

**CALIFORNIA COASTAL COMMISSION**

SAN DIEGO AREA

3111 CAMINO DEL RIO NORTH, SUITE 200

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 Staff Report: May 11, 1999  
 Hearing Date: June 7-11, 1999

REGULAR CALENDARSTAFF REPORT AND PRELIMINARY RECOMMENDATION

Application No.: 6-99-54

Applicant: Randolph Rhett

Agent: Dominy &amp; Associates

Description: Demolition of five existing cottages totaling 2,818 sq.ft. and construction of five new, one-story plus loft, 558.5 sq.ft. cottages (totaling 2,792.5 sq.ft.) on an 8,011 sq.ft. parcel.

Lot Area	8,011.0 sq. ft.
Building Coverage	2,792.5 sq. ft. (35%)
Pavement Coverage	2,738.0 sq. ft. (34%)
Landscape Coverage	2,480.5 sq. ft. (31%)
Parking Spaces	5
Zoning	R-2 12.5 dua
Plan Designation	High Density Residential 12.5 dua
Project Density	27.1 dua
Ht abv fin grade	15 feet

Site: 931-939 Ocean Avenue, Del Mar, San Diego County. APN 300-171-01

Substantive File Documents: Certified City of Del Mar LCP Land Use Plan and draft Implementing Ordinances; Planning Commission Resolution No. PC-98-18; Design Review Board Resolution No. DRB-98-84

STAFF NOTES:Summary of Staff's Preliminary Recommendation:

Staff is recommending denial of the proposed project since it includes insufficient parking in the nearshore area and is inconsistent with the certified land use plan with respect to both parking and density. The proposed development will result in adverse impacts on public access to the beach and to the existing blufftop paths. Moreover,

approval may prejudice the ability of the City of Del Mar to obtain a certified Local Coastal Program by setting an adverse precedent of allowing existing nonconforming structures to be demolished and replaced in kind.

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#### STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

##### I. Denial.

The Commission hereby denies a permit for the proposed development on the grounds that the development will not be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976 and would prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3 of the Coastal Act.

##### II. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description. The applicant is proposing to demolish five existing cottages on one legal lot, which were constructed as rental units in 1929. The applicant then proposes to construct five new cottages, maintaining the general style and scale of the existing ones. The existing cottages range in size from 396 sq.ft. to 611 sq.ft., having a combined total of 2,818 sq.ft. The five proposed replacement cottages would be identical, each 558.5 sq.ft. in size including a loft, for a total of 2,792.5 sq.ft. The existing cottages are all approximately 16 feet in height, and the proposed new cottages would measure just under 15 feet to the top of the roof. There are five unimproved parking spaces currently available, which occupy area both on the subject site and within public right-of-way; the parking area would be reconfigured and paved, but five parking spaces would remain.

The site is located on the south side of 10<sup>th</sup> Street, at its western terminus just east of the railroad right-of-way. The site address is Ocean Avenue, which is not an improved public street but rather a partially-vegetated linear strip of land west of the private properties. Within that strip, there is a public trail which provides ocean and shoreline views of the Del Mar coast. The portion of trail west of the subject site is paved, although the trail is unpaved along most of its length. The paved trail will remain.

The cottages, as they exist today, are nonconforming with several provisions of the Del Mar Municipal Code and the Uniform Building Code. Under the current Municipal Code, the existing development is nonconforming with respect to density, floor area ratio, rear yard, interior and street side yard setbacks and parking; also, portions of the development encroach beyond the property line onto adjacent private and public

property. As proposed by the applicant, the replacement cottages would eliminate the floor area ratio nonconformity, all setback nonconformities and the encroachment onto adjacent private lands. However, the proposed redevelopment project would still be nonconforming with respect to density, since the current land use plan designation and zoning would allow only two units. The proposal is also still nonconforming with respect to parking, since the five units would require seven spaces and only five are being proposed; moreover, portions of two of the proposed parking spaces would encroach onto public right-of-way.

Although the City of Del Mar has a certified land use plan, the implementation plan is still in draft form and has not yet been certified by the Coastal Commission. Therefore, the Commission retains permit jurisdiction over the entire city. Chapter 3 of the Coastal Act is the standard of review for coastal development permits, with the certified land use plan providing guidance.

2. Public Access /Intensity of Development. The Coastal Act emphasizes the need to protect public recreational opportunities and to provide public access to and along the coast. The following Coastal Act policies, which address the protection of public access and recreational opportunities, are most applicable to the proposed development, and state in part:

#### Section 30210

In carrying out the requirements of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall 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.

#### Section 30252

The location and amount of new development should maintain and enhance public access to the coast by ... (4) providing adequate parking ...

#### Section 30604(c)

(c) Every coastal development permit issued for any development between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone shall include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3 (commencing with Section 30200).

The subject site is located between an alley and 10<sup>th</sup> Street on Ocean Avenue, which is not an improved public street, but consists of landscaping and a narrow paved sidewalk. The designated first public road is Stratford Court, which is one block east of the site.

West of the site is the public trail which extends continuously north along the blufftop to 12<sup>th</sup> Street and south beyond 4<sup>th</sup> Street, with additional, non-contiguous segments further north and south as well. West of the public trail are the railroad right-of-way and the ocean bluffs. There are also historic, informal walking/jogging paths paralleling the railroad track on both the east and west side of the track, within its right-of-way. In recent years, the railroad, out of concern for public safety, has posted "no trespassing" signs along the right-of-way and has cited members of the public for using the posted area. However, the informal paths still receive a fair amount of use. In addition, there is evidence that people cross the tracks and make their way down the face of the bluffs to the beach below.

The closest formal beach access exists to the north of the subject site at 15<sup>th</sup> Street, a walk of approximately six city blocks, or roughly a third of a mile, from the subject site. This formal access can be reached from 10<sup>th</sup> Street by walking along the streets or by walking on the public trail to the west of the site. To the south, the nearest formal beach access is approximately a mile away. There are also views of the ocean available to the public from the existing paved public trail immediately west of the subject site and views of the ocean from the street end of 10<sup>th</sup> Street. Thus, 10<sup>th</sup> Street provides parking for people to access the beach, to access the blufftop trail, and to enjoy ocean views.

As stated, Section 30252 of the Coastal Act requires, among other things, that new development maintain and enhance public access by providing adequate parking on-site. In its review of the subject proposal to demolish and replace five existing rental cottages, the City determined that seven parking spaces would be required for the development, based on its parking standards for multi-family housing. The applicant is proposing five spaces, to replace the five spaces currently serving the site. Although the proposed units are quite small (one bedroom plus a small loft), each unit can accommodate more than one tenant and it is likely that more than one tenant will live in one or more of the units. Therefore, it is possible that one or more units will have tenants with more than one vehicle. Since only five vehicles can be accommodated in the proposed site configuration, any additional vehicles would have to park on the public street, usurping space that would otherwise be available for public parking. In addition, the permissible density under the certified land use plan would only allow two units on this site, which would significantly reduce the parking requirement on-site, thus also reducing the likelihood of overflow private parking on the public street.

The City of Del Mar ordinances provide that, when existing nonconforming development is demolished, all nonconforming rights are extinguished. New development must be fully consistent with all Municipal Code (zoning) requirements; in this particular case, only two units would be allowed on the subject site. However, the City of Del Mar has adopted a redevelopment ordinance specifically designed to encourage property owners to reduce existing nonconformities without relinquishing rights. Under this ordinance, a property owner can completely demolish and rebuild as long as the City can make findings that existing nonconformities are not expanded and that there is a public benefit outweighing any potential public harm. The City used this ordinance to approve the

proposed development, finding that existing Municipal Code nonconformities were not increased, but were, in fact, significantly reduced. In addition, the City found a public benefit in eliminating the Uniform Building Code nonconformities, which the City considers a threat to public safety. The City also found that the new development would carry on the historic value and community charm of the existing cottages, although the City has no provisions at this time for designating residential structures as historic sites. For these reasons, the City approved a project under its redevelopment ordinance that could not be approved under the regular Municipal Code provisions for new multi-family development, due to insufficient parking and inconsistency with allowed density.

The Commission finds that the proposed development would result in adverse impacts on public access because it is located in a nearshore area where streets are used for public parking to access the beach yet it fails to include on-site parking that is adequate to serve its intended users. The public can park on 10<sup>th</sup> Street and walk to the beach via Stratford Court and 15<sup>th</sup> Street, a distance of approximately a third of a mile. The public can also park along 10<sup>th</sup> Street and walk along the public trail west of the site, which provides panoramic views of the ocean and portions of the Del Mar coastline as well as access to the 15<sup>th</sup> Street beach access. Public parking availability on 10<sup>th</sup> Street would be reduced by the applicant's failure to provide adequate parking on the subject site because tenants of the new development would have to park on the street if the total number of cars owned by the tenants altogether exceeds five. This reduction in public parking would be significant given that the City of Del Mar receives thousands of visitors annually, particularly during the summer months.

The subject proposed development will be deficient in parking by two spaces under the City's zoning requirements. Although the parking standards in the land use plan certified by the Coastal Commission as consistent with Chapter 3 of the Coastal Act do not specifically address lofts, they require one parking space for studios or one-bedroom units and two parking spaces for two-bedroom units. Since a loft provides additional living and sleeping area, without actually being a second bedroom, the Commission finds the City's requirement for two additional parking spaces to serve such a development consistent with the intent of Section 30252 of the Coastal Act. Every public parking space becomes critical on weekends and during the summer, when the City of Del Mar receives thousands of regional and national visitors. If the site were developed at the density allowed in the certified land use plan, only two units would be constructed on the site and the development would have to be designed to provide all required parking on the site. This would probably be four parking spaces for the size units typically built in this area of Del Mar. However, the applicant is proposing to construct five units, which is more than double the density allowed in the certified land use plan, and is further proposing insufficient parking (five spaces where seven would be required). The result of this intensity of development, coupled with insufficient parking, will be project tenants parking on the public street, usurping spaces otherwise available to the beachgoing public. The Commission therefore denies the application as inconsistent with the Chapter 3 policies of the Coastal Act.

3. Visual Resources. The following policy of the Coastal Act provides for the protection of scenic coastal resources, and states, in part:

Section 30251

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

The subject site represents the first row of development inland of the railroad right-of-way, and is adjacent to an improved public sidewalk used for recreational purposes. The proposed project would demolish and rebuild five existing rental cottages. The redevelopment plan would result in five identical one-story plus loft cottages, with decks and landscaped yards facing the public sidewalk. The proposal includes the retention of as much existing landscaping as possible, and replacement of any landscaping that would be removed. After redevelopment, the site will not appear significantly different than today and the Commission finds the proposed development consistent with Section 30251 of the Act. However, the Commission further finds that, due to inconsistencies with other Chapter 3 policies as detailed in other findings, the proposal must be denied.

4. Local Coastal Planning. Section 30604(a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, such a finding cannot be made.

The City of Del Mar has a certified land use plan which designates the subject site for High Density Residential development at a density of 12.5 dwelling units per acre (dua). The existing R-2 Zone carries the same density requirement. These designations would allow two units on the site. Based on the development patterns of the neighborhood, this is usually accomplished with two detached single-family residences on a parcel, with two parking spaces typically required for each unit. In the subject proposal, the applicant would retain an existing density nonconformity of five units, which equals 27.1 dua, more than double the density allowed under the existing zone and the land use designation certified by the Coastal Commission. Moreover, the proposed development does not meet the parking standards of the certified land use plan, which would require seven parking spaces for five units of the proposed size; only five parking spaces are proposed.

As currently certified, the City of Del Mar LCP Land Use Plan does not include any policies addressing existing nonconforming structures or uses. Although not formally submitted for certification as yet, the City has informally submitted its proposed

implementation plan for staff review. Again, this document does not include any policies addressing nonconformities. Furthermore, neither the certified land use plan nor the draft implementation plan include the City's redevelopment provisions that were used in the local discretionary reviews to allow the City to approve the proposed development.

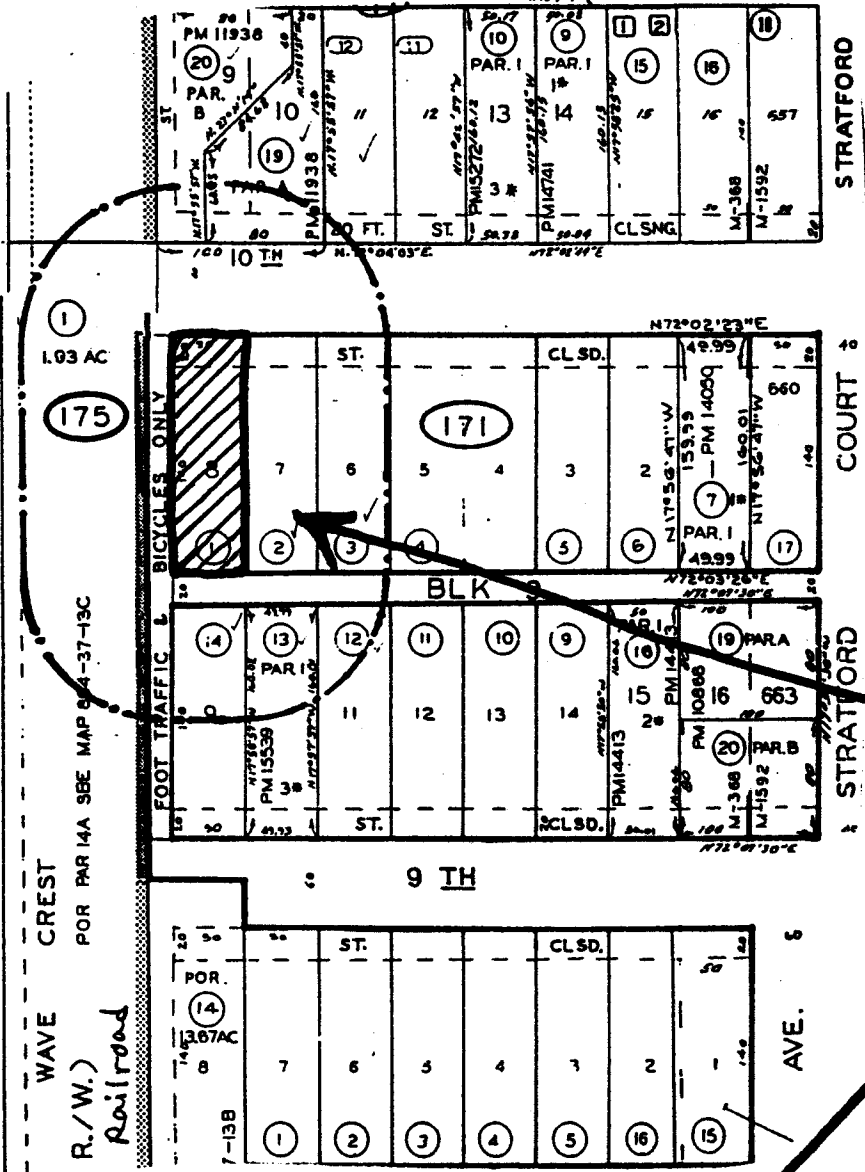
In addition, the Commission is concerned with potential cumulative impacts. It is not known how many other sites in Del Mar may be eligible to use the City's redevelopment ordinance, although the City's representative has indicated the ordinance has only been used once before in the ten years it has been in existence. It is also not known how many potential redevelopment sites may be located in critical nearshore areas. The age of much existing development throughout the City, including in the area west of Camino del Mar, would suggest that there may be a significant number of sites with existing Municipal Code and Uniform Building Code nonconformities, including some with parking deficiencies. If the redevelopment ordinance were to be applied to even a few sites that are in sensitive locations from an access perspective, the cumulative impact on available public beach parking could be significant. The appropriate means for the Commission to address these issues will be through the LCP process, should the City choose to include the redevelopment provisions in its implementation plan and through an amendment to its certified land use plan. If the City wants to include these provisions as land use plan policies and as part of the implementation plan, any future LCP submittals addressing redevelopment should include an analysis of the likely extent of applicability and potential cumulative effects.

However, since the Commission has only certified a land use plan for the City of Del Mar at this time, permit jurisdiction has not yet been delegated to the City. Thus, Chapter 3 of the Coastal Act remains the standard of review for this permit action. In previous findings, the Commission has found the proposed development inconsistent with several policies of Chapter 3 addressing public access and the intensity of development. In addition, the Commission finds that approval of the proposed development would prejudice the ability of the City to complete the LCP process, since the proposal is inconsistent with the certified land use plan and draft implementation plan. Therefore, the Commission finds the coastal development permit application must be denied.

5. Consistency with the California Environmental Quality Act (CEQA). As previously stated, the proposed development will result in impacts on public access opportunities, both individually and cumulatively, which will result in unmitigable environmental impacts. Furthermore, redevelopment of the site with a maximum of two units, consistent with the certified land use designation and current zoning, would lessen the environmental impact of the proposed project on coastal resources. The Commission therefore finds that there are feasible alternatives or mitigation measures available which would substantially lessen the significant adverse impacts which the proposed development may have on the environment of the coastal zone.

6-99-54

Pacific Ocean



Site

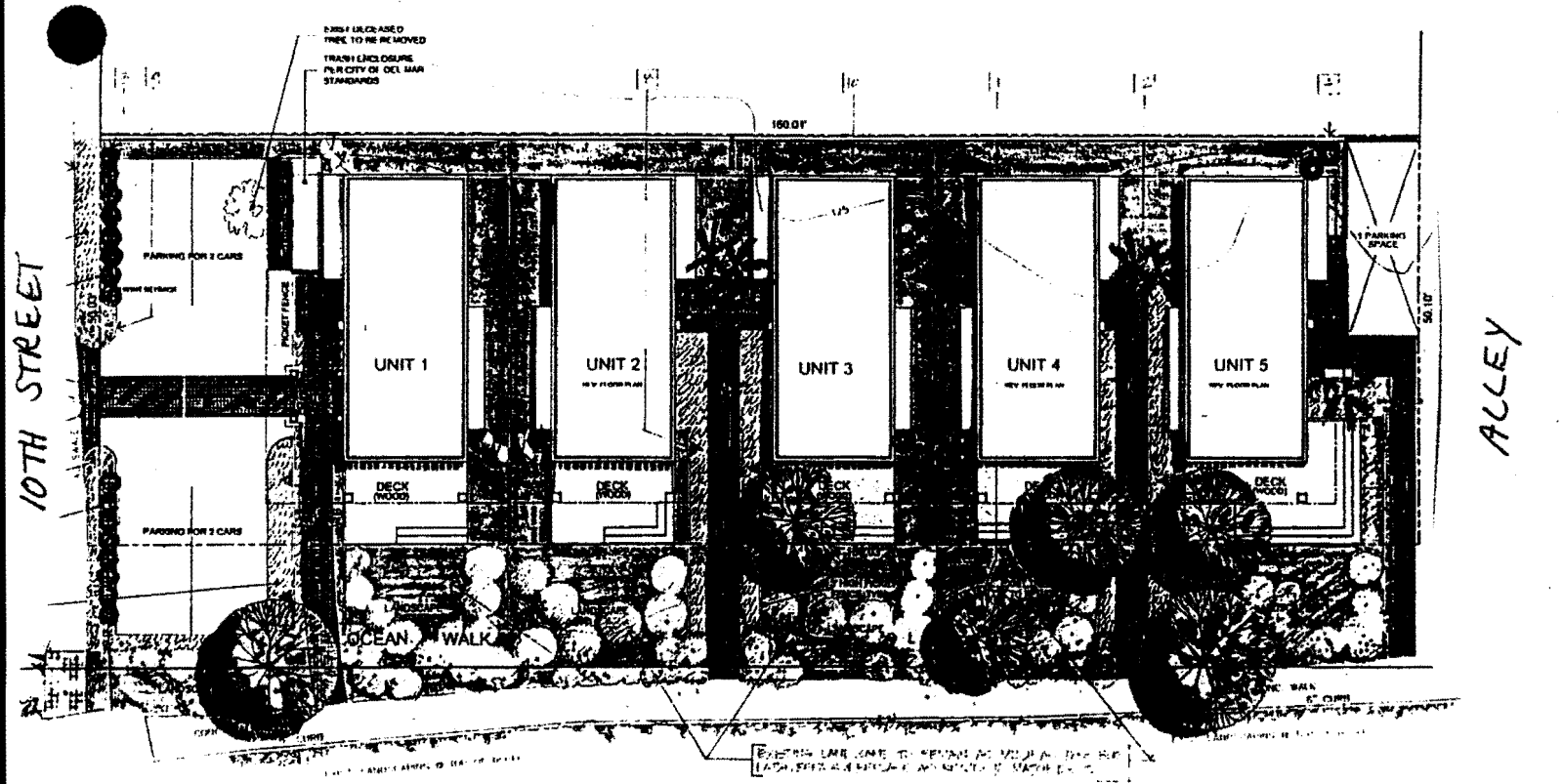


EXHIBIT NO. 1  
APPLICATION NO.  
**6-99-54**  
Location Maps

California Coastal Commission



6-99-54



PROPOSED SITE PLAN



SITE ELEVATION - WEST

EXHIBIT NO. 2
APPLICATION NO.
6-99-54
Site Plan and Elevations
California Coastal Commission