

## CALIFORNIA COASTAL COMMISSION

SAN DIEGO AREA

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## RECORD PACKET COPY

**Fri 14a**

Staff: LRO-SD  
Staff Report: 8/25/05  
Hearing Date: 9/14-16/05

REVISED CONDITIONS AND FINDINGS

Application No.: 6-04-163

Applicant: Cameron Brothers

Agent: Thomas Jenkins & Bayless Cobb;  
Matt Peterson; Susan McCabe

Description: Construction of two, three-story, 30-ft. high, two-unit residential buildings totaling 8,662 sq.ft. with attached two-space garage for each unit including landscaping and hardscaping. Also proposed is consolidation of six existing lots and vacated alley into one parcel totaling 7,940 sq.ft.

Lot Area	7,940 sq. ft.
Building Coverage	4,425 sq. ft. (56%)
Pavement Coverage	1,625 sq. ft. (20%)
Landscape Coverage	1,890 sq. ft. (24%)
Parking Spaces	8
Zoning	R-N
Plan Designation	Residential North (36 dua)
Project Density	21.9 dua
Ht abv fin grade	30 feet

Site: 3742 Strand Way, Mission Beach, San Diego, San Diego County.

Substantive File Documents: Certified Mission Beach Precise Plan and Planned District Ordinance

Summary of Commission Action:

Staff recommends the Commission adopt the following revised findings in support of the Commission's action on June 8, 2005. In its action, the Commission approved the project with special conditions addressing submittal of final plans (addressing permitted building setbacks), revised landscape/yard area fence plans, and timing of construction.

Date of Commission Action: June 8, 2005.Commissioners on Prevailing Side: Chairwoman Caldwell, Neely, Peters, Potter, Reilly, Secord, Shallenberger, Iseman and Kruer.STAFF NOTES:

Summary of Staff's Preliminary Recommendation:

Staff is recommending approval of the proposed project, subject to special conditions. The applicant is proposing to construct two three-story duplex structures adjacent to the public boardwalk. The ground floor and upper levels are not proposed to be terraced or "stepped back" to break up the building façade and to protect public views to the ocean as required by the certified LCP and the Chapter 3 policies of the Coastal Act. In addition, the applicant is also proposing a 4 ½ ft. high raised planter in the north side yard setback. This setback area is located next to Queenstown Court which is a public view corridor to the ocean. The proposed raised planter and any associated landscaping in this area along with the proposed three-story structure will result in an obstruction of views towards the ocean and along the public Boardwalk, inconsistent with Coastal Act policies. Therefore, staff recommends that special conditions be added that require that the applicant revise their building plans to meet the required setback requirements and provide a minimum 7 ft. setback at the ground level and an additional setback for the upper levels on the western side of the structure such that the building steps back from the public Boardwalk as it gets higher. In addition, proposed special conditions requires revised landscape plans to limit any hardseaping and landscaping to vegetation which will not have an adverse effect on public views toward the ocean and that any proposed fencing within the north side yard setback be at least 75% open so as not to obstruct views. Because work during the summer in this location can have significant impacts on public access, a special condition is recommended that addresses timing of construction to avoid impacts to public access during the summer season. The proposed two, two-unit residential structures, as conditioned, are consistent with all applicable Coastal Act policies.

Due to Permit Streamlining Act requirements, the Commission must act on this application at the June hearing.

Standard of Review: Chapter 3 policies of the Coastal Act.

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I. PRELIMINARY STAFF RECOMMENDATION:

The staff recommends the Commission adopt the following resolution:

MOTION: ~~I move that the Commission approve Coastal Development Permit No. 6-04-163 pursuant to the staff recommendation.~~

STAFF RECOMMENDATION OF APPROVAL:

Staff recommends a YES vote. 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 the Commissioners present.

**RESOLUTION TO APPROVE THE PERMIT:**

~~The Commission hereby approves a coastal development permit for the proposed development 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.~~

The staff recommends the Commission adopt the following resolution:

**I. MOTION:**            *I move that the Commission adopt the revised findings in support of the Commission's action on June 8, 2005 concerning approval of Coastal Development Permit No. 6-04-163.*

**STAFF RECOMMENDATION OF APPROVAL:**

Staff recommends a YES vote on the motion. Passage of this motion will result in the adoption of revised findings as set forth in this staff report. The motion requires a majority vote of the members from the prevailing side present at the June 8, 2005 hearing with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action are eligible to vote on the revised findings.

**RESOLUTION TO ADOPT REVISED FINDINGS:**

The Commission hereby adopts the findings set forth below for *Coastal Development Permit No. 6-04-163* on the grounds that the findings support the Commission's decision made on June 8, 2005 and accurately reflect the reasons for it.

**II. Standard Conditions.**

See attached page.

**III. Special Conditions.**

The permit is subject to the following conditions:

1. Revised Final Plans. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and written approval, revised final site, building and elevation plans for the

permitted development. Said plans shall be stamped approved by the City of San Diego and be in substantial conformance with the plans submitted by KPA Associates, Inc. date stamped 12/27/04, except they shall be revised to reflect the following:

- a. The ground floor of the proposed structure shall observe a minimum setback of 7 feet from the western property line allowing the 18-inch articulation. ~~The upper levels of the structure shall be set back a minimum of 10 feet (3 ft more than the ground floor) for 50% of the lot frontage and 12 feet (5 ft. more than the ground floor) for the remaining 50% of the frontage.~~
- b. ~~The ground floor and upper floors along the north elevation of the project site shall observe a minimum 10 foot setback from the north property line.~~

The permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without an amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

2. Revised Landscape/Yard Area Fence Plans. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and written approval, revised landscaping and fence plans approved by the City of San Diego. The plans shall be in substantial conformance with the plans as submitted by KPA Associates stamp dated 12/27/04, except for the revisions cited below. The plans shall be revised to keep the north yard area (or setback) clear to preserve public views from the street toward the ocean. Specifically, the plans shall be revised to incorporate the following:

- a. A view corridor a minimum of 10 ft. wide shall be preserved in the north yard area adjacent to Queenstown Court allowing the 18-inch articulation. All proposed landscaping and hardscaping in the north yard area shall be limited to a height that does not significantly obstruct public views of the ocean (i.e., about 3 ft. high). ~~The proposed 4 ½ foot high raised planter in the north yard view corridor shall be eliminated. The portions of the proposed 4 ½ foot high planter which exceed 3 feet in height shall be eliminated.~~ One tall tree with a thin trunk such as a palm tree is permitted in the north yard view corridor.
- b. All landscaping shall be (1) drought-tolerant and native or (2) non-invasive plant species (i.e., no plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property.)
- c. Any fencing in the north side yard setback area shall permit public views and

have at least 75 percent of its surface area open to light.

- d. A written commitment by the applicant that five years from the date of the issuance of the coastal development permit for the residential structure, the applicant will submit for the review and written approval of the Executive Director, a landscape monitoring report, prepared by a licensed Landscape Architect or qualified Resource Specialist, that certifies whether the on-site landscaping is in conformance with the landscape plan approved pursuant to this Special Condition. The monitoring report shall include photographic documentation of plant species and plant coverage.

The permittee shall undertake the development in accordance with the approved landscape plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Commission-approved amendment to the permit unless the Executive Director determines that no such amendment is legally required.

3. Timing and Staging of Construction. No construction shall take place for the project between Memorial Day weekend and Labor Day of any year. Access corridors and staging areas shall be located in a manner that has the least impact on public access via the maintenance of existing public parking areas and traffic flow on coastal access routes. No street (or public boardwalk) closures or use of public parking for the storage or staging of equipment or supplies is permitted.

4. Deed Restriction. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and 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 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 an 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 on or with respect to the subject property.

#### IV. Findings and Declarations.

The Commission finds and declares as follows:

1. Detailed Project Description. Proposed is construction of two, three-story, 30-ft. high, two-unit residential buildings totaling 8,662 sq.ft. with an attached two-space garage for each unit (for a total of 8 parking spaces). Each unit is proposed as a one-

family apartment. Access will be received from Strandway, the alley immediately adjacent to, and east of, the project site. Landscaping and hardscaping is also proposed consisting of a 4 ½ ft. high raised landscape planter in the north side yard. Also proposed is miscellaneous landscaping and hardscaping and consolidation of six existing lots and a portion of a vacated alley into one parcel totaling 7,940 sq.ft. The subject site is presently vacant.

The subject site is located adjacent to the public boardwalk (Ocean Front Walk) at the southeast corner of Ocean Front Walk and Queenstown Court in the community of Mission Beach in the City of San Diego.

Although the City of San Diego has a certified LCP for the Mission Beach community, the subject site is located in an area where the Commission retains permit jurisdiction. Therefore, Chapter 3 of the Coastal Act is the standard of review, with the City's LCP used as guidance.

2. Visual Quality. Section 30251 of the Coastal Act states, in part:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.

In addition, Section 132.0403 of the City's certified Land Development Code, which the Commission uses for guidance, states the following:

[...]

- (a) If there is an existing or potential public view between the ocean and the first public roadway, but the site is not designated in a land use plan as a view to be protected, it is intended that views to the ocean shall be preserved, enhanced or restored by deed restricting required side yard setback areas to cumulatively form functional view corridors and preventing a walled off effect from authorized development.

[...]

- (e) *Open fencing* and landscaping may be permitted within the view corridors and visual accessways, provided such improvements do not significantly obstruct public views of the ocean. Landscaping shall be planted and maintained to preserve public views.

The City's certified implementation plan defines open fencing as "a fence designed to permit public views that has at least 75 percent of its surface area open to light." The proposed development is located between the first coastal road and sea.

Section 103.0526.13 Mission Beach PDO, which the Commission uses for guidance also contains the following requirement:

"...Landscaping located within the required yards for Courts and Places shall protect pedestrian view corridors by emphasizing tall trees with canopy areas and ground cover. Landscaping materials shall not encroach or overhang into the Courts and Places rights-of-way below the height of 10 feet above the right-of-way." (p.10)

The certified Mission Beach Precise Plan and Local Coastal Program Addendum which the Commission uses for guidance also states:

"Views to and along the shoreline from Public areas shall be protected from blockage by development and or vegetation." (p.14)

In the Mission Beach community, the public rights-of-way of the various courts and places, which are generally east/west running streets, comprise the community's public view corridors. In addition, the public boardwalk, which runs north/south along the beach, serves not only as a highly popular public access, but also serves as a view corridor along the shoreline. The project site is located immediately adjacent to the public boardwalk (Ocean Front Walk) and Queenstown Court (to the north). Thus, there is the potential for the subject development to impact views to and along the shoreline. As proposed, the subject development will result in two, three-story, two-unit residential structures directly adjacent to the public boardwalk, ~~that not only encroach into the required building setback areas (side yard and along the boardwalk) but also do not observe a "step back" feature at the upper levels in order to avoid a "walled-off effect" and preserve public views along the boardwalk.~~

~~The proposed project results in new development adjacent to the public boardwalk, as opposed to a remodel of an existing structure. In January, 2005 the Commission approved CDP #6-04-38/Jocis which resulted in the remodeling of an existing two-story duplex adjacent to the public boardwalk. In that decision, the Commission found that because the proposed development was a remodel to an existing structure—as opposed to new development—that the proposed development did not need to terrace back the upper levels and was permitted to maintain its non-conforming building setbacks. It was also found that the structure would not increase the degree of non-conformity. In this particular case, however, the proposed development is clearly new development resulting in a new structure on the subject property. As such, the proposed development is required to adhere to the current building setbacks as well as the step back feature of the certified LCP (used for guidance) in order to preserve public views to the ocean along and the adjacent courts and places. Stepping back the upper levels also results in development that is less visually intrusive adjacent to the public boardwalk which is a major public accessway.~~



The proposed project results in new development adjacent to the public boardwalk, as opposed to a remodel of an existing structure. In January, 2005 the Commission approved CDP #6-04-38/Jocis which resulted in the remodeling of an existing two-story duplex adjacent to the public boardwalk. In that decision, the Commission found that because the proposed development was a remodel to an existing structure—as opposed to new development—that the proposed development did not need to terrace back the upper levels and was permitted to maintain its non-conforming building setbacks. It was also found that the structure would not increase the degree of non-conformity. In this particular case, however, the proposed development is clearly new development resulting in a new structure on the subject property. As such, the proposed development is required to adhere to the current building setbacks as well as the step-back feature of the certified LCP (used for guidance) in order to preserve public views to the ocean along and the adjacent courts and places. Stepping back the upper levels also results in development that is less visually intrusive adjacent to the public boardwalk which is a major public accessway.

The proposed development raises three separate-potential issues with regard to protection of public views: 1) the proposed structures encroach into the required setback areas; 2) the proposed structures are not terraced at the upper levels; and, 3) landscape improvements are proposed in required yard areas that will impact public views to the ocean.

Encroachment into Required Setback Areas. For the subject site, the Mission Beach PDO, which the Commission uses as guidance, requires that a 7 ft. building setback be provided from the western property line (adjacent to the public boardwalk) and that a 10 ft. building setback be provided from the northern property line (adjacent to Queenstown Court). The proposed project does not meet these standards because it only provides a 5 ½ foot setback from the Boardwalk and a 8 ½ foot setback from the northern property line. In addition, Section 103.0526 of the Mission Beach PDO allows structures to encroach 18" into the required building setback provided that an equal area of the proposed structure is set back 18" further behind the required building setback line. The project is proposed to be designed in this manner and will observe a 5 ½-foot setback from the Boardwalk and an 8 ½-foot setback from the northern property line for portions of the proposed structure. However, ~~such these~~ intrusions, ~~although appearing to be are~~ minor in nature, ~~could and do not~~ result in impacts on public views to and along the shoreline from the boardwalk and Queenstown Court. Although ~~The~~ Commission has typically required that projects located next to the boardwalk and public street ends not be permitted to intrude into the yard setback areas, regardless whether or not a vertical offset is provided (i.e., an area equivalent to the intrusion that is provided behind the setback area) ~~as the vertical offset does not compensate for view impacts associated with intrusion of the structure, although minimally, in the view corridors.~~ Such encroachments in other project areas (further inland or between Mission Blvd. and Bayside Walk or Ocean Front Walk) do not raise potential concerns with regard to protection of public views. However, such is not the case for the subject site. The proposed encroachments into the yard setbacks, in this particular case, the proposed 18"



encroachments will not result in, not only an adverse visual impacts by projecting into a view corridor, but also a psychological barrier and possible impediment to public access along the coastal access route. As such, the proposed project should be redesigned to observe a full setback required along these important frontages.

Terracing Upper Levels. Another method used to open up and improve public views in scenic areas and along view corridors is to require that buildings, as they get higher, to terrace or step-back. This helps reduces the potential for a "walled-off" effect next to an access/view corridor and reduces the massing of the building as its height increases. However, ~~i~~n the case of the proposed development, ~~the three-story building has been designed just the opposite. A~~adjacent to Queenstown Court, the upper levels actually overhang three feet into the required building setback area. In other words, the upper levels, instead of terracing back from the first level, ~~actually project into the setback area beyond the first floor. Although~~ ~~the proposed overhang at the upper levels intrudes into the viewshed of the public view corridor looking west from Strandway along Queenstown Court, thereby adversely affecting public views to the ocean it is minor in nature, still provides for a general 7-foot setback from the public boardwalk, and is proposed to break up the building mass so that the building appears different in design as viewed from the boardwalk. The Commission finds that, in this particular case, this architectural feature does not adversely affect public views to the ocean.~~

~~In addition, along the public boardwalk, the same concern is raised. Section 103.0526.4 of the certified Mission Beach PDO requires that along the boardwalk, there be a seven foot building setback for the first story. However, it is not clear as to the required setbacks for the upper levels as the section is written such that it can be interpreted in other ways, and that additional levels above the second story be set back three more feet for 50% of the lot fronting on the walk, and five feet for the remaining 50%. However, the intent of the language is clear--to create an offset to the building to break up the bulk and mass for upper levels. Thus, structures are required to be terraced back at the upper levels to break up the building façade and minimize their seaward encroachment adjacent to a public right of way, in this case, the public boardwalk of Ocean Front Walk. However, the proposed development is not consistent with this requirements. The western façade of the ground floor of the structure is set back only 5 ½ feet at its closest point from the western property line (utilizing the 18" articulation), with the upper floors actually projecting into the setback area beyond the first floor for a small portion of the structure. However, the Commission finds~~ ~~the proposed overhang at the upper levels does intrude into the viewshed of the public boardwalk, adversely affecting public views and is inconsistent with the above cited LCP requirements as well as with Section 30251 of the Coastal Act.~~

Landscape Improvements. The last concern with regard to protection of public views relates to landscape improvements in the required yard areas. The applicant is proposing a 4 ½ ft. high raised planter in the north side yard adjacent to Queenstown Court. Not only does the height of the planter potentially interfere with public views looking down Queenstown Court toward the ocean, but the planting of tall vegetation and/or trees in this area will also intrude into the public viewshed towards the ocean. Even shrubs which

are lower in height planted on top of a 4 ½ ft. raised planter will interfere with public views of the ocean in this location. As noted above, both the Coastal Act and the certified LCP (which is used for guidance) require that public views to and along the shoreline be protected. As such, it is important, in this particular case, to maintain and enhance views to the ocean from Queenstown Court. For this reason, the proposed development cannot be found consistent with the visual resource and public view protection policies of the Coastal Act.

To address these concerns, Special Condition #1 requires that the applicant submit revised plans that require that the proposed buildings ~~comply with all required building setbacks (ground floor and upper levels) such that the structures not interfere with public~~ observe a 7-foot setback from the western property line allowing the 18-inch articulation (offset into the setback area) views to and along the shoreline. In addition, Special Condition #2 requires that the applicant submit revised landscape/side yard area fence plans that have been modified to limit landscape and hardscape improvements to only low levels that do not impede views to the ocean. Specifically, the portions of the proposed 4 ½ -foot high planter which exceeds 3 feet in height shall be reduced in height to not exceed 3 ft. In this particular case, the permitted landscape elements include plant elements that do not impede views (limited to a height of about 3 ft.) and one tree with a thin trunk (such as a Palm tree). Through these conditions, it can be assured that any improvements proposed in the north side yard areas will not impede public views toward the ocean. Special Condition #5 requires the permit and findings be recorded to assure future property owners are aware of the permit conditions.

~~In a response to a letter dated 5/3/05 from Commission staff to the City of San Diego addressing development projects that have been designed without the upper level step-back feature, the City sent Commission staff a letter dated 5/26/05 (ref. Exhibit #6). The City's letter suggests that the PDO language is being interpreted incorrectly by the Commission and is not consistent with previous interpretations by the City and the Coastal Commission (ref. Exhibit #7 for the PDO language). The Commission does not agree with the City staff's statements. While the Commission agrees there are projects that are exceptions where structures do extend into the setback areas (many of these structures are pre-Coastal Act), the Commission's interpretation has been expressed to City staff and applicants on numerous occasions in Commission staff comments on projects early in their review through the City. These comments have in many cases resulted in projects being redesigned to address the identified concerns before they come before the Commission for approval.~~

~~Also, t~~ The applicant's representative has suggested that the Commission has approved many projects along the boardwalk that project into the setback areas. However, this is not correct. In reviewing the permit files for the projects specifically cited by the applicant's representative, the plans, in many cases, do not match what has been built or portrayed on submitted exhibits. Other coastal development permits cited by the applicant's representative as example of residential structures approved by the Coastal Commission that include projections into the setback areas along the boardwalk are not even for residential structures (i.e., for condo conversions and privacy walls). However,

there are some older development projects that appears to incorporate the encroachment into the setback area, as well. Thus, it seems that the application of this design requirement has not been applied consistently in past years by the Commission.

In addition, it should be noted that in this particular case, the subject development is located within the Commission's area of original permit jurisdiction where Chapter 3 policies of the Coastal Act are the standard of review, with the City's LCP is used only as guidance. Specifically, Section 30251 of the Coastal Act requires that new development be sited and designed to protect views to and along the ocean. In this particular case, as conditioned, no impacts on public views will occur. ~~In the case of the proposed development, allowing the 3-story structure to extend and project into the view corridors along the Queenstown Court and Ocean Front Walk (the public boardwalk) will result in adverse impacts on public views, inconsistent with the this policy.~~

In addition, the proposed project results in the consolidation of six existing lots and a portion of a vacated alley into one parcel totaling 7,940 sq.ft. However, even though the new lot will be larger in size, it will be compatible in size with the other lots in the area. Also, the proposed two-unit residential structures will be visually compatible with the surrounding development in terms of bulk and scale, consistent with Section 30251 of the Coastal Act.

In summary, the subject development, specifically the proposed ~~building setbacks and~~ landscape features, will result in public view blockage from adjacent view corridors. As ~~conditioned to require that the structures observe the required building setbacks along the western and northern frontages adjacent to the public boardwalk and adjacent vertical visual and public accessway and to limit hardscape and landscape features to a height that~~ does not significantly obstruct public views of the ocean, including reduction in height of portions of the planter that exceed 3 feet in height, the proposed development will not have an adverse impact on views to and along the shoreline. Furthermore, the Commission finds the proposed development, as conditioned, consistent with the visual resource protection policies of the Coastal Act.

3. Public Access/Recreation. Coastal Act sections 30210, 30211, 30212(a) and 30221 are applicable to the project and state the following:

Section 30210

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.

Section 30212(a)

(a) Public access from the nearest public roadway to the shoreline and along the

coast shall be provided in new development projects except where:

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

#### Section 30211

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

#### Section 30221

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

The project site is located adjacent to the public beach and boardwalk. The boardwalk is a heavily-used recreational facility frequented by pedestrians, bicyclists, skaters, skateboarders, runners, and persons in wheelchairs. The walkway is accessible from the east/west courts and streets off of Mission Boulevard, and provides access to the sandy beach at stairways located at various points along the seawall. Access to the beach can be gained nearest the project site at the end of Queenstown Court adjacent to the project site to the south. Thus, adequate access exists very nearby, for purposes of Coastal Act Section 30212.

In addition, eight on-site parking spaces are proposed to serve the new development. The existing structure is located at the southeast corner of Queenstown Court and Ocean Front Walk (the public boardwalk) in the Mission Beach community of the City of San Diego. The Ocean Front Walk boardwalk was originally constructed in 1928, and runs along the western side of Mission Beach from the South Mission Beach Jetty north approximately 2.36 miles to Thomas Avenue in the community of Pacific Beach.

The project site is located in an area where the public boardwalk has already been widened. ~~In this particular case, the proposed development is proposed to intrude into the required building setbacks adjacent to Ocean Front Walk and Queenstown Court, as noted in the previous finding. As conditioned, to redesign the development to observe the required building setbacks and to terrace back the upper levels, the proposed project can be found consistent with the public access and recreation policies of the Coastal Act.~~ In addition, However, to address potential concerns with regard to construction activities on public access on this oceanfront property and given its proximity to the public boardwalk, Special Condition #3 requires that construction work not occur between Memorial Day weekend and Labor Day. As conditioned, it can be assured that the

proposed development does not interfere with public access opportunities and is consistent with the public access and recreation policies of the Coastal Act.

4. Local Coastal Planning. ~~In addition to non-compliance with Chapter 3 policies of the Coastal Act,~~ The subject proposal also does not comply with the existing LCP provisions cited above pertaining to protection of public views to the ocean. Specifically, a 4 ½-foot high planter is proposed in the north side yard which will intrude into the adjacent view corridor. ~~the first floor and second floor setbacks do not meet LCP setback requirements. As noted above, the PDO requires that levels above the first level be setback further beyond the required first floor setback so as to "step back" the development. In this case, that setback for the upper levels should be 10 feet but the applicant proposes to observe only a 5 ½ ft. setback. Thus, the proposed project will result in a three-story development directly adjacent to the public boardwalk, with no "step back feature for upper levels" as required by the LCP. Therefore, the Commission finds that only as conditioned, for submittal of revised landscape/yard area/fence plans that require that the upper level be stepped back to break up the building façade the portions of the proposed 4 ½ foot high planter which exceed 3 feet in height be eliminated, can the subject proposal be found not to prejudice the ability of the City of San Diego to continue to implement its certified LCP for the Mission Beach area of the City of San Diego.~~

5. Consistency with the California Environmental Quality Act (CEQA). 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 proposed project has been conditioned in order to be found consistent with Chapter 3 policies of the Coastal Act. Mitigation measures, including conditions addressing preservation of public views to the ocean 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 is consistent with the requirements of the Coastal Act to conform to CEQA.

#### 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 permittee 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 or 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 permittee to bind all future owners and possessors of the subject property to the terms and conditions.