



City of Del Mar Staff Report

PLANNING COMMISSION
STAFF REPORT
March 9, 2021

APPLICATION: Proposed Housing Element Implementation Overlay Zone (HEI-OZ) for Implementation of 5th Cycle Housing Element Program 2G Rezone – Local Coastal Program Amendment (LCPA 20-003) and Zone Code Amendment (ZA 20-003)

REQUEST: This is a request for the Planning Commission to review and consider modifications to the proposed HEI-OZ based on City Council direction on February 16, 2021 to include design standards into the draft Overlay. The Planning Commission is requested to provide a recommendation to the City Council on the modifications, including inclusion of the design standards into the HEI-OZ and the types of standard proposed. The Planning Commission initially reviewed and recommended approval of the LCPA and ZA actions on January 12, 2021. The HEI-OZ has since been revised to include objective design standards and ancillary changes pursuant to City Council direction on February 16, 2021, which means an updated Planning Commission review and recommendation to the City Council is required. The City Council will consider whether to adopt the proposed amendments in a future noticed public hearing.

In order to minimize or avoid State enforcement penalties including fines, Housing Element decertification, and referral to the Attorney General's office, the City Council will need to timely approve the related LCPA and ZA actions for compliance with State law (including applicable California Environmental Quality Act, Housing Element, and Coastal Act laws) prior to April 15, 2021.

The proposed actions for compliance with the 5th Cycle Housing Element and State Housing law (California Government Code Sections 65583.2(h) and (i)) include:

- 1) Local Coastal Program Amendment (LCPA 20-003) to reflect a new HEI-OZ with design standards applicable to parcels where the HEI-OZ will be applied to implement Government Code §65583.2(h) and (i), and change the land use designation and zoning for North Commercial to demonstrate compliance with Housing law and the Coastal Act; and
- 2) Zone Code Amendment (ZA 20-003) to create and implement a new HEI-OZ per Housing Element Program 2G in accordance with State law (see Exhibit A); and

APPLICANT: City of Del Mar

STAFF CONTACTS: Joseph D. Smith, AICP, Planning & Community Development Director
Matt Bator, AICP, Principal Planner
Amanda Lee, Principal Planner

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LOCATION: The proposed HEI-OZ would apply Citywide to any parcels that are subject to the HEI-OZ pursuant to the City's Housing Element and Government Code Sections 65583.2(h) and (i), including two North Commercial Zone parcels identified as APNs 299-100-47-00 and 299-100-48-00 as part of a separate rezone action to implement 5th Cycle Housing Element Program 2G.

ENVIRONMENTAL STATUS: Pursuant to the California Environmental Quality Act (CEQA), the proposed actions have been analyzed and determined to be Statutorily Exempt pursuant to CEQA Guidelines Section 15265 because the proposed action constitutes an amendment to the City's certified Local Coastal Program (LCP) to facilitate the implementation of Government Code Section 65583.2 (h) and (i) pursuant to State Housing law. CEQA does not apply to activities or approvals by a local government as necessary for the preparation and adoption of a LCP amendment for review and certification by the California Coastal Commission (CCC) as set forth in Section 21080.9 of the Public Resources Code. Accordingly, the certified City of Del Mar LCP constitutes a plan for use in the CCC's regulatory program as certified under Section 21080.5 of the Public Resources Code. The proposed actions include a corollary amendment to the City's Municipal Code (Zoning). The future application of the HEI-OZ to certain parcels as required by the City's Housing Element to implement Government Code Section 65583.2 (h) and (i), including 5th Cycle Program 2G for multiple-dwelling residential use on two vacant parcels in the North Commercial Zone that requires the City Council's discretionary approval resulting in a physical change to the environment, will be analyzed in accordance with CEQA prior to such approval.

BACKGROUND:

As part of the City's implementation of its Housing Element, a document that is part of the Community Plan, State Housing law requires the City to rezone certain vacant parcels for "by-right" multiple-dwelling unit development at a density of 20-25 dwelling units per acre (du/ac) when it includes 20% of the units as affordable (low or very-low income). "By-right" means the City must process a development project "ministerially" subject to specific objective standards (i.e., height, FAR, setbacks, design criteria, etc). The City may not apply its "discretionary" authority to these types of development projects, meaning these types of projects are not eligible for Design Review or subjective design criteria. This is a similar process to how the City must process Accessory Dwelling Units (ADUs) pursuant to State law. This type of by-right rezone requirement is authorized by Government Code Section 65583.2 (h) and (i).

Under the City's current 5th Cycle Housing Element, the City is required to implement this type of by-right rezone on two vacant parcels at the corner of Jimmy Durante Boulevard and San Dieguito Drive (currently owned by Watermark, LP). This action is referred to as Program 2G and must be completed by the City Council before the State's deadline of April 15, 2021. Should the City not complete Program 2G by this deadline, it risks significant penalties by the State including decertification of its Housing Element. As a result of penalties and State law requirements, the City anticipates this same type of rezone to occur on various parcels during the City's 6th Housing Cycle (2021-2028). These include, but are not limited to, up to six vacant parcels along Border Avenue/North Bluff and up to three vacant parcels at the south end of Stratford Court (west side). To implement this type of by-right rezone program, the City would utilize the HEI-OZ. When applicable, the HEI-OZ would be applied to certain parcels via a rezone action. This would be the case for Program 2G, for example, and any other parcels subject to by-right development during

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the 6th Cycle. The HEI-OZ would essentially sit “on top” of the base underlying zoning. This means that the underlying zoning development standards would continue to apply to future development projects (e.g., height, FAR, setbacks, etc) that are not subject to the HEI-OZ.

On October 19, 2020, the City Council directed staff to complete implementation of the actions necessary to implement Program 2G by April 15, 2021. To implement the completion of Program 2G, the City also needed to develop the HEI-OZ. Therefore, the rezone actions of the two vacant parcels owned by Watermark, LP into the HEI-OZ are contingent on the City first adopting the HEI-OZ.

On January 12, 2021, the Planning Commission reviewed the HEI-OZ and recommended adoption by the City Council. Aside from the addition of objective design standards into the HEI-OZ, the version considered by the Planning Commission as included as Exhibit “A” mirrors the version considered on January 12, 2021.

On February 16, 2021, the City Council considered the HEI-OZ as recommended for adoption by the Planning Commission. At that meeting, the City Council directed staff to incorporate objective design standards into the draft document. Because the City is on an extremely condensed and expedited schedule to complete this action before April 15, 2021 (would require adoption via ordinance), staff is required to return to the Planning Commission for review and a formal recommendation on the HEI-OZ, including the design standards component, to the City Council as soon as possible. Note that the inclusion of Design Standards into the HEI-OZ are not a required component under 5th Cycle Housing Element Program 2G or State Housing law.

On February 24, 2021, the concept of including design standards into the HEI-OZ was discussed by the Design Review Board (DRB). A summary of the DRB’s feedback is provided later in this report.

ANALYSIS:

The Planning Commission is asked to provide a recommendation to the City Council on whether to approve the Local Coastal Program Amendment and Zone Code Amendment actions. The following analysis identifies the effect of the proposed action to create the HEI-OZ.

Creation of the Housing Element Implementation Overlay Zone

The HEI-OZ is proposed to facilitate implementation of housing-related rezone programs where required for compliance with State Housing law. The HEI-OZ one is a zoning tool that can be used to further specify allowances and standards on a specific parcel(s). Once created, the HEI-OZ could be applied to parcels throughout the City via rezone actions processed in the future as necessary to implement the City’s Housing Element requirements. The proposed HEI-OZ would be codified as a part of the Del Mar Municipal Code (DMMC) Chapter 30.92 and would identify the areas of applicability. The HEI-OZ will not apply to any property until a Rezone action is formally processed. All Rezone actions to include a parcel(s) into the HEI-OZ would be processed via an ordinance.

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The HEI-OZ identifies the process for permit approval, development standards, and mitigation, monitoring, and reporting requirements that would be required of all new development on a parcel located within the HEI-OZ. Pursuant to State law, rezone programs in the HEI-OZ will be subject to an administrative, ministerial approval process where submitted development applications will be reviewed for compliance with the published development standards and mitigation, monitoring, and reporting criteria. More specifically, an administrative Coastal Development Permit (CDP) would be required for proposed development. This is similar to the City's current processing of Accessory Dwelling Units (ADUs) as ministerial with an administrative CDP issued for those that are located within the California Coastal Commission (CCC) Appeals Jurisdiction.

Specific to development under the HEI-OZ, an ancillary amendment proposed in DMMC Section 30.75.080(E) will clarify that the City's Planning Director is the Issuing Authority for this type of administrative, ministerial permit (which again is similar to the process for ADU permitting). The Planning Director would be named as the Issuing Authority because development projects subject to the HEI-OZ are required by State law to be approved administratively. In this capacity, the Planning Director would approve of a CDP application in the HEI-OZ if the proposed housing development is consistent with the requirements of the City's certified LCP. As proposed, DMMC Section 30.75.140 would state the required findings for permit approval and further clarifying that no local public hearing can be required. Once a final decision is made, the Planning Director's decision must be reported to the Executive Director of the CCC within five working days and to any interested parties who request notice in writing. As proposed, public noticing will be provided in accordance with DMMC Section 30.75.120. Within the appealable area of the coastal zone (property located between the first public road and the sea, within 300 feet of a beach or the mean high tide line, or within 100 feet of a wetland or stream), the Planning Director's decision would be appealable to the CCC within 10 calendar days per DMMC Section 30.75.110. However, the City is prevented from including a local appeal provision to a decision-making body such as the DRB or City Council. Once an administrative CDP is approved (i.e., the CCC appeal period has concluded without objection), the project applicant may then apply for an administrative level approval of Construction Permits per DMMC Chapter 23.05 (i.e., Building Plan Check and Building Permit issuance).

The development standards applicable to proposed development in the HEI-OZ shall be in accordance with the applicable base zone, overlay zones applying to a parcel(s), other applicable provisions of the City's Zoning Ordinance (DMMC Title 30), and the specific standards proposed within the HEI-OZ Ordinance, unless otherwise indicated in DMMC Chapter 30.92 or where necessary to comply with Federal and State law. Through project reviews in the HEI-OZ, the City must meet applicable Federal and State law requirements while accommodating a project design that can meet the required density range of 20-25 du/ac and local development standards to the extent feasible. For example, the height requirements of the applicable base zone would apply (unless otherwise superseded by additional development standards in the HEI-OZ), but may require accommodation by the City as necessary to meet special construction design requirements in accordance with Federal floodplain development standards or Federal and State requirements for provision of a buffer from environmentally sensitive habitat areas. HCD indicated the best example to refer to for an understanding of this expected local accommodation process is set forth in the State's Density Bonus law regulations for "waivers" and "concessions" where the City must

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makes accommodations to certain development and/or design requirements to facilitate the production of lower income affordable units as part of a development application.

In addition, the applicant must demonstrate compliance with all of the objective standard protocols for mitigation, monitoring, and reporting as identified in the HEI-OZ. The purpose of the standards is to provide predictability for applicants to demonstrate how their proposed project will avoid a significant effect to the environment in accordance with applicable Federal and State laws. These standards cover several environmental topics included in City-adopted Program Environmental Impact Reports (PEIRs), including the NC/PC PEIR and 6th Cycle HEU PEIR pertaining to cultural resources including historic resources, offer for Native American consultation, archaeological surveys, and monitoring; biological resources including identification of sensitive biological resources, delineation of wetlands, provision of wetland buffers, and avoidance of impacts to environmentally sensitive habitat areas; construction noise reduction measures and on-site noise reduction; paleontological resources including standard protocols and monitoring; protection of public views per the certified LCP; protection of “steep slopes” per the certified LCP; and protection of the public health and safety from wildfire risk per State Fire and Building Codes. The requirements for offers to consult with and monitor projects in coordination with California Native American tribes are consistent with the technical advisory bulletin published by the Governor’s Office of Planning and Research regarding required implementation of Assembly Bill 168 and guidance to lead agencies regarding required procedures that took effect September 2020.

Objective Design Standards as Part of the HEI-OZ

As part of the City Council’s review of the HEI-OZ on February 16, 2021, the City Council directed staff to incorporate objective design standards into the draft document. Therefore, staff is required to return to the Planning Commission for review and a formal recommendation on the HEI-OZ, including the design standards component, to the City Council.

As discussed, the HEI-OZ (with or without objective design standards) would apply to specific types of residential development on sites pursuant to State Housing law (i.e., by-right, multiple-dwelling unit development with a density of 20-25 dwelling units per acre). As a result of anticipated penalties to be applied to the City pursuant to State law requirements, the City anticipates having to accommodate this type of development on various parcels during the City’s 6th Housing Cycle (2021-2028). These include, but are not limited to, the current 5th Cycle Program 2G parcels (two vacant parcels owned by “Watermark LP” in the North Commercial Zone), up to six vacant parcels along Border Avenue/North Bluff, and up to three vacant parcels at the south end of Stratford Court (west side).

On February 24, 2021, the concept of including design standards into the HEI-OZ was discussed by the DRB. Overall, many members of the DRB expressed concern that such standards which, in the absence of any discretionary review to protect Del Mar’s unique character and project neighbors from unreasonable adverse impacts from new multi-family development, must be very carefully thought-out and crafted through a process that needs to be much more thorough and inclusive of community input and review. In short, they felt that the process needed more time and should follow a similar community process that occurred in 2017 for the adoption of Citywide Design Guidelines. However, in light of the City Council’s direction and the need to expedite the

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creation of the standards, the Board recommended that staff look at the regulatory conclusions of the Design Review Ordinance and try to craft standards that address those issues. Additionally, it was suggested that staff review the research conducted by the Ad Hoc Development Review Process Citizens' Advisory Committee of comparable California cities with design guidelines.

Design Standards, as the term is used within the context of the HEI-OZ, are a set of "objective" threshold requirements applicants must adhere to when proposing residential development that would be subject to the HEI-OZ (i.e., by-right, multiple-dwelling unit development with a density of 20-25 dwelling units per acre). While "Zoning Standards" or "Development Standards" regulate maximum and minimum allowable building parameters such as height, setbacks, floor area (size), parking requirements, etc., "Design Standards" focus on topics more typical of the City's Design Review Ordinance (e.g., lighting, noise, covered area, orientation, exterior materials, site layout, landscaping, etc). Further, "Design Standards" differ from "Design Guidelines" in that Guidelines are recommendations that "should" be followed, but are not strictly required. Because development subject to the Overlay Zone will be "by-right" (or ministerial), Guidelines would not be appropriate since discretion cannot be applied to the City's review of these project types for approval.

At the February 16, 2021 City Council meeting, the Council's Housing Subcommittee (Mayor Gaasterland and Council Member Martinez) provided an excerpt of design standards used by the City of Encinitas for similar types of "by-right" development projects. Staff carefully reviewed the Encinitas standards for potential use in the HEI-OZ. The Subcommittee's excerpt/example was also provided to the DRB for review in preparation of its February 24, 2021 discussion mentioned-above. The document has been included with this report for Planning Commission reference (Exhibit B).

In crafting the draft objective Design Standards now before the Planning Commission for review and recommendation, staff first utilized the (limited) specific standards from the Encinitas by-right development standards. Staff scrutinized those standards that could most help to preserve Del Mar's unique village character and result in multi-unit development that would harmonize with existing neighborhoods and blend with the unique natural elements on and near development sites. Staff then, and most importantly, reviewed the City's existing Citywide Design Guidelines for recommended criteria that addressed the most relevant provisions of the Design Review Ordinance in order to apply those found to be appropriate as objective standards.

The proposed Design Standards would supplement and, in certain instances where there is a conflict between two provisions, replace the existing development provisions of underlying zoning districts, overlay zones, and applicable development standards found throughout the City's Zoning Ordinance (DMMC Title 30). In the HEI-OZ, the proposed Design Standards have been organized in sections addressing setbacks, building design, auxiliary structures/equipment and utilities, site improvement and landscaping, parking, and exterior lighting. As previously noted, while the DRB supported the concept of objective Design Standards for these types of projects, they requested a more thorough and well-studied process in their creation via a community process. However, based on City Council's direction on February 16, 2021, the timeline given to craft these standards is expedited and the extent of which is limited. Following Planning Commission, staff plans to return

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to the City Council on March 25, 2021 with an amended HEI-OZ that includes Design Standards. Should the City Council desire to include the Design Standards into the HEI-OZ, they would have the option to do so. Note that the inclusion of Design Standards into the HEI-OZ are not a required component under 5th Cycle Housing Element Program 2G or State Housing law.

Alternatively, the City Council could direct staff to include a program into the City's draft 6th Cycle Housing Element to create Design Standards for these projects during the next year. This alternative would not include the Design Standards as part of the HEI-OZ, but instead develop a new Municipal Code chapter in Title 23 (Building Construction) that would contain development and design standards for all "by-right" housing projects.

RECOMMENDATION:

Staff recommends that the Planning Commission take the following actions:

1. Recommend that the City Council adopt the Local Coastal Program Amendment and provide a recommendation on the design standards component
2. Recommend that the City Council adopt the Zone Code Amendment, as revised

Respectfully submitted,



Joseph D. Smith, AICP
Planning & Community Development Director

Attachments:

Exhibit A – Draft Housing Element Implementation Overlay Zone (revised to include Development Standards)

Exhibit B – City of Encinitas Development Standards for Multiple-Family Residential Zones

EXHIBIT A

Proposed HEI Overlay Zone with Design Standards

Revisions Added from the 1/12/2021 Planning Commission Meeting are shown as Underlined

Chapter 30.92 – Housing Element Implementation Overlay Zone

30.92.010 Purpose

The purpose and intent of the Housing Element Implementation Overlay Zone is to facilitate housing opportunities within the community via implementation of required rezone programs pursuant to the City of Del Mar's adopted Housing Element where required for compliance with State Housing Element law.

30.92.020 Areas of Applicability

The areas of applicability for the Housing Element Implementation Overlay Zone shall include the following properties:

<u>APN Location</u>	<u>Housing Element Program Description</u>	<u>Base Zone</u>
299-100-47-00 299-100-48-00	5 th Cycle Program 2-G – Two Parcels further described in DMMC Section 30.92.030(E)	North Commercial (NC)

30.92.030 Process for Permit Approval

- A. Notwithstanding the standard permit process provisions of the Del Mar Municipal Code, permit approvals for proposed multiple dwelling unit housing development within the Housing Element Implementation Overlay Zone shall be issued in accordance with an administrative level ministerial approval process where the proposed development is consistent with the applicable Housing Element program indicated in Section 30.92.020 and development standards in Section 30.92.040.
- B. Proposed development on property in the Housing Element Implementation Overlay Zone that does not meet the criteria stated in Section 30.92.030(A) shall be subject to the standard procedures for permit approval pursuant to the Del Mar Municipal Code.
- C. An administrative Coastal Development Permit (CDP) shall be required for proposed development.
 - (1) The administrative CDP shall be obtained in accordance with Section 30.75.080(E).
 - (2) The Planning Director shall prepare written findings of fact in accordance with Section 30.75.140 as necessary to support any decision to grant permit approval.
 - (3) No public hearing shall be required.

- (4) Public notice shall be required in accordance with Section 30.75.120.
 - (5) Once a final decision of approval, conditional approval, or denial is issued by the Planning Director, the notice of final action shall be provided within seven calendar days to the Executive Director of the Coastal Commission and to any interested parties who requested notice in writing in accordance with Section 30.75.100.
 - (6) Within the appealable area of the coastal zone (Section 30603 of the Coastal Act and as generally shown on the City Post Certification Map) property that is located between the first public road and the sea, within 300 feet of a beach or the mean high tide line, and all areas within 100 feet of wetlands and streams), the Planning Director's decision to approve an Administrative CDP in the Housing Element Implementation Overlay Zone may be appealed to the Coastal Commission within 10 calendar days in accordance with Section 30.75.110. Proposed development in the Housing Element Implementation Overlay Zone that is located outside of the coastal zone appealable area is not appealable to the Coastal Commission.
- D. Upon issuance of an administrative CDP, the applicant may apply for an administrative level approval of Construction Permits as applicable in accordance with DMMC Chapter 23.05 (Construction Permits).
- E. 5th Cycle Housing Element – Housing Program 2-G
- Pursuant to Government Code Sections 65583(c)(1)(A) and 65583.2(h) and (i), the City will rezone two adjacent vacant parcels at the south corner of Jimmy Durante Boulevard and San Dieguito Drive, roughly 2.3 acres in size in the NC Zone, to allow, "by right", residential development of the properties at a density of 20-25 du/ac with such density allowance to include a requirement for a percentage of the residential units to be available, long-term, at affordable rates, either through dedication to a non-profit housing advocacy organization or through deed restrictions for no less than the minimum duration required under state housing law applicable to affordable dwelling units. City Council adopted Rezone RP 20-001 on [Insert final adoption date and (Ordinance 2021-XX)].

30.92.040 Development Standards

The development standards applicable to proposed development in the Housing Element Implementation Overlay Zone shall be in accordance with the applicable base zone, overlay zones, and all applicable provisions of DMMC Title 30, unless otherwise indicated herein, or where necessary to comply with Federal and State law.

A. Density. 20-25 dwelling units per net acre.

B. Construction Design Standards.

(1) Setbacks.

a. Front yard: 10 feet

Street Side Yard: 10 feet

b. If parcels in the Overlay Zone share a property line with an adjacent parcel developed with an existing single dwelling unit or duplex residential use, the following additional setback requirements apply to proposed projects in the Overlay Zone to provide an appropriate transition to the existing use:

i. A minimum 15-foot-wide landscaped buffer (setback) shall be provided and maintained on the project side of any property line unless accommodation is necessary to meet the minimum density range to provide affordable units.

ii. Any upper stories of residential uses in the Overlay Zone shall be setback 30 feet from any property line adjacent to the residential use.

c. Construction, grading, or other encroachment of any kind on substantial steep slopes (as defined in DMMC Section 30.52.060.1.b), or within 20 feet of the top or 10 feet of the bottom of substantial steep slopes exceeding 25 percent grade, or the construction of structures which overhang such steep slopes or steep slope setbacks, shall be not be allowed.

(2) Building Design.

a. Maximum average size of dwelling units for a development site shall not exceed 1,000 square feet of "Bulk Floor Area" as defined and regulated in DMMC Chapter 30.72, excepting that attached dwelling units shall be measured to the center of shared building walls.

b. No more than 75% of a building facade shall be in a single plane. An average of a five-foot offset, with a minimum of one-foot, is required for the remaining 25% of the building face.

c. Decks on the roof of the tallest building exceeding one-story shall not be allowed.

d. Habitable portions of the development one-story shall have a "flat roof" design, allowing minimum necessary slope for drainage.

e. Single-story design elements such as entries and clerestories with two-story volume or heights shall not be allowed.

- f. Ceiling heights on any habitable building level shall not exceed 10 feet.
- g. Elevated deck areas associated with individual units shall be limited to 100 square-feet in area and shall be oriented towards the street.
- h. Covered outdoor areas, including but not limited to entries, porches, decks and balconies shall be limited to a cumulative total of 10% of the associated unit size.
- i. Earth tone paint colors shall be used for building exteriors.

(3) Auxiliary Structures/Equipment and Utilities.

- a. All roof appurtenances including, but not limited to air conditioning units and mechanical equipment shall be shielded and architecturally screened from view from on-site parking areas, adjacent public streets, and adjacent properties.
- b. All ground-mounted mechanical equipment, including but not limited to heating and air conditioning units, trash receptacle areas and adequate areas for collecting and loading recyclable materials, shall be completely screened from surrounding properties by use of a wall, view-obscuring fencing and/or landscaping, or enclosed within a building.
- c. Ground-mounted mechanical or electrical equipment shall be screened using a combination of elements including solid masonry walls, berms, and landscaping. Screening wall shall be designed to be architecturally compatible with the building design. All new and existing utility service connections within the boundaries of the development site shall be placed underground.
- d. Trash receptacles and adequate areas for collecting and loading recyclable materials shall be incorporated into the building design, located in garages, and/or enclosed by a six-foot high masonry wall with view-obscuring gates and screened with vegetation. The finish materials and colors of an exterior enclosure shall match the exterior building materials.
- e. Outdoor storage areas shall be entirely enclosed by solid masonry walls not less than six feet in height to adequately screen such areas from public view. Substitutions such as masonry, wood, or metal pilasters with wrought iron or chain link and view-obscuring material must be harmonious with exterior building materials.

- f. Any gutters, scuppers, or downspouts proposed on the exterior of a building shall be decorative or designed to be integrated with the building façade.

(4) Site and Landscape Standards.

- a. Hardscape shall be limited to no more than 20 percent of front yard and street side yard setbacks, including driveways and drive aisles.
- b. Screening plants shall be dense and fast growing evergreen species that buffer privacy encroaching views in at least 75% of the intended area, with species selected to reach this standard within one-year of planting. Grasses and deciduous plants shall not be used for screening purposes.
- c. For screening purposes, any new trees shall be provided at a minimum 24-inch box size and any new shrubs shall be provided at a minimum five-gallon size.
- d. New trees shall be regionally native or selected from the City of Del Mar's Recommended Tree List.
- e. Only regionally native species shall be planted within steep slope setback areas and wetland buffer areas.
- f. Twenty-five percent of all trees planted on-site shall be Torrey Pines.

(5) Parking.

Parking shall be provided in accordance with DMMC Chapter 38.80, with the following exceptions:

- a. Units which are deed-restricted to be affordable to extremely low, very low and low income households (as defined in California Health and Safety Code Sections 50105 and 50079.5, respectively) shall provide off-street parking as follows:

Studios and one bedroom – 1.0 space per unit.

Two bedrooms – 1.5 spaces per unit.

Three or more bedrooms – 2.0 spaces per unit.

Guest Parking – Inclusive in standards above.

- b. Garage parking shall be required in accordance with the provisions of DMMC Chapter 30.80, unless accommodation without a garage

enclosure is necessary to meet the minimum density range to provide affordable units.

- c. When garage parking is not required per the exception listed in Section 30.92.040.B-5(b), required parking areas/spaces shall be:
 - i. Located at the rear of the development site and screened from public view by the dwelling unit structure(s) and/or landscape screening; or
 - ii. Located at grade, situated beneath dwelling units and screened from view along fronting streets by architectural and/or landscaping features.
- d. Private drive aisles accessing parking shall be located at the rear or side of a property to avoid excessive curb cuts and maximize landscaping at the street frontage.
- e. Curb cuts shall be located to maximize sight distances for motorists, bicycles and pedestrians entering or exiting the property, crossing the driveways, and to limit interference with off-site circulation, parking, and safety. Any vegetation proposed to be planted adjacent to a driveway shall be selected and located so as to maintain adequate sight lines to and from the property, and along the property frontage to the public street(s) and intersection(s).
- f. Driveway slope angles shall not exceed 15%.
- g. Open-sided parking coverings that contain solar collectors/panels shall not be calculated towards maximum allowed Lot Coverage.
- H. Surface parking areas shall be separated from a building with both a raised pedestrian sidewalk (minimum four feet in width) and a landscape strip (minimum eight feet in width).

(6) Exterior Lighting.

- a. All exterior lighting shall be low intensity and directed downward, below the horizontal plane of the fixture, to prevent objectionable brightness or light trespass onto adjacent properties. The source of the light bulb must not be visible from adjacent properties or public rights of way. Natural gas lighting shall not be allowed.
- b. Fixtures must be "Full Cut Off" designated or "Fully Shielded" fixtures, so that no light is emitted above the lowest light emitting part of the fixture. Shielded and unshielded up-lighting shall not be allowed.

- c. Light fixtures shall be located no closer to the property line than four times the mounting height of the fixture, and shall not exceed the height of adjacent off-site structures.
- d. Focused flood lighting may be allowed for security purposes but shall be mounted to be downward directed only and shall utilize motion-sensor activation at all times.
- e. Accent lighting used only for highlighting architectural features (e.g., "wall washing") shall not be allowed.
- f. Pole-mounted lights are prohibited unless the lighting source is entirely screened from public view from a public street or shielded in a courtyard or interior portion of a multiple-dwelling unit complex.

30.92.050 Mitigation, Monitoring, and Reporting

All proposed multiple dwelling unit housing development within the Housing Element Implementation Overlay Zone shall be subject to the following objective standard protocols for mitigation, monitoring, and reporting as necessary to avoid a significant impact to the environment in accordance with applicable State and Federal laws.

A. Cultural Resources

(1) Historic Resources

- a. Where development would involve the alteration or demolition of a structure greater than 50 years old, a historic evaluation by a Secretary of Interior's Standards for Architectural Historian or Historic Architect shall be provided to determine if the resource meets the definition of a Historic Resource as defined in CEQA Guidelines Section 15064.5. If the structure is determined to be a Historic Resource, any proposed alteration shall follow mitigation guidelines contained in CEQA Guidelines Section 15126.4(b). Mitigation standards may include, but are not limited to avoidance and preservation, conducting alterations in a manner consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties (including as applicable, standards for Preservation, Rehabilitation, Restoration and Reconstruction), and documenting resources. The approach to comply with these standards shall be prepared by an Architectural Historian or Historic Architect and provided to the City.
- b. Demolition and/or significant diminution of designated historic landmarks shall be prohibited.

(2) Native American Consultation

Upon receipt of a development proponent's preliminary application, the City shall request consultation regarding the proposed development with any California Native American Tribe that is traditionally and culturally affiliated with the geographic area, as described in Section 21080.3.1 of the Public Resources Code, and contact the Native American Heritage Commission for assistance in identifying any California Native American Tribe. The City shall provide formal notice for each Tribe traditionally and culturally affiliated with the geographic area of the project site including the location and a description of the proposed development, and an invitation to engage in scoping consultation. Each Tribe that receives this notice has 30 calendar days to accept the invitation to engage in consultation. The local government must initiate consultation within 30 calendar days of a Tribe's acceptance of the invitation to engage in consultation. Consultation occurs between the City and the tribe(s) and must comply with the confidentiality requirements. Tribal consultation concludes either 1) upon documentation of an enforceable agreement regarding the treatment of tribal resources at the project site (Government Code §65913.4(b)(2)(D)(i)), or 2) one or more parties to the consultation, acting in good faith and after a reasonable effort, conclude that a mutual agreement cannot be achieved (Government Code §65913.4(b)(2)(D)(ii)).

(3) Archaeological Survey

- a. Where a site has been disturbed from prior development or grading activities, eliminating the possibility of surface archaeological resources to be encountered, an archaeological survey shall not be required.
- b. For all other sites, an archaeological survey report shall be submitted by a Registered Professional Archaeologist.
 - i. The survey report shall include a record search of known archaeological resources and document results of the field survey including any resources encountered.
 - ii. If the surveys find the potential for significant resources, the Registered Professional Archaeologist shall develop and implement an archaeological testing program. The testing program shall be adequate to allow a determination of significance pursuant to CEQA Guidelines Section 15064.5(b) and shall include a Native American monitor. Shall the testing find significant resources are present, a mitigation program shall be implemented consistent with CEQA Guidelines Section 15126.4(b)(3). Mitigation may include, but is not

limited to, conservation and protection of the site in perpetuity, implementation of a data recovery plan, or other on-site preservation methods such as capping.

- iii. A Native American monitor shall be consulted regarding the proposed mitigation plan. If there is disagreement regarding the culturally affiliated tribal government, the Native American Heritage Commission shall be consulted. All reports, methods, testing programs, curation, and other aspects of the archaeological investigation shall follow the Secretary of the Interior's Guidelines for Archaeological Documentation.

(4) Archaeological and Native American Monitoring

- a. Archaeological monitoring is required in accordance with Section 30.92.050(A)(3)(b), unless a Registered Professional Archaeologist and Native American Monitor provide written recommendation that monitoring is not recommended.
- b. Prior to the start of any ground-disturbing activity, an archaeological and Native American monitor shall be retained to monitor ground-disturbing activities including, but not limited to, grading, excavation, brush clearance, and grubbing. The archaeological monitor shall conduct preconstruction cultural resources worker sensitivity training to bring awareness to personnel of actions to be taken in the event of a cultural resources discovery.
- c. The duration and timing of monitoring shall be determined by the qualified archaeologist in consultation with the City and the Native American Monitor. Initially, all ground-disturbing activities shall be monitored. However, the qualified archaeologist, based on observations of soil stratigraphy or other factors, and in consultation with the City and the Native American Monitor, may reduce the level of monitoring as warranted.
- d. In the event that archaeological resources are accidentally discovered or unearthed during construction activities, all earth-disturbing work within a 25-meter radius shall be temporarily suspended or redirected until the qualified archaeologist has identified and evaluated the nature and significance of the find, in compliance with CEQA Guidelines Section 15064.5(f). Construction activities shall be redirected to other work areas until the archaeologist determines that work can resume in the vicinity of the find. If the artifact that is accidentally discovered or unearthed is of Native American origin, the certified archaeologist and a culturally affiliated Native American with knowledge of cultural resources shall be consulted for

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

- e. In the event that human remains are discovered or unearthed during construction activities, all earth-disturbing work within a 25-meter radius of the human remains shall be temporarily suspended or redirected and the county coroner must be contacted as required by California Health and Safety Code Section 7050.5. If the remains are determined by the coroner to be Native American in origin, the coroner is responsible for contacting the Native American Heritage Commission (NAHC) within 24 hours. California PRC Sections 5097.94 and 5097.98 require consultation with the NAHC, protection of Native American remains, and notification of most likely descendants to ensure the appropriate and dignified treatment of Native American human remains and any associated grave goods.

B. Biological Resources

- (1) The applicant shall provide information with the development application detailing the biological resources present on-site including identification of jurisdictional resources such as State or Federal wetland, environmentally sensitive habitat area (as defined in DMMC Section 30.75.030). If wetlands are present as defined in DMMC Section 30.53.030, a jurisdictional wetland delineation shall be provided. If there is a potential for sensitive plant or wildlife species to be present, applicable protocol surveys shall be conducted.
- (2) If wetlands are present on-site the project design shall ensure wetlands are preserved and where appropriate restored, along with a minimum 100-foot wetland buffer. If wetlands are located off-site, a 100-foot wetland buffer shall be provided from the edge of the off-site wetland to the edge of the development footprint. The wetland buffer may be reduced to no less than 50-feet with written concurrence from the California Department of Fish and Wildlife (CDFW). Permitted uses in wetlands are specified in DMMC Section 30.53.080. Wetland buffers shall be consistent with DMMC Section 30.53.090. Public access to wetlands and wetland buffer areas shall be restricted as necessary to maintain the biological productivity of the wetland. This may be accomplished by landscape berms, fencing, or other suitable barriers.
- (3) Sensitive habitat areas (including wetlands and wetland buffers) shall be retained or restored to their natural state to ensure the future protection of the designated area(s) from encroachment, disturbance, or degradation.

Prior to the issuance of Certificate(s) of Occupancy, protected habitat areas shall be preserved through recordation of an open space deed restriction, conservation easement, or open space easement over the protected area(s) to ensure their protection and to serve notice to the property owner, subsequent owners or interested parties of the restrictions in effect on such property.

- (4) Impacts to Environmentally Sensitive Habitat Areas shall be avoided to the maximum extent feasible. Where impacts cannot be avoided, the applicant shall identify and implement the mechanism(s) proposed to offset impacts, which may include one or more of the following:
 - a. Implementation of on-site restoration, including a monitoring and long-term management component.
 - b. Conservation of habitat on-site.
 - c. Purchase of habitat credits at an off-site mitigation bank if onsite restoration and/or conservation of habitat on-site is deemed not suitable by a qualified biologist due to site constraints and/or vegetation.
- (5) Removal of protected trees as defined in DMMC Section 23.50.020(E) shall be replaced consistent with the ratios provided in DMMC Section 23.50.090 or through payment into the City's Tree Mitigation Fund if on-site replacement is deemed not suitable by a qualified arborist due to site constraints and/or vegetation.
- (6) The clearing and grading of trees and shrubs shall occur outside of the avian and raptor breeding season of January 1 through August 31 to avoid damage to nests and nesting birds consistent with the Migratory Bird Treaty Act. If clearing and grading during the avian breeding season is proposed, then a focused nest survey shall be conducted by a qualified biologist 72 hours prior to the vegetation removal. If active nests are discovered during the nest survey, those nests shall be avoided until the young have fledged. The qualified biologist shall recommend appropriate nest setback distances to be implemented during construction that are based on the species of bird and applicability of noise attenuation measures, the topography between the nest and the proposed disturbance activity, and the surrounding vegetation.
- (7) Where habitat for California gnatcatcher is present within or adjacent to the project site, breeding season avoidance measures shall be implemented. If project-related work is to occur during the breeding season for California gnatcatcher (February 15 through August 31), pre-construction protocol-level surveys for California gnatcatcher shall be performed to determine the

status of breeding California gnatcatchers on site and within 500 feet of the site. If a nesting California gnatcatcher pair is detected on site or within 500 feet of the site, noise attenuation measures shall be implemented to ensure that ambient noise levels are equal to or less than 60 decibels at the nest. Nest monitoring by an individual holding a Section 10(a) U.S. Fish and Wildlife Service recovery permit for California gnatcatcher shall be conducted to ensure that the nesting California gnatcatchers remain undisturbed by construction.

- (8) Where landscaping or revegetation is proposed in proximity to native vegetation on- or off-site, the landscaping and/or revegetation plan shall not include any invasive plant species listed on the California Invasive Plant Council's Invasive Plant Inventory Database.

C. Noise

- (1) Construction Noise. The applicant shall provide a construction noise mitigation program to the City that demonstrates how construction activities will comply with DMMC Section 9.20.050. Construction noise reduction measures may include, but are not limited to the following:
 - a. Temporary sound barriers/shielding adjacent to sensitive receivers. The required location, height, and materials of the barrier shall be specified.
 - b. Siting of staging areas, stationary noise sources, and other noise generators away from sensitive receivers.
 - c. Reduction of construction equipment idling time and fitting of construction equipment with noise reducing devices.
 - d. Resident notification of construction schedule.
- (2) On-site Noise.
 - a. Project designs shall ensure all outdoor noise generating equipment is shielded to provide noise attenuation to achieve noise level limits at the nearest property line consistent with DMMC Section 9.20.040 - Sound Level Limits.
 - b. Project outdoor use areas shall be shielded from roadway noise through building attenuation or other methods.

D. Paleontological Resources

- (1) Applicants shall be required to provide the following supporting information as part of a development application to determine applicability of this section:
 - a. The types and depth of geological formations present.
 - b. The paleontological sensitivity of each geologic formation.
 - c. Proposed grading depths into each formation.

- (2) Any project that requires disturbance into high or moderate sensitivity paleontological formations shall be required to provide a paleontological monitor during ground disturbing activities. The requirement shall be as follows:
 - a. A qualified paleontologist (an individual with an MS or PhD in paleontology or geology who is familiar with paleontological procedures and techniques, who is knowledgeable in the geology and paleontology of San Diego County, and who has worked as a paleontological mitigation project supervisor in the County for a least one year) shall attend the preconstruction meeting to consult with the grading and excavation contractors concerning excavation schedules, paleontological field techniques, and safety issues.
 - b. A paleontological monitor (an individual who has experience in the collection and salvage of fossil materials, working under the direction of a qualified paleontologist) shall be on site on a full-time basis during the original cutting of previously undisturbed deposits of high paleontological resource potential to inspect exposures for contained fossils.
 - c. Grading activities in previously undisturbed deposits of moderate paleontological resource potential shall be monitored on a part-time basis. In the event that paleontological resources are discovered or unearthed during project subsurface activities, all earth-disturbing work within a 100-meter radius shall be temporarily suspended or redirected until a certified paleontologist has recovered, identified, and/or evaluated the nature and significance of the find, in compliance with CEQA Guidelines Section 15064.5(f). After the find has been appropriately mitigated, work in the area may resume.
 - d. During the monitoring and recovery phases of the mitigation program, the qualified paleontologist and/or the paleontological monitor shall routinely collect stratigraphic data (e.g., lithology, vertical thickness, lateral extent of strata, nature of upper and lower contacts, and taphonomic character of exposed strata). Collection of

such data is critical for providing a stratigraphic context for any recovered fossils.

- e. Fossil remains collected during monitoring and salvage shall be cleaned (removal of extraneous enclosing sedimentary rock material), repaired (consolidation of fragile fossils and gluing together broken pieces), sorted (separating fossils of the different species), and cataloged (scientific identification of species, assignment of inventory tracking numbers, and recording of these numbers in a computerized collection database) as part of the mitigation program. Prepared fossils, along with copies of all pertinent field notes, photos, and maps, shall be deposited (as a donation) in a scientific institution with permanent paleontological collections such as the San Diego Natural History Museum. Donation of the fossils shall be accompanied by financial support for preparation, curation, and initial specimen storage, if this work has not already been completed.
- f. A final summary report shall be completed that outlines the results of the mitigation program. This report shall include discussions of the methods used, stratigraphic section(s) exposed, fossils collected, and significance of recovered fossils.

E. Public Views

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

F. Steep Slopes

Construction, grading, or other encroachment of any kind on substantial steep slopes exceeding 25 percent grade, or within 20 feet of the top or 10 feet of the bottom of substantial steep slopes exceeding 25 percent grade, or the construction of structures which overhang such steep slopes or steep slope setbacks, shall be prohibited except as specified in DMMC Section 30.52.060(A).

G. Wildfire

To ensure protection of the public health and safety from wildfire, all development within or adjacent to a “Very High” or “High” Fire Hazard Severity Zone shall be required to

Proposed HEI Overlay Zone with Design Standards

Revisions Added from the 1/12/2021 Planning Commission Meeting are shown as Underlined

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incorporate enhanced fire safety measures consistent with the State Fire Code and Building Code to the satisfaction of the Fire Marshall and Building Official.

EXHIBIT B

Draft – February 16, 2021

Early Draft: Design Standards to add to overlays for Higher Density Parcels to protect Del Mar from Over-Development without impeding allowed number of units

Del Mar has an opportunity to add design standards to include in any overlay that will apply to parcels zoned for “up to 20 dwelling units per acre (du/ac)” or for “20-25 du/ac”. Quantitative (non-discretionary) design standards will help protect Del Mar from overdevelopment without impeding the allowed number of units from being built.

Encinitas has established design standards for its higher-density zones. They have more such zones than Del Mar with numbers of units per acre ranging from 11 to 30. In particular, they distinguished between zones with 11 up to 25 du/ac and zones with a minimum of 25 du/ac on parcels that allow a minimum of 16 units. The Encinitas design standards provide a starting point for Del Mar (Encinitas Code 30.16.010 (Development Standards) Sections A, B, C, D, E http://www.qcode.us/codes/encinitas/?view=desktop&topic=30-30_16-30_16_010).

The following draft Design Standards are adapted from the Encinitas code and presented here as a starting point to consider what standards may be appropriate in Del Mar?

DRAFT DESIGN STANDARDS TO INCLUDE IN HIGHER-DENSITY OVERLAYS:

- **Maximum Average Unit Size.** Maximum average size of dwelling units in the project shall not exceed 1,000 square feet of floor area for rental projects and 1,150 square feet of floor area for ownership projects.
- **Requirements for Transition Space if Adjacent to Existing Single-Family Development.** If parcels in the Overlay zone share a property line with an adjacent parcel developed with an existing single-family residential use or duplex units, the following additional setback requirements apply to proposed projects in the Overlay zone to provide an appropriate transition to the existing use:
 - **Additional setback required.** The third story of residential uses in the Overlay zone shall be setback 30 feet from any property line adjacent to a parcel with an existing single-family residential use or duplex units.
- **Facade Wall Plane Requirements.** Articulation of the wall plane shall be required for all front elevations, and for all side and rear elevations visible from a public right-of-way.
- **No more than 75% of a building facade shall be in a single plane.** An average of a five-foot (5') offset, with a minimum of one-foot, is required for the remaining 25% of the building face.
- **Private Storage Space.** For projects with 20-25 du/ac, a minimum of 200 cubic feet of lockable, enclosed storage area per unit shall be provided. For projects with up to 20 du/ac, a minimum of 200 cubic feet of lockable, enclosed storage area per unit shall be provided.
- **Private Open Space.** For projects with 20-25 du/ac, a minimum of 100 square feet per unit shall be provided. For projects with up to 20 du/ac, a minimum of 10% of the floor area of the unit shall be provided as private open space for both ground floor units and units contained wholly on the second floor

- **Common Amenity Space.** A minimum of 200 square feet per unit shall be provided as common amenity open space to be made available for use by all residents and/or tenants.
- **Private and common area.** For projects with 20-25 du/ac, private and common area may be combined for a total of 300 square feet per unit overall, located on-site.
- Architecturally compatible **trash enclosures**, and adequate areas for collecting and loading recyclable materials, **screened from view of the roadway**, and convenient to all dwelling units within the project, shall be provided.
- **A minimum of 15 feet wide of screen type landscaping** shall be provided and maintained on the project side of **any property line separating the project from a rural residential or single-family residential zone**
- **A minimum of 30 trees per net acre** shall be required as part of the project landscaping
- The following **recreation facilities** shall be provided unless waived during the design review process:
 - a. **Children’s play area;**
 - b. **Swimming pool;**
 - c. **Family picnic area**
- The front yard setbacks may be reduced to 15 feet provided that the subject parcel is substandard in either size or the depth of the lot, and an alley abuts the rear of the parcel where the required parking is to be located. No paving (impervious surfaces) shall be permitted in the front yard other than a pedestrian sidewalk to the front entry with the rest of the front yard being landscaped.
- Residences shall be oriented with the rear of the residence toward collector and larger streets where possible, consistent with the pattern of development in the neighborhood.
- Walkways connecting with city sidewalk/trail systems shall where practical be provided in new residential developments.
- Driveway or other concrete or asphalt concrete areas available for parking shall not exceed 50% where practical of the required front yard area.
- To the extent practical, access to the garage shall be from the alley or side street, if available.
- The following standards shall apply to building height limits for residential buildings.
 - a. The standard height limit for residential buildings, shall be the lesser of two stories or 26 feet height for projects with up to 20 du/ac.
 - b. The standard height limit for residential buildings, shall be the lesser of three stories or 35 feet height for projects with 20-25 du/ac.
- **No additional grade may be added to the parcel.**
- **Roof must be flat** if more than 2 stories.
- **No rooftop decks.**
- **Rooftop utilities** must be within building height limits.

- Parking shall be provided in accordance with [INSERT CHAPTER NUMBER], however, units which are deed-restricted to be affordable to very-low and low income households (as defined in California [Health and Safety Code](#) Sections 50105 and 50079.5, respectively) shall provide off-street parking as follows:

Studios and one bedroom – 1.0 space per unit.

Two bedrooms – 1.5 spaces per unit.

Three+ bedrooms – 2.0 spaces per unit.

Guest Parking – Inclusive in standards above.

- **Auxiliary Structures/Equipment and Utilities.** The following development standards related to auxiliary structures/equipment and utilities shall apply:
 - a. All roof appurtenances including, but not limited to, air conditioning units, and mechanical equipment shall be shielded and architecturally screened from view from on-site parking areas, adjacent public streets and adjacent properties;
 - b. All ground-mounted mechanical equipment, including heating and air condition units, and trash receptacle areas and adequate areas for collecting and loading recyclable materials, shall be completely screened from surrounding properties by use of a wall, fence, or landscaping, or shall be enclosed within a building;
 - c. All utility connections shall be designed to coordinate with the architectural elements of the site so as not to be exposed except where necessary. Pad-mounted transformers and/or meter box locations shall be included in the site plan with an appropriate screening treatment. All new and existing utility connections within the boundaries of the project shall be placed underground, with the exception of existing overhead power transmission lines in excess of 34.5 KV and longdistance and main trunk communications facilities. Transformer, terminal boxes, meter cabinets, pedestals, concealed ducts and other facilities may be placed above ground provided they are screened with landscaping;
 - d. Trash receptacles and adequate areas for collecting and loading recyclable materials enclosed by a six-foot high masonry wall with view-obstructing gates shall be provided in an acceptable location;
 - e. Outdoor storage and sales areas shall be entirely enclosed by solid masonry walls not less than six feet in height to adequately screen such areas from view. Reasonable substitutions such as masonry, wood or metal pilasters with wrought iron or chain link and view obscuring material may be approved during design review. This requirement does not apply to authorized agriculture uses.