by the City for such ordinance. The preparer shall also certify that the LDP is in compliance with the Governor's Executive Order Nos. B-29-15 and B-36-15, which call for compliance with landscape/irrigation water use standards set by the California Building Standards Commission and the California Department of Housing and Community Development.

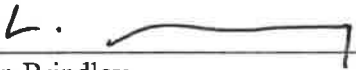
The LDP shall be subject to the review and written approval of the Director of Planning and Community Development (Director). The Director shall, as deemed necessary, work in consultation with the City's Landscape Architect, with the costs for such consultation to be borne by the applicant or his/her designee. If the submitted LDP is found *not* to be in compliance with the standards referenced herein, it shall be revised accordingly and resubmitted for compliance review.

In the event that compliance with this condition results in the need to modify a landscape or irrigation plan approved as part of a discretionary permit granted by the City, the Director shall

have discretion to authorize changes of landscape materials in a manner that retains like-for-like consistency with the parameters of the project's approved discretionary permit, with such parameters to include: the size of landscape material to be installed and its anticipated mature height; and the location of any trees to be installed.

WC-02 [City Inspection for Compliance with Project's Landscape Documentation Package]

Prior to final sign-off on implementation, the project shall be subject to inspection by City staff for compliance with the Landscape Documentation Package (LDP) required pursuant to the project's conditions of approval. The inspections shall include review for compliance with the irrigation and landscape plans included as component parts of the LDP.



Karen Brindley
Director of Planning and Community Development

April 19, 2022

Date

DECISION ON BOUNDARY ADJUSTMENT BA22-001

A DETERMINATION BY THE DIRECTOR OF PLANNING AND COMMUNITY DEVELOPMENT OF THE CITY OF DEL MAR TO CONDITIONALLY APPROVE BOUNDARY ADJUSTMENT BA22-001 TO ALLOW THE CONSOLIDATION OF TWO LOTS LOCATED AT THE SOUTHEAST CORNER OF JIMMY DURANTE BOULEVARD AND SAN DIEGUITO DRIVE, (APNS 299-100-47 AND 299-100-48) IN DEL MAR, CALIFORNIA

WHEREAS, Watermark DM, L.P. ("Applicant") is the owner of real property located at the southeast corner of Jimmy Durante Boulevard and San Dieguito Drive and identified by the APN's 299-100-47 and 299-100-48 (the "Property"); and

WHEREAS, on April 8, 2021, the Applicant applied for a Boundary Adjustment (**BA22-001**) to consolidate the two undeveloped lots (APN's 299-100-47 and 299-100-48) at the Property; and

WHEREAS, Del Mar Municipal Code (DMMC) Section 24.70.030(A) specifies that the Director of Planning and Community Development shall serve as the issuing authority on the application for a Lot Line Adjustment which also includes a Boundary Adjustment; and

WHEREAS, on April 19, 2022 the Director of Planning and Community Development of the City of Del Mar considered application BA22-001 pursuant to the provisions of DMMC Chapter 24.70; and

WHEREAS, pursuant to the California Environmental Quality Act (CEQA), the consolidation of two lots by a Lot Line (Boundary) Adjustment is a "Ministerial" project and is found to be Statutorily Exempt from the requirements of CEQA (Guidelines Section 15268); and

NOW THEREFORE, BE IT RESOLVED, based on the application materials and information received, the Director of Planning and Community Development finds that application BA22-001 is consistent with the requirements for Lot Line Adjustments pursuant to DMMC Chapter 24.70; and

NOW, THEREFORE, BE IT FURTHER RESOLVED by the Director of Planning and Community Development that application BA22-001 is hereby approved subject to the following conditions:

1. *[Indemnification]*

By accepting this permit implementing the Boundary Adjustment authorized herein, the applicants agree to indemnify, defend and save the City of Del Mar, its authorized agents, officers, representatives and employees harmless from and against any and all penalties, liabilities, annoyances, or loss resulting from claims or court action and arising out of any accident, loss or damage to persons or property happening or occurring as a proximate result of any work undertaken under the permit granted pursuant to the application or by reason of

the permittees' installation, operation, maintenance or removal of any improvements on their properties.

2. *[Boundary Adjustment Authorization Limited to Plan Set]*

This permit is granted based on submitted plans (Lot Line Adjustment Plat) dated **February 23, 2021** and so identified by the staff of the Del Mar Planning Department. Revisions to these plans and/or any proposals for modification shall require review and prior authorization from the appropriate entities of the City of Del Mar.

3. *[Code Compliance]*

Approval of this application shall not waive the requirement for compliance with the provisions of the Del Mar Municipal Code or other applicable City regulations in effect at the time of recordation of the required Certificate of Compliance, unless specifically waived in this authorization/permit or related authorizations.


4. *[Monumentation]*

The applicants shall prepare and install, to the City Engineer's satisfaction, permanent property corner monumentation that reflects the approved Lot Line Adjustment Plat. A copy of the recorded Record of Survey shall be provided to the City Engineer.

5. *[Certificate of Compliance]*

The applicants shall receive approval for and record a Certificate of Compliance reflecting the legal description of the lot lines authorized by the Lot Line Adjustment Plat. The form and content of the Certificate of Compliance required herein shall be subject to the review and approval of the Planning Director. The recording fees shall be borne by the applicants.

6. *[Record of Survey]* The applicants shall prepare, approve and record a Record of Survey (ROS), or Corner Record (CR) with the County of San Diego Mapping Department



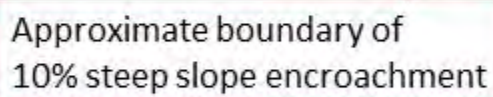
Karen Brindley
Director of Planning and Community Development

April 19, 2022
Date

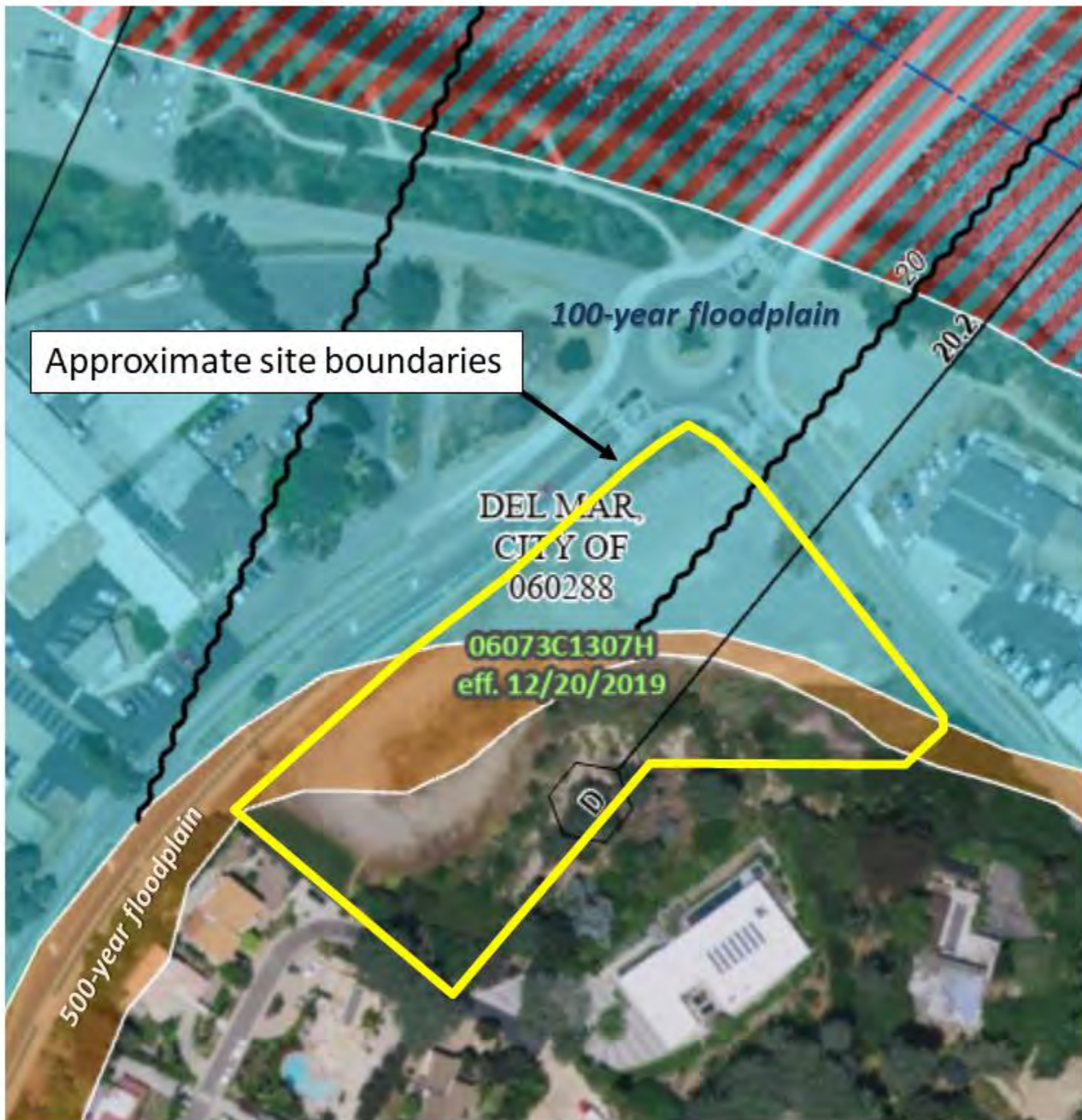
Watermark Del Mar - ESHA and Wetland Map



EXHIBIT NO. 7
APPLICATION NO.
A-6-DMR-22-0020
ESHA & Wetland Map
 California Coastal Commission



California Coastal Commission



SPECIAL FLOOD HAZARD AREAS		Without Base Flood Elevation (BFE) Zone A, V, A99
		With BFE or Depth Zone AE, AO, AH, VE, AR
		Regulatory Floodway
		0.2% Annual Chance Flood Hazard, Areas of 1% annual chance flood with average depth less than one foot or with drainage areas of less than one square mile Zone X

EXHIBIT NO. 9
APPLICATION NO. A-6-DMR-22-0020
FEMA Floodplain Imagery
 California Coastal Commission

Key Observation Points (taken from Public View Analysis of the Watermark Del Mar Apartment Project, July 16, 2021)



EXHIBIT NO. 10
APPLICATION NO.
A-6-DMR-22-0020
Public View Analysis
 California Coastal Commission



KOP 1 : Existing Conditions



KOP 1 : Proposed Conditions



KOP 2 : Existing Conditions



KOP 2 : Proposed Conditions



KOP 3 : Existing Conditions



KOP 3 : Proposed Conditions



KOP 4 : Existing Conditions



KOP 4 : Proposed Conditions



KOP 5 : Existing Conditions



KOP 5 : Proposed Conditions