

CALIFORNIA COASTAL COMMISSION

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W17a

ADDENDUM

September 1, 2022

To: Commissioners and Interested Persons

From: California Coastal Commission
San Diego Staff

Subject: Addendum to **Item W17a, A-6-DMR-22-0034 (Del Mar 107, LLC)**, for the Commission Meeting of September 7, 2022

The purpose of this addendum is to respond to several comments raised by one of the appellants after the initial release of the staff report. Staff recommends the following additions and clarifications be made to the above-referenced staff report. Deletions shall be marked by ~~strike through~~ and additions shall be underlined:

1. On Page 8 of the staff report, the following shall be added after the first paragraph under Section B “Local Coastal Program ADU History” as follows:

In 2017, the City of Del Mar incorporated a set of ADU regulations into their LCP, which was certified by the Commission in February 2018 as Local Coastal Program Amendment No. LCP-6-DMR-17-0062-2. This amendment created a new Chapter 30.91 in the LCP which specified the process for approval of both ADUs and JrADUs, submittal requirements, and their development standards, such as height, setbacks, parking, and sensitive resource protections.

2. On Page 12 of the staff report, a sentence will be added to the partial paragraph at the top of the page as follows:

One appellant alleges in a follow-up comment letter to the staff report that the ADU will be up to 18 feet in high; however, the approved project plans depict a proposed 16-foot high ADU.

3. On Page 12 of the staff report, a new paragraph will be added after the first complete paragraph on the page as follows:

One additional small area of existing blue water views visible from Penny Lane may be impacted by the approved ADU. The new ADU will be attached to the

north side of the existing residence where there is currently a view in between the existing residence and the residence on the lot seaward of the subject site (see [Exhibit 8](#)). This glimpse of water is not part of the street view corridor, is not contiguous to the views down the street, and is only visible for one short of span of approximately 30-40 feet on Penny Lane in roughly the same spot where a small slice of view along the southern setback of the project area may be impacted. This view is largely a private view from adjacent lots, and the impact from the proposed ADU on public views is not significant given that the street view corridors on both sides of the structure will remain.

4. On Page 13 of the Staff Report, a new paragraph will be added after the paragraph under the section “LCP Status and Affordability Contentions” as follows:

One appellant sent a comment following publication of the staff report, attempting to raise new assertions. However, the appeal period has closed, and staff may not accept assertions that are substantially different in nature than raised in the appeal statements. Furthermore, the appellant raises issues that are not valid grounds for appeal under Coastal Act section 30603. Those issues concern the City’s Notice of Final Action ([Exhibit 5](#)), which was timely submitted to the Commission; the accelerated approval process for the ADU, which is allowable per the currently certified LCP; and the allowance of to-be-certified height and setbacks that would implement state law. Regardless of the somewhat more generous height and reduced setbacks, the project does not impact coastal resources and has negligible impact on public views.

Agenda item 17
Appeal no. A-6-DMR-22-0034
Name Greg Monahan
Position Opposition

Del Mar permit appeal memo dated 8/31/2022

Introduction

The ADU permit issued by the city of Del Mar on 6/21/2022 brings into sharp focus the interaction between the California Coastal Commission Act and the California housing laws relating to ADUs. The facts of this case are so unique they may very well set the precedent for future cases involving the protection of one of the most prized coastal resources (ocean front) vs the questionable need to quickly develop an ADU that will never be occupied by a homeless person. Make no mistake, the purpose of pursuing an ADU on an ocean front compound is not to help the homeless but to relieve the burden of strict coastal protections that, but for the ADU exemption, would be applied to these prime assets. If current subterfuge prevails anyone wanting to avoid appropriate Coastal Act protections can and will seek to use the ADU loophole to circumvent Coastal Act procedures. This precedent will not only apply to Del Mar but to the entire state. If ocean front property cannot be protected by the Coastal Act procedures, in a non-emergency situation, what can be protected?

In the past few years, the legal landscape has changed dramatically with the introduction of a series of new ADU Laws

Status of California Laws dealing with Coastal Protection laws and new housing Laws has become complex and confusing. On the coastal protection side, we have the Coastal Protection Act, the City of Del Mar LCP and the Coastal Commission's oversight role. On the new housing side, we have new laws relating to ADUs and the Department of housing Development and community development (HCD) in an oversight role. To provide added oversight the Office of Attorney General (AG) has been added to the oversight team. To keep up with the changing environment the Coastal Commission has to date issued 3 updated versions to its original guidance for implementation of new ADU laws.

In the latest version of the Coastal Commissions guidance, in reference to the changing laws states "Importantly, the changes did not modify existing provisions of state housing law that explicitly recognize that local governments must still abide by the requirements of the Coastal Act, and by extension, Local Coastal Programs (LCPs). Thus, provisions on coastal resource protection must be incorporated into the planning and development process, and **into** updated LCP J/ADU requirements when considering J/ADUs in the coastal zone." It is important that the LCP incorporate necessary changes in or to maintain its status as the stand alone "rule book" used to test the permit process compliance with the Coast Commission Act.

City of Del Mars Official Certified LCP does not support the accelerated process for ADU development.

After making 5 phone requests to 3 different Del Mar planning department staffers I was unable to get an official copy of the City of Del Mars Certified LCP. Knowing how important the

Agenda item 17
Appeal no. A-6-DMR-22-0034
Name Greg Monahan
Position Opposition

LCP was to the process I wrote a detailed email to the Del Mar planning department, not individual planners but to the department, requesting the current Official Certified LCP. I specifically stated I needed the document for the purpose of determining if the proposed development was in conformity with the Certified LCP. I was demanding the “rule book”.

I was totally in my right to make such a demand. As the State of California constitution Article 1 sec 3(b)(1) I have the right of access to the writings of public officials and sec 3(b)(7) each agency is required to comply with the California Public Records act.

After a few days the city’s Planning Department provided me The Official certified LCP by email. I had finally achieved the goal of getting a copy of the current official Del Mar Certified LCP. It was a long (300 pages) well integrated plan consisting of both Implementing Ordinances and Land Use Plan. The Implementing Ordinances labeled on the cover page as Certified by the California Coastal commission on September 11, 2001

The officially provided Certified Del Mar LCP has NO mention of ADUs whatsoever. There is NO chapter 30.19 or chapter 30.21 or chapter 30.91 in the Official Certified LCP. These chapters are the key chapters the City relied upon to issue the permit in question and therefore the process used to issue the permit cannot possibly be consistent with the current Certified LCP.

The permit should be rejected based on the failure of Del Mar Ordinance 966 to qualify for inclusion into the Del Mar certified LCP.

Ordinance 966, which added chapters 30.19, 30.21 and 30.91 to Del Mar Municipal code (DMCC) was the basis for issuing the permit. The City of Del Mar submitted a LCP implementation Plan, incorporating Ordinance 966 changes on August 24, 2020. The Amendment was never approved or certified and in fact was withdrawn. The Del Mar website lists the status of 966 as NOT IN EFFECT. The status of 966 at the time of the permit findings and permit issuance in June of 2022 had not changed but 966 was included as the basis for justifying the permit. How is it possible to find the request is consistent with the requirements of the Certified Local Coastal Program when the founding principle (966) was rejected and in a “not in effect” status?

A historically bad proposed precedent

The Commission’s staff report does not dispute that the 966 Amendment was never approved and Certified. The staff justifies the use of the 966 provisions based on the statement that the city is working on submitting a new amendment. Given that the City has been working on the amendment for over 2 years with little progress the city should be required to complete the amendment negotiation process, incorporate the changes to the LCP, get the commissions review, approval, and certification of the complete LCP prior to being able to issue permits.

Agenda item 17
Appeal no. A-6-DMR-22-0034
Name Greg Monahan
Position Opposition

Can you imagine the precedent that would be set by allowing cities to issue permits based on a statement that they will be going thru the amendment process sometime in the future? You would lose complete control for implementing the Coastal Commission Act.

The ADU proposed is larger and blocks more public view and enjoyment than the staffs report reflects.

At the bottom of Page 2 of the staff W17a report it states “The proposed ADU will be located on the southern edge of the subject lot and will extend the existing building further **south** into the rear yard...” If the ADU is at the southern edge it cannot extend further south. According to the drawings the 16’-18’ high resulting structure will run along the eastern most side of the lot (4 ft setback) and end approximately 67’ north from the southern property line. This structure will block out all the water view between the existing buildings as one walks west down Penny Lane to the bench on the bluff. Walkers frequently walk down to the bench at the end of Penny Lane and enjoy a glass of refreshment while looking at the view.

The Del Mar Certified Land Use Plan, chapter IV(A)p73 provides “In addition to the policies of this Land Use Plan which serves to protect the most significant public views, Del Mar’s Design Review Ordinance provides for the protection of additional views from public and private residences and business “. The city also finds that “the protection and provision of visual access to the coastline...is paramount to the overall goal of protecting the scenic and natural resources which characterize the City”.

When walking west on Penny Lane, to the bench at the end, and looking at the water view between the houses it is not uncommon to see motorized hang gliders in the sky and dolphin in the water. The public should not have to give up the pleasure of seeing such beauty while walking down Penny Lane.

The Notice of Coastal Development Permit Approval is fatally flawed because it does not specify a date certain for the forfeiture of right to appeal.

The Notice specifies the appeal period runs 10 (ten) calendar days, commencing from the date upon which the Coastal Commission **receives** notice of the City’s final action on the application. Nowhere does the notice specify the start date of the ten-day period. Given (1) the magnitude of the issue –forfeiting the right to insist on the present setting protection of the most valuable portion of the coast- and (2) the complexity of the overlapping laws and regulations and extraordinarily short notice period it is totally unreasonable to not have a date certain. Without this information it is not possible for someone in opposition to the permit to logically plan the resources and timing of a response.

Agenda item 17
Appeal no. A-6-DMR-22-0034
Name Greg Monahan
Position Opposition

Conclusions

1. The Ocean front property deserves the highest level of public protection
2. LCP Amendment process must keep up with the pace of legislative change
3. The Official Del Mar Certified LCP does not permit an accelerated ADU permit process
4. Permit was based on an Ordinance that was never approved or certified
5. Proposed structure would eliminate the ocean view while walking to the bluff
6. City's Notice of permit award fails to identify forfeiture date – the purpose of the notice