

To: Sea-Level Rise Stakeholder-Technical Advisory Committee (STAC)
From: City Attorney
Cc: City Council
Re: ***Adoption and Processing of Sea-Level Rise Adaptation Plan***

Question

Should the City of Del Mar Sea-Level Rise Adaptation Plan (the “Adaptation Plan”) be submitted to the California Coastal Commission (the “Commission”) as a Local Coastal Program Amendment (“LCP”), or may it instead be processed as an amendment to the City’s Community Plan, which serves as the general plan, and what are the pros and cons of each option.

Analysis

On May 21, 2018, the City Council approved its Sea-Level Rise Adaptation Plan, following years of work and numerous public meetings. Though the Adaptation Plan itself was approved, the process for adopting the Adaptation Plan – whether as an amendment to the City’s Local Coastal Program (the “LCP”) or as an amendment to the Community Plan – was deferred due to questions and concerns raised during the process of planning for and preparing the Adaptation Plan. In response to such concerns, the City Council requested an objective analysis of the issues. The following are the results of reviewing the positions of both sides of the debate and conducting an independent analysis of the Grants and relevant statutes, regulations and caselaw:

The Adaptation Plan can be part of the Community Plan, in Addition to – not in lieu of – Incorporation in the LCP

- Goals identified in the Adaptation Plan could be considered for inclusion in the Community Plan in addition to inclusion in the LCP, by reference or in whole or in part
- Del Mar’s Community Plan serves as the legally required general plan
 - A general plan is a city’s blueprint for citywide development
 - General plans contain broad planning goals and a comprehensive slate of policies for each of these goals
- A Community (General) Plan requires a corresponding land use plan and zoning ordinances for implementation of the Community Plan’s policies
 - For Del Mar, the certified LCP contains most of these policies and implementing ordinances
 - Placing the Adaptation Plan solely in the Community Plan (i.e., without also amending the LCP) would not ensure implementation for development and permitting subject to the Coastal Act and Commission review without LCP implementing ordinances

- As a practical matter, the City's shoreline hazard mitigation policies are currently located within the City's certified LCP land use plan, while more general natural hazard issues are addressed within the county-wide San Diego County Hazard Mitigation Plan
- Because Del Mar does not have a now-required safety element in the Community Plan, the Community Plan could not just be simply amended (to address the City's hazard mitigation policies) in-lieu of amending the LCP's land use plan
 - An alternative is to amend the Community Plan to address the Adaptation Plan, by reference or in whole or in part, in addition to amending the LCP
 - Otherwise, a new safety element would have to be prepared per state law and would have to be adopted as such
 - Adding a new element could require Del Mar to update the entire Community Plan, as well as undergo extensive CEQA review
 - Amending the Community Plan is anticipated to be a multi-year and costly process
 - Typically, general plan updates with new elements take 3 to 5 years and often cost upwards of \$1,000,000
 - If the Adaptation Plan were not incorporated into the LCP in the interim, the strategies and standards included in the Adaptation Plan would not be applied during Commission review

LCP Background and Standards

- The LCP is a basic planning tool to guide development solely in the Coastal Zone
- An LCP includes a Land Use Plan, which must be consistent with the adopted Community Plan, and Implementing Ordinances
- With a certified LCP, coastal permitting authority is generally transferred from the State to the local jurisdiction
 - An LCP's specific factors are tailored for the community
 - Currently Del Mar has that permitting authority, and the standard of review is Del Mar's LCP, making the review criteria tailored to Del Mar's unique situation

There are Legal and Practical Benefits to Incorporating the Adaptation Plan into the LCP

- Local coastal programs generally control and set the standards of review for coastal development
 - Incorporating the Adaptation Plan into the LCP sets strategies and methods established by Del Mar itself for dealing with climate change and sea level rise
- The Commission's jurisdiction is generally limited to determining compliance with the LCP and applicable policies
 - Including items within an LCP limits and focuses the Commission's review
 - Conformity with the LCP is required for both appellate review and original review
 - The Commission's role is to interpret law, not create it

- If the Adaptation Plan is not included in the LCP, the Commission will not be able to refer to it or rely on it in making decisions and taking actions related to Del Mar
 - If the Adaptation Plan were included only in the Community Plan, the Commission would not be able to refer to or rely on it
 - Where something is addressed in the LCP, development must conform to that; if something is not addressed, it may be subject to interpretation
 - Example: sea walls are allowed under the LCP; if not included, permits for such structures are likely denied

The Commission Generally Cannot Require the City to Include Specific Content

- The Coastal Act does not require an LCP amendment
 - Guides such as the Commission's Sea Level Rise Policy Guidance are suggestions only and do not legally require action
 - The Commission could suggest modification as part of its periodic review of LCPs, but a local agency need not accept any of the suggestions
 - The Commission cannot force an agency to amend its LCP -- if suggested modifications are rejected, the Commission's only recourse is to request that the legislature address the issue
- LCPs and related land use plans are reviewed for conformity with the Coastal Act's Coastal Resources Planning and Management Policies
 - In reviewing LCPs, the Commission is not authorized to diminish or abridge the authority of the City to adopt and establish the precise content of its land use plan
 - Conformance with the policies and requirements of the Coastal Resources Planning and Management Policies can be required only to the extent necessary to achieve the basic state goals specified in section 30001.5, i.e., coastal quality, utilization and conservation, public access, prioritized development, and coordinated planning and development

The Grants Require an LCP Amendment

- The City was awarded in excess of \$300,000 in grants (the "Grants") pursuant to the Commission's Local Coastal Program Local Assistance Grant Program (the "Grant Program")
- Processing the Adaptation Plan as an LCP amendment is legally required by the Grants
 - The grants expressly include consequences for failing to proceed as an LCP amendment
 - The Commission has statutory authority to contract and enforce its contracts, including authority to sue
- In addition to the legal requirements of the Grants, there are practical risks associated with failing to incorporate the Adaptation Plan into the LCP
 - Strained relationship with the Commission
 - Affect the City's ability to obtain future grant funding

- The strategies selected by Del Mar will not be taken into account in reviewing coastal development
- Implementation of the City's preferred strategies (such as SCOUP permits for sand replenishment) could be complicated or hindered

SB 379 does not Require an LCP Amendment, but May be Satisfied by it

- SB 379 contemplates amendment of components of an agency's general plan, either a local hazard mitigation plan or the safety element of the agency's general plan by 2022
- SB 379 could be satisfied by including the substance required other than in a hazard plan or safety element, but some general plan amendment – even if just a reference – seems to be required
- The City could incorporate the Adaption Plan into the Community Plan as well as the LCP as part of its compliance with SB 379
 - General plan amendments involve an intricate and involved process, including obtaining input from numerous agencies including, but not limited to, affected schools, LAFCO, neighboring jurisdictions, water suppliers, Native American tribes, etc.

The Adaptation Plan Satisfies and Complies with the Grants and the Coastal Act

- The purpose of the Grants was to address and plan for sea level rise and related climate change issues
- The Grants required that the Adaptation Plan evaluate and address strategies such as retreat, protection, and accommodation strategies
 - Community and stakeholder input is required in evaluating strategies
- The Adaptation Plan considers and addressed retreat as an alternative to address sea level rise
 - Following extensive public input, as required, the City determined that *retreat was not a viable option* in the near-term, leaving it open if conditions change and/or other preferred strategies are not successful
 - The Adaptation Plan would likely not have satisfied requirements of the Grants without addressing retreat
- The Adaptation Plan and a corresponding LCP amendment would comply with the Coastal Act
 - The standard of review under the Grants for determining whether the LCP is successfully completed and acceptable is the Coastal Act
 - The City has local discretion on how to implement the Coastal Act's policies
 - Where a number of alternatives consistent with the Coastal Act are available, the Commission cannot force a local agency to follow a certain approach
 - Including retreat as an immediate strategy is not necessary to comply with or achieve the basic goals of the Coastal Act