

**CALIFORNIA COASTAL COMMISSION**

SAN DIEGO AREA  
 7575 METROPOLITAN DRIVE, SUITE 103  
 SAN DIEGO, CA 92108-4421  
 (619) 767-2370



# Th19a&b

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## COMBINED STAFF REPORT AND RECOMMENDATION ON APPEAL SUBSTANTIAL ISSUE & DE NOVO

**Local Government:** City of San Diego

**Decision:** Approved with Conditions

**Appeal Number:** A-6-MBE-16-0048 & A-6-MBE-16-0050

**Applicant:** MB9 Owner, LLC & Santa Barbara Place MB9, LLC

**Location:** 818 & 825 Santa Barbara Pl, Mission Beach, San Diego, San Diego County (APN Nos. 423-653-01; 423-654-01; & 423-657-01)

**Project Description:** Demolish existing unused school facility and construct 51 dwelling units and 0.201-acre park north of Santa Barbara Place and 12 dwelling units south of Santa Barbara Place.

**Appellants:** Chair Dayna Bochco, Commissioner Mary Shallenberger, William Bradshaw, and Mission Beach Precise Planning Board

**Staff Recommendation:** Substantial Issue and Approval with Conditions on De Novo

### 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 follow, unless it has been postponed, during which the Commission 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.

In May of this year, the Commission reviewed and approved LCP-6-MBE-16-0029-6, a project driven Local Coastal Program (LCP) Amendment to change the land use designation of the former main campus of the currently closed Mission Beach Elementary School, north of Santa Barbara Place, from “School” to “Residential” so as to permit the demolition and redevelopment of the school site with private residences, an open space park, establishment of a pedestrian court, and vehicular alleys. As approved, the certified LCP required an open space park of no less than 0.32 acre in size to be developed on the subject site, configured in a rectangular shape and centrally located within the site along the proposed alignment of the Jersey Court extension. The amendment also requires a dedicated public right-of-way pedestrian path be provided on Jersey Court.

The subject permits are for a specific residential development submitted under the amended LCP. The entire 2.23-acre school site was sold by the San Diego Unified School District to the applicant in 2013, and the site is being developed comprehensively as a single project. However, the City processed the development as two separate coastal development permits (CDPs) because only the northern 1.88-acre segment of the property required the Land Use Plan (LUP) amendment to change the land use designation from “School” to “Residential,” whereas the southern 0.35-acre segment was already designated at “Residential” in the LUP. Due to the related nature of the two permits, both are being addressed in one staff report.

The local CDP for the “Mission Beach Residences” covers the area north of Santa Barbara Place, and consists of the demolition of the northern segment of the now-closed Mission Beach Elementary School, and construction of 51 dwelling units in 17 structures – 1 single family residence, 2 duplexes, 10 triplexes, and 4 quadplexes. The project also includes construction of a 0.201-acre linear park adjacent to Mission Boulevard. The local CDP for the “Santa Barbara Place Residences” approved the demolition of the remaining 0.35-acre southern segment of the Mission Beach Elementary School located south of Santa Barbara Place and construction of 12 dwelling units in 3 quadplexes. All the structures would be 30 feet in height and each dwelling unit would have two tandem off-street parking spaces.

The appellants raise several LCP consistency issues with regards to public access and public recreation, including but not limited to the impacts associated with the City’s decision for a smaller park than the LUP now requires.

With regards to public access, the Mission Beach community is a heavily visited, densely developed community organized on a grid system of alternating pedestrian courts and vehicular alleys, and the approved development would mimic this pattern with two new east-west vehicular alleys and a new extension of Jersey Court. However, unlike the rest of Mission Beach, where the courts and alleys are dedicated public right-of-ways maintained by the City of San Diego, the proposed vehicular courts and alleys would be

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public easements overseen by the development's Home Owners Association (HOA), creating a risk of future obstruction or deterrents to public traffic from privatization of the accessways. Additionally, the traffic study the City's approval raised a substantial issue because it failed to assess traffic volume during the summer tourist season, and thus did not adequately evaluate the impact the project would have on traffic and circulation. Regarding public recreation, the certified LUP contains provisions identifying the complete lack of community park space within Mission Beach as an issue to be addressed in future development, and identifying the open space of the school site as a prime location to place such community park space. The 0.201-acre linear park contained in City's approval is inadequate to meet that LUP policy due to its small size and linear nature along Mission Boulevard, being only 70-feet at its widest point.

Because the project includes triplexes and quadplexes larger than those found elsewhere in the interior streets of Mission Beach (not beach or bayfront), the appellants contend that the project will substantially alter the character of Mission Beach, a dense, popular beach community that predominantly consists of single family and duplex structures. Finally, the appellants contend that processing the development as two separate CDPs, one for the portion north of Santa Barbara Place and one for the portion south of Santa Barbara Place constitutes an improper bifurcation of the development and prevented a proper analysis of the demand for park space, traffic, and other cumulative impacts of the introduction of 63 new residential units into the community, as well as the necessary mitigation measures to minimize these adverse impacts.

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.

Commission staff further recommends **approval** of the application on de novo with special conditions. After discussions between the applicant, members of the public, and Commission staff, the applicant revised the development to delete four dwelling units and redesign the community park space into a 0.32-acre rectangle shape paralleling Jersey Court. Jersey Court will be designated as a dedicated public right-of-way in line with the other pedestrian courts in Mission Beach, and a new traffic light and pedestrian crosswalks installed at the intersection of Santa Barbara Place and Mission Boulevard.

The appellants contend that the project is inconsistent with the maximum density allowed by the Planned District Ordinance (PDO) – the segment of the Implementation Plan (IP) containing development regulations specific to Mission Beach – because the City allowed the applicant to include square footage of the site that will become public rights-of-ways in their density calculations, rather than deducting them from the net lot area, and because the density was calculated looking at the entire project site as a whole, rather than calculating density on a lot-by-lot basis. The City has indicated that this is standard practice for land that does not currently have any dedicated rights-of-way, and is developed comprehensively.

The PDO does not specifically address or prohibit calculating density where there are currently no easements or street dedications. Nevertheless, even if the land area proposed for the vehicular alleys, Jersey Court, and the proposed park were excluded, the proposed 59 dwelling units would still comply with the 36 dwelling unit per acre limit.

As proposed, some of the residential lots (which vary in size) would be developed at less than the maximum density, and others above the maximum density. As a whole, this evens out to an average density within the 36 dwelling unit per acre limit. The appellants correctly note that if the public easements were excluded from the density calculation, and the calculation was performed on a lot-by-lot basis, the project would have to delete approximately four dwelling units. However, there is nothing in the LCP or PDO that specifically addresses or prohibits reviewing density comprehensively over a single project. Mission Beach is a dense, built-out community, and the presence of these four “additional” units on this site is not going to have a detectable impact on the character of this beach community for either visitors or residents.

Similar to the question of density, the City and the appellants disagree as to whether floor area ratio (FAR) should be including the future streets and parks, and whether it is appropriate to look at the entire site as a whole or on a lot-by-lot basis.

Consistent with the manner in which they calculated the project’s density, the City determined that the proposed alleys, courts, and park do not have to be excluded from FAR calculations because they do not yet formally exist. As with density, the PDO does not appear to prohibit such an approach, but it is different than how FAR would be calculated anywhere else in Mission Beach, given that everywhere else, there are existing alleys, courts, and park area that could not be included in the FAR calculation. Dividing the total gross floor area of the entire project (82,212 sq. ft.) by the total project area (2.23 acre = 97,139 sq. ft.), the resulting FAR is 0.84. If the courts and alleys are excluded, the resulting FAR is 0.96. However, if the 0.32-acre park requirement is excluded as well, then the resulting FAR is 1.15, approximately 3,600 sq. ft. over the limit on a project-wide basis.

Relatedly, as with the calculation of density, the appellants allege that FAR should be looked at on a lot-by-lot basis that deducts the portion of each lot covered by alley from the lot-specific FAR calculation. Again, the LCP and PDO are silent regarding the required approach. Under such a methodology, some of the proposed structures would be still be under or at the 1.1 FAR limit, but seven of the proposed structures would be over the limit (up to 1.25 FAR). This means that some of the structures would be 600 – 900 sq. ft. over the limit according to the methodology espoused by the opposition. As these overages are exclusive to the triplexes, this equates to an additional 200 – 300 sq. ft. of gross floor area per dwelling unit under the opposition’s methodology, who argue that in such a densely developed community as Mission Beach the additional square footage will contribute to building bulk that will adversely impact light and air flow along the courts and alleys of inland Mission Beach.

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Thus, while calculating FAR on a project level without deducting planned alleys and parks is not specifically prohibited by the LCP or PDO, it would result in some larger structures than would otherwise be allowed on a lot-by-lot basis.

Along with the physical development, the applicant is proposing to record a tentative map to subdivide the lot to create 26 lots and a public park area across the entire school site, which the appellants are challenging.

Section 1513.0304(c) of the PDO defines the minimum lot standards for R-S zoned properties such as the subject site as 30 feet wide and 80 feet long. All of the lots proposed by the applicant in the vesting tentative map for condominium ownership are at or above the listed minimum requirements, with lots ranging from 30 feet by 87 feet to 46 feet by 87 feet. The opposition notes that inland Mission Beach consists predominantly of lots measuring 30 feet by 80 feet, and therefore, the project's proposal to create lots wider than 30 feet is inconsistent with the LCP, and that the proposed development should adhere to a 30 foot by 80 foot lot size to the greatest extent feasible. Yet while the predominant pattern of development in the inland lots of Mission Beach is lots of 30 ft. by 80 ft. and that the proposed project differs from this historic pattern, such differences are not prohibited by the Mission Beach Precise Plan or the related PDO. The subsequent determination of whether or not the differences associated with the proposed project result in significant adverse impact to community character is most directly addressed in the analysis of structure bulk and scale.

Regarding bulk and scale, the opposition alleges that permitting the construction of triplexes and quadplexes would create a new, adverse precedent that would be replicated elsewhere in Mission Beach, inexorably shifting the character of Mission Beach toward larger, bulkier structures. In fact, the PDO already allows the construction of triplexes and quadplexes. As discussed above, the PDO explicitly states the manner in which a structure, sharing common wall construction, can be built with up to four dwelling units across contiguous lots. It is very likely that the reason such development is rarely undertaken in Mission Beach is because the rest of the community has already been mapped out as separate, distinct 30-ft. by 80-ft. lots. Thus, to build larger structures such as triplexes and quadplexes elsewhere in Mission Beach, at least two contiguous lots would have to be purchased and developed together. As it is a rare occasion for two contiguous lots to come up for sale simultaneously, and the lots in Mission Beach, while small, are still priced fairly high due to their proximity to the ocean, such a scenario allowing construction of structures larger than duplexes has been very rare and is likely continue to be rare in the future.

Furthermore, the Mission Beach Elementary School site is unique in that it is one of the last remaining vacant lots in Mission Beach, and by far the largest (though it still only represents approximately 2% of Mission Beach). There are no other vacant, developable sites close to its size elsewhere in Mission Beach, and thus the opportunity to propose such a large scale development that is able to utilize such as size to propose similar structural configurations is unlikely to arise again in the future.

The opposition contends the proposed bulk and scale will reduce light and air and result in a significant adverse impact to community character. Although the individual dwelling units proposed would not be larger than typical dwelling units in Mission Beach, because the units are being developed as triplexes and quadplexes, the structures themselves would be larger than most structures in Mission Beach. As noted, a structure of up to 2,640 sq. ft. is allowed on a typical 30-ft. by 80-ft. lot. The size of the proposed 8 triplexes are approximately 4,300 sq. ft., while the proposed 8 quadplexes are approximately 5,300 sq. ft. In addition, because they are being developed with common wall construction, there will not be as many side yard setbacks between the structures as there would be if the entire site was developed with duplexes on 30-ft. by-80-ft. lots. However, the difference between the proposed number of structures on a given street and what would be developed under the appellants' preference of only duplexes would only amount to 2-3 structures, which only equates to an additional 20-30 feet of side yard setback area divided among those extra structures and is not rise to a substantially adverse difference.

The appellants contend that the central location of the proposed community park is inadequate, and that the park should be located on the southern segment of the school site south of Santa Barbara Place. However, that location is only 150 feet away from the proposed park location and does not has two vehicular roads bordering it, whereas the proposed location is bordered by both a pedestrian path (Jersey Court) and a vehicular alleys, allowing a wider range of safe methods of public access. The proposed southern par site thus would not present substantially greater benefit to the public in comparison to the proposed location, but would have a greater impact on the project itself, requiring the deletion of at least four more dwelling units.

The applicant conducted an updated traffic impact analysis for the combined project that analyzed existing summer traffic volumes and the anticipated impact of the proposed residential development. Its analysis calls for the installation of a traffic light at the intersection of Mission Boulevard and Santa Barbara Place prior to the completion of the residences, which the applicant has agreed to do.

The proposed development will incorporate water quality features such as permeable paving in the alleys to retain runoff which currently enters nearby storm drains that enter directly into Mission Bay. Because the bay area is used by the public for recreational activity and contains sensitive habitat such as eel grass, measures such as permeable pavers are generally promoted in new developments to allow runoff to infiltrate into the ground, which traps the pollutants before rather than having them flow into open coastal waters.

While the total residential development – both north and south of Santa Barbara Place – is being analyzed together in this combined staff report as one project, because the City approved two separate local CDPs which in turn garnered two separate sets of appeals, two sets of special conditions have been drafted to address the two segments.

For CDP Appeal No. A-6-MBE-16-0048, the northern 1.88-acre segment, in order to formalize the project's modifications regarding total dwelling units and park size in order

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to bring the project into conformance with the certified LCP of the City of San Diego, **Special Condition No. 1** requires revised construction for the residential development to remove non-conforming side yard encroachments and an encroachment into the park space that adversely affects its attractiveness to the public. **Special Condition No. 2** requires final landscaping, turf management, construction staging and storage, and traffic plans to mitigate potential impacts to public views, water quality, and public access. **Special Condition No. 3** requires a final park plan that adheres to designated criteria regarding features that are prohibited (such as signs) and features that are required (such as benches and bike racks) so as to maximize public utility of the park. **Special Condition No. 4** requires that a construction water quality plan be submitted adhering to the listed criteria and detailing the measures to be utilized to promote on-site retention and reduce and treat runoff during development. **Special Condition No. 5** requires a permanent water quality plan be submitted that conforms to the reviewed plan and adheres to criteria regarding runoff retention and treatment. **Special Condition No. 6** requires that a public access easement be recorded over the two vehicular alleys and open space park, and a dedicated public right-of-way be placed over Jersey Court, to be offered to the City for future public access across the project site so as to ensure the longevity of public access. **Special Condition No. 7** requires that the approved permit be recorded against the property and incorporated into the HOA's Covenants, Conditions, & Restrictions (CC&Rs) so that it will run with the land and give formal notice to future property owners as to the rights and responsibilities of both the HOA and the public. **Special Condition No. 8** notifies the applicant that any non-Coastal Act conditions placed by the City of San Diego on these two developments that are not set aside or modified in this permit action are still in effect. **Special Condition No. 9** informs that applicant that should a legal action arise from a third-party related to the permit's approval or issuance, they shall reimburse the Commission for related legal expenses.

For CDP Appeal No. A-6-MBE-0050, the southern 0.35-acre segment, **Special Condition No. 1** requires the submittal of final construction, landscaping, and construction staging and storage plans for the three quadplexes to ensure they are built to approved specifications in a manner that protects public views and access. **Special Condition No. 2** requires the submittal of a construction water quality plan to prevent construction-related discharges, while **Special Condition No. 3** requires the submittal of a permanent water quality plan detailing how runoff will be retained and treated. **Special Condition No. 4** requires the recordation of the permit against the HOA's Covenants, Conditions, & Restrictions (CC&Rs). **Special Condition No. 5** notifies the applicant that any non-Coastal Act conditions placed by the City of San Diego on these two developments that are not set aside or modified in this permit action are still in effect. **Special Condition No. 6** informs that applicant that should a legal action arise from a third party related to the permit's approval or issuance, they shall reimburse the Commission for related legal expenses.

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

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## APPENDICES

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## EXHIBITS

[Exhibit 1 – Vicinity Map](#)

[Exhibit 2 – Aerial View](#)

[Exhibit 3 – Locally Approved Project Site Plan](#)

[Exhibit 4 – Revised Project Site Plans](#)

[Exhibit 6 – Elevations](#)

[Exhibit 6 – Mission Blvd & Santa Barbara Place Traffic Plan](#)

[Exhibit 7 – Streetscape Comparison](#)

[Exhibit 8 – FAR Comparison](#)

[Exhibit 9 – Lot Configuration Comparison](#)

[Exhibit 10 – Public Rights-of-Way Exhibit](#)

[Exhibit 11 – Park 3-ft. Height Limit Area](#)

[Exhibit 12 - Appeals](#)

## **I. APPELLANTS CONTEND**

The project as approved by the City does not conform to the City of San Diego’s certified Local Coastal Program (LCP). While appeals were filed by multiple parties, they substantially overlap in their claims. The appeals contend that (1) the approved residential use is inconsistent with the required “school” land use contained in the certified LUP at the time of local permit approval, (2) the proposed residential structures do not conform to the prevalent community character of Mission Beach, (3) the placement of the two proposed vehicular alleys and extension of Jersey Court under public access easements as opposed to dedicated public right-of-ways is inconsistent with the rest of Mission Beach and not most protective of public access, (4) the size and design of the locally-approved 0.201-acre linear pocket park is inadequate to serve as a usable public amenity called for in the certified LUP, (5) the traffic analysis performed for the local approval was inadequate as it did not analyze traffic during the busy summer months and in turn failed to require adequate mitigation measures, and (6) the residential development as a whole – the Mission Beach Residence development on the north side and the Santa Barbara Place development on the south side – was improperly bifurcated into two projects, preventing a proper analysis of the cumulative impacts and required mitigation measures for the proposed development.

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## **II. LOCAL GOVERNMENT ACTION**

The two projects were approved with conditions by the City Council on April 11, 2016 (Ref: City of San Diego Resolution Nos. R-310347 and R-310344).

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## **III. APPEAL PROCEDURES**

After certification of a Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits.

Section 30603(b)(1) of the Coastal Act states:

*The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified local coastal program or the public access policies set forth in this division.*

Coastal Act Section 30625(b) states that the Commission shall hear an appeal unless it determines:

*With respect to appeals to the commission after certification of a local coastal program that no substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603.*

If the staff recommends "substantial issue" and no Commissioner objects, the Commission will proceed directly to the de novo portion of the hearing on the merits of the project, then, or at a later date. If the staff recommends "no substantial issue" or the Commission decides to hear arguments and vote on the substantial issue question, those allowed to testify at the hearing will have 3 minutes per side to address whether the appeal raises a substantial issue. It takes a majority of Commissioners present to find that no substantial issue is raised. If substantial issue is found, the Commission will proceed to a full public hearing on the merits of the project then, or at a later date, reviewing the project de novo in accordance with sections 13057-13096 of the Commission's regulations. If the Commission conducts the de novo portion of the hearing on the permit application, the applicable standard of review for the Commission to consider is whether the proposed development is in conformity with the certified Local Coastal Program (LCP).

In addition, for projects located between the sea and the first public road paralleling the sea (Mission Bay), 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 term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it "finds that the appeal raises no significant question as to conformity with the certified local coastal program" or, if applicable, the public access and public recreation policies of Chapter 3 of the Coastal Act (Cal. Code Regs., tit. 14 section 13115(b)). In previous decisions on appeals, the Commission has been guided by the following factors:

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.

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 San Diego 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. Before the Commission considers the appeal de novo, the appeal must establish that a substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603. In this case, for the reasons discussed further below, the Commission exercises its discretion to determine that the development approved by the City raises substantial issue with regard to the appellant's contentions regarding coastal resources.

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

The staff recommends the Commission adopt the following resolution:

**A. MOTION:**     *I move that the Commission determine that Appeal No. A-6-MBE-16-0048 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

#### **STAFF RECOMMENDATION:**

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 of the majority of the Commissioners present.

**RESOLUTION:**     *The Commission hereby finds that Appeal No. A-6-MBE-16-0048 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.*

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**B. MOTION:** *I move that the Commission determine that Appeal No. A-6-MBE-16-0050 raises NO substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act.*

**STAFF RECOMMENDATION:**

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 of the majority of the Commissioners present.

**RESOLUTION:** *The Commission hereby finds that Appeal No. A-6-MBE-16-0050 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.*

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## **V. SUBSTANTIAL ISSUE FINDINGS AND DECLARATION**

### **1. PROJECT DESCRIPTION**

The proposed residential development is located in the Mission Beach community of the City of San Diego. The project was approved under two separate local coastal development permits (CDPs) by the City of San Diego, but due to the related nature of the two permits, both are being addressed in one staff report. The local CDP for the “Mission Beach Residences” covers the 1.88-acre parcel north of Santa Barbara Place, and includes the demolition of the northern segment of the now-closed Mission Beach Elementary School and construction of 51 dwelling units in 17 structures – 1 single family residence, 2 duplexes, 10 triplexes, and 4 quadplexes – along with a 0.201-acre linear park adjacent to Mission Boulevard (CDP No. A-6-MBE-16-0048) [[Exhibit 3](#)]. The local CDP for the “Santa Barbara Place Residences” involves the demolition of the remaining 0.35-acre southern segment of the Mission Beach Elementary School located on the south side of Santa Barbara Place, and construction of 12 dwelling units in 3 quadplexes (CDP No. A-6-MBE-16-0050) [[Exhibit 4](#)]. All the structures would be 30 feet in height and each dwelling unit would have two attached tandem off-street parking spaces.

The Mission Beach community is one of the City of San Diego’s twelve LCP segments. The community, approximately 0.34 square miles in size, is located entirely within the Coastal Zone, and is bordered by the Pacific Ocean to the west, the San Diego River to the south, Mission Bay Park to the east, and Pacific Beach to the north.

As an appeal, the standard of review is the certified City of San Diego Local Coastal Program and the public access and recreation policies of the Coastal Act.

## **2. PROJECT HISTORY**

The subject site of the two appeals is the site of the former Mission Beach Elementary School [[Exhibit 2](#)]. The Mission Beach Elementary School was established in 1925 by the San Diego School System (now the San Diego Unified School District) on the northern 1.88-acre parcel north of Santa Barbara Place. In 1947 the San Diego Unified School District (SDUSD) purchased the 0.35-acre southern parcel south of Santa Barbara Place, and in 1952 expanded the school facilities onto that site. The primary school use continued until the summer of 1973, when the facility was converted to a special education school and the elementary school students transferred north to Farnum Elementary in the neighboring community of Pacific Beach. The special education program continued until the early 1980's, at which time that function ceased and the facility was subsequently used for administrative purposes until 1996, when the facility was fully closed. In 2012, the SDUSD voted to place surplus properties – including Mission Beach Elementary School – up for sale, with the sale of the subject site occurring in 2013.

In May of this year, the Commission reviewed and approved LCP-6-MBE=0029-6, a project driven Local Coastal Program (LCP) Amendment to change the land use designation of the currently closed Mission Beach Elementary School, north of Santa Barbara Place, from “School” to “Residential” so as to permit the demolition and redevelopment of the school site with private residences, open space park, establishment of a pedestrian court, and vehicular alleys. As approved, the certified LCP requires an open space park of no less than 0.32 acres in size to be developed on the subject site, configured in a rectangular shape and centrally located within the site along the proposed alignment of the Jersey Court extension. The amendment also requires a dedicated public right-of-way pedestrian path be provided on Jersey Court. No LCPA was required to develop the portion of the school property south of Santa Barbara Place with residential uses because despite being used as a school, the land use designation has always been “Residential.” The subject permits are for a specific residential development located on the former school site.

## **3. CONTENTIONS THAT RAISE A SUBSTANTIAL ISSUE**

### **A. PUBLIC ACCESS & 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*

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*public safety needs and the need to protect public rights, rights of the private property owners, and natural resource areas from overuse.*

Section 30211 of the Coastal Act states:

*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 30212 of the Coastal Act states, in relevant part:

*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 (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.*

Page 12 of the Mission Beach Precise Plan states as an Overall Goal:

*The reduction of the overall vehicular congestion existing in Mission Beach.*

Page 17 of the Mission Beach Precise Plan states:

*The Courts and Places in Mission Beach provide the only pedestrian open space system other than the beaches.*

Page 19 of the Mission Beach Precise Plan states:

*Because of the important role that the Courts and Places serve in providing open space and east-west pedestrian linkages, they should not be closed.*

Page 46 of the Mission Beach Precise Plan states as a goal in its "Parks and Recreation" section:

*The integration of usable public open space into the developed portion of the community.*

Page 47 of the Mission Beach Precise Plan recommends that:

*Consideration should be given to landscaping the playground at the elementary school so that it could function as a small neighborhood park. Every opportunity*

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*of this nature should be explored in an attempt to integrate usable open space into the developed portion of Mission Beach.*

Public Access

Mission Beach is a densely developed coastal community that is organized along a grid system of a central north-south trunk road – Mission Blvd – and alternating east-west vehicular alleys and pedestrian courts. Most of Mission Beach is fully built out, so the redevelopment of the 2.23-acre former school site represents the largest single development in Mission Beach in decades. The intensification of use raises concerns regarding the impact the project will have on traffic and circulation, potentially affecting access to the ocean and to Mission Bay.

The project will generally incorporate the surrounding grid pattern into the proposed residential development by creating two new east-west vehicular alleys through the northern portion of the site and extending Jersey Court to align with the surrounding courts and alleys. The two alleys that will be created on the site are proposed to be slightly wider than the alleys in the rest of Mission Beach (20 feet rather than 16 feet), in order to comply with current standards.

However, as approved by the City of San Diego, both of the two new vehicular alleys and the extension of Jersey Court would contain easements for public use managed by the HOA of the proposed residential development. In contrast, the existing Mission Beach vehicular alleys and pedestrian courts are dedicated public right-of-ways which, while not owned in fee by the City, are maintained by the City. Allowing a private HOA to manage these rights-of-way, especially the pedestrian courts, raises concerns that public access could be obstructed by gates, time restrictions, or other private encroachments in the future. In addition, the recently amended LCP specifically requires that all pedestrian courts and places, such as the proposed extension of Jersey Court, be dedicated public right-of-ways managed by the City. Thus, private management of public access raises a substantial issue.

Furthermore, the construction of 63 new residential units in what is the most densely developed community in San Diego will increase traffic volumes on the existing surface streets. In addressing the potential traffic impacts from the proposed residential development, the City's approval relied on a traffic survey that underestimated projected traffic impacts because the report surveyed existing traffic patterns during March 2014, while the highest traffic volumes in Mission Beach typically occur in the summer months due to high visitor volumes [Urban Systems Associates, March 2015]. At the request of Commission staff, a new traffic study was done in August, 2016 [Urban Systems Associates, November 2016]; this study found that compared to existing conditions, the volume of vehicles on nearby street segments on Mission Boulevard and West Mission Bay Drive would not be significantly impacted, but that the wait times at the intersection adjacent to the project site – Mission Boulevard and Santa Barbara Place – would significantly increase. The study found that the appropriate mitigation would be the

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installation of a traffic signal and related pedestrian crosswalks prior to the completion of the project, and that the new traffic signal should be operated in coordination with the traffic signals found elsewhere in Mission Beach, especially the main intersection at Mission Boulevard and West Mission Bay Drive approximately 750 feet south of Santa Barbara Place.

However, because the City approved the project using March 2015 data, the City's approval only required that a traffic signal be installed at the intersection of Mission Boulevard and Santa Barbara Place by May 2025. Thus, as approved, the project would adversely impact traffic and circulation, and raises a substantial issue with regard to the public access policies of the Mission Beach Precise Plan.

### Public Recreation

With regards to public recreation, the residential development as approved by the City includes a 0.201-acre linear, slightly triangle-shaped pocket park along Mission Boulevard that is only 70 feet at its widest point and bisected by a vehicular alley. Although the community is bounded by the ocean and Mission Bay Park, there is very little in the way of community open space or neighborhood parkland and the certified plan clearly called for any redevelopment of the school site to consider other priority and community uses. Given the local approval for a small, linear park situated along the heavily trafficked Mission Boulevard corridor, there is a substantial issue raised. Furthermore, at a minimum, as recently amended, the Mission Beach Precise Plan requires that any future redevelopment of the school site incorporate a community park of at least 0.32-acre in size south of the Jersey Court extension. Thus, the approved 0.201-acre park is not consistent with the certified LCP.

## **B. COMMUNITY CHARACTER**

Page 12 of the Mission Beach Precise Plan states in its "Overall Goals:"

*The continuation of the existing medium-density character of Mission Beach, exemplified by the overall low profile and random mix of housing types and styles.*

*The promotion of a community balanced by housing types, dwelling unit sizes, a variety of individual and family sizes, housing price, and racial and ethnic composition.*

Page 15 of the Mission Beach Precise Plan states in the "Goals" in the "Residential" section:

*The permanent control of height and building bulk so that structures in Mission Beach will not have adverse effects on surrounding property, the beaches, and community in general.*

*The insurance of necessary health and safety conditions such as the provision of adequate light and air, and storage of trash and garbage.*

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*The insurance of necessary environmental amenities such as the provision of open space, landscaping, and vegetation.*

Section 1513.0303 of the San Diego Municipal Code states in relevant part:

No building or improvement or portion thereof shall be erected, constructed, converted, established, altered, or enlarged, nor shall any lot or premises be used except for one or more of the following purposes:

(a) Primary Uses

- 1) Single dwelling units.
- 2) Duplexes (2 dwelling units in a single structure)
- 3) Multiple dwelling units; restricted to a maximum of 4 dwelling units in any single structure including common wall construction on adjoining lots.
- 4) Parks and playgrounds

[...]

Section 1513.0304 of the San Diego Municipal Code states in relevant part:

(a) Density Regulations

One dwelling unit shall be allowed, including lodging and boarding units, per 1,200 square feet of lot area, except as follows:

- 1) A single R-S lot of 2,000 to 2,400 square feet shall be entitled to a maximum of 2 dwelling units;
- 2) Two contiguous R-S lots developed concurrently with common wall construction shall be entitled to a maximum of 4 dwelling units; and
- 3) Fractions of dwelling units shall not be rounded up when determining the total units permitted on a lot or lots.

The appellants contend that the proposed residential structures do not conform to the prevalent community character of Mission Beach. Mission Beach is the most densely developed community in San Diego, with a maximum permitted density of 36 dwelling units per acre. While there exists some previously conforming pre-coastal structures that are above 30 feet in height or have non-standard setbacks, the pattern of development

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within Mission Beach has been fairly consistent since the community was first platted out in 1914. The historical pattern substantially consists of larger lots consisting of residential structures with up to 3 dwelling units along the eastern and western boardwalks or on corner lots, with the inland properties between the boardwalks consisting of single family residences or duplexes.

Of the 18 structures in total proposed in the two local CDPs, only one is a single family residence and one is a duplex, with the remainder consisting of triplexes and quadplexes. The proposed triplexes and quadplexes have been designed with a common wall construction, that is, as a single building. This is permitted under the Mission Beach PDO, which allows up to 4 dwelling units on contiguous lots when developed concurrently. However, because it requires developing two lots simultaneously, triplexes and quadplexes are rare or non-existent in the inland portions of Mission Beach between the two eastern and western boardwalks. As a result, the development pattern would consist of larger structures than the existing pattern of duplexes separated by setbacks. This would increase the bulk and scale of development, and reduce the amount of light and air circulation compared to the typical pattern of development in Mission Beach, which raises a substantial issue regarding conformance with the certified LCP.

### **C. BIFURCATION**

Section 1513.0304 of the San Diego Municipal Code states in relevant part:

#### **(b) Density Regulations**

One dwelling unit shall be allowed, including lodging and boarding units, per 1,200 square feet of lot area, except as follows:

- 4) A single R-S lot of 2,000 to 2,400 square feet shall be entitled to a maximum of 2 dwelling units;
- 5) Two contiguous R-S lots developed concurrently with common wall construction shall be entitled to a maximum of 4 dwelling units; and
- 6) Fractions of dwelling units shall not be rounded up when determining the total units permitted on a lot or lots.

As described in the Project History section of this report, the SDUSD first purchased the northern 1.88-acre portion of the Mission Beach Elementary School site in 1925, with the 0.35-acre remainder of the site purchased in 1947 and expanded onto in 1952. From the date of that 1947 purchase to the sale of the site in its entirety in 2013, the Mission Beach Elementary School had a single owner operating the site for a single purpose. The property in turn was purchased as a whole site in a single auction, and during the local environmental review process the Environmental Impact Report (EIR) reviewed the site jointly as well as separately. During the subsequent local CDP process, the City determined that only the northern portion required an LUP amendment to address the non-conforming land use, and in coordination with the City, the purchasing party then

formed two subsidiaries to divide the development into two segments – the 1.88-acre northern segment and the 0.35-acre southern segment – and process two separate CDPs.

The appellants contend that in bifurcating the site into two separate residential developments, the full impacts of the project and the appropriateness of its mitigation – such as the size of the required community park space and impact on community character – were insufficient. However, as previously discussed, subsequent to the City’s approval of the subject permits, the LCP was amended to require that a park of no less than 0.32 acres in size be constructed in conjunction with development of the subject site. Processing two separate permits for the site will not affect the size of the park required by the certified LCP.

Nevertheless, the project is clearly a single project, and treating it as two separate projects runs the risk of piece-mealing and underestimating the individual and cumulative impacts a project of this size could have on community character and priority land uses. Thus, the review and approval of the project as separate permits raises a substantial issue with regards to the public access and recreation policies of the LCP and Coastal Act.

#### **D. LAND USE PLAN CONSISTENCY**

The appellants contend that at the time of the City of San Diego’s April 11, 2016, approval of the two local CDPs authorizing the Mission Beach Residences and Santa Barbara Place Residences developments, the approved residential use was not in conformance with the required “school” land use and policy goals of the Mission Beach Precise Plan for that property.

The map figure on Page 13 of the Mission Beach Precise Plan depicting the certified land uses within the community identified the 1.88-acre northern portion of the Mission Beach Elementary School site – the location of the “Mission Beach Residences” portion of the project – as “Public Facilities: School.”

Page 12 of the Mission Beach Precise Plan stated among its “Overall Goals:”

*[T]he provision of community facilities necessary for the education, relaxation, safety, and health of people with the Mission Beach community.*

*[T]he community at present contains a proportionally low percentage of families with children and an even smaller percentage of lower income families with children. The elementary school is of extreme importance if these types of families are to be attracted to Mission Beach. The primary consideration made by these types of families in choosing a place to live is the existence of a convenient neighborhood elementary school.*

Page 43 of the Mission Beach Precise Plan listed as a goal”

*The encouragement of intensive use of the public school facility for other uses in addition to elementary education such as special education, adult education, recreation, and civic and cultural activities.*

Page 44 of the Mission Beach Precise Plan listed in its “Summary Recommendations:”

*That the Mission Beach Elementary School be reopened as an elementary educational facility at its present location.*

At the time of the City’s local approval of the CDP for the northern portion of the residential development, the development did not conform to the use the certified LUP required for that property. The northern 1.88-acre segment of the Mission Beach Elementary School site was designated as a “School” use, and the locally approved residential development did not conform with that designation. Because of this non-conformance, in conjunction with other issues raised by the project as locally approved, appeals were filed by both the Commission and members of the public. However, subsequent to the submittal of this appeal, the City applied for a project-driven LCP amendment so as to modify the required land use in the LUP for the 1.88-acre segment of the Mission Beach Elementary School site from “School” to “Residential” so as to address the above discrepancy. At the May 11, 2017, hearing, the Coastal Commission approved LCP Amendment No. LCP-6-MBE-16-0029-6 which, among other LUP modifications, amended the land use of the subject property to “residential.” The Executive Director checkoff of the City’s adoption of the Commission’s action occurred at the September 2017 Coastal Commission hearing.

However, given that the City’s action on the local coastal development was inconsistent with the certified LUP at the time it was approved, there was no legal basis for the City’s action. In weighing the identified factors for the Commission to consider whether or not an appeal raises a substantial issue, one of those factors is the precedence of the local government’s action. The City should have processed the land use plan amendment first and therefore, the initial action raises a substantial issue.

#### **4. SUBSTANTIAL ISSUE FACTORS**

As discussed above, there is inadequate factual and legal support for the City’s determination that the proposed development is consistent with the certified LCP. In this case, the City’s approval authorized residential development for a designated school site, contained a park that is inadequate in size and design to constitute a usable public amenity, relied on an inadequate traffic study, and the project as a whole was improperly bifurcated, preventing a proper analysis of the potential adverse impacts and required mitigation measures. In addition, the proposed adoption of public easements to be held and managed by the HOA in lieu of the local government requiring public dedication of rights-of-way raises serious concerns about the long term management of public accessways and the protection of coastal access. The other factors, especially the significance of public access and recreation as a coastal resource also raise 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.

## **STAFF RECOMMENDATION ON THE COASTAL PERMIT**

### **VI. MOTIONS AND RESOLUTION ON DE NOVO**

The staff recommends the Commission adopt the following resolution:

**A. MOTION:** *I move that the Commission approve Coastal Development Permit No. A-6-MBE-16-0048 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 certified LCP and the public access policies 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.

**B. MOTION:** *I move that the Commission approve Coastal Development Permit No. A-6-MBE-16-0050 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 certified LCP and the public access policies of

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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.

## **VII. STANDARD CONDITIONS**

Each permit is granted subject to the following 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 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 permittee to bind all future owners and possessors of the subject property to the terms and conditions.

## **VIII. SPECIAL CONDITIONS (A-6-MBE-16-0048)**

The permit is subject to the following conditions:

### **1. Submittal of Revised Final Plans**

- (a) **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the review and written approval of the Executive Director, a full-size set of the following revised final plans, modified as required below.
  - i. Final construction plans that conform with the plans submitted to the Commission, titled "Mission Beach Residences" and dated August 22, 2017, except that they shall be modified as required below:

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- A. There shall be no fencing, gates, or similar encroachments located within the side yard setbacks.
  - B. The western balcony on the proposed duplex on Lot 12 immediately east of the proposed park shall be deleted and the projecting portion of the lot extending 5 feet west from the balcony shall be deleted and converted to park space, with the western lot line becoming a straight line 5 feet from the western wall of the duplex.
- (b) All revised plans shall be prepared and certified by a licensed professional or professionals as applicable (e.g., architect, surveyor, geotechnical engineer), based on current information and professional standards, and shall be certified to ensure that they are consistent with the Commission's approval and with the recommendations of any required technical reports.
- (c) The permittee shall undertake development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director provides a written determination that no amendment is legally required for any proposed minor deviations.

## 2. Submittal of Final Plans

- (a) **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the review and written approval of the Executive Director, full-size set of the following final plans:
- i. Final landscape/yard area plans that shall include the following:
    - A. A view corridor, 15 feet wide, shall be preserved in the yard areas adjacent to Jersey Court. All proposed landscaping in the yard areas shall be maintained at a height of three feet or lower (including raised planters) to preserve the views from Mission Boulevard toward the bay.
    - B. All landscaping shall be drought tolerant, native or non-invasive plant species. All landscape materials within the identified view corridors shall be species with a growth potential not to exceed three feet at maturity. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or 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. If using potable water for irrigation, the project shall use water-conserving emitters (e.g. microspray) and drip irrigation. Use of weather-based irrigation controllers and reclaimed water for irrigation is encouraged.

- C. Any fencing and walls, including glass walls, trellis walls, and retaining walls, in the yard setback areas along Jersey Court shall not exceed a height of three feet above the existing grade or proposed grade, whichever is lower.
- D. No fencing or landscaping shall encroach onto the public right-of-way or City of San Diego property.
- E. A written commitment by the permittee 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 landscaping 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.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the Permittee, or successor in interest, shall submit a revised or supplemental landscape plan for the review and written approval of the Executive Director. The revised landscaping plan must be prepared by a licensed Landscape Architect or qualified resource specialist and shall specify measures to remediate those portions of the approved landscaping plan that have failed or are not in conformance with the original approved plan.

- ii. Final turf and pest management plans that shall incorporate the following:
  - A. A Turf and Pest Management Plan shall be prepared that favors non-chemical strategies over chemical strategies for managing weedy species and pests on site to the maximum extent feasible in the maintenance of the public park space.
  - B. Turf management practices shall utilize state-of-the-art environmental methods to minimize water use, fertilizer and herbicide application, and chemical pest control to the

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maximum extent feasible in the maintenance of the public park space.

- C. The Turf and Pest Management Plan shall emphasize sustainability and resource management in maintenance and operations practices.
  - D. An Annual Summary Report shall be prepared by the applicant, and provided to the Coastal Commission upon request, that documents the implementation of the Turf and Pest Management Plan each year.
- iii. Final construction staging and storage plans that shall incorporate the following:
    - A. All staging and storage shall occur within the project site, with no staging, storage, worker parking, or deliveries occurring within the public right-of-way or public parking areas outside of the project site.
    - B. Any fencing or similar security measures shall be placed and designed to avoid impacts to public right-of-ways and public views of the bay to the greatest extent feasible.
  - iv. Final traffic plans that conform with the plans submitted to the Commission, titled "Mission Boulevard and Santa Barbara Place, submitted to the Commission on August 23, 2017, and incorporate the following:
    - A. The traffic light shall be installed and operation prior to the Certificate of Occupancy being issued for the 10<sup>th</sup> dwelling unit;
    - B. The signal timing of the traffic signal constructed at the intersection of Mission Boulevard and Santa Barbara Place shall be operated in coordination with the other traffic lights on Mission Boulevard to avoid traffic spillover between intersections.
- (b) The permittee shall undertake development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director provides a written determination that no amendment is legally required for any proposed minor deviations.

### **3. Final Park Design**

#### **(a) PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT**

**PERMIT**, the applicant shall submit, for the review and written approval of the Executive Director, a full-size sets of the final park plans that adheres to the following criteria:

- i. Fencing, walls, or similar exclusionary structures shall be prohibited along the perimeter of the park space.
- ii. The park shall not include a “notch” encroachment on the eastern side of the park adjacent to the proposed residences.
- iii. The closure of the park to the public for any period of time except for routine repair and maintenance shall be prohibited.
- iv. A signage plan shall be incorporated that governs the placement of signage informing the public that the park is open to the public at all times. The plan shall designate the location, dimensions, and text of all the signage, and detail the repair and replacement plan to be followed for the maintenance of the signs.
- v. Bike racks or similar facilities promoting alternate transit shall be incorporated in the park space.
- vi. Features promoting public use, such as benches, water fountains, tables, exercise areas, playgrounds, or similar facilities shall be incorporated into the park space.
- vii. All landscaping and hardscaping within the 15 feet of park space immediately south of the Jersey Court right-of-way shall be no taller than 3 feet in height from existing or finished grade, whichever is lower.
- viii. Trees may be located within the park space outside of the area as shown in [Exhibit 11](#), but shall be located in a manner that maximizes the amount of uninterrupted open space so as promote the widest range of passive recreational activities.
- ix. Only minimal grading or landform alteration will be allowed so as to maximize usable space and recreational opportunities.

### **4. Construction and Pollution Prevention Plan.**

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the review and written approval of the Executive Director, a final Construction and Pollution Prevention Plan prepared and certified by a qualified licensed professional.

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- (a) The final Plan shall demonstrate that all construction, including, but not limited to, clearing, grading, staging, storage of equipment and materials, or other activities that involve ground disturbance; building, reconstructing, or demolishing a structure; and creation or replacement of impervious surfaces, complies with the following requirements:
- i. Staging and storage of construction equipment and materials (including debris) shall not take place on public parking or right-of-ways. Staging and storage of construction equipment and materials shall occur in inland areas at least 50 feet from coastal waters, drainage courses, and storm drain inlets, if feasible. Upon a showing of infeasibility, the applicant may submit a request for review and written approval to the Executive Director for staging and storage of construction equipment and materials closer than 50 feet from coastal water, drainage courses, and storm drain inlets. Construction is prohibited outside of the defined construction, staging, and storage areas.
  - ii. All construction methods to be used, including all methods to keep the construction areas separated from public recreational use areas (e.g., using unobtrusive fencing or equivalent measures to delineate construction areas), shall be clearly identified on the construction site map and described in the narrative description required by subdivision (g) of this Special Condition.
  - iii. All beaches, beach access points, and other recreational use areas impacted by construction activities shall be restored to their pre-construction condition or better within three days of completion of construction. Any beach sand impacted shall be filtered as necessary to remove all construction debris from the beach.
  - iv. Sand from the beach, cobbles, or shoreline rocks shall not be used for construction material.
- (b) **Property Owner Consent.** The Construction and Pollution Prevention Plan shall be submitted with evidence indicating that the owners of any properties on which construction activities are to take place, including properties to be crossed in accessing the site, consent to use of their properties.
- (c) **Minimize Erosion and Sediment Discharge.** During construction, erosion and the discharge of sediment off-site or to coastal waters shall be minimized through the use of appropriate Best Management Practices (BMPs), including:

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- i. Land disturbance during construction (e.g., clearing, grading, and cut-and-fill) shall be minimized, and grading activities shall be phased, to avoid increased erosion and sedimentation.
- ii. Erosion control BMPs (such as mulch, soil binders, geotextile blankets or mats, or temporary seeding) shall be installed as needed to prevent soil from being transported by water or wind. Temporary BMPs shall be implemented to stabilize soil on graded or disturbed areas as soon as feasible during construction, where there is a potential for soil erosion to lead to discharge of sediment off-site or to coastal waters.
- iii. Sediment control BMPs (such as silt fences, fiber rolls, sediment basins, inlet protection, sand bag barriers, or straw bale barriers) shall be installed as needed to trap and remove eroded sediment from runoff, to prevent sedimentation of coastal waters.
- iv. Tracking control BMPs (such as a stabilized construction entrance/exit, and street sweeping) shall be installed or implemented as needed to prevent tracking sediment off-site by vehicles leaving the construction area.
- v. Runoff control BMPs (such as a concrete washout facility, dewatering tank, or dedicated vehicle wash area) that will be implemented during construction to retain, infiltrate, or treat stormwater and non-stormwater runoff.
- vi. Grading shall be avoided during the rainy season, from October 15<sup>th</sup> to April 15<sup>th</sup>.

(d) **Minimize Discharge of Construction Pollutants.** The discharge of other pollutants resulting from construction activities (such as chemicals, paints, vehicle fluids, petroleum products, asphalt and cement compounds, debris, and trash) into runoff or coastal waters shall be minimized through the use of appropriate BMPs, including:

- i. Materials management and waste management BMPs (such as stockpile management, spill prevention, and good housekeeping practices) shall be installed or implemented as needed to minimize pollutant discharge and polluted runoff resulting from staging, storage, and disposal of construction chemicals and materials. BMPs shall include, at a minimum:
  - A. Covering stockpiled construction materials, soil, and other excavated materials to prevent contact with rain, and protecting all stockpiles from stormwater runoff using temporary perimeter barriers.

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- B. Cleaning up all leaks, drips, and spills immediately; having a written plan for the clean-up of spills and leaks; and maintaining an inventory of products and chemicals used on site.
  - C. Proper disposal of all wastes; providing trash receptacles on site; and covering open trash receptacles during wet weather.
  - D. Prompt removal of all construction debris from the beach.
  - E. Detaining, infiltrating, or treating runoff, if needed, prior to conveyance off-site during construction.
- ii. Fueling and maintenance of construction equipment and vehicles shall be conducted off site if feasible. Any fueling and maintenance of mobile equipment conducted on site shall not take place on the beach, and shall take place at a designated area located at least 50 feet from coastal waters, drainage courses, and storm drain inlets, if feasible (unless those inlets are blocked to protect against fuel spills). The fueling and maintenance area shall be designed to fully contain any spills of fuel, oil, or other contaminants. Equipment that cannot be feasibly relocated to a designated fueling and maintenance area (such as cranes) may be fueled and maintained in other areas of the site, provided that procedures are implemented to fully contain any potential spills.
- (e) **Minimize Other Impacts of Construction Activities.** Other impacts of construction activities shall be minimized through the use of appropriate BMPs, including:
- i. The damage or removal of non-invasive vegetation (including trees, native vegetation, and root structures) during construction shall be minimized, to achieve water quality benefits such as transpiration, vegetative interception, pollutant uptake, shading of waterways, and erosion control.
  - ii. Soil compaction due to construction activities shall be minimized, to retain the natural stormwater infiltration capacity of the soil.
  - iii. The use of temporary erosion and sediment control products (such as fiber rolls, erosion control blankets, mulch control netting, and silt fences) that incorporate plastic netting (such as polypropylene, nylon, polyethylene, polyester, or other synthetic fibers) shall be avoided, to minimize wildlife entanglement and plastic debris pollution.

- (f) **Manage Construction-Phase BMPs.** Appropriate protocols shall be implemented to manage all construction-phase BMPs (including installation and removal, ongoing operation, inspection, maintenance, and training), to protect coastal water quality.
- (g) **Construction Site Map and Narrative Description.** The Construction and Pollution Prevention Plan shall include a construction site map and a narrative description addressing, at a minimum, the following required components:
- i. A map delineating the construction site, construction phasing boundaries, and the location of all temporary construction-phase BMPs (such as silt fences, inlet protection, and sediment basins).
  - ii. A description of the BMPs that will be implemented to minimize land disturbance activities, minimize the project footprint, minimize soil compaction, and minimize damage or removal of non-invasive vegetation. Include a construction phasing schedule, if applicable to the project, with a description and timeline of significant land disturbance activities.
  - iii. A description of the BMPs that will be implemented to minimize erosion and sedimentation, control runoff and minimize the discharge of other pollutants resulting from construction activities. Include calculations that demonstrate proper sizing of BMPs.
  - iv. A description and schedule for the management of all construction-phase BMPs (including installation and removal, ongoing operation, inspection, maintenance, and training). Identify any temporary BMPs that will be converted to permanent post-development BMPs.
- (h) **Construction Site Documents.** The Construction and Pollution Prevention Plan shall specify that copies of the signed CDP and the approved Construction and Pollution Prevention Plan be maintained in a conspicuous location at the construction job site at all times, and be available for public review on request. All persons involved with the construction shall be briefed on the content and meaning of the CDP and the approved Construction and Pollution Prevention Plan, and the public review requirements applicable to them, prior to commencement of construction.
- (i) **Construction Coordinator.** The Construction and Pollution Prevention Plan shall specify that a construction coordinator be designated who may be contacted during construction should questions or emergencies arise regarding the construction. The coordinator's contact information (including, at a minimum, a telephone number available 24 hours a day for the duration of construction) shall be conspicuously posted at the job site and readily visible from public viewing areas, indicating that the coordinator should be contacted in the case of questions or emergencies. The coordinator shall record the name, phone number, and nature of all complaints received regarding the

construction, and shall investigate complaints and take remedial action, if necessary, within 24 hours of receipt of the complaint or inquiry.

- (j) **Notification.** The permittee shall notify planning staff of the Coastal Commission's San Diego Coast District Office at least three working days in advance of (1) commencement of construction or maintenance activities, and immediately upon completion of construction or maintenance activities, and (2) of any anticipated changes in the schedule based on site conditions, weather or other unavoidable factors.

The permittee shall undertake development in accordance with the approved Construction-Phase Pollution Prevention Plan, unless the Commission amends this permit or the Executive Director provides written determination that no amendment is legally required for any proposed minor deviations.

## 5. Post-Development Runoff Plan.

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the applicant shall submit, for the review and written approval of the Executive Director, a final Post-Development Runoff Plan that substantially conforms with the plan submitted to the Commission titled that substantially conforms with the plan submitted to the Commission titled "Priority Development Project Storm Water Quality Management Plan For Mission Beach Residences" and "Drainage Study for Mission Beach Residences," submitted to the Commission on September 6, 2017. The final Post-Development Runoff Plan shall demonstrate that the project complies with the following requirements:

- (a) **Low Impact Development Strategies.** The project shall comply with the following Low Impact Development standards:
- i. Minimize disturbance of coastal waters and natural drainage features such as stream corridors, rivers, wetlands, natural drainage patterns, drainage swales, groundwater recharge areas, floodplains, and topographical depressions.
  - ii. Minimize removal of native vegetation, and plant additional non-invasive vegetation, particularly native plants that provide water quality benefits such as transpiration, interception of rainfall, pollutant uptake, shading of waterways to maintain water temperature, and erosion control.
  - iii. Maintain or enhance appropriate on-site infiltration of runoff to the greatest extent feasible. Use strategies such as avoiding building impervious surfaces on highly permeable soils; amending soil if

needed to enhance infiltration; and installing an infiltration Best Management Practice (BMP) (e.g., a vegetated swale, rain garden, or bio retention system).

- iv. Minimize the addition of impervious surfaces, and where feasible increase the area of pervious surfaces in re-development. Use strategies such as minimizing the footprint of buildings; minimizing the footprint of impervious pavement; and installing a permeable pavement system where pavement is required.
- v. Disconnect impervious surface areas from the storm drain system, by interposing permeable areas between impervious surfaces and the storm drain system. Design curbs, berms, and similar structures to avoid isolation of vegetative landscaping and other permeable areas, and allow runoff to flow from impervious pavement to permeable areas for infiltration. Use strategies such as directing roof-top runoff into permeable landscaped areas; directing runoff from impervious pavement into distributed permeable areas (e.g., turf, medians, or parking islands); installing a vegetated swale or filter strip to intercept runoff sheet flow from impervious surfaces; and installing a rain barrel or cistern to capture and store roof-top runoff for later use in on-site irrigation.
- vi. Where on-site infiltration is not appropriate or feasible, use alternative BMPs to minimize post-development changes in runoff flows, such as installing an evapotranspiration BMP that does not infiltrate into the ground but uses evapotranspiration to reduce runoff (e.g., a vegetated “green roof,” flow-through planter, or retention pond); directing runoff to an off-site infiltration facility; or implementing BMPs to reduce runoff volume, velocity, and flow rate before directing runoff to the storm drain system.

(b) **Implement Source Control BMPs.** Appropriate and feasible long-term Source Control BMPs, which may be structural features or operational practices, shall be implemented to minimize the transport of pollutants in runoff from the development by controlling pollutant sources and keeping pollutants segregated from runoff. Use strategies such as covering outdoor storage areas; using efficient irrigation; proper application and clean-up of potentially harmful chemicals and fertilizers; and proper disposal of waste.

(c) **Avoid Adverse Impacts from Stormwater and Dry Weather Discharges.** The adverse impacts of discharging stormwater or dry weather runoff flows to coastal waters, intertidal areas, beaches, bluffs, or stream banks shall be avoided, to the extent feasible. The project shall comply with the following requirements:

- i. Runoff shall be conveyed off-site or to drainage systems in a non-erosive manner. If runoff flows to a natural stream channel or

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drainage course, determine whether the added volume of runoff is large enough to trigger erosion.

- ii. Protective measures shall be used to prevent erosion from concentrated runoff flows at stormwater outlets (including outlets of pipes, drains, culverts, ditches, swales, or channels), if the discharge velocity will be sufficient to potentially cause erosion. The type of measures selected for outlet erosion prevention shall be prioritized in the following order, depending on the characteristics of the site and the discharge velocity: (1) vegetative bioengineered measures (such as plant wattles); (2) a hardened structure consisting of loose materials (such as a rip-rap apron or rock slope protection); or (3) a fixed energy dissipation structure (such as a concrete apron, grouted rip-rap, or baffles).
- iii. The discharge of dry weather runoff to coastal waters shall be minimized, to the greatest extent feasible. Use strategies such as efficient irrigation techniques that minimize off-site runoff.

(d) **Manage BMPs for the Life of the Development.** Appropriate protocols shall be implemented to manage BMPs (including ongoing operation, maintenance, inspection, and training) to keep the water quality provisions effective for the life of the development.

(e) **Site Plan and Narrative Description.** The Post-Development Runoff Plan shall include a site plan and a narrative description addressing, at a minimum, the following required components:

- i. A site plan, drawn to scale, showing the property boundaries, building footprint, runoff flow directions, relevant drainage features, structural BMPs, impervious surfaces, permeable pavements, and landscaped areas.
- ii. Identification of pollutants potentially generated by the proposed development that could be transported off the site by runoff.
- iii. An estimate of the proposed changes in (1) impervious surface areas on the site, including pre-project and post-project impervious coverage area and the percentage of the property covered by impervious surfaces; (2) the amount of impervious areas that drain directly into the storm drain system without first flowing across permeable areas; and (3) site coverage with permeable or semi-permeable pavements.

- iv. A description of the BMPs that will be implemented, and the Low Impact Development approach to stormwater management that will be used. Include a schedule for installation or implementation of all post-development BMPs.
- v. A description and schedule for the ongoing management of all post-development BMPs (including operation, maintenance, inspection, and training) that will be performed for the life of the development, if required for the BMPs to function properly.

The permittee shall undertake development in accordance with the approved Post-Development Runoff Plan, unless the Commission amends this permit or the Executive Director determines issues a written determination that no amendment is legally required for any proposed minor deviations.

**6. Vehicular Alley Public Access Easements and Jersey Court Dedicated Public Right-of-Way for Vertical Access Direct Dedication**

- (a) **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall execute and record a document(s) in a form and content acceptable to the Executive Director, dedicating to the City of San Diego a public access easement and a dedicated public right-of-way for public access and recreational uses in perpetuity. The public access easements shall be in the two approx. 20 ft. by 200 ft. vehicular alleys between Mission Boulevard and Bayside Lane and the community park area, and the dedicated public right-of-way shall be placed over Jersey Court, as shown in [Exhibit 10](#). No development, as defined in Section 30106 of the Coastal Act, shall occur within the easement area except for the following development authorized by this coastal development permit:

1. Grading and construction necessary to construct and maintain the alleyways for vehicular traffic.

The recorded document(s) shall include a legal description and corresponding graphic depiction of the legal parcel(s) subject to this permit and a metes and bounds legal description and a corresponding graphic depiction, drawn to scale, of the perimeter of the easement area prepared by a licensed surveyor based on an on-site inspection of the easement area. The document shall also provide that access shall be uninterrupted at all times.

2. Amenities for the park as required by Special Condition 3.

- (b) The direct dedication shall be recorded free of prior liens and any other encumbrances that the Executive Director determines may affect the interest being conveyed. The document shall provide that the dedication shall not be

used or construed to allow anyone to interfere with any rights of public access acquired through use which may exist on the property.

- (c) The dedication shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicant or landowner in perpetuity.

- 7. **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 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 or with respect to the subject property.

8. **Conditions Imposed By Local Government**

This action has no effect on conditions imposed by the City of San Diego pursuant to an authority other than the Coastal Act, except as provided in the last sentence of this condition. The permittee is responsible for compliance with all terms and conditions of this coastal development permit in addition to any other requirements imposed by other local government permit conditions pursuant to the local government's non-Coastal Act authority. In the event of conflicts between terms and conditions imposed by the local government and those of this coastal development permit, such terms and conditions of this coastal development permit shall prevail.

9. **Liability for Costs and Attorney Fees**

By acceptance of this coastal development permit, the applicants/permittees agree to reimburse the Coastal Commission in full for all Coastal Commission costs and attorney's fees including (1) those charged by the Office of the Attorney General, and (2) any court costs and attorney's fees that the Coastal Commission may be required by a court to pay that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the Applicant/Permittee

against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or issuance of this permit. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.

## **IX. SPECIAL CONDITIONS (A-6-MBE-16-0050)**

### **1. Submittal of Final Plans**

- (a) **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the review and written approval of the Executive Director, two full-size sets of the following final plans:
- i. Final construction plans that conform to the plans submitted to the Commission titled “Santa Barbara Place Residences” and dated July 11, 2014;
  - ii. Final landscape/yard area plans that shall include the following:
    - A. A view corridor, 15 feet wide, shall be preserved in the yard areas adjacent to Jersey Court. All proposed landscaping in the yard areas shall be maintained at a height of three feet or lower (including raised planters) to preserve the views from Mission Boulevard toward the bay.
    - B. All landscaping shall be drought tolerant, native or non-invasive plant species. All landscape materials within the identified view corridors shall be species with a growth potential not to exceed three feet at maturity. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or 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. If using potable water for irrigation, the project shall use water-conserving emitters (e.g. microspray) and drip irrigation. Use of weather-based irrigation controllers and reclaimed water for irrigation is encouraged.
    - C. Any fencing and walls, including glass walls, trellis walls, and retaining walls, in the yard setback areas along Jersey Court shall not exceed a height of three feet above the existing grade or proposed grade, whichever is lower.
    - D. No fencing or landscaping shall encroach onto the public right-of-way or City of San Diego property.

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- E. A written commitment by the permittee 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 landscaping 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.

If the landscape monitoring report indicates the landscaping is not in conformance with or has failed to meet the performance standards specified in the landscaping plan approved pursuant to this permit, the Permittee, or successor in interest, shall submit a revised or supplemental landscape plan for the review and written approval of the Executive Director. The revised landscaping plan must be prepared by a licensed Landscape Architect or qualified resource specialist and shall specify measures to remediate those portions of the approved landscaping plan that have failed or are not in conformance with the original approved plan.

- iii. Final turf and pest management plans that shall incorporate the following:
  - A. A Turf and Pest Management Plan shall be prepared that favors non-chemical strategies over chemical strategies for managing weedy species and pests on site to the maximum extent feasible in the maintenance of the public park space.
  - B. Turf management practices shall utilize state-of-the-art environmental methods to minimize water use, fertilizer and herbicide application, and chemical pest control to the maximum extent feasible in the maintenance of the public park space.
  - C. The Turf and Pest Management Plan shall emphasize sustainability and resource management in maintenance and operations practices.
  - D. An Annual Summary Report shall be prepared by the applicant, and provided to the Coastal Commission upon request, that documents the implementation of the Turf and Pest Management Plan each year.

- iv. Final construction staging and storage plans that shall incorporate the following:
    - A. All staging and storage shall occur within the project site, with no staging, storage, worker parking, or deliveries occurring within the public right-of-way or public parking areas outside of the project site.
    - B. Any fencing or similar security measures shall be placed and designed to avoid impacts to public right-of-ways and public views of the bay to the greatest extent feasible.
  - v. Final traffic plans that conform with the plans submitted to the Commission, titled "Mission Boulevard and Santa Barbara Place, submitted to the Commission on August 23, 2017, and incorporate the following:
    - A. The signal timing of the traffic signal constructed at the intersection of Mission Boulevard and Santa Barbara Place shall be operated in coordination with the other traffic lights on Mission Boulevard to avoid traffic spillover between intersections.
- (b) The permittee shall undertake development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director provides a written determination that no amendment is legally required for any proposed minor deviations.

2. **Construction and Pollution Prevention Plan.**

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the applicant shall submit, for the review and written approval of the Executive Director, a final Construction and Pollution Prevention Plan prepared and certified by a qualified licensed professional.

- (a) The final Plan shall demonstrate that all construction, including, but not limited to, clearing, grading, staging, storage of equipment and materials, or other activities that involve ground disturbance; building, reconstructing, or demolishing a structure; and creation or replacement of impervious surfaces, complies with the following requirements:
  - i. Staging and storage of construction equipment and materials (including debris) shall not take place on public parking or right-of-ways. Staging and storage of construction equipment and materials shall occur in inland areas at least 50 feet from coastal waters, drainage courses, and storm drain inlets, if feasible. Upon a showing of infeasibility, the applicant may submit a request for review and written

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approval to the Executive Director for staging and storage of construction equipment and materials closer than 50 feet from coastal water, drainage courses, and storm drain inlets. Construction is prohibited outside of the defined construction, staging, and storage areas.

- ii. All construction methods to be used, including all methods to keep the construction areas separated from public recreational use areas (e.g., using unobtrusive fencing or equivalent measures to delineate construction areas), shall be clearly identified on the construction site map and described in the narrative description (see Section H).
- iii. All beaches, beach access points, and other recreational use areas impacted by construction activities shall be restored to their pre-construction condition or better within three days of completion of construction. Any beach sand impacted shall be filtered as necessary to remove all construction debris from the beach.
- iv. Sand from the beach, cobbles, or shoreline rocks shall not be used for construction material.

**(b) Property Owner Consent.** The Construction and Pollution Prevention Plan shall be submitted with evidence indicating that the owners of any properties on which construction activities are to take place, including properties to be crossed in accessing the site, consent to use of their properties.

**(c) Minimize Erosion and Sediment Discharge.** During construction, erosion and the discharge of sediment off-site or to coastal waters shall be minimized through the use of appropriate Best Management Practices (BMPs), including:

- i. Land disturbance during construction (e.g., clearing, grading, and cut-and-fill) shall be minimized, and grading activities shall be phased, to avoid increased erosion and sedimentation.
- ii. Erosion control BMPs (such as mulch, soil binders, geotextile blankets or mats, or temporary seeding) shall be installed as needed to prevent soil from being transported by water or wind. Temporary BMPs shall be implemented to stabilize soil on graded or disturbed areas as soon as feasible during construction, where there is a potential for soil erosion to lead to discharge of sediment off-site or to coastal waters.
- iii. Sediment control BMPs (such as silt fences, fiber rolls, sediment basins, inlet protection, sand bag barriers, or straw bale barriers) shall be installed as needed to trap and remove eroded sediment from runoff, to prevent sedimentation of coastal waters.

- iv. Tracking control BMPs (such as a stabilized construction entrance/exit, and street sweeping) shall be installed or implemented as needed to prevent tracking sediment off-site by vehicles leaving the construction area.
- v. Runoff control BMPs (such as a concrete washout facility, dewatering tank, or dedicated vehicle wash area) that will be implemented during construction to retain, infiltrate, or treat stormwater and non-stormwater runoff.
- vi. Grading shall be avoided during the rainy season, from October 15<sup>th</sup> to April 15<sup>th</sup>.

(d) **Minimize Discharge of Construction Pollutants.** The discharge of other pollutants resulting from construction activities (such as chemicals, paints, vehicle fluids, petroleum products, asphalt and cement compounds, debris, and trash) into runoff or coastal waters shall be minimized through the use of appropriate BMPs, including:

- i. Materials management and waste management BMPs (such as stockpile management, spill prevention, and good housekeeping practices) shall be installed or implemented as needed to minimize pollutant discharge and polluted runoff resulting from staging, storage, and disposal of construction chemicals and materials. BMPs shall include, at a minimum:
  - A. Covering stockpiled construction materials, soil, and other excavated materials to prevent contact with rain, and protecting all stockpiles from stormwater runoff using temporary perimeter barriers.
  - B. Cleaning up all leaks, drips, and spills immediately; having a written plan for the clean-up of spills and leaks; and maintaining an inventory of products and chemicals used on site.
  - C. Proper disposal of all wastes; providing trash receptacles on site; and covering open trash receptacles during wet weather.
  - D. Prompt removal of all construction debris from the beach.
  - E. Detaining, infiltrating, or treating runoff, if needed, prior to conveyance off-site during construction.
- ii. Fueling and maintenance of construction equipment and vehicles shall be conducted off site if feasible. Any fueling and maintenance of mobile equipment conducted on site shall not take place on the beach,

and shall take place at a designated area located at least 50 feet from coastal waters, drainage courses, and storm drain inlets, if feasible (unless those inlets are blocked to protect against fuel spills). The fueling and maintenance area shall be designed to fully contain any spills of fuel, oil, or other contaminants. Equipment that cannot be feasibly relocated to a designated fueling and maintenance area (such as cranes) may be fueled and maintained in other areas of the site, provided that procedures are implemented to fully contain any potential spills.

- (e) **Minimize Other Impacts of Construction Activities.** Other impacts of construction activities shall be minimized through the use of appropriate BMPs, including:
- i. The damage or removal of non-invasive vegetation (including trees, native vegetation, and root structures) during construction shall be minimized, to achieve water quality benefits such as transpiration, vegetative interception, pollutant uptake, shading of waterways, and erosion control.
  - ii. Soil compaction due to construction activities shall be minimized, to retain the natural stormwater infiltration capacity of the soil.
  - iii. The use of temporary erosion and sediment control products (such as fiber rolls, erosion control blankets, mulch control netting, and silt fences) that incorporate plastic netting (such as polypropylene, nylon, polyethylene, polyester, or other synthetic fibers) shall be avoided, to minimize wildlife entanglement and plastic debris pollution.
- (f) **Manage Construction-Phase BMPs.** Appropriate protocols shall be implemented to manage all construction-phase BMPs (including installation and removal, ongoing operation, inspection, maintenance, and training), to protect coastal water quality.
- (g) **Construction Site Map and Narrative Description.** The Construction and Pollution Prevention Plan shall include a construction site map and a narrative description addressing, at a minimum, the following required components:
- i. A map delineating the construction site, construction phasing boundaries, and the location of all temporary construction-phase BMPs (such as silt fences, inlet protection, and sediment basins).
  - ii. A description of the BMPs that will be implemented to minimize land disturbance activities, minimize the project footprint, minimize soil compaction, and minimize damage or removal of non-invasive

vegetation. Include a construction phasing schedule, if applicable to the project, with a description and timeline of significant land disturbance activities.

- iii. A description of the BMPs that will be implemented to minimize erosion and sedimentation, control runoff and minimize the discharge of other pollutants resulting from construction activities. Include calculations that demonstrate proper sizing of BMPs.
- iv. A description and schedule for the management of all construction-phase BMPs (including installation and removal, ongoing operation, inspection, maintenance, and training). Identify any temporary BMPs that will be converted to permanent post-development BMPs.

- (h) **Construction Site Documents.** The Construction and Pollution Prevention Plan shall specify that copies of the signed CDP and the approved Construction and Pollution Prevention Plan be maintained in a conspicuous location at the construction job site at all times, and be available for public review on request. All persons involved with the construction shall be briefed on the content and meaning of the CDP and the approved Construction and Pollution Prevention Plan, and the public review requirements applicable to them, prior to commencement of construction.
- (i) **Construction Coordinator.** The Construction and Pollution Prevention Plan shall specify that a construction coordinator be designated who may be contacted during construction should questions or emergencies arise regarding the construction. The coordinator's contact information (including, at a minimum, a telephone number available 24 hours a day for the duration of construction) shall be conspicuously posted at the job site and readily visible from public viewing areas, indicating that the coordinator should be contacted in the case of questions or emergencies. The coordinator shall record the name, phone number, and nature of all complaints received regarding the construction, and shall investigate complaints and take remedial action, if necessary, within 24 hours of receipt of the complaint or inquiry.
- (j) **Notification.** The permittee shall notify planning staff of the Coastal Commission's San Diego Coast District Office at least three working days in advance of (1) commencement of construction or maintenance activities, and immediately upon completion of construction or maintenance activities, and (2) of any anticipated changes in the schedule based on site conditions, weather or other unavoidable factors.

The permittee shall undertake development in accordance with the approved Construction-Phase Pollution Prevention Plan, unless the Commission amends this permit or the Executive Director provides written determination that no amendment is legally required for any proposed minor deviations.

### 3. Post-Development Runoff Plan.

**PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit, for the review and written approval of the Executive Director, a final Post-Development Runoff Plan that substantially conforms with the plan submitted to the Commission titled that substantially conforms with the plan submitted to the Commission titled “Water Quality Technical Report for Santa Barbara Place Residences,” and “Drainage Study for Santa Barbara Residences,” submitted to the Commission on September 6, 2017. The final Post-Development Runoff Plan shall demonstrate that the project complies with the following requirements:

- (a) **Low Impact Development Strategies.** The project shall comply with the following Low Impact Development standards:
- i. Minimize disturbance of coastal waters and natural drainage features such as stream corridors, rivers, wetlands, natural drainage patterns, drainage swales, groundwater recharge areas, floodplains, and topographical depressions.
  - ii. Minimize removal of native vegetation, and plant additional non-invasive vegetation, particularly native plants that provide water quality benefits such as transpiration, interception of rainfall, pollutant uptake, shading of waterways to maintain water temperature, and erosion control.
  - iii. Maintain or enhance appropriate on-site infiltration of runoff to the greatest extent feasible. Use strategies such as avoiding building impervious surfaces on highly permeable soils; amending soil if needed to enhance infiltration; and installing an infiltration Best Management Practice (BMP) (e.g., a vegetated swale, rain garden, or bio retention system).
  - iv. Minimize the addition of impervious surfaces, and where feasible increase the area of pervious surfaces in re-development. Use strategies such as minimizing the footprint of buildings; minimizing the footprint of impervious pavement; and installing a permeable pavement system where pavement is required.
  - v. Disconnect impervious surface areas from the storm drain system, by interposing permeable areas between impervious surfaces and the storm drain system. Design curbs, berms, and similar structures to avoid isolation of vegetative landscaping and other permeable areas, and allow runoff to flow from impervious pavement to permeable areas for infiltration. Use strategies such as directing

roof-top runoff into permeable landscaped areas; directing runoff from impervious pavement into distributed permeable areas (e.g., turf, medians, or parking islands); installing a vegetated swale or filter strip to intercept runoff sheet flow from impervious surfaces; and installing a rain barrel or cistern to capture and store roof-top runoff for later use in on-site irrigation.

- vi. Where on-site infiltration is not appropriate or feasible, use alternative BMPs to minimize post-development changes in runoff flows, such as installing an evapotranspiration BMP that does not infiltrate into the ground but uses evapotranspiration to reduce runoff (e.g., a vegetated “green roof,” flow-through planter, or retention pond); directing runoff to an off-site infiltration facility; or implementing BMPs to reduce runoff volume, velocity, and flow rate before directing runoff to the storm drain system.

**(b) Implement Source Control BMPs.** Appropriate and feasible long-term Source Control BMPs, which may be structural features or operational practices, shall be implemented to minimize the transport of pollutants in runoff from the development by controlling pollutant sources and keeping pollutants segregated from runoff. Use strategies such as covering outdoor storage areas; using efficient irrigation; proper application and clean-up of potentially harmful chemicals and fertilizers; and proper disposal of waste.

**(c) Avoid Adverse Impacts from Stormwater and Dry Weather Discharges.** The adverse impacts of discharging stormwater or dry weather runoff flows to coastal waters, intertidal areas, beaches, bluffs, or stream banks shall be avoided, to the extent feasible. The project shall comply with the following requirements:

- i. Runoff shall be conveyed off-site or to drainage systems in a non-erosive manner. If runoff flows to a natural stream channel or drainage course, determine whether the added volume of runoff is large enough to trigger erosion.
- ii. Protective measures shall be used to prevent erosion from concentrated runoff flows at stormwater outlets (including outlets of pipes, drains, culverts, ditches, swales, or channels), if the discharge velocity will be sufficient to potentially cause erosion. The type of measures selected for outlet erosion prevention shall be prioritized in the following order, depending on the characteristics of the site and the discharge velocity: (1) vegetative bioengineered measures (such as plant wattles); (2) a hardened structure consisting of loose materials (such as a rip-rap apron or rock slope protection); or (3) a fixed energy dissipation structure (such as a concrete apron, grouted rip-rap, or baffles).

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- iii. The discharge of dry weather runoff to coastal waters shall be minimized, to the greatest extent feasible. Use strategies such as efficient irrigation techniques that minimize off-site runoff.

(d) **Manage BMPs for the Life of the Development.** Appropriate protocols shall be implemented to manage BMPs (including ongoing operation, maintenance, inspection, and training) to keep the water quality provisions effective for the life of the development.

(e) **Site Plan and Narrative Description.** The Post-Development Runoff Plan shall include a site plan and a narrative description addressing, at a minimum, the following required components:

- i. A site plan, drawn to scale, showing the property boundaries, building footprint, runoff flow directions, relevant drainage features, structural BMPs, impervious surfaces, permeable pavements, and landscaped areas.
- ii. Identification of pollutants potentially generated by the proposed development that could be transported off the site by runoff.
- iii. An estimate of the proposed changes in (1) impervious surface areas on the site, including pre-project and post-project impervious coverage area and the percentage of the property covered by impervious surfaces; (2) the amount of impervious areas that drain directly into the storm drain system without first flowing across permeable areas; and (3) site coverage with permeable or semi-permeable pavements.
- iv. A description of the BMPs that will be implemented, and the Low Impact Development approach to stormwater management that will be used. Include a schedule for installation or implementation of all post-development BMPs.
- v. A description and schedule for the ongoing management of all post-development BMPs (including operation, maintenance, inspection, and training) that will be performed for the life of the development, if required for the BMPs to function properly.

The permittee shall undertake development in accordance with the approved Post-Development Runoff Plan, unless the Commission amends this permit or the Executive Director determines issues a written determination that no amendment is legally required for any proposed minor deviations.

4. **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 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 or with respect to the subject property.

5. **Conditions Imposed By Local Government**

This action has no effect on conditions imposed by the City of San Diego pursuant to an authority other than the Coastal Act, except as provided in the last sentence of this condition. The permittee is responsible for compliance with all terms and conditions of this coastal development permit in addition to any other requirements imposed by other local government permit conditions pursuant to the local government's non-Coastal Act authority. In the event of conflicts between terms and conditions imposed by the local government and those of this coastal development permit, such terms and conditions of this coastal development permit shall prevail.

6. **Liability for Costs and Attorney Fees**

By acceptance of this coastal development permit, the applicants/permittees agree to reimburse the Coastal Commission in full for all Coastal Commission costs and attorney's fees including (1) those charged by the Office of the Attorney General, and (2) any court costs and attorney's fees that the Coastal Commission may be required by a court to pay that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the Applicant/Permittee against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or issuance of this permit. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.

## **X. FINDINGS AND DECLARATIONS**

The Commission finds and declares as follows:

### **A. PROJECT DESCRIPTION**

The detailed project description contained above under the Substantial Issue findings is of the two projects as approved by the City of San Diego. Since the filing of the appeals, the applicant has modified their proposal to decrease the total number of dwelling units from 63 to 59, with 47 dwelling units contained in 1 single family residence, 1 duplex, 8 triplexes, and 5 quadplexes north of Santa Barbara Place and 12 dwelling units in 3 quadplexes south of Santa Barbara Place. As originally approved, two vehicular alleys and a pedestrian court – Jersey Court – will be placed across the project site to provide public and private access. The proposed community park has been redesigned to a rectangle shape located along the southern side of Jersey Court, and the size of the park has been increased to 0.32-acre in size, including a portion of the sidewalk area of Jersey Court.

The standard of review is the certified Local Coastal Program (LCP) of the City of San Diego. The certified Land Use Plan (LUP) consists of the Mission Beach Precise Plan, while chapters 11-15 of the San Diego Municipal Code compose the Land Development Code and serves as the Implementation Plan (IP) for the LCP. Chapter 15 of the LDC contains the Planned District Ordinances (PDO) for some of the communities of San Diego. PDOs are designed to serve as community-specific development regulations tailored to the unique characteristics and contexts of the various communities of San Diego. The PDOs are intended to be supplementary to the overall, city-wide provisions of the LDC, and are intended to be read together. However, where a provision of the general development regulations and a provision of the PDO conflict, the PDO takes precedence. Additionally, because the site is located between the first public road and the sea, the public access policies of Chapter 3 of the Coastal Act also serve as a standard of review.

### **B. COMMUNITY CHARACTER**

The Summary Recommendations of the Mission Beach Precise Plan state, in relevant part:

*That a density limitation of 36 dwelling units per net residential acre be established for Mission Beach for all new development.*

*That the maximum consolidation of property permitted be that which is bounded by two adjacent Courts, and by Mission Boulevard and a north-south street.*

Section 113.0103 of the LDC defines “density” as:

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*[T]he relationship between the number of dwelling units existing or permitted on a premises and the area of the premises. See section 113.0222 for additional information on calculating density.*

Section 113.0103 of the LDC defines “premises” as:

*[A]n area of land with its structures that, because of unity of use, is regarded as the smallest conveyable unit.*

Section 113.0103 of the LDC defines “public right-of-way” as:

*[A] public easement for streets, alleys, or other uses.*

Section 113.0222(a) of the LDC describes the manner of calculating density for multiple dwelling unit development thusly:

*(a) Multiple Dwelling Unit Development*

*For multiple dwelling unit development, the maximum number of units that may be permitted on any premises is determined by dividing the lot area of the premises by the number of square feet required for each dwelling unit (maximum permitted density), as prescribed by the applicable base zone.*

*[...]*

Section 1513.0302 of the San Diego Municipal Code states:

- (a) The Residential Subdistricts are designated R-N and R-S. The purpose of the Residential Subdistrict is to regulate the small-scale and low-profile developed area with a maximum residential density of approximately 36 dwelling units per net residential acre.
- (b) It is the intent of these regulations to allow the improvement or development of the standard Mission Beach lots with little or no need for variances.

Section 1513.0303 of the San Diego Municipal Code states in relevant part:

No building or improvement or portion thereof shall be erected, constructed, converted, established, altered, or enlarged, nor shall any lot or premises be used except for one or more of the following purposes:

(b) Primary Uses

- 1) Single dwelling units.
- 2) Duplexes (2 dwelling units in a single structure)

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- 3) Multiple dwelling units; restricted to a maximum of 4 dwelling units in any single structure including common wall construction on adjoining lots.
- 4) Parks and playgrounds

[...]

Section 1513.0304 of the San Diego Municipal Code states in relevant part:

(c) Density Regulations

One dwelling unit shall be allowed, including lodging and boarding units, per 1,200 square feet of lot area, except as follows:

- 7) A single R-S lot of 2,000 to 2,400 square feet shall be entitled to a maximum of 2 dwelling units;
- 8) Two contiguous R-S lots developed concurrently with common wall construction shall be entitled to a maximum of 4 dwelling units; and
- 9) Fractions of dwelling units shall not be rounded up when determining the total units permitted on a lot or lots.

(d) Minimum Lot Standards

The minimum lot standards are shown in Table 1513-03A apply except that any lot as defined in Land Development Code Section 113.0103 that meets the criteria for being a legal lot under Section 113.0237 and which does not comply in all respects with the minimum lot dimensions specified in Table 1513-03A, may be used in accordance with the regulations of the applicable zone.

**Table 1513-03A  
Minimum Lot Standards**

<b>Standard</b>	<b>R-N</b>	<b>R-S</b>
Area	1,250 Square Feet	2,400 Square Feet
Street Frontage	25 Feet	30 Feet
Width	25 Feet	30 Feet
Depth	50 Feet	80 Feet

[...]

(e) Yards

[...]

2) Minimum Yards for Courts and Places

(A) R-N Subdistrict – 10 foot standard setback

(B) R-S Subdistrict – 15 foot standard setback

(C) Exceptions:

- i. Buildings on the south side of a Court of Place shall observe an additional setback beginning at 20 feet above existing grade or proposed grade, whichever is lower, at the standard setback and sloping back at a 45 degree angle on the north facing façade. The angle is measured in a horizontal plane perpendicular to and away from the building wall in either direction as shown in Diagram 1513-03A.
- ii. Buildings on the north side of a Court of Place shall observe an additional setback beginning 25 feet above existing grade or proposed grade, whichever is lower, at the setback and sloping back at a 45 degree angle on the south facing façade. The angle is measured in a horizontal plane perpendicular to and away from the building wall in either direction, as shown in Diagram 1513-03B.

3) Minimum Interior Yards

(A) Five foot standard setback

(B) Exceptions:

- i. A three-foot setback may be applied to a structure that is 20 feet or less above existing or proposed grade, whichever is lower, provided that any portion of the structure's façade that exceeds 20 feet in height above existing or proposed grade, whichever is lower, shall observe an additional setback for the remainder of the structure height by sloping away from the vertical plane of the façade at an angle not to exceed 45 degrees.
- ii. Structures that are developed with portions of the structure observing a 3-foot setback, and other portions of the structure observing a 5-foot setback may use a combination of Sections 1513.0304(c)(3)(A) and 1513.0304(c)(3)(B)(i), as show in in Diagram 1513-03C.
- iii. In the R-N subdistrict, development of any lot or combination of lots 45 feet or greater in width shall have a minimum interior yard setback of 6 feet or 10 percent of lot width, whichever is greater.

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- iv. In the R-S subdistrict, development of any lot or combination of lots 55 feet or greater in width shall have a minimum interior yard setback of 6 feet or 10 percent of the lot width, whichever is greater.

4) Minimum Yards of Streets and Alleys

Yards abutting Strandway and Bayside Lane and alleys shall not be required.

[...]

6) Minimum Rear Yards

No rear yard is required except where the rear yard abuts an interior or rear yard of an adjacent lot; then, the regulations in Section 1513.0304(c)(3) shall apply.

[...]

(e) Building Width

- 1) Buildings facing a Court, Place, Bayside, or Ocean Front Walk shall not be wider than 25 feet in the R-N Subdistrict or 30 feet in the R-S subdistrict, unless a vertical offset in the front façade is provided. The vertical offset shall be a minimum of 3 feet in depth, not less than 45 degrees, and extend the full height of the building. The offset in Section 1513.0304(d)(2)(A)(i) may be used to satisfy this requirement (see diagram 1513-03D).
- 2) The use of vertical offsets in Section 1513.0304(e)(1) is allowed for building widths less than 25 feet in the R-N Subdistrict and less than 30 feet in the R-S Subdistrict.

(f) Maximum Lot Coverage

The maximum lot coverage shall be 65 percent.

(g) Floor Area Ratio

- 1) The basic maximum floor area ratio shall be 1.1
- 2) Portions of the building or structure used exclusively for required off-street parking shall not be included as part of the building area for the

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purposes of determining floor area ration. This exemption is restricted to a maximum 200 square feet per required off-street parking space.

- 3) Regardless of lot size, individual buildings, including common wall construction, shall not exceed 5,280 square feet in total gross floor area. However, those areas excluded by Section 1513.0304(g)(2) from the calculations of floor area ratio shall not be considered as part of the 5,280 square feet.

(h) Height.

The maximum height of a building or structure shall be 30 feet. If the 30-foot height limitation or Ordinance No. 10960 N.S. is removed from Mission Beach, the building limit shall be 35 feet.

The City of San Diego's Land Use Plan (LUP) is divided among the 12 communities that are wholly or partially located in the Coastal Zone. The LUP for Mission Beach is the Mission Beach Precise Plan. Chapter 11 through 15 of the San Diego Municipal Code is referred to as the Land Development Code (LDC) and serves as the Implementation Plan (IP) for the City, including Mission Beach. As can be seen in the above-cited policies, Mission Beach's PDO includes very detailed requirements regarding lot size, building size, setbacks, and architectural features. Community character can be affected by many different aspects of the built environment, from land use to building color, but the bulk and scale of the proposed residential development has been the most controversial and contested aspect of the subject project. In addressing bulk and scale, the three most relevant aspects are density, Floor Area Ratio (FAR), and lot size.

Density

As cited above, the Mission Beach Precise Plan and the PDO limit residential density in Mission Beach to 36 dwelling units per net residential acre. Both the opposition and the City agree on this point. The area of contention arises in the manner in which net density, and density in general, has been calculated for the proposed project. These are two separate but related issues.

First, to calculate density, the City divided the proposed number of dwelling units (at that time 51 dwelling units north of Santa Barbara Place and 12 dwelling units south of Santa Barbara Place) by the total area of the school site (2.23 acres) and found that the project density would be 28.3 dwelling units per acre (63 divided by 2.23) which is below the 36 dwelling unit per acre limit of the LCP (the City calculated the density of the segments north and south of Santa Barbara Place separately, but as the project should be properly be looked at as a whole, this staff report evaluates all of the proposed dwelling units to be proposed on the former school site). The current proposal is for 59 units, which when divided by 2.23 acres equals approximately 26.5 dwelling units per acre. Thus, the City concluded the project was consistent with the maximum permitted density for the site.

The opposition has argued this method of calculation is inaccurate for two reasons. First, in determining the site acreage, the City included the square footage of the two proposed

vehicular alleys and the extension of Jersey Court. Everywhere else in Mission Beach, allowable density is calculated without considering the lot area dedicated to the public right-of-ways. As noted, the Summary Recommendations of the Mission Beach Precise Plan specifically recommends that “a density limitation of 36 dwelling units per **net** residential acre be established for Mission Beach for all new development” [emphasis added]. Net density is typically understood to be the portions of the property not encumbered by right-of-ways or easements.

This interpretation is supported by Section 113.0246 of the LDC, which as cited above states:

*Determining Property Lines*

*The property lines define the perimeter of a lot or premises and separate one lot or premises from any other lot or premises or **from the public right-of-way**. These rules for determining property lines are for purposes of applying and interpreting development regulations only and are not intended to affect ownership rights or responsibilities. These rules apply regardless of ownership of property extending into the public right-of-way [emphasis added].*

Section 113.0246 continues on by describing the various methods of determining front, rear, and side property lines, while consistently stating that the property line is separate from the public right-of-way, including alleys.

In response, the City has indicated that there are currently no public right-of-ways, either physically or on legal maps, currently in existence. While two alleys and a pedestrian court do appear to have been dedicated across the project site in 1914 when the school opened in 1925 and became operational, the City vacated the public right-of-ways in the late 1930's and early 1940's. Thus, while it was known that the final project would include public right-of-ways in the future, when the City reviewed the project, because there are not any existing public right-of-ways, they did not exclude the square footage of the alleys and courts (or the park) from their calculations. Once the project is approved, the public easements will be recorded, and future redevelopment of any lot in the project will be evaluated based on the lot area, excluding the public right-of-ways on that particular lot.

Neither the LCP nor PDO specifically includes language addressing the calculation of density on a development site where there are no existing public rights-of-way, and the City has indicated that not including the proposed right-of-ways is how new development of this kind is typically evaluated at the local level.

Nevertheless, while the City's approach may be technically consistent with the letter of the LCP, including public rights-of-way in the calculation of permitted maximum density is not consistent with how any other location in Mission Beach is evaluated, because the rest of the community has existing public rights-of-way. Thus, it is important to

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understand whether taking this approach would result in a project density inconsistent with the Mission Beach community character.

Therefore, at the request of Commission staff, the applicant calculated the density that would be allowed on the site if the land area proposed for the vehicular alleys and Jersey Court were excluded. This results in a project area of 1.96 acres, which for 59 units results in a density of 30.1 dwelling units per acre, which is still well under the maximum allowable density of 36 dwelling units per acre (it should be noted that if the 0.32-acre park area is also excluded, the resulting density would be 36 dwelling units per acre, still within the limits). Thus, the City's approach of including the future public right-of-ways in its calculation of density for this project, in and of itself, does not result in a maximum density for the proposed project above that permitted by the certified LCP.

However, the opposition contends that the City erred in its density calculation not just by deciding to not exclude the alley and Jersey Court square footage, but also by evaluating the project as a whole, rather than calculating density on a lot-by-lot basis. The opposition claims that by looking at the project as a whole it is allowing more dwelling units to be placed on the former school site than would be the case if the density of each individual lot was calculated separately while simultaneously excluding the square footage of the portion of each lot that contained alley area. This is because as proposed, some of the lots (which vary in size) are proposed to be developed at less than the maximum density, and others above the maximum density. As a whole, this evens out to an average density below 36 dwelling units per acre. But if this lot-by-lot density method were to be applied while also excluding the alley area, approximately four triplex structures would not meet the required 3,600 sq. ft. of net residential lot area to house three dwelling units. Subsequently, no more than two dwelling units could be constructed on each of these four sites, reducing the total number of dwelling units on the project from 59 to 55.

The City has explained that nothing in the LCP prohibits the approach of calculating density based on the project as a whole. The subject property was conveyed and is being developed as a single, comprehensive development. While the project involves the recordation of a tentative map to create lots to contain the various structures, the entire residential development will be recorded as a condominium ownership with a single unified HOA overseeing the property. No new individual lots separate from the condominium ownership are being created. While it is true that elsewhere in Mission Beach development is commonly analyzed on a lot-by-lot basis, in those cases the lots only contain a single structure because that is how they have been mapped since 1914, whereas the school site has long operated as a 2.23-acre site and is being retained as a unified parcel despite being mapped with lots containing the various residential structures. There is nothing in the LCP or PDO that specifically addresses or prohibits reviewing density comprehensively over a single project.

The resulting difference between the density calculation method used by the City and the method espoused by the appellants is four dwelling units. The distinction between 59 and 55 dwelling units on this 2.23-acre lot is not going to result in a project that adversely affects community character. Mission Beach is a densely developed community, and the

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presence of four “additional” dwelling units is not going to have a detectable impact on the character of this beach community area for either visitors or residents.

It is important to understand that this approach to calculating density would not set a precedent allowing any increase in maximum density elsewhere in Mission Beach. The subject site is the only large vacant site remaining in Mission Beach. However, even if a future project were to propose redeveloping multiple lots as a single project, the existing alley and court areas in Mission Beach would be deducted from the density calculation, and because almost all of the lots in Mission Beach are already the minimum lot size allowed under the PDO, it would not be possible to average out density over smaller and larger lots as was done with the subject site (this is discussed in greater detail below under “bulk and scale”). Furthermore, even on this particular site, once the streets and alleys are constructed, any future redevelopment on the lots would have to meet density requirements based on the exclusion of these areas from future calculations, as they would then be in legal existence just as in the rest of Mission Beach. Thus, this project is not going to result in any future increase in allowable density in Mission Beach.

In conclusion, when calculating density, the LCP does not prohibit dividing the total number of dwelling units by the total premise area. Thus, even with the future public rights-of-way excluded, the project as proposed meets the 36 dwelling unit per acre limit in Mission Beach. The resulting density of the project is not expected to have a significant adverse impact on community character, nor will it set a precedent resulting in future densification of Mission Beach that would adversely impact community character.

#### Floor Area Ratio

Similar to the question of density, the City and the opposition disagree as to whether floor area ratio (FAR) should be including the future streets and parks, and whether it is appropriate to look at the entire site as a whole or on a lot-by-lot basis.

The Mission Beach Precise Plan states that in addition to density, setbacks, and lot coverage development regulations, “further limitation is necessary. This limitation is floor area ratio. This ratio is as follows:  $FAR = \text{total floor area} / \text{total land area}$ .” As cited above, Section 1513.0304 of the PDO for Mission Beach sets the maximum FAR for residential uses at 1.1. Section 113.0103 defines FAR as “the numerical value obtained by dividing the gross floor area of all buildings on a premises by the total area of the premises on which the buildings are located.” For example, a 2,000 sq. ft. duplex on a 2,400 sq. ft. lot would have a FAR of 0.83 (2,000/2,400). This formula is similar to that as described for density above, although it is worth noting that unlike the reference to density in the Mission Beach PDO, the FAR calculation does not reference “net” acreage.

Consistent with the manner in which they calculated the project’s density, the City determined that the proposed alleys, courts, and park do not have to be excluded from FAR calculations because they do not yet formally exist. As with density, the PDO does not appear to prohibit such an approach, but it is different than how FAR would be

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calculated anywhere else in Mission Beach, given that everywhere else, there are existing alleys, courts, and park area that could not be included in the FAR calculation. Dividing the total gross floor area of the entire project (82,212 sq. ft.) by the total project area (2.23 acre = 97,139 sq. ft.), the resulting FAR is 0.84. If the courts and alleys are excluded, the resulting FAR is 0.96. However, if the 0.32-acre park requirement is excluded as well, then the resulting FAR is 1.15, approximately 3,600 sq. ft. over the limit on a project-wide basis.

Relatedly, as with the calculation of density, the appellants allege that FAR should be looked at on a lot-by-lot basis that deducts the portion of each lot covered by alley from the lot-specific FAR calculation. Again, the LCP and PDO are silent regarding the required approach. Under such a methodology, some of the proposed structures would be still be under or at the 1.1 FAR limit, but seven of the proposed structures would be over the limit (up to 1.25 FAR). This means that some of the structures would be 600 – 900 sq. ft. over the limit according to the methodology espoused by the opposition. As these overages are exclusive to the triplexes, this equates to an additional 200 – 300 sq. ft. of gross floor area per dwelling unit under the opposition’s methodology [[Exhibit 6](#)], who argue that in such a densely developed community as Mission Beach the additional square footage will contribute to building bulk that will adversely impact light and air flow along the courts and alleys of inland Mission Beach.

Thus, while calculating FAR on a project level without deducting planned alleys and parks is not specifically prohibited by the LCP or PDO, it would result in larger structures than would otherwise be allowed, and therefore could result in adverse impacts related to bulk and scale, which are discussed in detail below under bulk and scale.

### Lot Consolidation

Along with the physical development, the applicant is proposing to record a tentative map to subdivide the lot to create 26 lots and a public park area across the entire school site.

Section 1513.0304(c) of the PDO defines the minimum lot standards for R-S zoned properties such as the subject site as 30 feet wide and 80 feet long. All of the lots proposed by the applicant in the vesting tentative map for condominium ownership are at or above the listed minimum requirements, with lots ranging from 30 feet by 87 feet to 46 feet by 87 feet. The appellants note that inland Mission Beach consists predominantly of lots measuring 30 feet by 80 feet, and therefore, the project’s proposal to create lots wider than 30 feet is inconsistent with the LCP, and that the proposed development should adhere to a 30 foot by 80 foot lot size to the greatest extent feasible [[Exhibit 8](#)].

Regarding lot size and lot consolidation, the Mission Beach Precise Plan identifies the difficulty that such small 30 foot by 80 foot lots presented to development, but also seeks to balance development potential with preserving community character. The Mission Beach Precise Plan states that the “courts, places, and alleys in Mission Beach act as boundaries, preventing any exceptionally large consolidation...The maximum consolidation, then, becomes the area between two Courts, and between either north-south streets and Mission Boulevard.” The PDO has the uncommon characteristic in that, while defining the minimum lot size as described above, it does not include a maximum

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lot dimension, and thus the above-described boundary of the area between the courts and Mission Boulevard and the side streets in the Mission Beach Precise Plan presumably sets the upper boundary for lot consolidation. Other than that presumed limitation, rather than establish a maximum lot size, the PDO sets an upper limit on the gross floor area of a structure sited on a particular lot. Section 1513.0304(g) of the PDO states that “regardless of lot size, individual buildings, including common wall construction, shall not exceed 5,280 sq. ft. in total gross floor area.” None of the proposed residential structures exceed this limit.

The Commission acknowledges that the predominant pattern of development in the inland lots of Mission Beach is lots of 30 ft. by 80 ft. and that the proposed project deviates from this historic pattern. However, such differences are not prohibited by the Mission Beach Precise Plan or the related PDO. The determination of whether or not the deviations associated with the proposed project result in significant adverse impact to community character is discussed below under “bulk and scale.”

#### Bulk and Scale

Density, FAR, and lot size are all different aspects that cumulatively define the most prominent feature of any proposed structure – its bulk and sale. The proposed development contains 8 triplexes and 8 quadplexes, whereas currently inland Mission Beach predominantly consists of single family residences and duplexes, with some triplexes on corner lots by the side streets. The appellants allege that the community character of Mission Beach prohibits the construction of such structures on the subject site, that allowing their construction would adversely affect the greater community’s character and create an adverse precedent that would then be repeated elsewhere in Mission Beach, and that the project site should be developed with the common 30-ft. by 80-ft. lot size and related duplexes [[Exhibit 9](#)].

Besides density and FAR, the Mission Beach Precise Plan addresses controlling bulk and scale through setback, height, and lot coverage requirements. Section 1513.0304(d) of the PDO requires for R-S zoned properties front yard setbacks of 15 feet from the pedestrian right-of-way, default 5-ft. (reducible to 3 feet) side yard setbacks, and 0-ft. alley setbacks to ensure the provision of sufficient light and air along between the residences and along the courts and alleys. Regarding structure height, all of Mission Beach, and most of San Diego’s coastal zone, is under a 30-ft. coastal height limit overlay zone. Finally, Section 1513.0304(f) sets maximum lot coverage by structures at 65%. The all of the structures on the proposed development conform to the above limitations.

The question of community character and a particular project’s impact on it is a partly subjective one. Southern inland Mission Beach has historically been composed mostly of 30-ft. by 80-ft. lots with their related single family and duplex residences because of how the community was originally mapped and the subsequent minimum lot sizes that were placed in the certified LCP. Because all of Mission Beach was mapped in 1914 as separate 30-ft. by 80-ft. lots, and the subsequent PDO established the minimum allowable

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lot size at that same dimension, lot line adjustments between two adjacent lots elsewhere in Mission Beach is infeasible due to one lot not being able to increase in size without decreasing the neighboring lot below the legal minimum. Thus, the appellants' contention that the reason creating lots larger than 30-ft. by 80-ft. has rarely been done before is because it is disallowed by the LCP is incorrect. Rather, such lot changes have been rare due to the majority of inland lots already being at the bare minimum lot size allowed. This is why, as alluded to above under the discussion of density, the proposed project will not set a precedent allowing density or bulk and scale to be "balanced" across multiple lots elsewhere in Mission Beach, because in order to achieve a high density or larger building on one larger lot, a project would have to have to obtain lot area from an adjoining lot, which is practically infeasible as the majority of the lots in Mission Beach are already the minimum size allowed by the LCP.

Relatedly, the opposition alleges that permitting the construction of triplexes and quadplexes would create a new, adverse precedent that would be replicated elsewhere in Mission Beach, inexorably shifting the character of Mission Beach toward larger, bulkier structures. In fact, the PDO already allows the construction of triplexes and quadplexes. As discussed above, the PDO explicitly states the manner in which a structure, sharing common wall construction, can be built with up to four dwelling units across contiguous lots. It is very likely that the reason such development is rarely undertaken in Mission Beach is because the rest of the community has already been mapped out as separate, distinct 30-ft. by 80-ft. lots. Thus, to build larger structures such as triplexes and quadplexes elsewhere in Mission Beach, at least two contiguous lots would have to be purchased and developed together. As it is a rare occasion for two contiguous lots to come up for sale simultaneously, and the lots in Mission Beach, while small, are still priced fairly high due to their proximity to the ocean, such a scenario allowing construction of structures larger than duplexes has been very rare and is likely continue to be rare in the future.

Furthermore, the Mission Beach Elementary School site is unique in that it is one of the last remaining vacant lots in Mission Beach, and by far the largest (though it still only represents approximately 2% of Mission Beach). There are no other vacant, developable sites close to its size elsewhere in Mission Beach, and thus the opportunity to propose such a large scale development that is able to utilize such as size to propose similar structural configurations is unlikely to arise again in the future.

Nevertheless, while the proposed pattern of development is unlikely to set a precedent for future development, it is still necessary to evaluate the impact the bulk and scale of the project itself will have on the community character of Mission Beach. With regard to the impact the size of the proposed residential structures will have, past permit actions by the Commission for new inland residential structures (not beach or bayfront) have typically approved dwelling units, either in single family residences or duplexes, to the maximum height of 30 feet and maximum FAR of 1.1, which on the minimum 30-ft. by 80-ft. lots allows up to 2,600 sq. ft. gross floor area (plus an additional exempt 400 sq. ft. for garage space), which could either be a single family residence or a duplex [Exhibit 7]. The dwelling units along the eastern and western boardwalks tend to be much larger in size – up to over 4,000 sq. ft. when developed as a single family residence. In the locally approved residential project currently before the Commission, all of the dwelling units

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range from 1,200 sq. ft. to 1,700 sq. ft. in size except for the one single family residence, which is 2,300 sq. ft. Thus, the dwelling units as locally approved do not substantially differ from the existing character of dwelling unit size within the community and are unlikely to set a precedent for a substantially different pattern of development and community character.

Although the individual dwelling units proposed would not be larger than typical dwelling units in Mission Beach, because the units are being developed as triplexes and quadplexes, the structures themselves would be larger than most structures in Mission Beach. As noted, a structure of up to 2,640 sq. ft. is allowed on a typical 30-ft. by 80-ft. lot. The size of the proposed 8 triplexes is approximately 4,300 sq. ft., while the proposed 8 quadplexes are approximately 5,300 sq. ft. In addition, because they are being developed with common wall construction, there will not be as many side yard setbacks between the structures as there would be if the entire site was developed with duplexes on 30-ft. by-80-ft. lots. The opposition contends the proposed bulk and scale will reduce light and air and result in a significant adverse impact to community character.

However, while the proposed buildings do represent a change from the typical pattern of structure size in Mission Beach, and will result in fewer side yard setbacks between the proposed buildings than typically seen in Mission Beach's grid streets, the overall impact on community character will be quite limited. The setbacks between structures are not public view corridors, and are not visible from Mission Boulevard. The PDO contains numerous provisions regarding architectural features, angled setbacks, and encroachments that must be complied with to maintain the appearance and character of the area. Visitors to the beach, bay, or visitor-serving uses in the community are unlikely to notice the relatively minor differences between the proposed structures on the subject site and the rest of Mission Beach. While long-time residents undoubtedly appreciate the continuity of Mission Beach's 2,640 sq. ft. residential structures on 30-ft. by 80-ft. lots, the differences proposed through the subject project will not have an impact on community character for visitors to Mission Beach, and do not rise to a level of statewide significance. As described herein, the unique circumstances of this site mean that it is extremely unlikely the subject approval will set a precedent for future development in Mission Beach. Thus, the bulk and scale of the proposed project is consistent with the policies of the certified LCP regarding community character.

### Conclusion

Thus, when analyzing the various aspects of the proposed residential development, its conformance with delineated development criteria in the LCP, and its effect on community character, it becomes evident that while there are some discrepancies within the various relevant LCP provisions, the project can be found in conformance with the identifiable standards, and that the development as proposed will not adversely impact or shift the existing community character, and thus not negatively impact the visiting public's enjoyment of the coastal resources in Mission Beach.

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To ensure that the development does not have unforeseen impacts on community character, **Special Condition No. 1** of both CDP Nos. A-6-MBE-16-0048 and A-6-MBE-16-0050 require the development to adhere to final plans reviewed and approved by the Commission to ensure that the final development does not differ substantially from what was reviewed. Thus, as conditioned, the development can be found consistent with the certified LCP of the City of San Diego.

### **C. PUBLIC ACCESS AND RECREATION**

Page 12 of the Mission Beach Precise Plan states as an Overall Goal:

*The reduction of the overall vehicular congestion existing in Mission Beach.*

Page 17 of the Mission Beach Precise Plan states:

*The Courts and Places in Mission Beach provide the only pedestrian open space system other than the beaches.*

Page 19 of the Mission Beach Precise Plan states:

*Because of the important role that the Courts and Places serve in providing open space and east-west pedestrian linkages, they should not be closed.*

Page 46 of the Mission Beach Precise Plan states:

*The development of the former Mission Beach Elementary School site at the northeast corner of Mission Boulevard and Santa Barbara Place includes a pocket park, approximately 0.32-acres for passive recreational use.*

Page 46 of the Mission Beach Precise Plan states as a goal in its “Parks and Recreation” section:

*The integration of usable public open space into the developed portion of the community.*

Section 1513.0403 of the San Diego Municipal Code states in relevant part:

[...]

(b) Residential Subdistricts

- 1) Every premises used for one or more of those uses permitted in Section 1513.0303 shall be provided with a minimum of permanently maintained off-street parking spaces located on the premises as follows:

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- (A) Two spaces per dwelling unit; except for the following:
  - i. In R-S Subdistricts when a unit is added to a lot with an existing single-family unit and the lot has less than 34 feet of frontage on a street or alley, then the requirement shall be 1.5 spaces per dwelling unit.

[...]

- 4) Tandem off-street parking is permitted consistent with the following:
  - (A) The space required is 8 feet by 36 feet and accommodates 2 cars, one behind the other, except that the width of parking spaces that abut a wall, column, or other immovable obstacle shall be 8 feet and 6 inches.
  - (B) Both of the tandem spaces shall be assigned to the same unit.
  - (C) Tandem spaces are not required to be enclosed.
  - (D) Unenclosed tandem parking spaces may only encroach into an interior yard to achieve the required 36-foot depth.

Public Access

The Mission Beach circulation system consists of the north-south Mission Boulevard and two alleyways – Strandway and Bayside Lane – along with alternating east-west pedestrian courts and unnamed vehicular alleys. In all of Mission Beach outside of the project site, these access ways are privately owned but legally designated as “dedicated public right-of-ways” managed by the City of San Diego.

When a large number of visitors or residents occupy these access ways, visitation and circulation within Mission Beach can become very challenging, impeding the ability of the public to visit the beaches and visitor-serving establishments and potentially dissuading future visitors. The two subject residential projects propose to construct 20 new structures with 59 new dwelling units between them, which will introduce significant numbers of new residents and their related traffic.

As proposed, the residential developments to be located on the Mission Beach Elementary School site will generally follow the existing grid system with two east-west vehicular alleys and an extension of Jersey Court between them. The two alleys would be 20 feet wide, not 16 feet wide like the other alleys in Mission Beach, in order to meet current standards. As originally proposed, the two new alleys and Jersey Court would have been privately owned by the lot owners on either side of the streets, but unlike the rest of Mission Beach, would not be made “dedicated public right-of-ways,” but rather

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would have public easements held by the City of San Diego but managed by the project HOA.

The legal distinction between “dedicated public right-of-way” and “public easement” is not necessarily significant. In either case, the underlying land is privately held and not owned in fee by the City, and in both scenarios the public’s right of access is held by the City. In Mission Beach, the dedicated public right-of-ways were first mapped when the entire community was subdivided in 1914, and to this day are maintained by the City. “Dedicated public right-of-way” is not a term used by the City anymore, and public right-of-ways maintained by the City constitute the vast majority of the streets throughout the City.

What is different and significant with the current proposal is that as approved by the City, the vehicular alleys and pedestrian Jersey Court would be managed by the project HOA. The City and the applicant have explained that this arrangement results from the applicant’s desire to construct the access ways with permeable pavers, which is a water quality design that the City is unwilling to maintain. The Commission supports the use of permeable pavers as a water quality BMP (discussed in detail in Section E., Water Quality), but the management issue raises public access concerns. The maintenance of public access ways by private entities such as neighboring homeowners can create the risk of deterring public access through an appearance of exclusivity when the access way appears substantially different from the other available access ways. Furthermore, the maintenance of the access way by neighboring property owners can create the risk that, should public use be deemed a nuisance by the property owners, they will view the access way as something that can be limited or closed off through gates, time restrictions, or private encroachments. This is a particular concern for the proposed extension of Jersey Court, as it would be relatively easy to close a pedestrian access way without noticeably disrupting circulation for the community at large.

Thus, as part of the approval of the LUP amendment to the Mission Beach Precise Plan, the Commission required Jersey Court be designated a dedicated public right-of-way managed and maintained by the City. However, the LCP does not specifically prohibit the two vehicular alleys from being designated as public right-of-ways managed by the project HOA, as with the proposed project.

While the two alleys being public access easements would place them in a different status than all the other vehicular alleys within Mission Beach, the public would still be able to use them in the same manner to access the beaches as any other alley within the community. Furthermore, because of the width of the alleys in Mission Beach and their high use due to the large volumes of visitors and dense nature of the community, the risk that the two 20-ft. wide, 200-ft. long alleys will be blocked off by private gates is low. Furthermore, just like with dedicated public right-of-ways, in order for the public access easements to be removed, it would require a City Council action followed either by an amendment to this Commission permit or a new local coastal development permit, which would be appealable to the Commission. Finally, as the remainder of Mission Beach is developed and the subject site is the last major vacant lot remaining to be developed where new alleys and courts could be placed, this development is unlikely to create an adverse precedent elsewhere in the community or lead to a substantial change in the legal

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status of the public's access ways in the community. Thus, as proposed, allowing the proposed alleys to be developed with public access easements and maintained by the HOA, is not expected to have any adverse impact on public access.

With regards to traffic impacts in what is already a heavily visited coastal community, all of the proposed dwelling units shall contain the two off-street parking spaces required by the certified LCP, but the introduction of 59 new dwelling units could cause an adverse impact on the existing traffic of Mission Beach. In analyzing this risk, the applicant originally conducted a traffic survey that analyzed traffic patterns in March 2015. Because the highest traffic volumes in Mission Beach occur during the busy summer tourist season, in response to comments from the public and Commission staff, the applicant conducted a new traffic study in August 2016. This study showed that analysis of the existing traffic volume plus the expected traffic of the total residential project would lead to adverse impacts at the intersection of Mission Boulevard and Santa Barbara Place, requiring the installation and operation of the traffic signal and related pedestrian crosswalks before the residences are completed. Furthermore, because the existing intersections within Mission Beach, especially the main community intersection of Mission Boulevard and West Mission Bay Drive just 760 feet south of the intersection of Mission Boulevard and Santa Barbara Place, can have extensive queues during the AM and PM peak rush hours, the traffic study recommends that the new traffic signal be operated in synchronicity with the other intersections so as to avoid spillover effects of long queues of cars impacting other each other.

While Mission Beach is a narrow peninsula bordering on three sides by coastal waters, because it is so densely developed, public views of the water are often obstructed by existing development. The courts and alleys in Mission Beach serve as the main view corridors for the public within Mission Beach to view the ocean or bay, and thus the PDO has strict requirements as to front yard setbacks and the landscaping contained therein, limiting its height to 3 feet. This permit memorializes this height limit and, because the community park will encompass a significant portion of the site, extends the 3-ft. height limit to the 15 feet of park space immediately south of Jersey Court, thus allowing public amenities such as benches and drinking fountains to be installed while not obstructing public views over the park toward the bay to the east [[Exhibit 11](#)]. Relatedly, because the dense development also makes the courts and alleys the primary means to reach the ocean and bay, they shall be placed under public access easements and dedicated public right-of-way along with the park to ensure continued public access well into the future [[Exhibit 10](#)].

The school site also presents a prime location to convert vacant, obsolete development into a newer, more relevant use, concentrating development in an already disturbed area that is in a pedestrian-oriented community along a major alternate transit corridor. By increasing the supply of dwelling units in a close proximity to recreational destinations, the proposed development will help address housing shortages while encouraging alternate means of transit and a decrease in vehicle miles traveled.

Public Recreation

Mission Beach is the most densely developed community in San Diego, and this status is most acutely felt during the busy summer months, when large volumes of local and out-of-town visitors descend on the small peninsular community for day trips or to stay in one of the many short-term vacation rentals on offer. Yet while Mission Beach is bordered on three sides by open water and sandy beaches, these constitute heavily-used regional park areas that cater to both out-of-town visitors and well as local visitors. As far back as the adoption of the original Mission Beach Precise Plan in the 1970's, it was recognized that Mission Beach did not contain any community park space for use by local residents, and that they had to compete with large volumes of visitors for use of the regional park space. Due to the dense nature of the community and lack of readily developable open space, the Mission Beach Elementary school site, approximately half of which was not developed with structures, was identified by the Mission Beach Precise Plan and its authors as a feasible candidate for any future landscaped community park space.

The subject development will develop the school site with 59 dwelling units, substantially increasing the number of residents who will utilize the regional park space while covering the last viable vacant site for a community park. Because the Mission Beach Precise Plan identified the school site for providing a community space where one is currently lacking, the subject development should include a community park component to conform to the park policies of the Mission Beach Precise Plan, provide an amenity that does not experience the same demand pressures as the more popular beach areas, and mitigate the impact of increasing the demand on existing park facilities.

Of its 2.33 acres, the school site currently has approximately 1.25 acres of open area, though the subject development will cover the vast majority of the site. Because the school site is the last vacant parcel where a viable park space could be placed, any community park space placed there should be designed to cater to the greatest range of recreational activities, either passive or active. Given the grid pattern of alleys and courts in Mission Beach, a rectangular design would most efficiently maximize park space and provide for a range of activities while also allowing those activities to be able to occur back from the busy traffic corridor that is Mission Boulevard.

In May 2017, the Commission approved LUP Amendment No. LCP-6-MBE-16-0029-6 to amend the Mission Beach Precise Plan in order to address the Mission Beach Elementary School site in anticipation of the subject development coming before the Commission. In addition to changing the land use designation of the school site from "school" to "residential," the Commission required that a park of at least 0.32-acre in size be provided on the site. This requirement was placed in recognition of the potential for the school site to at least partially address the dearth of community park space in Mission Beach by providing a park of sufficient size to cater to a range of recreational activities.

Subsequent to the filing of this appeal, and in response to the approved LUP amendment to the Mission Beach Precise Plan, the applicant has modified their project to delete four dwelling units and expand the on-site community park from 0.201 acres to 0.32 acres, to be located south of Jersey Court in the center of the development. Because the park is

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located along the majority of Jersey Court, which will be built concurrently with the park and tie into its usable space, the applicant's proposed 0.32-acre calculation includes a portion of Jersey Court. Because of the strict lot size requirements in the Mission Beach PDO, the park area could not be enlarged before additional units would have to be deleted from the project.

The appellants contest the inclusion of a portion of Jersey Court into the community park calculation, arguing that such a calculation constitutes "double counting" as Jersey Court will be provided in the development regardless of where the park is located, and that the language of the May 2017 LUP amendment states that the "park location shall be sited along the southern side of Jersey Court, a park of 0.32 acre or larger shall be located on site," which the appellants believe is not being met by the proposed park design.

Besides the above park description, the May 2017 LUP amendment does not contain much more additional information as to the specific details of the design and location of the park required to be provided on the school site. While not a formal part of the approved LUP, at the May 2017 hearing, Commission staff's presentation on the LUP item did contain an exhibit that showed the park area encompassing a portion of Jersey Court. Thus, that exhibit is part of the record and clearly demonstrates that including a portion of Jersey Court was the intent of the project applicant when they chose not to object to the suggested modification requiring the community park. Furthermore, the enlarged park represents a substantial redesign from the originally, locally approved .201-acre linear park that had limited potential for public use.

The appellants also contend that community park should not be placed along Jersey Court but rather on the 0.35-acre segment of the school site south of Santa Barbara Place. The appellants contend this site is superior because it will be bordered by two vehicular paths – Santa Barbara Place on the north and a vehicular alley on the south – which would improve access to the park. In addition, the appellants contend the southern site would be less secluded and feel more open compared to the Jersey Court location. Finally, the appellants state that locating the park in the south will allow for the preservation of a particular ficus tree that some members of the community wish to see preserved.

However, the benefits of redesigning the project to relocate the park would not be significant or substantial. With regards to access, either location would be adjacent to Mission Boulevard and less than 150 feet from each other. Furthermore, the Jersey Court location provides direct access to both pedestrians (on Jersey Court) and visitors being dropped off from vehicles (in the vehicular alley). The south Santa Barbara location would not have any east-west pedestrian sidewalks adjacent to it, just vehicular alleys or roads, which could give rise to a safety issue. As for the issue of the Jersey Court location being secluded, that site would have the 10-foot wide Jersey Court bordering it to the north (with the residential structures set back an additional 15 feet from there) and a 20-ft. wide vehicular alley to the south (with no rear residential setback), whereas the southern park site would have 20-ft. wide Santa Barbara Place to the north (with the residential structures set back an additional 15 feet from there) and a 16-ft. wide

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vehicular alley to the south (with no rear residential setback there). Thus, the difference between the two sites amounts to approximately 6 feet of extra width for the southern site, which is not a substantial difference between the two in regards to nearby development obstructing park visibility or light and air. Finally, the ficus tree currently located on the southern site is not designated as historic or a community resource in any LUP or registry, though neither the LUP amendment nor this permit precludes its preservation and relocation to another site should the appellants, applicant, or a third-party wish to do so.

While the subject of the project's impact on community character through its bulk and scale was discussed in Section B above, the appellants claim that allowing the FAR calculations of the residential structures to include the square footage of the individual lots that will become public right-of-ways will result in larger structures that can house more bedrooms – as bedrooms generally need only be at least 70 sq. ft. in size, and the inclusion of the alley space in the FAR calculation would allow dwelling units from 33 to 243 sq. ft. larger than would be allowed if the alley space was excluded. The appellants continue that this in turn would increase the likelihood of the new residences being used for short term vacation rentals rather than long-term residences. While not all of the proposed dwelling units are maximized to take advantage of the alley space, the Commission acknowledges that the use of the residences as a short term vacation rental is a possible outcome, regardless of whether the FAR allows additional bedrooms. However, Mission Beach has the highest concentration of short term vacation rentals of any community in San Diego, and for decades the community has stood out from other San Diego coastal communities for the practice of providing short term vacation rentals. Vacation rentals provide a reservoir of overnight accommodations, and providing more opportunities for vacation rentals is consistent with the visitor-serving use policies of the Coastal Act. The City of San Diego is currently drafting regulations for the operation of short term vacation rentals, but as it stands now, short term vacation rentals are not prohibited by the certified LCP. Thus, the inclusion of the alley space in the FAR calculation of the residential structures will not adversely impact public access and recreation.

In conclusion, the larger size and centralized location along Jersey Court of the proposed community park will ensure that the resulting park space will provide sufficient space for a wide variety of passive recreational activities, encouraging its use by the public park, while the inclusion of alley space into the FAR calculations will not adversely impact the public recreation of the community. However, the residential structure immediately to the east of the park proposes to have a balcony on its western side just above the park, with a related projection of the lot line into the park space. Because this balcony and related projection could discourage park visitors from congregating on the eastern end of the park, **Special Condition No. 1** of CDP No. A-6-MBE-16-0048 requires the final project plans to be revised to delete this balcony and projections so as to make the eastern side of the park more uniform. **Special Condition Nos. 2 and 1** of CDP Nos. A-6-MBE-16-0048 and A-6-MBE-16-0050, respectively, require final landscape and construction staging and storage plans be provided so as to ensure that the development will not adversely affect public views or access either during construction or after completion. **Special Condition No. 2** of CDP No. A-6-MBE-16-0048 further requires that the traffic signal on the Mission Boulevard be installed before the residential development is complete and

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coordinated in its timing with the other lights in Mission Beach. Additionally, to ensure that the park does not take on an air of exclusivity and to prevent exclusionary features such as fencing from being installed, **Special Condition No. 3** of CDP No. A-6-MBE-16-0048 requires submittal of a final park plan and describes the various features that are prohibited in the park (such as fences) and required (such as signage) so as to ensure that the public will always be aware that the park space is a public amenity. **Special Condition No. 6** of CDP No. A-6-MBE-16-0048 requires the recordation of public access easements over the alleys and park, and a dedicated public right-of-way over Jersey Court, held by the City, to ensure that the public's right of access runs with the land. **Special Condition Nos. 7 and 4** of CDP Nos. A-6-MBE-16-0048 and A-6-MBE-16-0050, respectively, require that the permit be recorded against the HOA's CC&R's so that all future parties in interest to the development are officially notified of the rights and responsibilities of this permit. Finally, **Special Condition Nos. 8 and 5** of those two permits inform the applicant and successors in interest that the City's conditions not set aside by this permit action are still in effect. Thus, as conditioned, the development can be found consistent with the public access policies of Chapter 3 of the Coastal Act and the certified LCP for the City of San Diego.

**D. WATER QUALITY**

Section 142.0201 of the San Diego Municipal Code states:

*The purpose of this division is to regulate the development of, and impacts to, drainage facilities, to limit water quality impacts from development, to minimize hazards due to flooding while minimizing the need for construction of flood control facilities, to minimize impacts to environmentally sensitive lands, to implement the provisions of federal and state regulations, and to protect the public health, safety, and welfare.*

Section 142.0202 of the San Diego Municipal Code states:

*This division shall apply to all development in the City, whether or not a permit or other approval is required.*

Section 142.0210 of the San Diego Municipal Code states:

*All storm water runoff control, drainage, and flood control facilities shall be constructed in accordance with standards established in the Land Development Manual, the Standard Specifications for Public Works, and any City-adopted supplements.*

Section 142.0220 of the San Diego Municipal Code states:

(a) *All development shall comply with Municipal Code Chapter 4, Article 3,*

*Division 3 (Stormwater Management and Discharge Control).*

*(b) All development shall be conducted to prevent erosion and stop sediment and pollutants from leaving the property to the maximum extent practicable. The property owner is responsible to implement and maintain temporary and permanent erosion, sedimentation, and water pollution control measures to the satisfaction of the City Manager, whether or not such measures are a part of approved plans. The property owner shall install, monitor, maintain, and revise these measures, as appropriate, to ensure their effectiveness. Controls shall include the following measures that address the development's potential erosion, sedimentation, and water pollution impacts.*

*(1) Erosion prevention.*

*(2) Sediment control.*

*(3) Phased grading.*

Being a narrow peninsula bordered by the Pacific Ocean and Mission Bay, all properties in Mission Beach, including the project site, are a short distance from open water and popular beach recreation areas. Storm runoff not retained within properties flows into the paved City streets and subsequently into the City's storm water system. Thus, the construction of 18 new structures with 59 total dwelling units will introduce a substantial amount of impermeable surfaces and new uses that could bring with them new adverse water quality impacts if not properly planned for and processed.

As it currently exists, the closed Mission Beach Elementary School site contains several large classroom and office buildings on its southern end, with the majority of the site consisting of large open areas of pavement bordered by sparse landscaping. Thus, when storm events occur, much of the water falling on the site either sheet flows directly onto adjacent streets or onto the limited landscaped or bare dirt areas. The 1.88-acre portion of the residential development will decrease runoff compared to current conditions while the 0.35-acre portion south of Santa Barbara Place will increase runoff compared to current conditions; with the pollutants of concern for the entire development consisting of sediments, nutrients, trash, bacteria, and pesticides. Overall the runoff from the site will be decreased because of the change in the type of use on the land, the landscaping the certified LCP requires for residential uses, the provision of a 0.32-acre park, and the incorporation of permeable pavement and similar water quality design features into many of the common areas. The applicant prepared storm water quality management plans for the development that have been reviewed by the Commission's water quality staff and found to be satisfactory. To ensure that the proper water quality measures are incorporated into the final design, **Special Condition Nos. 4 and 5** of A-6-MBE-16-0048 and **Special Condition Nos. 2 and 3** of CDP No. A-6-MBE-16-0050 require the submittal of a construction and permanent water quality plans for both segments of the development that substantially conforms to the plans reviewed and approved by the Commission and contain delineated measures to best capture and treat runoff at all stages of the development. Because the project will create substantial new landscaping area,

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including a community park, the manner in which the vegetation is maintained and pests dealt with could have water quality implications. Thus, **Special Condition No. 2** of CDP No. A-6-MBE-16-0048 and **Special Condition No. 1** of CDP No. A-6-MBE-16-0050 require the submittal of a Turf Management Plan that discourages the use of chemicals and explores alternative, natural methods of turf maintenance that will reduce potential pollutant loads in any runoff. With the project as conditioned for water quality protection, the development can be found consistent with the certified LCP of the City of San Diego.

**E. REIMBURSEMENT IN CASE OF CHALLENGE**

Coastal Act Section 30620(c)(1) authorizes the Commission to require applicants to reimburse the Commission for expenses incurred in processing CDP application. Thus, the Commission is authorized to require the reimbursement for expenses incurred in defending its action on the pending CDP application in the event that the Commission's action is challenged by a party other than the applicant. Therefore, consistent with Section 30620(c), the Commission imposes **Special Condition Nos. 9 and 6** of CDP Nos. A-6-MBE-16-0048 and A-6-MBE-16-0050, respectively, requiring reimbursement for any costs and attorney fees that the Commission incurs in connection with the defense of any action brought by a party other than the applicant challenging the approval or issuance of this permit.

**F. LOCAL COASTAL PLANNING**

The subject site is located in an area of original jurisdiction, where the Commission retains permanent permit authority and Chapter 3 of the Coastal Act remains the legal standard of review. As amended by the Commission on May 11, 2017 and adopted by the City of San Diego, the Mission Beach Precise Plan now designates the 1.88-acre segment of the Mission Beach Elementary School site north of Santa Barbara Place as a "residential" land use with a maximum density of 36 dwelling units per acre, as well as requiring placement of a park at least 0.32-acre in size and the dedication of Jersey Court as a public right-of-way. As discussed in detail above, the project is consistent with these land use designations. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act. Approval of the project, as conditioned, will not prejudice the ability of the City of San Diego to continue to implement its certified LCP for the Mission Beach community.

**G. 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

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mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. The City of San Diego adopted Master Environmental Impact Report (EIR) No. 366139 and related State of Overriding Considerations and Mitigation, Monitoring, and Reporting Program on April 11, 2016. The City found that proposed mitigation measures would reduce impacts to, among other impacts, traffic, parking, and land use, to below a level of significance.

The proposed project has been conditioned in order to be found consistent with the City of San Diego's certified LCP. Mitigation measures, including redesign of the project, park design criteria, and final construction, staging, and water quality plans will minimize adverse precedential effects on future development on similarly situated parcels. 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, as conditioned, is the least environmentally-damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.

(G:\San Diego\Reports\Appeals\2016\A-6-MBE-16-0048 & A-6-MBE-0050 Mission Beach Residences & Santa Barbara Place Residence Si & De Novo Stf Rpt.docx)

**APPENDIX A**  
**SUBSTANTIVE FILE DOCUMENTS**

- Appeal by Chair Bochco dated May 3, 2016;
- Appeal by Commissioner Shallenberger dated May 3, 2016;
- Appeal by William Bradshaw dated May 3, 2016;
- Appeal by Mission Beach Precise Planning Board dated May 3, 2016
- Master EIR No. 366139
- Evaluation of Summertime Peak Traffic, Queueing, and Traffic Signal Operations by Urban Systems Associates, Inc., dated November 2, 2016