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STAFF REPORT: DE NOVO HEARING

Local Government: City of Del Mar

Decision: Approved

Appeal No.: A-6-DMR-21-0018

Applicant: Ocean Front, LLC

Location: 2610 Ocean Front, Del Mar, San Diego County (APN: 299-065-07)

Project Description: 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.

Appellant: Mark Wyland

Staff Recommendation: Approval with conditions on De Novo

SUMMARY OF STAFF RECOMMENDATION

This staff report is for the De Novo review of an appeal of the conversion of an existing, attached two-car garage into an accessory dwelling unit (ADU) approved by the City of Del Mar. At the Commission's April 2021 substantial issue hearing for this project, the Commission found that Substantial Issue existed with respect to the grounds on which the appeal was filed. Specifically, the Commission identified that conversion of the existing two-car garage into a first floor ADU without providing replacement off-street

parking for the primary residence was inconsistent with the City of Del Mar's Local Coastal Program (LCP) and could adversely impact public access and recreation opportunities near the shoreline site.

As approved by the City, the project included the conversion of the approximately 380 sq. ft. attached two-car garage into an ADU, an approximately 12 sq. ft. addition to the single-family residence, and an approximately 4.5-foot height increase for the new ADU's roof and clerestory windows ([Exhibit 4](#)). No off-street parking was proposed for the new ADU and the two existing parking spaces in the garage would not have been replaced on the property. As a result, there would be no off-street parking provided on the site for residents of the single-family residence or for the new ADU. While parking for the new ADU is not required by the existing certified LCP in this case, the lack of replacement parking for the primary residence presents a conflict with the LCP. The elimination of all parking for residents of this property is also inconsistent with the public access policies of the Coastal Act, and staff accordingly recommended Substantial Issue to the Commission.

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. The City's Local Coastal Program Amendment No. LCP-6-DMR-20-0044-2 was submitted to similarly update its existing ADU regulations within the LCP and was scheduled to be heard at the October 2021 Commission hearing. However, the City withdrew the item before it could be heard by the Commission. Accordingly, the newest provisions for ADUs that have been approved and enacted by the City at the local level have not been certified as part of the LCP, and therefore cannot be used as the standard of review. Instead, the standard of review remains the City's current LCP, which contains previously certified ADU regulations from 2018, as well as the public access and recreation policies of Chapter 3 of the Coastal Act.

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. After the Commission's finding of Substantial Issue, Commission staff requested that the applicant provide an alternative to their project that included adding an ADU as a new second story to the existing single-story residence in order to protect public parking. Given the constrained lot size, the revised project design would allow for the retention of the off-street two-car garage at the site, consistent with the parking requirements of the City's LCP and avoid adverse impacts to public street parking used for beach access.

Because a second story ADU on site has been found to be feasible, **Special Condition #1** requires that the applicant submit revised final plans for the ADU in substantial conformance with those renderings submitted to staff in July 2021, including that the project has been sited and designed for sea level rise over the lifetime of the structure. To further avoid potential adverse impacts to coastal resources, staff is recommending

several special conditions. **Special Condition #2** requires the applicant to acknowledge that the development is proposed on a site subject to coastal hazards and assume the risks of development in such a location. **Special Condition #3** requires the applicant to waive any right to construct a future shoreline protective device. Because the ADU is located partially within the 2019 FEMA FIRM 100-year floodplain, **Special Condition #4** requires the landowner to notify occupants that the ADU is located in the FEMA FIRM and is therefore in a potentially hazardous area, that it may suffer a loss of basic services at a point in the future due to sea level rise, that it is not permitted on public lands as the line of public trust migrates with sea level rise, and that additional adaptation strategies may be needed. Finally, **Special Condition #5** requires the applicant to record a deed restriction against the property that imposes the conditions of the permit for the purpose of providing notice to future property owners. Therefore, as conditioned, the project will be consistent with the Chapter 3 policies of the Coastal Act and the City of Del Mar LCP, and no impacts to coastal resources are anticipated.

Commission staff recommends that the Commission **APPROVE** coastal development permit application A-6-DMR-21-0018, as conditioned. The motion and resolution can be found on Page 5 of the staff report. Because the site is located between the sea and the first public roadway in an area with a certified LCP, the standard of review is the certified LCP and the public access and recreation policies of Chapter 3 of the Coastal Act.

TABLE OF CONTENTS

I. MOTION AND RESOLUTION ON DE NOVO	5
II. STANDARD CONDITIONS	5
III. SPECIAL CONDITIONS	6
IV. FINDINGS AND DECLARATIONS	8
A. Project Description and Background	8
B. Parking/Public Access and Recreation.....	9
C. Coastal Hazards	12
D. Community Character/Visual Resources	15
E. Local Coastal Planning.....	16
F. California Environmental Quality Act	16
APPENDIX A – SUBSTANTIVE FILE DOCUMENTS	18

EXHIBITS

[Exhibit 1 – Project Location](#)

[Exhibit 2 – Existing Site Conditions](#)

[Exhibit 3 – Beach Access](#)

[Exhibit 4 – Proposed Project Plans](#)

[Exhibit 5 – Second Floor ADU Alternative Project Plans](#)

[Exhibit 6 – City of Del Mar Decision on CDP No. CDP20-016](#)

[Exhibit 7 – 2019 FEMA FIRM](#)

I. MOTION AND RESOLUTION ON DE NOVO

Motion:

I move that the Commission approve Coastal Development Permit A-6-DMR-21-0018 pursuant to the staff recommendation.

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of Commissioners present.

Resolution:

The Commission hereby approves the Coastal Development Permit for the proposed project and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

- 1. Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the applicant or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4. Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
- 5. Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the applicant to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

- 1. Revised Final Plans. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for the review and written approval of the Executive Director, revised final plans approved by the City of Del Mar that are in substantial conformance with the plans prepared by Bokal & Sneed Architects and received by the San Diego Coastal Commission office on July 21, 2021 with the ADU constructed above the existing garage, as depicted in [Exhibit 5](#), except that they shall comply with the following:

(a) The ADU shall be sited and designed, including elevation and floodproofing, to ensure safety from the impacts of sea level rise over the anticipated lifetime of the proposed structure using the best available science on sea level projections (such as the California State Sea Level Rise Guidance (OPC 2018) and the table for La Jolla in Appendix G of the Coastal Commission's 2018 Sea Level Rise Policy Guidance.

The permittee shall undertake development in conformance with the approved revised final plans unless the Commission amends this permit or the Executive Director determines that no amendment is legally required for any proposed minor deviations.

- 2. Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from flooding, sea level rise, erosion and wave uprush; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of this project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
- 3. No Future Shoreline Protective Device.** By acceptance of this Permit, the applicant agrees, on behalf of itself and all successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. A-6-DMR-21-0018 and any subsequent amendments to Coastal Development Permit No. A-6-DMR-21-0018 including, but not limited to, the approved accessory dwelling unit, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, or other coastal hazards in the future. By acceptance of this Permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to construct such devices that may exist under applicable law.

By acceptance of this permit, the applicants agree, on behalf of themselves and all successors and assigns, that they are required to remove all or a portion of the development authorized by this permit, and restore the site, if: (a) the City or any other government agency with jurisdiction has issued a final order, not overturned through any appeal or writ proceedings, determining that the structures are currently and permanently unsafe for occupancy or use due to damage or destruction from waves, flooding, erosion, bluff retreat, landslides, or other hazards related to coastal processes, and that there are no feasible measures that could make the structures suitable for habitation or use without the use of shoreline protective devices; (b) essential services to the site (e.g., utilities, roads) can no longer feasibly be maintained due to the coastal hazards listed above; (c) removal is required pursuant to LCP policies for sea level rise adaptation planning; or (d) the development requires new or augmented shoreline protective devices that conflict with the applicable LCP or Coastal Act policies. In addition, this approval does not allow encroachment onto public trust lands. Any future encroachment shall be removed unless authorized by the Coastal Commission. Any future encroachment is subject to the State Lands Commission's (or other designated trustee agency's) leasing approval.

4. **Notifications.** The landowner shall provide notice to all future occupants that: 1) the ADU is located in the 2019 FEMA FIRM and as such is located in a hazardous area or an area that may become hazardous in the future; 2) that sea level rise could render it difficult or impossible to provide services to the site; 3) that the boundary between public lands (tidelands) and private land may shift with rising seas and the development approval does not permit encroachment onto public trust land; and 4) that additional adaptation strategies may be required in the future to address sea level rise consistent with the Coastal Act and certified LCP.
5. **Deed Restriction. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and written approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property subject to the terms and conditions that restrict the use and enjoyment of that property, and (2) imposing the special conditions of this permit as covenants, conditions, and restrictions on the use and enjoyment of the property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence or with respect to the subject property.

IV. FINDINGS AND DECLARATIONS

A. Project Description and Background

The subject site is located in the North Beach neighborhood of Del Mar and is a 1,753 sq. ft. shoreline lot developed with an approximately 525 sq. ft. one-story single-family residence with an attached approximately 380 sq. ft. two-car garage ([Exhibits 1 and 2](#)). A vertical seawall is located on the western property line. 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. Less than 100 feet to the south of the site is a public beach accessway, located at the western terminus of 26th Street. Another public beach accessway is located at the western terminus of 27th 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 3](#)).

The site is within the City of Del Mar's permitting authority and is located within the Commission's appeal jurisdiction. The proposed project includes the conversion of the two-car garage into an ADU, with an approximately 12 sq. ft. addition, and an approximately 4.5-foot height increase to the structure for the new ADU's roof and clerestory windows ([Exhibit 4](#)). The proposed ADU is exempt from parking requirements due to its location within a half mile of a bus stop, and no parking is proposed for the ADU. However, the two existing parking spaces in the garage would not be replaced after its conversion. As a result, there will be no off-street parking spaces provided on the site for residents of the single-family residence or the ADU.

The City granted ministerial approval to the project and issued CDP 20-016 on February 2, 2021 ([Exhibit 6](#)). The project was appealed to the Commission on February 23, 2021 by a neighbor, Mark Wyland. At the Commission's April 2021 substantial issue hearing for this project, the Commission found that Substantial Issue existed with respect to the grounds on which the appeal was filed. Specifically, the Commission identified that conversion of the existing two-car garage into a first floor ADU without providing replacement off-street parking for the primary residence was inconsistent with the City of Del Mar's certified Local Coastal Program (LCP), and could adversely impact public access and recreation opportunities near the shoreline site.

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. While the parking requirements for ADUs themselves largely stayed the same (including those instances where ADUs are exempt from parking requirements), significant changes were made to the parking requirements for primary residences. Specifically, under the proposed amended ordinance, where an existing garage is demolished or converted to create an ADU, no replacement off-street parking is

required. Prior to the adoption of these new regulations, replacement off-street parking was required for the primary residence as part of the original ADU regulations adopted by the City and certified by the Commission in February 2018 as Local Coastal Program Amendment No.LCP-6-DMR-17-0062-2.

The City of Del Mar's LCP Amendment No. LCP-6-DMR-20-0044-2 was filed in the San Diego District office on August 24, 2020 to request analogous updates to the City's LCP. The amendment was scheduled for Commission action at the October 2021 hearing; however, the City requested its withdrawal before the item could be heard. As such, no action has been taken that harmonizes the City's adopted ordinance and new ADU regulations with the certified LCP, and the standard of review remains the City's current LCP, which contains previously certified ADU regulations from 2018, as well as the public access and recreation policies of Chapter 3 of the Coastal Act.

Site History/Past Permits

The property at 2610 Ocean Front has been subject to several Commission CDP applications in the past, including the following:

- **6-89-305:** In January 1990, the Commission approved construction of a vertical seawall on the western property line to protect a two-story home on the site.
- **6-90-57:** The Commission authorized demolition of the previous two-story single-family residence on the site. The seawall approved by CDP #6-89-305 was authorized to remain.
- **6-93-182:** The Commission authorized construction of an approximately 589 sq. ft. cottage with attached 361 sq. ft. two-car garage. Though the applicant at the time complied with the special condition imposed on that permit and the permit was issued, the home was never constructed, and the permit expired.
- **6-97-163:** The Commission approved construction of the single-story, single-family residence that exists today. The existing approximately 525 sq. ft. residence with attached 380 sq. ft. two-car garage was approved with variances for smaller side yard setbacks (3 ft. instead of the 5 ft. required by the zone) and a substandard size garage (380 sq. ft. instead of the 400 sq. ft. typically required) due to the small size of the lot.

B. Parking/Public Access and Recreation

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:

Goal IV-A states:

Provide physical and visual access to coastal recreation areas for all segments of the population without creating a public safety concern, overburdening the City's public improvements, degrading the City's natural resources, or causing substantial adverse impacts to adjacent private properties.

Goal IV-D states:

Maximize the opportunity for access to beach areas by minimizing competition for public on-street parking spaces.

Policy IV-30:

The City shall apply the following Off-Street Parking Regulations to new projects and redevelopment projects to assure that the parking needs generated by new development are provided on site...

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) 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) 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 subject site is a shoreline property at a popular beach destination where public parking is already limited. The site is located approximately 100 feet north of a public beach accessway at the western terminus of 26th Street, and approximately 150 feet south of another public beach accessway at the western terminus of 27th Street ([Exhibit 3](#)). No on-street or public parking is available or allowed on Ocean Front, but free public street parking is available one block east of the site on Camino Del Mar and on 26th and 27th Streets to the north and south of the site.

Chapter 30.80.030(B) of the certified LCP requires two garage spaces for single dwelling units with three bedrooms or less. 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. As proposed, the project would convert the existing two-car garage into a new ADU, and no off-street parking spaces would remain; thus, the project as proposed is inconsistent with the certified LCP.

In addition, the proposed 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. The site is located within one half mile of a bus stop and thus, the certified LCP does not require parking for the ADU. However, with no off-street parking to serve the existing single-family residence or proposed ADU, residents with cars will be forced to use public street parking in the vicinity.

The provision and protection of public access parking near prime shoreline visitor destinations is critical to ensure 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 do not live adjacent to 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.

Both the City's certified LCP and the Chapter 3 policies of the Coastal Act pertaining to access and recreation make it clear that the public's ability to enjoy the coast is a priority to be maximized. Goal IV-A of the certified LCP prioritizes physical access to the coast for all segments of the population while Goal IV-D acknowledges the importance of public street parking as a means of beach access. Section 30210 of the Coastal Act plainly states that maximum access and recreational opportunities should be provided for the public as a whole while Sections 30212.5 and 30213 emphasize the importance of protecting lower cost visitor accommodations and recreation opportunities as well as the equal distribution of public facilities, including parking areas, so as to prevent overcrowding or overuse. Because the proposed project will eliminate all parking on the site and has the potential to lead to a reduction in free shoreline or beach area on-street parking in the vicinity of the project, it is inconsistent with the Chapter 3 public access and recreation policies as well as the certified LCP.

Following the Commission's finding of Substantial Issue at the April 2021 meeting, the applicant provided Commission staff with an alternative project design that would construct an ADU above the existing garage and residence as a second story ([Exhibit 5](#)). This alternative demonstrates that it is feasible to add an ADU at the site while complying with the LCP requirements to maintain parking for the primary residence, and minimize adverse impacts to beach access in the surrounding beach community. Therefore, the Commission imposes **Special Condition #1** to require the applicant to redesign the project, consistent with the alternative depicted in Exhibit 5, to maintain the existing garage parking for the primary residence. As conditioned, the project can be found consistent with the LCP policies regarding parking for accessory dwelling units and public access to the coast, and with the Chapter 3 policies protecting public access and recreation.

C. Coastal Hazards

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

Policy III-2:

Conserve the natural character of land, water, vegetative and wildlife resources within the community by ensuring that future development minimizes the disturbance of existing or natural terrain and vegetation, and does not create soil erosion, silting of lower slopes, slide damage, flooding problems and/or cutting or scarring...

Policy III-7:

Promote public safety, health and welfare, and provide for the protection of private property while protecting public access opportunities to and along the beach...

Goal III-D:

Minimize risks to life and property associated with flooding and flood waters

Policy III-12:

Ensure that the development of real property which is subject to floodwaters will not obstruct flood flow; will not create a hazard to life, health, safety, or the general welfare; will reduce the need for the construction of flood control facilities that would be required if unregulated development occurs; and will minimize the cost of flood insurance to Del Mar residents. The following Floodplain (FP) Overlay Zone policies shall be applied to all applications for a Floodplain Development Permit....

[...]

Applications for Floodplain Development Permits shall be reviewed for consistency with the following requirements to be assured that new development will:

- a. Be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;
- b. Be constructed with materials and utility equipment resistant to flood damage;
- c. Use methods and practices that minimize flood damage;
- d. Have the lowest floor (including basement) of any residential structure elevated to or above the base flood elevation;
- e. Have the lowest floor (including basement) of any nonresidential structure elevated to or above the base flood level or, together with attendant utility and sanitary facilities, be flood-proofed below the base flood level to the extent that the structure is watertight with walls substantially impermeable to the passage of water and with structure components have the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy, as certified by a registered professional engineer or architect;
- f. When located in an area of shallow flooding (Zones AO and VO on the community's FIRM), have the lowest floor (including basement) elevated to or above the depth number indicated on the most current FIRM; or if there is no depth number indicated on the most current FIRM, be elevated at least two feet above the highest adjacent grade. As an alternative, nonresidential structures, together with attendant utility and sanitary facilities, may be flood-proofed to that level as specified in subsection "e." above;
- g. [...]

The northern coastal area of the City of Del Mar consists of low-lying beach area that is subject to coastal hazards. Beachfront residences are protected from coastal hazards such as wave run-up and flooding by seawalls and other forms of shoreline protection. The subject site contains a legally permitted vertical seawall centered on the western property line, which serves as the shoreline protection area (SPA) line as defined in the certified LCP (CDP 6-89-305/Gerhard; CDP 6-97-163/Gerhard). All new development is proposed landward of the seawall and of the SPA line.

The project site is located in the North Beach area of Del Mar, which is especially vulnerable to the effects of both flooding and sea level rise. An analysis of sea level rise

risk using Our Coast, Our Future,¹ a mapping tool developed by Point Blue Conservation Science and USGS Pacific Coastal and Marine Science Center, reveals that parts of this area are already vulnerable to flooding if faced with a 100-year storm event – which is also reflected in the FEMA Flood Insurance Rate Maps (FIRM) for the area. In addition, sunny day flooding may potentially affect the area as early as 2095 (assuming sea levels rise at the rate associated with medium-high risk aversion in state sea level rise guidance documents).² Groundwater is also expected to rise as sea levels rise, potentially beginning to emerge from the ground and pond in parts of North Beach with about 2.5 feet or more of sea level rise. These projections have important implications not only for residential development in the City but also for coastal access. Throughout the City, but in the North Beach especially, rising sea levels and emergent groundwater will impact the public beach areas and cause the migration of the mean high tide line further inland, affecting or prohibiting the public’s ability to utilize the coast in addition to causing residential flooding.

The City of Del Mar has acknowledged the threats posed by sea level rise and increased flooding by publishing a Coastal Hazards, Vulnerability, and Risk Assessment report, most recently updated in August 2018. The City submitted an LCP amendment in order to incorporate some of its key findings, but this proposal was withdrawn before the Commission could hear the matter. However, during its review of that submittal, Commission staff suggested the incorporation of the December 2019 FEMA FIRM maps to replace the City’s original certified Floodplain Overlay Zone map ([Exhibit 7](#)). While these maps do not depict the floodplain associated with today’s extreme flood event nor the extreme flood events that can be expected in the future due to sea level rise, they largely overlap with areas vulnerable to sea level rise, such as the North Beach area, identified in the City’s coastal hazards study as well as those identified on maps from the site “Our Coast, Our Future.”

In accordance with **Special Condition #1**, the applicant must submit plans for a revised second story ADU design that preserves the existing two-car parking garage. A second story ADU would not be threatened from sea level rise before the existing residence is, as it would be located on the eastern end of the lot and approx. eleven feet above grade. Nevertheless, **Special Condition #2** requires the applicant to acknowledge that the development is proposed in a site subject to coastal hazards and to assume risks of development in such a location. Because the ADU is new development and is not entitled to shoreline protection, **Special Condition #3** requires the applicant to waive any rights to future shoreline protection for the proposed ADU. Further, **Special Condition #5** requires the applicant to record a Deed Restriction that imposes the

¹ <https://ourcoastourfuture.org/hazard-map/>

² Because there is scientific uncertainty about how fast sea levels will rise in the future, state guidance documents provide several different sea level rise rates that are plausible according to the current best available research. To sufficiently protect coastal resources and site development safely, the Commission uses the medium-high risk scenario to analyze residential and commercial development.

special conditions of this permit as covenants, conditions, and restrictions on the use and enjoyment of the property.

Because the 2019 FEMA FIRMs have been identified by Coastal staff as acceptable representations of those areas most at risk according to both the City's analysis as well as staff's, additional Special Conditions are recommended for the redesigned project. Because the subject parcel falls partially within the flood hazard areas identified on the 2019 FEMA FIRMs, **Special Condition #1** would require the ADU to include elevation, floodproofing, or other measures sufficient to safeguard it from the impacts of sea level rise over the anticipated lifetime of the proposed structure using the best available science. Finally, **Special Condition #4** would require the landowner to notify all future occupants that the ADU is located in the FEMA FIRM and is in a hazardous area or an area that may become hazardous; that sea level rise could make it difficult or impossible to provide services to the site; that the boundary between tidelands and private land may shift with rising seas and the development approval does not permit encroachment onto public trust land, and that additional adaptation strategies may be required in the future to address sea level rise consistent with the Coastal Act and certified LCP. As conditioned, the project can be found consistent with the LCP policies regarding coastal hazards.

D. Community Character/Visual Resources

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

Policy II-1 states:

Maintain the existing small-scale character of the community and permit only one and two story, low-intensity development with a maximum allowable height of 26 feet.

Policy II-2 states:

Insure that future development, whether commercial or residential, retains the aesthetic quality of the community by protecting and preserving public views to the ocean and other significant natural resources; and by minimizing the disturbance of natural topography and vegetation.

Goal IV-C:

Preserve existing views and view corridors from public vantage points to the maximum extent possible without preventing reasonable use of private property.

Policy IV-27:

Continue to implement the process of design review for new construction projects in order to preserve views of community-wide importance and enhance the small-town village atmosphere of Del Mar.

The project site is located within an existing developed area and a second story ADU will be compatible with the character and scale of the surrounding area. The site is surrounded by single-family residences to the north, south and east, and by the Pacific Ocean to the west. Most of the single-family residences around the subject site are two-story residences, including the homes immediately to the north and to the south ([Exhibit 2](#)). Two-story residences are permitted on shoreline lots within the City's R1-5B Zone, and this site is not an exception. The site also does not obstruct public views along 26th Street and 27th Street, which function as beach access points. Thus, a second story ADU, as required by **Special Condition #1**, would have no adverse impacts to public views, consistent with the LCP.

While the applicant has suggested that a neighbor (the appellant) may object to a second story ADU due to private view blockage, the certified LCP does not afford protection of private views and there are no public views available across this site that would be impacted by redesign of the project to a second story ADU. In summary, as conditioned to redesign the proposed ADU as a second story, the project would have no adverse impacts on public access or public views, consistent with the certified LCP and Chapter 3 public access and recreation policies of the Coastal Act.

E. 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 can be made.

The City of Del Mar's LCP was approved in September 2001, and the City began issuing coastal development permits thereafter. The City of Del Mar approved the subject project ministerially without conditions on February 2, 2021. The site falls within the Commission's appeal jurisdiction because the site is located between the inland extent of the sea and the first public road paralleling the sea (Camino Del Mar). The standards of review are the policies and ordinances of the certified LCP and the public access and recreation policies of the Coastal Act.

Based on the above findings and Special Conditions, the subject development is consistent with the coastal resource protection policies of the LCP. The project has been conditioned such that there will be no loss of required off-street parking spaces, and there will be no seaward encroachment of the structure. As conditioned, the proposed development is also consistent with the public access and recreation policies of the Coastal Act and approval would not prejudice the ability of the City to continue to implement its certified LCP.

F. California Environmental Quality Act

Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a

proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. The City of Del Mar approved the originally proposed ADU through a ministerial action and found the project to be statutorily exempt pursuant to CEQA Guidelines Sections 15268(a) and (h).

The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures, including conditions addressing public access and recreation will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

- Certified Del Mar Local Coastal Program
- Appeal filed by Mark Wyland