

## CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA  
7575 METROPOLITAN DRIVE, SUITE 103  
SAN DIEGO, CA 92108-4402  
(619) 767-2370



# W15a

## Addendum

March 4, 2011

To: Commissioners and Interested Persons

From: California Coastal Commission  
San Diego Staff

Subject: Addendum to **Item W 15a**, Coastal Commission Permit Application  
**#A-6-OCN-11-007 (Dillon)**, for the Commission Meeting of March 9-11,  
2011

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Staff recommends the following changes be made to the above-referenced staff report:

The attached exhibit (Exhibit #8) was included in the staff report. However, per the applicant's request, please replace that exhibit with the attached Exhibit #8, which includes color copies.

## CALIFORNIA COASTAL COMMISSION

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# W15a

Filed: January 27, 2011  
49th Day: March 17, 2011  
Staff: T. Ross-SD  
Staff Report: February 17, 2011  
Hearing Date: March 9-11, 2011

## STAFF REPORT AND RECOMMENDATION ON APPEAL

LOCAL GOVERNMENT: City of Oceanside

DECISION: Approved with Conditions

APPEAL NO.: A-6-OCN-11-007

APPLICANT: Kim Dillon

PROJECT DESCRIPTION: Construction of a 232 sq. ft. elevated open deck addition on the western side of an existing home on a 3,750 sq. ft. ocean fronting lot.

PROJECT LOCATION: 1011 South Pacific St, Oceanside, San Diego County.  
APN #152-076-04

APPELLANTS: Jim and Nancy Bailey

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### SUMMARY OF STAFF RECOMMENDATION:

The staff recommends that the Commission, after public hearing, determine that no substantial issue exists with respect to the grounds on which the appeal has been filed. The appellants raise several issues, with the most pertinent being that the development is inconsistent with zoning policy pertaining to rear yard setbacks, resulting in a development beyond the western “stringline” boundary that obstructs the views from adjoining properties. The project is located on the western side of Pacific Street, and the general area has open views of the ocean as well as intermittent opportunities to view Oceanside Pier (ref. Exhibit #4).

Based on review of the City’s file and information provided by the appellants and applicants, staff has concluded that the development, as approved by the City, is consistent with all applicable LCP provisions as it is in character with the overall surrounding community and will not result in any significant adverse impacts to views from adjoining properties.<sup>1</sup>

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<sup>1</sup> The applicant also submitted two letters from her attorney requesting that the Commission dismiss this appeal under the Commission’s regulations (Section 13111(d)) due to the appellants’ failure to send the Notice of Appeal to the applicant and other interested parties. Commission staff provided the Notice of

Staff Notes:

The City of Oceanside's LCP was certified by the Commission in 1986 and the City has been issuing coastal development permits for development in the City's Coastal Zone since that time. Recently, through a joint review process between the City of Oceanside staff and Commission staff, it became apparent that some time between 1991 and 1992 the City of Oceanside significantly updated/replaced its zoning ordinance without benefit of review and/or approval by the Coastal Commission. This oversight was realized in 2007, and directly following, the City began using the previously approved, and *Commission certified* version of its zoning document, dating back to 1986, to review developments within the coastal zone. Among other things, the two versions contain significantly different provisions regarding height restrictions and development beyond the western "stringline" boundary; with the 1992 version being more restrictive. Consequently, the City has observed a significant influx in coastal development permit applications along the shoreline to take advantage of the less restrictive provisions. This has further resulted in strong public interest/concern.

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**SUBSTANTIVE FILE DOCUMENTS:** Certified City of Oceanside Local Coastal Program; Appeal Form submitted by Jim and Nancy Bailey; Staff Report to the City of Oceanside Community Development Commission dated September 13, 2010; Staff Report to the City Council dated January 5, 2011, Previous Coastal Commission reviewed City approved developments; CDP 3's 6-OCN-99-107 and 6-OCN-09-198.

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I. Appellants Contend That: The project, as approved by the City, is inconsistent with the certified LCP with respect to protection of views from adjoining properties to and along the shoreline. In addition, the appellants contend that the City failed to adequately implement its certified LCP in that 1) The City doesn't current hold a certified ordinance; 2) the City failed to make the findings required to approve development beyond the stringline; 3) the City failed to correctly identify and locate the stringline consistently over time; 4) That the City allowed the submission of an inappropriate letter of support written by the applicants; 5) and additional concerns regarding previous development onsite; but not a component of this development approval.

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Appeal to the applicant, however, and the intent of Section 13111(d) is to ensure that the applicant and interested parties are advised of the pendency of the appeal. They have been so advised in this case. Section 13111(d) allows the Commission to exercise its discretion to dismiss an appeal if there has been an "[u]nwarranted failure to perform" the required notification. Here, Commission staff advised the applicant of the pendency of the appeal, so there was no need for the appellants to send the applicant an additional Notice of Appeal. Their failure to do so is therefore not "unwarranted." In addition, the applicants attorney also provided the applicant and all known parties the Notice of Appeal. Staff therefore does not recommend that the Commission exercise its discretion to dismiss the appeal on this procedural ground.

## II. Local Government Action.

The Planning Commission approved the project by a 6-0 vote on September 13, 2010. The project was then appealed to the City Council on October 7, 2010, by the current appellants. The City Council upheld the Commission's action by approving the proposed development, with conditions, by a 4-1 vote. Specific conditions were attached which, among other things, require the applicant to complete the proposed deck as approved by the City and than any deviation from the approved building plans shall not occur without Planning Division review/approval.

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## III. Appeal Procedures/Substantial Issue Analysis.

After certification of a Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits.

Section 30604(b)(1) of the Coastal Act states:

*The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.*

Coastal Act Section 30625(b) states that the Commission shall hear an appeal unless it determines:

*With respect to appeals to the commission after certification of a local coastal program, that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.*

If the staff recommends "substantial issue" and no Commissioner objects, the Commission will proceed directly to the de novo portion of the hearing on the merits of the project then, or at a later date. If the staff recommends "no substantial issue" or the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project then, or at a later date. If the Commission conducts the de novo portion of the hearing on the permit application, the applicable test for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program.

In addition, for projects located between the sea and the first public road paralleling the sea, Section 30604(c) of the Act requires that a finding must be made by the approving agency, whether the local government or the Coastal Commission on appeal, that the

development is in conformity with the public access and public recreation policies of Chapter 3. In other words, in regard to public access questions, the Commission is required to consider not only the certified LCP, but also Chapter 3 policies when reviewing a project on appeal.

The only persons qualified to testify before the Commission at the "substantial issue" stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. At the time of the de novo hearing, any person may testify.

The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it "finds that the appeal raises no significant question" (Cal. Code Regs. titl. 14 section 13155(b)). In previous decisions on appeals, the Commission has been guided by the following factors:

1. The degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the certified LCP;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretations of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government's coastal permit decision by filing petition for a writ of mandate pursuant to the Code of Civil Procedure, section 1094.5.

In this case, for the reasons discussed further below, the Commission exercises its discretion and determines that the development approved by the City does not raise a substantial issue with regard to the appellants' contentions regarding coastal resources.

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#### IV. Staff Recommendation On Substantial Issue.

The staff recommends the Commission adopt the following resolution:

**MOTION:**     *I move that the Commission determine that Appeal No. A-6-OCN-11-007 raises NO substantial issue with*

*respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

**STAFF RECOMMENDATION OF NO SUBSTANTIAL ISSUE:**

Staff recommends a **YES** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

**RESOLUTION TO FIND NO SUBSTANTIAL ISSUE:**

The Commission finds that Appeal No. A-6-OCN-11-007 does not present a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

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V. Findings and Declarations.

The Commission finds and declares as follows:

1. Project Description and Site History.

The project site, a 3,750 sq. ft. oceanfront lot, is currently developed with a two-story, 3,066 sq. ft. single-family residence with a “daylighted basement” on the western side facing the beach. A daylight basement is used on sloping lots so that a portion of the basement can accommodate larger windows and/or, a doorway that opens out to the exterior. The specific development proposed associated with this coastal development permit includes the construction of an approximately 232 sq. ft. elevated deck expansion attached to the first level (above the daylighted basement) of the existing home (ref. Exhibit #2). The balcony deck would be an expansion to the existing 96 sq. ft. deck accessed through the first-level dining and bedroom area. The deck will be constructed at a height of 13.5’ with 3.5 feet of its height consisting of glass railing, above the remaining structural support beams. The deck will also be angled 45 degrees at its southern end to reduce potential visual impacts from the adjoining property to the south (ref. Exhibit #6). The proposed deck would be an extension westward approximately 8’ from the existing building and 6.5’ beyond an established “stringline” boundary.

The subject site is located on the west side of Pacific Street, approximately 120-feet south of Marron Street in the City of Oceanside. The measurements of the property are approximately 37.5’ wide and 130’ in depth. The physical characteristics of the property are typical of the coastal bluff properties within the area, with a sloping grade of approximately 10% and a rock revetment separating the private lot from the public beach frontage.

The existing single family home was approved by the City of Oceanside in 1998, and no appeals were filed for this development (ref. CDP 6-OCN-99-107). In 2009, the City of Oceanside reviewed and approved a CDP for the enclosure of 532 sq. ft. of an existing balcony for expansion to the master bedroom, with 96 sq. ft. of balcony to remain. Again, no appeals were filed for this development (ref. CDP 6-OCN-09-198).

2. Consistency with Certified LCP. The appellants raise two main concerns regarding the approved development; both of which pertain to the Zoning Ordinance Policy 1703 (e) listed below. The first is that a) the approved development will result in significant impacts to views from adjoining properties, and, b) that the approved development is based on an inaccurate stringline location. The following provision of the City's certified Implementation Plan, pertaining to the stringline, is applicable and states:

**Section 1703: Rear Yards. The following minimum rear yard setbacks shall be met:**

[...]

(e) notwithstanding any other provisions of this Section, buildings or structures located on lots contiguous to the shoreline shall be compatible in scale with existing development and shall not extend further seaward that the line established on the "Stringline Setback Map," which is kept on file in the Planning Division. Appurtenances such as open decks, patios, and balconies may be allowed to extend seaward of the Stringline Setback line, provided that they do not substantially impair the views from adjoining properties.

a. View Impacts from Adjoining Properties.

The primary contention of the appellants is that the development, as approved by the City, will substantially impair the views from adjoining properties, inconsistent with the above stated zoning ordinance. As noted in the LCP language cited above, while a western building stringline is defined, open decks, patios and balconies may be allowed to extend beyond the stringline, if views from the adjoining properties are not substantially impaired. The appellants live in the residence immediately south of the subject site and contend that the proposed deck will substantially impair their existing views north, from their master bedroom window to the ocean as well as to the Oceanside Pier. Specifically, the appellants contend that the deck will 1) provide a physical visual barrier between the appellants' home and the coast, and 2) will provide need for an additional privacy barrier, in that the location of the deck will result in direct visual access from the applicant's expanded deck to the appellants' bedroom; and that such visual access will require curtains or blinds to be constructed for privacy purposes, where currently none are necessary (ref. Exhibit #5). While the second concern may be true, the construction of the deck does not directly result in the need for additional privacy, in that it would be the appellant's choice to install curtains or blinds. In any case, privacy

issues such as those raised herein are not addressed in the LCP and thus are not grounds for an appeal or a finding of substantial issue.

Regarding the direct visual impacts associated with the construction of the deck, the project includes several design features specifically aimed at reducing the impacts to existing private views. First of all, the deck is elevated and only supported on posts. The area below the deck will remain open. In addition, the deck is substantially comprised of glass railing, above the remaining structural support beams, thus the majority of the deck will be transparent. Additionally, the deck will be angled inward 45 degrees at its southern end. All of these features were targeted specifically to reduce potential visual impacts to the adjoining property to the south (ref. Exhibit #6). Additionally, while the deck may encroach partially into the views from the appellants' bedroom window, there remain numerous other view opportunities from other decks, balconies and rooms within the appellants property, and as such, this proposed project cannot be interpreted to substantially impair the views from the adjoining property. The approved deck is located inland of the majority of existing structures along this section of Pacific Street, including the appellant's property (ref. Exhibit #7), and thus does not substantially impair the views from any other adjoining property. More importantly, the subject site is also not located adjacent to any undeveloped lots, nor is the subject site adjacent to any public access points; thus, the proposed development will not impact any public views through or along the subject site.

b. Location of Stringline.

The second concern raised by the appellants is the true location of the "stringline" as certified by the City of Oceanside. The "stringline" in this case is a line on a map loosely following the line of development on the beach-fronting homes along the City's coast. The certified "Stringline Setback Map" was developed in 1983 by overlaying an imaginary stringline on an aerial photo of the shoreline in the City of Oceanside. The map shows how far new development may extend towards the ocean. The stringline map was based on existing building patterns, as well as anticipated future developments and remodels/expansions. This "stringline" was certified by the Commission in 1986 as part of the City's Local Coastal Program. These maps are kept on file in the City's Planning Division and are used to determine the westernmost boundary for any proposed development along the shoreline. The goal of limiting new development to extend no further seaward than the stringline is to restrict encroachment onto the shoreline and preserve private and public views along the shoreline.

The appellants contend that over the permit history onsite, the definite location of the stringline has been inconsistent; one location associated with the construction of the home in 1999, another associated with the master bedroom enclosure in 2009, and yet another location proposed with the subject development request. Specifically, during the construction of the home, the City's staff report indicated the stringline was located 1.5' west of the proposed building. In 2009, the applicant applied for a coastal development permit to enclose the upper deck. The deck enclosure did not modify the western boundary of the home or the existing building footprint in general; however, at the time



of review, the City staff report indicated the stringline was located 14' west of the existing home. This is a 12.5' discrepancy. Most recently, the appellants contend that the City first accepted a location of the stringline at 6.5' west of the existing building, and only after the appellants brought this discrepancy to the City's Planning Commission, was the stringline accurately described as 1.5' west of the existing home. And, as such, the appellants contend that the zoning policy limiting development beyond the stringline has not been implemented consistently. Commission staff has reviewed both the Planning Commission and City Council documents associated with the proposed deck addition, and both reports site the stringline location at 1.5' west of the existing home. That being said, given the previously siting at 14' west (a 12.5' difference), there remains concern regarding the consistency of how the City is delineating where the stringline exists.

In discussing this issue with City Planning staff, they have indicated that the stringline is simply a line drawn on a map, at a fixed moment in time. There is no scale, there are no fixed geographic references, and, as such, accurately identifying the *exact* location of the stringline has been a challenge in the past. However, current advances in GIS mapping have allowed the City to more accurately identify a moderately accurate location for the stringline. Additionally, the City had indicated that in those cases where the location of the stringline may need some interpretation, the City currently uses the most conservative location as the limit to development. To summarize, while the appellants raise a valid concern, and the City should consider updating its Stringline Setback Map, the City has implemented a process by which to site the stringline as accurately as feasibly possible. The project, therefore, does not raise substantial issue on the grounds filed by the appellants relative to the location of the stringline.

c. Other Appellant Contentions.

The appellants also included several additional concerns with their appeal. Specifically, they claim that the City doesn't have a certified zoning ordinance, that the City allowed submittal of letters of support from properties the applicant owns, and that previous unpermitted development, not associated with the subject approval (previous deck construction, and fencing), exists on the applicant's property. With the case of the City's certified zoning document, the appellants assert that the City voted to repeal its zoning ordinance in 1988, with the subsequent approval of a new ordinance in 1992. The appellants assert that because the modified 1992 ordinance was never approved by the Coastal Commission and the previous one was repealed, the City no longer has a certified zoning ordinance by which to approve development in the coastal zone. However, the Commission never reviewed/approved the revocation of the original zoning ordinance, and, as such, the version of the ordinance certified by the Commission in 1986 remains the certified standard of review. None of the remaining concerns raise valid coastal concerns relative to LCP consistency or are they are not directly related to the subject approval. As such, no further discussion will be included regarding these contentions.

3. Public Access/Recreation. Pursuant to Section 30604 (c), the Coastal Act emphasizes the need to protect public recreational opportunities and to provide public

access to and along the coast. Section 30210 of the Coastal Act is applicable to the proposed development and states:

Section 30210

In carrying out the requirement 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 30211

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212 of the Act is applicable and states, in part:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:

- (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources,
- (2) adequate access exists nearby....

The proposed raised deck addition to an existing building does not modify nor affect any coastal access opportunities. The development as approved by the City includes solely a 232 sq. ft. deck addition on the first floor (above basement) of a single family home. The proposal is located entirely on privately owned property, and the structure and the beach are separated by an existing revetment. All proposed development will be located inland of this revetment and thus, no impacts to public access along the western front of the property are expected.

4. Conclusions. In conclusion, the proposed deck addition will not substantially impair the views from adjacent structures, and does not result in any other potential impacts to coastal resources or public access. Additionally, while historically the location of the western stringline boundary was open to greater interpretation, most recently, the City has taken a conservative view on where the stringline is delineated and now uses GIS technology to more adequately determine where that boundary exists on individual properties. As such, the proposed development does not raise substantial issue on any of the grounds filed by the appellants.

5. Substantial Issue Factors. Generally speaking, the Commission considers five specific findings when considering whether a project raises a "substantial issue." These

factors are listed on Page 4 of this staff report and none of them support a finding of substantial issue in this case. As discussed above, there is strong factual and legal support for the City's determination that the proposed development is consistent with the certified LCP. While the City's LCP protects *private* views, private views are not typically a priority within the coastal zone, so the coastal resources affected by this approval are not particularly significant. The subject appeal is for a minimal development located in an area with an established line of development beyond that approved by the subject development. Thus, while the project may raise some minimal private view concerns, the objections to the project suggested by the appellants do not raise any significant *coastal resource or public access* concerns, and as such, do not raise any substantial issues of regional or statewide significance. Finally, the City's approval of this CDP will not create an adverse precedent for future interpretation of this LCP.

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[Click here to go to the exhibits.](#)