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STAFF REPORT AND RECOMMENDATION ON APPEAL SUBSTANTIAL ISSUE DETERMINATION

Local Government: City of Del Mar

Decision: Approved

Appeal Number: A-6-DMR-23-0022

Applicant: Mary S. Vonder Reith

Location: 118 & 120 6th Street, Del Mar, San Diego County.
(APN: 300-182-12-00)

Project Description: Demolition of 239 sq. ft. of an existing duplex and construction of a detached two-story 1,000 sq. ft. accessory dwelling unit on an 8,006 sq. ft. lot with an existing 2,433 sq. ft. multi-story duplex and 525 sq. ft. detached garage.

Appellants: Gwynn Thomas, Jeff Sturgis, Laura Schaefer, Lois Lund, James Wood, Holley Martens

Staff Recommendation: 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.

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 appellants contend that the approved project is inconsistent with policies and ordinances regarding the protection of public views and public access of the Del Mar certified Local Coastal Program (LCP). Specifically, the appellants argue that the proposed accessory dwelling unit (ADU) is not consistent with the standards required by the certified LCP for a number of reasons, including that the new ADU will block blue water views from public vantage points, there will be a reduction of existing onsite parking and the proposed ADU will not provide necessary parking, and that there will be adverse impacts to coastal bluffs as a result of the project. The appellants also contend that the ADU will not be used as affordable housing, that the existing structure encroaches onto the adjacent North County Transit District (NCTD) railroad right-of-way, and that the project was improperly noticed by the City of Del Mar.

Upon review of the locally approved project plans and the certified LCP, the approved ADU does raise a substantial issue regarding an impact to public views. The City's LCP does not identify specific viewpoints or street ends but nonetheless requires the preservation of views from public vantage points. The subject site is the most seaward residential lot at the terminus of 6th Street, which is a highly scenic public view corridor with ocean views available from Stratford Court down 6th Street. The ADU would be located on the southern portion of the site, set back approximately 20 feet from 6th Street, and would extend approximately 10 feet closer to 6th Street compared to the existing duplex. The applicant has provided information related to public view protection, including visual simulations of the proposed ADU. The visual simulation demonstrates that blue water views will be lost from several vantage points along 6th Street. The applicant has also provided a brief alternatives analysis; based on this submittal as well as staff's review, it appears that there are potential alternative locations and designs for the ADU that would protect public views as required by the LCP, including a second-story ADU on top of the existing duplex, an ADU located on the western side of the site, or an overall smaller ADU on the site. Because the approved ADU would block public views inconsistent with the City's LCP and, based on the information currently available, it does not appear that the approved project minimizes impacts to public views. Therefore, the project raises a substantial issue.

The project also raises a substantial issue concerning parking and public access. Four parking spaces are required for this site. Existing parking for the duplex includes a 2-car garage on the northern side of the property and an approximately 44-foot by 18-foot gravel parking pad on the southwestern side of the property. The gravel parking pad contains one legal parking space that meets the minimum size requirements of the City's LCP, making the site existing non-conforming, as four legal parking spaces total are required for the site, and only three legal spaces exist. The applicant has also added that the space is large enough to accommodate two to four cars depending on the size and configuration of vehicles. However, because the proposed ADU would be constructed south of the existing residence, the project raises concerns that the gravel parking area would be reduced in size and potentially reduce the area available for onsite parking, inconsistent with the City's LCP. Based on the information available, it is unclear how many additional parking spaces the gravel area will accommodate after construction of the ADU and it is not clear if the approved project will exacerbate the degree of non-conformity of the site. When private residential parking needs are not accommodated onsite, it can lead to increased use of on-street parking and thereby reduce the availability of on-street parking to the general public. This could potentially affect public coastal access to the nearby Del Mar Upper Bluff Coastal Trail, for which an access point is located at the end of 6th street directly west of the subject site and that is identified within the certified LCP. Thus, the potential reduction in area available for onsite parking contributes to a finding of substantial issue and should be further explored at the de novo review.

In applying the five factors the Commission may use when considering an appeal, the appeal is found to raise a "substantial issue" with respect to the LCP provisions because further information is still needed to determine the degree of factual and legal support for the local government's decision that is the development is consistent with the certified LCP. Accessory dwelling units within the City of Del Mar are being reviewed on a case-by-case basis until the City is able to submit and have certified an updated ADU LCP amendment, and so in the interim, there is precedential value in evaluating the local government's decision for interpretations of its LCP. Finally, the preservation of public coastal views is a cornerstone of the Coastal Act, and the loss of blue water views speaks to a concern at the local level that is reflected across all coastal jurisdictions. Due to these factors, the approved ADU will result in a significant adverse impact to public views and does raise a substantial issue with regard to conformity with the City's visual resource protection policies in the LCP.

Because of the above-described inconsistencies with the 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.

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

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[Exhibit 2 – Site Location](#)

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[Exhibit 5 – City Notice of Final Action](#)

[Exhibit 6 – 6th Street View Analysis](#)

[Exhibit 7 – Parking Imagery](#)

I. APPELLANTS CONTEND

The appellants contend that the project as approved by the City does not conform to the City of Del Mar's certified Local Coastal Program (LCP), with regard to protection of public views, provision of adequate onsite parking and protection of public access, and adverse impacts to coastal bluffs. The appellants also contend that the accessory dwelling unit (ADU) will not be used as affordable housing, that the project was improperly noticed by the City of Del Mar, and that the existing structure encroaches onto the adjacent North County Transit District (NCTD) railroad right-of-way ([Exhibit 4](#)).

II. LOCAL GOVERNMENT ACTION

The project was approved by the Director of Planning and Community Development on June 14, 2023.

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.

IV. SUBSTANTIAL ISSUE MOTION AND RESOLUTION

Motion:

I move that the Commission determine that Appeal No. A-6-DMR-23-0022 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 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-23-0022 presents 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.

V. SUBSTANTIAL ISSUE FINDINGS AND DECLARATION

A. Project Description and Background

The locally approved project is construction of a detached two-story 1,000 sq. ft. accessory dwelling unit (ADU) on an 8,006 sq. ft. lot with an existing duplex comprised of a 1,424 sq. ft. one-story residence at 120 6th Street and an existing multi-level 1,009 sq. ft. residence at 118 6th Street. Approximately 239 sq. ft. of the existing unit at 120 6th Street will be demolished to facilitate construction of the new ADU. An existing 525 sq. ft. detached, 2-car garage serves as parking for the entirety of the property and is located north of the residence at 118 6th Street ([Exhibit 3](#)). A third legal parking space is located on a gravel pad on the southwestern side of the street. The subject site is located on the inland side of the adjacent railroad tracks and at the terminus of 6th Street ([Exhibit 2](#)).

The site is within the City of Del Mar's permit jurisdiction and appealable to the Coastal Commission due to the property being located being the first public road and the sea (§30603(a)(1)) ([Exhibit 1](#)). The grounds for an appeal are limited to allegations that the

development does not conform to the standards set forth in the certified LCP or the public access policies of the Coastal Act.

B. Local Coastal Program ADU History

In response to the state’s affordable housing crisis, the State legislature has passed a series of changes to state housing law in recent years designed to facilitate more ADUs and affordable housing units. These laws are designed to eliminate barriers to the provision of housing, and to help foster additional housing units—particularly critically needed affordable units—where they can be appropriately accommodated by adequate public services and where, in the coastal zone, they will not adversely affect coastal resources. These changes include requirements to provide for streamlined review and permit processing of ADUs, expand where ADUs are considered permitted uses, and relaxing standards for size, height, and setbacks by which ADUs must comply.

These changes have triggered the need for jurisdictions in the coastal zone to update their LCPs to address requirements affecting the development of ADUs. Importantly, state law continues to explicitly require that the coastal resource protections of the Coastal Act (and by extension LCPs) be incorporated into the process when considering ADUs. Accordingly, local government ADU provisions must continue to be updated to ensure coastal resource protections.

In 2017, the City of Del Mar incorporated a set of ADU regulations into its 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 junior accessory dwelling units (JrADUs), submittal requirements, and their development standards, such as height, setbacks, parking, and sensitive resource protections.

In August 2020, the City of Del Mar submitted an LCP Implementation Plan update to implement a newly passed local ordinance modifying the regulations and requirements for ADUs and JrADUs consistent with recent changes in state law (LCP-6-DMR-20-0044-2). Among other changes, the LCPA proposed to allow for ADUs to be up to 16 feet in height, two feet higher than what is allowed in the existing LCP. However, the City withdrew the LCPA prior to Commission action. 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. The City has been working with Commission staff on a resubmittal, and expects to submit an updated LCPA in late 2023 to revise the certified LCP consistent with state law.

C. Public Views

Goal IV-C of the City’s certified Land Use Plan states:

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 of the City’s certified Land Use Plan states:

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 appellants contend that the project as approved by the City does not conform to the public view protection policies of the City's LCP as identified above. As stated in the relevant policies, the Del Mar certified LUP does not identify specific viewpoints or street ends but requires the preservation of "public vantage points."

The subject site is the most seaward residential lot at the terminus of 6th Street. As noted, 6th Street is a highly scenic public view corridor with ocean views available from Stratford Court down 6th Street. Public parking is also available on 6th Street. The proposed ADU would be located on the southern portion of the site, set back approximately 20 feet from 6th Street, consistent with the underlying zoning. The new ADU would extend approximately 10 feet closer to 6th Street compared to the existing residence.

The applicant has supplied information relating to public view protection since the appeals were filed, including a visual simulation of the area to be occupied by the proposed ADU structure ([Exhibit 6](#)). Based on the visual simulations, the proposed structure will block existing blue water views from several vantage points along 6th Street, which is inconsistent with the LCP. The applicant asserts that the ADU design as approved by the City is the design that is least impactful to public views while affording an ADU unit that meets the needs of the owner. The applicant argues that no siting or design of the ADU would completely eliminate the blockage of public street views besides; however, it appears that there are potential alternative locations and designs for the ADU that would better protect public views as required by the LCP, including a second-story ADU on top of the existing duplex, a two-story ADU located on the western or northern side of the site, or an overall smaller ADU on the site.

While the applicant did explore construction of a second-floor ADU during the local application process, ultimately that design was abandoned. A previous design featured two ADU's on the site – one on the second-floor of the 118 residence and one detached on the southern end of the site. However, the applicant decided not to move forward with that design. Under the California Government Code 65852.2 (e)(1)(D), only detached ADU units are permitted on a duplex lot. The City found the applicant did not submit adequate justification for the necessity of the second-floor ADU but that the detached ADU was an acceptable design given it complied with the setbacks of the underlying zone. Accordingly, the applicant changed their proposal to omit the second-floor ADU and only proposed the detached ADU located on the southern end of the property.

Additionally, while the visual simulations provided by the applicant are helpful in understanding the potential view blockage of the ADU as approved by the City, and the applicant did submit a brief alternatives analysis describing the estimated degree of public view blockage for three alternatives, a visual analysis of all of the potential

options and their respective degree of public view blockage is necessary in order to fully understand how the selected design option represents the least damaging alternative. A smaller development footprint (i.e. reducing the size of the ADU) would also result in a smaller impact to public views, and it does not appear that this option was considered by the applicant. Therefore, there may be alternatives that would avoid or minimize impacts to public views, and the project raises a substantial issue.

As a note, the proposed ADU would be up to 16 feet in height, which does not conform to the 14-foot height limit of the certified LCP. While the City approved a project that does not strictly adhere to the currently certified LCP, the project conforms to requirements of Ordinance No. 966, adopted on June 1, 2020, which adheres to more recent state ADU development regulations than those adopted by the Commission in 2018 (Amendment No. LCP-6-DMR-17-0062-2). Among other design requirements, the Ordinance allows for ministerial approval of ADUs up to 16 feet in height. While the proposed ADU does not comply with the required height requirement of the certified LCP, the intent of adherence to the prescribed height is avoidance and minimization of impacts to public views. In reviewing the proposed ADU, staff has determined that the development as proposed raises a substantial issue not because of the 2-foot difference in allowable height, but because of the likely impact to public views from the bulk of the structure. This is in contrast to another appeal brought before the Commission for an ADU project in Del Mar (A-6-DMR-22-0034), in which the proposed ADU was also 16 feet in height but was found to raise no substantial issue because it was found it did not significantly impact public views of the ocean due to its location on the site.

In conclusion, the approved project will block blue water views from 6th Street, a public view corridor, which is inconsistent with the City's LCP and there appear to be alternatives that would avoid or lessen adverse impacts on public views. Thus, as approved by the City, the ADU raises a substantial issue with regard to conformity with the City's visual resource protection policies in the LCP.

D. 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.

Goal IV-D of the City's certified Land Use Plan states:

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

Section 30.91.040(P) of the City's certified Implementation Plan 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 historic 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 appellants contend that there will be no parking provided for the ADU and there will be a loss of existing parking onsite, which would result in adverse impacts on public access inconsistent with the City's LCP.

The proposed ADU is located on a parcel with an existing duplex. Existing parking for the residences includes a 2-car garage on the northern side of the property and an approximately 44-foot by 18-foot gravel parking pad on the southwestern side of the property. The gravel parking pad contains one legal parking space that meets the minimum size requirements of the City's LCP, but aerial imagery of the site and photos from the applicant indicate that the gravel area accommodates more than one car ([Exhibit 7](#)). The applicant has also stated that the space is large enough to accommodate two to four cars depending on the size and configuration of vehicles. Overall, the site is existing non-conforming in regards to parking, as four parking spaces total are required for the site, and only three legal spaces exist.

First, the appellant contends that the proposed ADU is not in compliance with the parking requirements of Section 30.80.030 of the certified Implementation Plan, which describes the number of off-street parking spaces required for residences. While there are no parking spaces proposed for the ADU explicitly, none are required by the LCP per Section 30.91.040(P). Among several specific exemptions listed, an ADU does not require parking if it is located within a half-mile of a public transit stop. Because the proposed ADU is located within this radius, no parking is required per the certified LCP.

However, because the proposed ADU would be constructed south of the existing residence, the project does raise concerns that the gravel parking area would be reduced in size and potentially reduce the area available for onsite parking, inconsistent with the City's LCP. The plans approved by the City show that the one legal space will be maintained within the gravel parking area and the applicant contends that the gravel parking space will not be significantly reduced in size. However, based on the information available, it is unclear how many additional parking spaces the gravel area will accommodate after construction of the ADU and it is not clear if the approved project will exacerbate the degree of non-conformity of the site. When private residential parking needs are not accommodated onsite, it can lead to increased use of on-street

parking to address such needs, thereby reducing the availability of on-street parking to the general public. This may adversely affect public coastal access if it occurs in high visitor-serving areas and/or areas with significant public recreational access opportunities, and where on-street parking is heavily used, such as in Del Mar. The appellants allege that public access to the coast along the Del Mar Upper Bluff Coastal Trail will be affected by a loss of on-site parking. The coastal trail runs from 4th Street to 8th Street, and includes an access point at the street-end at 6th Street directly west of the subject site and that is identified within the certified LCP. Thus, the potential reduction in area available for onsite parking contributes to a finding of substantial issue and should be further explored at the de novo review.

E. Coastal Hazards

Goal III-C of the City's certified Land Use Plan states:

Protect resources and property located downstream from hillside and bluff areas from damage due to uncontrolled runoff.

Policy III-10 of the City's certified Land Use Plan states:

Minimize damage from runoff from all projects within the City by:

- a. Ensuring that storm drains are designed and provided in such a manner to carry the entire amount of intercepted storm runoff estimated to occur during a storm having a return period of ten years.
- b. [...]

Section 30.52.120(A) of the City's certified Implementation Plan states:

In addition to the other provisions of the Del Mar Municipal Code, projects located within the Bluff, Slope and Canyon Overlay Zone shall be subject to the following provisions:

1. All projects involving grading shall be subject to the submittal of an erosion and sedimentation control plan. Said plan shall ensure that the project will not result in an increase in peak runoff from the site over the greatest discharge expected during a 10-year, 6-hour frequency storm. Runoff control shall be accomplished by a variety of measures including, but not limited to, on-site catchment basins, detention basins, siltation traps, energy dissipaters and the installation of landscape material. The required erosion and sedimentation control plan, and any proposals to increase flows, shall be subject to review and approval of the City Engineer.

[...]

Section 30.91.030(A)(1) of the City's certified Implementation Plan states:

ADU Submittal Requirements. In addition to the general application and permit fees for planning and engineering review as applicable, the applicant shall submit the following to demonstrate compliance with Section 30.91.040 to the satisfaction of the Planning and Community Development Director:

[...]

d. Information regarding available water and sewer utility easements; services, and connections and whether the existing primary residence has an automatic residential sprinkler system.

[...]

g. A construction-phase parking and equipment/materials storage plan.

[...]

The proposed ADU will be approximately two feet below grade for about 50% of the first floor in order to allow for the second floor to be constructed under the 16-foot height limit. The appellants allege that the two feet of grading is excessive and will threaten the adjacent coastal bluff. They cite the removal of mature vegetation in the footprint of the approved ADU as a further cause for concern because it could exacerbate the potential for cliff erosion. However, the proposed ADU will be located approximately 85 feet east of the bluff edge, and the vegetation removal includes existing ornamental landscaping currently on the site and does not include native bluff vegetation. The minor sub-grade work will take place a substantial distance away and does not pose a substantial threat to the train tracks, bluff, or the general public.

The appellants have cited Section 30.52.120(a)(1-5) for the Bluff, Slope, and Canyon Overlay Zone as part of their appeal, but this section of the certified IP is not relevant to the project because the site is not located within this particular overlay. There is also a Coastal Bluff Overlay designated within the City's certified LCP, but the project is not located in this overlay either.

Thus, as approved by the City, the ADU raises no substantial issue with regard to coastal bluffs and other coastal hazards.

F. Other Contentions

Section 30.91.010 of the Del Mar certified IP states:

Accessory Dwelling Units (ADUs) provide independent living facilities that are separate from the primary dwelling unit on the property. Chapter 30.91 is intended to facilitate the development of ADUs and Junior Accessory Dwelling Units (JrADUs) in accordance with California Government Code Sections 65852.150, 65852.2, and 65852.22. ADUs and JrADUs are a valuable type of lower cost, long term rental housing stock that can help the City meet its goal to provide a greater range of housing options in residential zones.

Section 30.91.040(X) of the Del Mar certified IP states:

The owner of an ADU shall provide information to the City annually upon request for reporting to the State as to whether during the prior 12 months the ADU was

rented to a tenant qualifying as low income, rented to a tenant qualifying as moderate income, occupied but not rented, or unoccupied.

The appellants contend that the proposed ADU will not be utilized as a low-income unit that is supposed to improve housing supply and affordability in the City of Del Mar. While the Coastal Commission supports local jurisdictions in their ongoing effort to increase the supply and affordability of housing, enforcing the specific use and pricing of the proposed ADU lies outside the provisions of the City's certified LCP, which identifies both them and JrADUs as "a valuable type of lower cost, long term rental housing stock that can help the City meet its goal to provide a greater range of housing options in residential zones (Del Mar Municipal Code 30.91.010)." Per Section 30.91.010(X), the certified LCP also states that an owner of an ADU will be required to provide information to the City annually upon request for reporting to the State as to whether during the prior 12 months the ADU was rented to a tenant qualifying as low income, rented to a tenant qualifying as moderate income, occupied but not rented, or unoccupied, but there is no specific requirement on the affordability level. Thus, these allegations do not raise a substantial issue with regard to consistency with the LCP.

The appellants have also alleged that the property encroaches into the railroad right-of-way three to four feet. A review of the site plan indicates that a small portion of the existing landscaping and gravel pad encroaches onto a parcel owned by North County Transit District (NCTD) to the west of the site ([Exhibit 3](#)). However, this potential encroachment does not raise Coastal Act issues in and itself, and the ADU design approved by the City will not encroach onto NCTD property. Thus, these allegations do not raise a substantial issue regarding consistency with the LCP.

Finally, the appellants have alleged that the City improperly noticed the project upon its ministerial approval. They have supplied staff with the notice that was sent out upon approval of the ADU, which references the northern 118 6th Street residence and omits the 120 6th Street residence. The property is developed with a duplex that has two addresses, one for each unit. While the City could have been more accurate in its notice (e.g. using both 118-120 6th Street), this omission did not hinder the participation of the public in the appeals process. Also, the City has clarified that under the State's ADU law, this existing attached duplex is considered a multi-family home and the approved ADU is technically for the property as a whole and not necessarily for the 120 6th Street residence. Thus, these allegations do not raise a substantial issue with regard to consistency with the LCP.

G. 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 proposed development raises a substantial issue concerning public view protection. As described above, the Commission considers five factors when considering whether a project raises a "substantial issue." The first is the degree of factual and legal support for the local government's decision that the development is

consistent or inconsistent with the certified LCP. On this point, the appellants' contention that the City's action did not conform to the requirements and policies of the LCP is valid because adequate information is not available to determine if the project complies with the requirements of the LCP that could ultimately reduce or eliminate the potential for impacts to public views and public access. The second factor is the extent and scope of the development as approved or denied by the local government. The City of Del Mar is in the process of updating the ADU regulations of its certified LCP, but in the meantime continues to process ministerial approvals for ADUs in order to meet state housing goals while balancing the protections and requirements of the Coastal Act. The third factor is the significance of the coastal resources affected by the decision and the fifth factor is whether the appeal raises issues of statewide or regional significance in addition to local significance. The preservation of public coastal views is a cornerstone of the Coastal Act, and the loss of blue water views speaks to a concern at the local level that is reflected across all coastal jurisdictions. Further the loss of onsite parking could adversely impact the ability of the public to access the coast. Due to these factors, the approved ADU will potentially result in a significant adverse impact to public views and public access and does raise a substantial issue with regard to conformity with the City's visual resource protection policies in the LCP. The fourth factor is the precedential value of the local government's decision for future interpretations of its LCP. Accessory dwelling units within the City of Del Mar are being reviewed on a case-by-case basis until the City is able to submit and have certified an updated ADU LCP amendment, and so in the interim, there is precedential value in evaluating the local government's decision for interpretations of its LCP.

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 appellants raise substantial issues of regional or statewide significance, and the City's approval of this coastal development permit could potentially create an adverse precedent for future interpretation of this LCP.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

- A-6-DMR-22-0034 (Del Mar 107, LLC)
- LCP-6-DMR-20-0044-2 (ADU Update)