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Filed: 2/9/21  
49<sup>th</sup> Day: 4/21/21  
Staff: CH-SD  
Staff Report: 3/25/21  
Hearing Date: 4/16/21

**STAFF REPORT AND RECOMMENDATION ON APPEAL  
SUBSTANTIAL ISSUE DETERMINATION**

<b>Local Government:</b>	<b>City of Del Mar</b>
<b>Decision:</b>	<b>Approved</b>
<b>Appeal Number:</b>	<b>A-6-DMR-21-0018</b>
<b>Applicant:</b>	<b>Ocean Front, LLC</b>
<b>Location:</b>	2610 Ocean Front, Del Mar, San Diego County (APN: 299-065-07)
<b>Project Description:</b>	Conversion of an existing approximately 380 sq. ft. attached 2-car garage into an approximately 392 sq. ft. accessory dwelling unit attached to an existing approximately 525 sq. ft. single-family residence on a 1,753 sq. ft. shoreline lot.
<b>Appellants:</b>	Mark Wyland
<b>Staff Recommendation:</b>	Substantial Issue

**IMPORTANT HEARING PROCEDURE NOTE**

The Commission will not take testimony on this “substantial issue” recommendation unless at least three commissioners request it. The Commission may ask questions of the applicant, any aggrieved person, the Attorney General or the executive director prior to determining whether or not to take testimony regarding whether the appeal raises a substantial issue. If the Commission takes testimony regarding whether the appeal raises a substantial issue, testimony is generally and at the discretion of the Chair

limited to 3 minutes total per side. Only the applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify during this phase of the hearing. Others may submit comments in writing.

If the Commission finds that the appeal raises a substantial issue, the de novo phase of the hearing will occur at a future Commission meeting, during which it will take public testimony.

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## SUMMARY OF STAFF RECOMMENDATION

Staff recommends that the Commission, after public hearing, determine that a substantial issue exists with respect to the grounds on which the appeal has been filed.

The proposed project involves the conversion of an existing, attached two-car garage into an accessory dwelling unit (ADU). No off-street parking is proposed for the new ADU and the existing parking spaces in the garage will not be replaced on the property. As a result, there will be no off-street parking provided on the site for residents.

The appellant contends that the proposed ADU raises two Local Coastal Program (LCP) consistency issues, including that: (1) the proposed development will eliminate all parking on the site, and (2) the ADU will not be affordable and will be used to increase the living area of the existing single-family residence instead of as a separate rental unit. In addition, the appellant contends that the approved project is inconsistent with the public access and recreation policies of the Coastal Act because inadequate on-site parking will adversely impact the limited public parking on surrounding streets in this popular beach neighborhood.

Although the City of Del Mar recently adopted an ordinance amending its accessory dwelling unit regulations consistent with recent changes in state law, including revisions to the parking requirements for ADU projects, these revisions have not yet been certified as part of the LCP and should not be used as guidance in determining whether the subject development raises substantial issue.

The City's currently certified LCP requires the replacement of off-street parking for the primary residence where an existing garage is converted to an ADU. Although the site is exempt from any parking requirement for the ADU because it is located within one-half mile of a bus stop, the beachfront property is located between two public beach access points in an area where spillover demand for on-street parking could adversely impact the supply of public beach parking.

Because of these potential inconsistencies with the currently-certified LCP and the Coastal Act, staff recommends that the Commission determine that the project raises a substantial issue regarding conformance with the certified LCP and the Chapter 3 policies of the Coastal Act.

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Ocean Front, LLC

Standard of Review: Certified City of Del Mar Local Coastal Program and the public access and recreation policies of Chapter 3 of the Coastal Act.

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## EXHIBITS

- [Exhibit 1 – Project Location](#)
- [Exhibit 2 – Nearby Public Access Locations](#)
- [Exhibit 3 – Project Plans](#)
- [Exhibit 4 – City of Del Mar Decision on CDP No. CDP20-016](#)
- [Exhibit 5 – Appeal](#)

## I. APPELLANTS CONTEND

The appellant contends that the development, as approved by the City, raises several LCP consistency issues including that: (1) the project will eliminate all parking on the site, and (2) the ADU will not be affordable and will be used to increase the living area of the existing single-family residence instead of as a separate rental unit. In addition, the appellant contends that the approved project is inconsistent with the public access and recreation policies of the Coastal Act because inadequate on-site parking will adversely impact public parking on surrounding streets in this shoreline neighborhood that has limited available public parking for beach access.

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## II. LOCAL GOVERNMENT ACTION

On February 2, 2021, the City of Del Mar's Director of Planning and Community Development ministerially approved CDP20-016 ([Exhibit 4](#)). Section 30.91.030(D)(5)(a) of the City's certified LCP does not require the local government to hold public hearings for Coastal Development Permit (CDP) applications for ADUs. Thus, no public meetings were held to consider the CDP application. The appellant received notice of the administrative approval and expressed his objection to the planner.

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## III. APPEAL PROCEDURES

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 30603(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,

those allowed to testify at the hearing 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, reviewing the project de novo in accordance with sections 13057-13096 of the Commission's regulations. If the Commission conducts the de novo portion of the hearing on the permit application, the applicable standard of review for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program (LCP).

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 of the Coastal Act. In other words, in regard to public access questions, the Commission is required to consider not only the certified LCP, but also applicable 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 portion of the hearing, any person may testify.

The Coastal Act requires that the Commission shall hear an appeal unless no substantial issue exists with respect to the grounds on which the appeal was filed under Section 30603 (§ 30625(b)(2)). Section 13115(c) of the Commission regulations provides that the Commission may consider the following five factors when determining if a local action raises a significant issue:

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.

The Commission may, but need not, assign a particular weight to a factor.

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 a petition for a writ of mandate pursuant to the Code of Civil Procedure, section 1094.5.

The City of Del Mar has a certified Local Coastal Program (LCP), and the subject site is located in an area where the Commission retains appeal jurisdiction because it is located between the first public road and the sea. Therefore, before the Commission considers the appeal de novo, the appeal must establish that a substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603. In this case, for the reasons discussed further below, the Commission exercises its discretion to determine that the development approved by the City raises substantial issue with regard to the appellant's contentions regarding coastal resources.

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## **IV. SUBSTANTIAL ISSUE MOTION AND RESOLUTION**

### **Motion:**

I move that the Commission determine that Appeal No. A-6-DMR-21-0018 raises NO substantial issue with respect to the grounds on which the appeal has been filed under Section 30603 of the Coastal Act.

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue 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:**

The Commission hereby finds that Appeal No. A-6-DMR-21-0018 presents a substantial issue with respect to the grounds on which the appeal has been filed under Section 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. SUBSTANTIAL ISSUE FINDINGS AND DECLARATION**

### **A. Project Description and Background**

The subject site is a 1,753 sq. ft. shoreline lot developed with an existing single-story, approximately 525 sq. ft. single-family residence with an attached approximately 380 sq. ft. 2-car garage. The site is designated and zoned for residential development and is surrounded by Ocean Front (an alley) to the east, residential development to the north

and south, and the beach and Pacific Ocean to the west ([Exhibit 1](#)). Less than 100 feet to the south of the site is a public beach accessway, located at the western terminus of 26<sup>th</sup> Street. Another public beach accessway is located at the western terminus of 27<sup>th</sup> Street, approximately 150 feet to the north of the project site. Ocean Front is an alley seaward of the first public roadway in this area, Camino Del Mar, and no on-street or public parking is available or allowed in the alley ([Exhibit 2](#)).

The project as approved by the City includes the conversion of the approximately 380 sq. ft. attached 2-car garage into an accessory dwelling unit (ADU), 12 sq. ft. addition to the structure, and an approximately 4.5-foot height increase for the new ADU's roof and clerestory windows ([Exhibit 3](#)). No off-street parking is proposed for the new ADU and the existing parking spaces in the garage will not be replaced on the property. As a result, there will be no off-street parking provided on the site for residents.

### **Standard of Review**

On June 1, 2020, the City of Del Mar adopted an ordinance amending the Del Mar Municipal Code to update the City's accessory dwelling unit regulations consistent with recent changes in state law, including revisions to the parking requirements for ADU projects. The City approved this project pursuant to its updated ADU regulations. However, the revisions to the City's ADU ordinance have not yet been certified as part of the LCP and should not be used as guidance in determining whether the subject development raises substantial issue.

On August 24, 2020, the City of Del Mar LCP Amendment No. LCP-6-DMR-20-0044-2 was filed in the San Diego District office. On October 15, 2020, staff requested and was granted a one-year time extension due to insufficient staff time to adequately review the amendment and prepare a recommendation. The amendment raises concerns about potential adverse impacts to public access. LCP Amendment No. LCP-6-DMR-20-0044-2 has not yet been scheduled for Commission action. Thus, the certified LCP provisions relating to accessory dwelling units and parking requirements are the standard of review for this appeal.

## **B. Parking/Public Access and Recreation**

The appellant contends that the proposed addition of an ADU and elimination of all off-street parking at this site is inconsistent with the certified LCP and will adversely impact public parking and access by forcing residents to utilize on-street parking in this shoreline area with already limited available public parking for beach access. The relevant Coastal Act policies are as follows:

Section 30210 of the Coastal Act states:

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 30212.5 of the Coastal Act states:

Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

Section 30213 of the Coastal Act states:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred...

Additionally, the City of Del Mar's certified LCP includes the following relevant policies and provisions:

Chapter 30.80.030(B)(1) provides a table of Residential Use Parking Requirements:

For a single-family dwelling unit with 3 bedrooms or less, 2 garage spaces per unit are required as the off-street parking ratio.

Chapter 30.91.040(O) of the LCP states:

Where an existing garage is demolished or converted to an ADU, the replacement off-street parking required for the primary dwelling unit shall be provided on the premises and may be located in the setback, may be covered or uncovered, and may be tandem or accessible by mechanical lift (if the mechanical lift is designed within a garage).

Chapter 30.91.040(P) of the LCP states:

The ADU shall provide one off-street parking space (covered or uncovered), unless one of the following parking exemptions applies in which case no parking is required:

1. The ADU would be located within the existing primary dwelling unit.
2. The ADU would be located within an existing accessory building on the property.
3. The ADU would be located on a property within one-half mile of public transit, including a bus route, train station, or paratransit service, if applicable.
4. The ADU would be located in an architecturally and historically significant district or on a property listed in the California Register of Historic Places.
5. The ADU would be located on a property within one block of a designated car share parking location.

The appellant contends that the project is inconsistent with the parking requirements of the certified LCP because the locally approved development will eliminate all existing parking on the site and no new parking is proposed. Chapter 30.80.030(B) of the certified LCP requires two garage spaces for single dwelling units with three bedrooms

or less. However, the existing two-car garage on the site will be converted to the ADU and those spaces will not be replaced on the property. Chapter 30.91.040(O) of the LCP requires that where an existing garage is demolished or converted to an ADU, the off-street parking required for the primary dwelling unit must be replaced on the premises.

In addition, the approved project does not provide parking for the new ADU. Chapter 30.91.040(P) of the LCP requires one off-street parking space for a new ADU unless one of five listed exemptions apply. Although the City did not make any findings about whether a parking exemption applies for this project, the site is located within one half mile of a bus stop and thus, the certified LCP does not require parking for the ADU. Nevertheless, when an ADU is added to a residentially developed site, it typically brings with it additional off-street parking needs; and when existing garages or carports are converted into ADUs, there is a potential to reduce the availability of on-street parking for visitors if the parking for the ADU and primary dwelling unit cannot be made up on-site. Because the existing parking on the site will be eliminated and not replaced, and no parking is proposed for the new ADU, there will be no off-street parking for residents of either the primary dwelling unit or the ADU. Thus, the elimination of all parking at the site raises a substantial issue.

The appellant further contends that the project is inconsistent with the public access and recreation policies of Chapter 3 of the Coastal Act because the development will adversely impact public parking and access. The subject site is a shoreline property at a popular beach destination with already limited available public parking. The site is located approximately 100 feet north of a public beach accessway at the western terminus of 26<sup>th</sup> Street, and approximately 150 feet south of another public beach accessway at the western terminus of 27<sup>th</sup> Street ([Exhibit 2](#)). No on-street or public parking is available or allowed on Ocean Front. Eliminating off-street parking at this site would require the residents to utilize nearby on-street, public parking spaces. In terms of public access parking near prime shoreline visitor destinations, it is important to ensure that there is adequate on-street public parking as a means of meeting Coastal Act and LCP public access provisions, particularly in terms of ensuring that no-cost and lower cost public access opportunities are both adequately provided for and ultimately maximized. This is particularly key given that most coastal visitors are not fortunate enough to live right by the coast, requiring them to drive and park in order to enjoy this public resource. In this area of Del Mar in particular, there are no public parking lots and most coastal visitor parking is on-street. Thus, in order to ensure that public access is not reduced, particularly for coastal visitors who must drive in and find parking in order to access the coast, and to avoid disproportionately impacting inland communities and their rights to coastal access, projects that reduce off-street parking must ensure that they do not lead to a reduction in shoreline and beach area on-street parking. Residential use of public street parking will adversely impact the public's ability to park near the beach and beach accessways in this area, inconsistent with the public access and recreation policies of the Coastal Act and raises a substantial issue.

### **C. Affordable Housing and Use of ADU**

The appellant raises a concern that the proposed ADU is unlikely to provide affordable housing and will instead be used as an addition to the primary residence. The City's LCP and state law do not require that ADUs be affordable. Instead, the laws encourage the development of ADUs to increase the range of housing types and sizes available. The proposed ADU will be approximately 392 sq. ft. in size. It will be smaller than the approximately 525 sq. ft. primary residence on the property, and thus, is likely to be more affordable than the existing residence. Therefore, the proposed project does not raise a substantial issue regarding affordability or use of the ADU.

### **D. Substantial Issue Factors**

As discussed above, there is inadequate factual and legal support for the City's determination that the proposed development is consistent with the certified LCP. In this case, the City's approval is inconsistent with LCP policies regarding protection of public access and parking and is also inconsistent with the public access and recreation provisions of the Coastal Act. The other factors that the Commission normally considers when evaluating whether a local government's action raises a substantial issue also support a finding of substantial issue. The objections to the project suggested by the appellant raise substantial issues of regional or statewide significance regarding public access and recreation, and the local government's decision has the potential to establish adverse precedential value for future interpretations of the certified LCP regarding protection of public access and recreation.

## **APPENDIX A – SUBSTANTIVE FILE DOCUMENTS**

- City of Del Mar certified Local Coastal Program (LCP)
- City of Del Mar decision on CDP20-016