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**October 16, 2020**

**Via Electronic Mail**

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Ashley Jones  
City Clerk  
City of Del Mar  
1050 Camino Del Mar  
Del Mar, CA 92014

**Re: Response to HCD Enforcement Letter – Agenda Item 12  
Watermark DM, L.P. Comments**

Dear Mayor and City Councilmembers:

Please accept these comments on behalf of Watermark DM, L.P. regarding Item 12 on the Del Mar City Council agenda for October 19, 2020.

Given the flurry of recent activity by the City to address continued deficiencies regarding compliance with State Housing laws, we would like to make clear our intentions for development of the Watermark Del Mar project and to provide our perspective on how this may impact attempts by the Council to respond to the September 30, 2020 enforcement letter from the State's Department of Housing and Community Development (HCD).

### **History**

As you all are aware, the decision to entitle the Watermark project through a Specific Plan process was the result of recommendations by City staff shortly after approval of the 5<sup>th</sup> Cycle Housing Element update. Throughout our attempts to move the project forward, we have consistently informed staff and the City Attorney that in light of requirements of the Housing Element, the City has an obligation to inform Del Mar residents and the decisionmakers on the Planning Commission and Design Review Board that failure to expeditiously move the project forward could result in either a lawsuit from the public or enforcement by HCD. The 2016 Briggs letter should have been a wake-up call in this regard. However, to date we have not felt the City has appropriately facilitated compliance with the Housing Element requirements, and instead has simply hoped that we would carry the ball forward entirely on our own.

The staff report for Item 12 notes that we faced certain challenges with the site plan analyzed in our Draft EIR due to environmental resources at the site. While this is partially true, a more accurate description of our difficulties would also include those inherent in attempting to meet many of the City's and community's desired constraints on density and development standards, while at the same time providing the affordable unit expectations of the Housing Element.

The staff report indicates we have been coordinating a revised Watermark Project with staff of the California Coastal Commission (CCC). This is accurate, and we believe our revised project will result in a recommendation of approval by CCC staff.

### **The Revised Watermark Del Mar Project**

The Watermark Del Mar project that will shortly be the subject of a new application has been designed to comply with the Housing Element requirement of development at a minimum of 20 du/acre. In multiple 3-story buildings constructed over a parking garage/podium, the project will include a total of 48 units, 10 of which will be designated “low affordable” consistent with both the City’s inclusionary housing requirements and State Density Bonus Law. The affordable units will include 2 three-bedroom, 4 two-bedroom, and 4 one-bedroom units. This bedroom mix of affordable units is consistent with the ratios to be constructed for the proposed 38 market-rate units.

Importantly, the revised project will remove units previously slated for the hillside, thus protecting environmentally sensitive habitat (including existing Torrey Pines trees) and complying with the Bluff, Slope, & Canyon overlay. Jurisdictional wetlands on site will be protected by a 50-ft buffer that has received support from the California Department of Fish and Wildlife and CCC staff.

### **Entitlement Processing**

While recent actions by a majority of the City Council appear to be moving the City toward a point where it can at least argue an intent to comply with State Housing Law, we have no reason to believe such compliance will occur in a timely manner. Given the many years of failing to appreciate the Housing Element rezone requirements, coupled with the unabashed disdain for residential development at required densities in the North Commercial zone by two members of City Council, it is clear the required 4 votes needed for a Community Plan amendment will not occur in the foreseeable future.

Notwithstanding the City’s obligation to include reasonable development standards amendments in the proposed rezone of the NC properties (including for example as to height measurements, flood plain elevation accommodation, and floor area ratio), and our notice of the same since the rezone process was undertaken, we have seen nothing to indicate that a viable 20 du/acre multi-family project with 20% affordable units will result from the City’s current efforts.

Because the City failed to implement the required rezone of Housing Element Program 2(G), pursuant to California Government Code section 65583(g)(1), Watermark DM, L.P. intends to submit forthwith an application for by-right processing of the Watermark Project. The Government Code directs that the City:

*“...may not disapprove a housing development project, nor require a conditional use permit, planned unit development permit, or other locally imposed discretionary permit, or impose a condition that would render the project infeasible, if the housing development project (A) is proposed to be located on a site required to be rezoned*

*pursuant to the program action required by that subparagraph and (B) complies with applicable, objective general plan and zoning standards and criteria, including design review standards, described in the program action required by that subparagraph.”*

As has been conveyed to you by staff multiple times at recent City Council meetings, the proposed rezone by-right of the Watermark Property in Housing Element program 2(G) and the City’s failure to accomplish the rezone in the timeframe required satisfies prong “A” noted above. Further, the revised proposed project is designed to comply with all applicable, *objective* general plan and zoning standards and criteria for the rezone, of which very few (if any) exist. (Emphasis added).

While we appreciate there is a process underway that seeks to correct the City’s past and ongoing failure to comply with State Housing law, as noted prior, there is little indication this process will be successful nor that it will happen in a timely manner given recent statements by the Council minority.

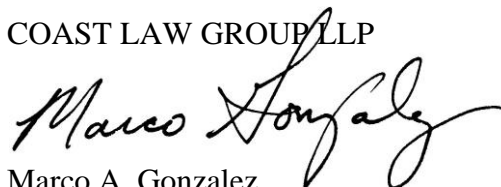
Watermark DM, L.P therefore intends to submit a Preliminary Application pursuant to SB 330 that will establish, at the time of application submission, a vested right to the plans, policies, and ordinances in effect at that time. Because this submission will occur well before the City’s recently approved rezone and LCP amendment are approved by the CCC, and before the City will conclude efforts to finally enact the by-right provisions Housing Element Program 2(G), the current regulatory condition contemplated by Government Code section 65583(g)(1) will control the City’s processing of the revised Watermark project. To be clear, upon submission of our SB 330 Preliminary Application, the City will be required to process the project as the zoning is summarily contemplated in Program 2(G). We intend to address any development standards issues through concessions, incentives, and waivers under the State Density Bonus Law.

At this point, while we understand the City’s need to show HCD that it intends to comply with its 5<sup>th</sup> Cycle Housing Element requirements, the proposed expenditure of funds for environmental review and time for staff to process the contemplated by-right provisions of Program 2(G) are likely not necessary as the issue will be moot upon submission of the SB 330 Preliminary Application. See Gov’t Code sec. 65941.1.

Please do not hesitate to contact me if you have questions or concerns regarding the foregoing.

Sincerely,

COAST LAW GROUP LLP



Marco A. Gonzalez  
Attorney for Watermark DM, L.P.