

**CALIFORNIA COASTAL COMMISSION**

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 Hearing Date: 10/11/18

**STAFF REPORT AND RECOMMENDATION ON APPEAL  
 SUBSTANTIAL ISSUE DETERMINATION**

**Local Government:** City of San Diego

**Decision:** Approved with Conditions

**Appeal Number:** A-6-MBE-18-0055

**Applicant:** SDDP 2016 LTD (Ted Montag)

**Location:** 2695 Mission Blvd & 805 San Luis Rey Pl, Mission Beach,  
 San Diego, San Diego County (APN No. 423-747-08)

**Project Description:** Demolish two existing one-story single-family residences and construct a thirty-ft. tall, three-story, approximately 4,000 sq. ft. duplex with two attached two-car garages on a 0.09-acre lot.

**Appellants:** Mission Beach Precise Planning Board

**Staff Recommendation:** No Substantial Issue

**IMPORTANT HEARING PROCEDURE NOTE**

This is a substantial issue only hearing. Testimony will be taken only on the question of whether the appeal raises a substantial issue. Generally and at the discretion of the Chair, testimony is limited to 3 minutes total per side. Please plan your testimony accordingly. Only the applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify. Others may submit comments in writing. If the Commission determines that the appeal does raise a substantial issue, the de novo phase of the hearing will occur at a future Commission meeting, during which it will take public testimony.

## **SUMMARY OF STAFF RECOMMENDATION**

Staff recommends that the Commission, after public hearing, determine that NO substantial issue exists with respect to the grounds on which the appeal has been filed.

The appellants raise two issues: (1) the City incorrectly allowed one unit of the approved duplex access from a driveway off of San Luis Rey Place, despite the certified Mission Beach Planned District Ordinance (PDO) – part of the certified Implementation Plan (IP) – prohibiting the construction of driveways within required yards along Courts, Places, or Walks, and (2) the approved development does not conform to the visual resource protection policies of Section 126.0708 and setback landscaping requirements of Section 1513.0402 of the IP by allowing the driveway and related vehicular parking to encroach into the San Luis Rey Place view corridor.

Both units will have the required two parking spaces in the two two-car garages located outside of the required front yard setback, but vehicular parking could occur in the San Luis Rey Place driveway, which would be located within the required fifteen-foot front yard setback. Section 1513.0403(b)(3)(B) of the PDO states that for development existing prior to February 27, 1964, parking is permitted within yards abutting Courts, Places, or Mission Boulevard if the yard was being used for parking on or before that date. The City approved the subject project with the driveway off of San Luis Rey Place, finding that because the subject property was developed with a driveway off San Luis Rey Place prior to 1964, the driveway/parking configuration runs with the land and thus could be retained for the new duplex.

However, Section 127.0102(g) requires that when a previously conforming premises or use is brought into conformance by a new development, the previously conforming status is terminated and the premises or use cannot revert to a previously conforming status. As approved, the entire site is being redeveloped. Non-conforming development features may not be retained after being demolished or redeveloped, or there would be no circumstances under which they would ever be required to be brought into conformance with current regulations. Thus, the City did not accurately apply the requirements of the certified LCP when approving the driveway, and as a new development, a driveway from San Luis Rey Place should not have been permitted. The approved new duplex should have been designed consistent with the PDO, with access and parking for both proposed dwelling units being accessed from the southern alley.

Furthermore, in its approval, the City found that the subject property was not located within a coastal view corridor. However, the eastern half of San Luis Rey Place, where the subject property is located, terminates directly onto the sandy beach along Mission Bay Park, and there is a direct view of the bay from San Luis Rey Place. The majority of public views of coastal waters from within Mission Beach are down east-west courts, places, walks, and alleys, and in order to maximize these view corridors, the LCP requires either ten- or fifteen-foot front yard setbacks for development along courts, walks, and places, with landscaping and hardscape within these setbacks limited to three feet in height specifically to preserve views. San Luis Rey Place is a public view corridor, and as such, the restriction on encroachments into the setback, including driveways, is required to maintain public views.

However, despite the identified inconsistencies with the LCP, staff recommends that the Commission determine that the project raises no substantial issue regarding conformance with the certified LCP and the Chapter 3 policies of the Coastal Act. With the exception of the aforementioned driveway, the remainder of the approved development conforms to the height, setback, density, parking, and landscaping requirements of the certified LCP. The driveway in question will be a flat, at-grade space that itself will have no impact on the public view corridor. Rather, only during the times when a car is parked in the driveway is when there will be an obstruction in the setback on San Luis Rey Place. It is important to note that while San Luis Rey Place is an important public view corridor, parallel parking is allowed along the entire southern length of San Luis Rey Place, which represents an encroachment by vehicles into the view corridor. One additional periodic encroachment will not have a substantial impact on public views. Although staff strongly disagrees with the City's interpretation of the policy allowing nonconforming driveways built prior to 1964 to remain when the site is redeveloped, the potential for an adverse precedent for future development in Mission Beach is limited, as there are not a substantial number of sites that fit that description. Thus, the impact of the locally approved development does not rise to a substantial level, and staff recommends that the Commission find the project raises no substantial issue.

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](#)

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[Exhibit 3 – Project Plans](#)

[Exhibit 4 – Site Photos](#)

[Exhibit 5 – Appeal Form](#)

## **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), with regard to the retention of a previously conforming driveway off San Luis Rey Place and regarding visual resource protection policies for the San Luis Rey Place view corridor.

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## **II. LOCAL GOVERNMENT ACTION**

The project was approved with conditions by the Planning Commission on July 19, 2018.

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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, 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. Therefore, before the Commission considers the appeal de novo, the appeal must establish that a substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30603. In

this case, for the reasons discussed further below, the Commission exercises its discretion to determine that the development approved by the City does not raise a 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:

**MOTION:**     *I move that the Commission determine that Appeal No. A-6-MBE-18-0055 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 **YES** vote. Passage of this motion will result in a finding of No Substantial Issue and adoption of the following resolution and findings. If the Commission finds No Substantial Issue, the Commission will not hear the application de novo and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

**RESOLUTION:**     *The Commission hereby finds that Appeal No. A-6-MBE-18-0055 does not present 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**

The Commission finds and declares as follows:

##### **A. PROJECT DESCRIPTION/SITE HISTORY**

The subject property is a 0.09-acre trapezoidal parcel located at the southeast corner of Mission Boulevard and San Luis Rey Place that currently contains two detached one-story single family residences with attached garages constructed in approximately 1942. The parcel is bordered by San Luis Rey Place to the north, Mission Boulevard to the west, an unnamed alley to the south, and a residential property to the east [[Exhibit 2](#)]. Vehicular access to the northern residence at 805 San Luis Rey Place is from a driveway off the southern side of San Luis Rey Place serving its attached garage, while the southern residence at 2695 Mission Boulevard has an attached garage accessed from the alley to the south.

The proposed duplex will be a single structure thirty feet tall, with three stories totaling approximately 4,000 sq. ft., including two attached two-car garages. Access to the units is proposed to be identical to the current configuration, with access to one garage from San Luis Rey Place and access to the other garage from the alley [[Exhibit 3](#)].

The subject property is located in the community of Mission Beach in the City of San Diego. The City has a certified Local Coastal Program (LCP), which consists of the community plans for the various coastal communities within the City's limits serving as the certified Land Use Plans (LUPs) and the Land Development Code (chapters 11-15 of the San Diego Municipal Code) serving as the certified Implementation Plan (IP). Chapter 15 contains the City's Planned District Ordinances (PDOs), subsets of community-specific regulations, of which Mission Beach has one. The subject property is located in an area of Mission Beach where the Commission retains appeal jurisdiction because it is located between the sea and the first public road. The standard of review is the certified LCP for the City of San Diego and the public access policies of the Coastal Act.

## **B. PREVIOUSLY CONFORMING DEVELOPMENT**

On Page 13 of the "Mission Beach Precise Plan Local Coastal Program," the "Overall Goals" section lists, in relevant part:

- *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 creation of development regulations, tailored to the special needs of Mission Beach, to replace existing zoning within the community.*

Section 127.0101 of the Mission Beach Planned Development Ordinance within the San Diego Land Development Code states:

### ***§127.0101 Purpose of Procedures for Previously Conforming Premises and Uses***

*The purpose of these procedures is to establish a review process for the development, maintenance, and operation of previously conforming premises and uses. Because of changes in the City's zones and zoning regulations over the years, many structures that were built, or uses that were established, in compliance with the applicable regulations at the time of their development no longer comply with existing regulations. In order to clarify this status, and to avoid confusion with illegal premises and uses, the term "previously conforming" is used to describe these situations and has the same meaning as "nonconforming." The intent of these procedures is to allow certain, potentially compatible, previously conforming premises and uses, subject to special regulations and conditions, unless the previously conforming premises or uses adversely impact the public health, safety or welfare.*



Section 1513.0403 of the Mission Beach Planned Development Ordinance within the San Diego Land Development Code states, in relevant part:

**§1513.0403 Parking**

[...]

*(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:*

*(A) Two spaces per dwelling unit; except for the following:*

[...]

*(3) Parking shall not be permitted in required yards other than interior or rear yards, except as provided herein.*

[...]

*(B) Development prior to February 27, 1964.*

*For properties where any legal development, redevelopment or improvement created or enlarged floor area on the premises and the yard was being used for parking on or before February 27, 1964, parking shall be permitted within yards abutting Courts, Places, or Mission Boulevard and are not required to provide additional landscaping or the fencing separation, provided that:*

*(i) Said property is in compliance with permits or regulations in effect at the time the property was developed;*

*(ii) The parking space was in existence on November 17, 2010.*

*(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.*

*[...]*

*(7) Driveways and parking are not allowed within required yards for Courts, Places, or Walks unless exempted in accordance with Section 1513.0403(b)(3).*

Section 127.0102 of the San Diego Land Development Code states, in relevant part:

***§127.0102 General Rules for Previously Conforming Premises and Uses***

*The following general rules apply to all previously conforming premises and uses:*

*[...]*

*(g) If a previously conforming premises or use is brought into conformance by a change in use or new development, the previously conforming status is terminated and the premises or use cannot revert to a previously conforming status. A temporary discontinuance of operations in accordance with Section 127.0108(d) does not bring the previously conforming use into conformance or terminate the previously conforming status. See Section 127.0108 for additional regulations regarding discontinuance of previously conforming uses.*

Section 1513.0304(c)(3) of the Mission Beach Planned Development Ordinance within the San Diego Land Development Code states, in relevant part:

***§1513.0304 Property Development Regulations – Residential Subdistricts***

*(c) Yards*

*(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 facade that exceeds 20 feet in height above existing grade 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 facade 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 shown in Diagram 1513-03C.*

The two existing single family residences on the subject property were constructed in approximately 1942, with the attached garage for the northern residence being served by a driveway off San Luis Rey Place. This driveway access is previously conforming, as Section 1513.0403(b)(7) of the certified LCP prohibits driveways and parking spaces within the required yards adjacent to rights-of-way identified as Courts, Places, or Walks in Mission Beach. In the City of San Diego, “previously conforming” refers to the circumstance where a use, structure, or premises complied with all applicable state and local laws when it was first built or came into existence, but because of a subsequent change in zone or development regulations, is not in conformance with current regulations applicable to that zone. The City has an extensive history of zoning code amendments that modified the setbacks, floor area, height, density, and use standards for various zones. This has resulted in numerous previously conforming structures and uses throughout the City.

The approved project would demolish all of the existing structures and improvements on the site and construct a wholly new duplex. The majority of the site and the new structure would conform to current development standards. However, the applicant has stated the twenty-eight-foot long southern property line along the alley is too narrow to conveniently provide vehicular parking for both proposed dwelling units. Thus, as approved by the City, vehicle access to the site is provided with a design similar to the existing site, with access to the northern unit from a driveway off San Luis Rey Place, and access to the southern residence from the alley. Both units will have the required two parking spaces in two two-car garages located outside of the required front yard setbacks, but vehicle parking could occur in the San Luis Rey Place driveway, which would be located within the required fifteen-foot front yard setback area as opposed to the required landscaping.

Section 1513.0403(b)(3)(B) of the certified Mission Beach PDO states that for development existing prior to February 27, 1964, parking is permitted within yards abutting Courts, Places, or Mission Beach if the yard was being used for parking on or before that date. The City approved the subject project with the driveway and parking space off of San Luis Rey Place, finding that driveway/parking configuration runs with the land and thus can be retained for the new duplex.

Section 127.0102(g) requires that when a previously conforming premises or use is brought into conformance by a new development, the previously conforming status is terminated and the premises or use cannot revert to a previously conforming status. The appellants contend that the City wrongfully applied the parking provisions of the LCP when determining that the new duplex development could retain the northern driveway off the south side San Luis Rey Place, because the entire site is being redeveloped. As a new development, a driveway from San Luis Rey Place is not permitted, and the approved new duplex should have been designed with access and parking for both proposed residences accessed from the southern alley.

The appellants contend that Section 1513.0403(b)(3)(B) of the LCP was drafted in recognition that Mission Beach is an older community with several previously-conforming properties that required temporary relief from current regulatory requirements only until such time as the properties were redeveloped, after which they must be brought up to current standards.

As cited above, the intent of the non-conforming development regulations is to allow previously conforming premises and uses to remain until new development occurs, at which point the development must conform to all current development standards. The proposed demolition of the existing structures and construction of a new duplex clearly constitutes new development, and thus, all previously conforming structures such as the existing driveway must be brought into conformance. Non-conforming development features may not be retained after being demolished or redeveloped, or there would be no circumstances under which they would ever be required to be brought into conformance. As such, the Commission agrees with the appellants' contentions that the City did not accurately apply the requirements of the certified LCP when approving the driveway.

The applicant contends that the southern property line along the alley, at twenty-eight feet, is too narrow to provide the four off-street parking spaces the duplex is required to provide when taking into account the three-foot setback required along Mission Boulevard and the standard five-foot setback along the eastern property line. However, upon review of the site and applicable parking regulations, the Commission disagrees that it is infeasible to provide all four parking spaces off the southern alley. Section 1513.0403(b)(4) allows residential structures to provide tandem parking spaces for dwelling units, with minimum dimensions of eight feet wide and thirty-six feet long. Taking into account the space along the southern alley, it is possible to fit the above dimensions into the space. Furthermore, Section 1513.0304(c)(3) allows for the standard five-foot side yard setback to be reduced to three feet. Finally, Section 1513.0403(b)(4) does not require tandem parking spaces to be enclosed, providing further opportunity to have fit all required off-street parking off the southern alley. This would require a redesign of the project, and potentially a somewhat smaller structure, but consistency with the certified PDO is clearly feasible. Even if the site did warrant an exception to the setback requirements of the PDO, the appropriate way to grant such an exception is through the variance process. Variances are granted to provide relief for cases in which, because of special circumstances applicable to the property including size, shape, topography, location, or surroundings, the strict application of the development regulations would deprive the property of privileges enjoyed by other properties in the vicinity and under the same land use designation and zone. In contrast, the City's

interpretation of the PDO could potentially allow any site developed prior to 1964 to retain previously conforming parking uses even when the site is redeveloped, which would not allow the currently adopted community regulations to be applied.

However, despite the above issues in interpretation and application of the provisions of the LCP to the subject property, applying the five factors listed in Section III above clarifies that the appeal does not raise a “substantial issue” with respect to the LCP provisions.

The first factor is the degree of factual and legal support for the local government’s decision that the development is exempt from the LCP’s requirements regarding the driveway within the front yard setback. Based on the plain language of the LCP, the appellants’ contention that the City misapplied the LCP’s development regulations to the approved duplex is a valid one. The plain language of the LCP prohibits parking spaces within yard setback areas along courts, places, and walks, and the exemption for developments constructed prior to February 27, 1964 does not contain any language indicating that the previously conforming parking features may be retained by new development. A consistent, widely accepted provision of development regulations along the coast is that previously conforming development features only remain so long as they are not demolished or redeveloped, and with the complete demolition and reconstruction of the approved duplex, the language of the LCP requires that the previously conforming features, including the driveway, be removed.

The second factor is the extent and scope of the development as approved or denied by the local government. The subject site is 0.09-acre in size, and the approved development is a thirty-ft. tall, approximately 4,000 sq. ft. duplex. The size of the approved development is within the range of existing development within the community and does not represent a large, extremely noticeable development in an especially visually prominent location within the community. Rather, the development is one of thousands of residential structures located within the community. The location of a driveway on a single lot is not expected to result in a substantial impact to the neighborhood of the community.

The third factor is the significance of the coastal resources affected by the decision. The retention of the previously conforming driveway will not substantially adversely impact any significant coastal resources. The approved development includes a single fifteen-foot wide driveway along an approximately 800-ft. long stretch of road. As the driveway is located on private property that does not contain any existing or forthcoming public access path, it will not adversely impact public access. The subject parcel neither contains nor is in close proximity to sensitive habitat. While a driveway within a front yard setback is not a common development feature in Mission Beach, because the rest of the approved duplex development will conform to current regulations, the property will not represent a major deviation from community character. Finally, while the driveway will consist of impermeable material, its fifteen-by-twenty-foot size will not represent an substantial increase in impervious surfaces that could impact water quality or contribute to erosion.

The fourth factor is the precedential value of the local government's decision for future interpretations of its LCP. As the vast majority of the Courts, Places, and Walks in Mission Beach are pedestrian paths with no vehicular access, the number of structures that would meet the listed criteria of the above section is limited in number to begin with, and as described herein, the Commission does not accept the City's interpretation of the regulations and there should be no expectation that this should be allowed to occur in the future. Furthermore, while three other properties exist along this stretch of San Luis Rey Place that are similarly non-conforming regarding taking vehicular access off the street rather than the alley, two of them have the same or more alley frontage than the subject site, and with the City put on notice in the action regarding the proper application of Section 1513.0403(b)(3), it is expected that when they redevelop they will be able and required to provide all off-street parking off the rear alley.

The fifth, final factor is whether the appeal raises only local issues, or those of regional or statewide significance. The approved development consists of only one duplex on one parcel within one of the smallest coastal communities within the City of San Diego. With the Commission finding that the language of the LCP was misapplied in allowing retention of the driveway and putting the City on notice that it should not repeat the decision to allow previously conforming development to remain when the site is redeveloped, repetition of this matter is not expected and thus will not result in statewide impacts.

In conclusion, while some of the appellants' contentions with regard to the previously conforming status of the driveway off San Luis Rey Place are valid, the Commission finds that in this case the impacts are minor in both frequency, size, and precedent. The project thus does not raise a substantial issue on the grounds filed by the appellants relative to potential impacts to inconsistency with the LCP policies regarding non-conforming uses.

### **C. PUBLIC VIEW IMPACTS**

In the "Visual Resource" section of the "Mission Beach Precise Plan Local Coastal Program Addendum," on Page 14, it states:

*Views to and along the shoreline from public areas shall be protected from blockage by development and or vegetation. This proposal is consistent with the Plan's intent to preserve and improve the physical appearance and character of the Mission Beach community.*

Section 1513.0402 of the Mission Beach Planned Development Ordinance within the San Diego Land Development Code states, in relevant part:

#### ***§1513.0402 Landscaping***

##### ***(a) Residential Subdistricts***

*(1) One hundred percent of all required yards except interior yards and rear yards shall be landscaped with a minimum of at least 50 percent and shall be any combination of trees, shrubs and ground cover; except that the use of trees to meet this requirement shall be optional. All proposed landscaping in the required yard areas for Courts, Places, or Walks shall be maintained at a height of three feet or lower (including raised planters) to preserve public views. All landscaping shall be drought-tolerant and native or non-invasive plant species. The remaining 50 percent may include, but is not restricted to, fountains, reflecting pools, art objects, decorative walkways, screens, walls, fences, benches, and decks not exceeding 3 feet in height.*

*(2) Landscaping located within the required yards for Courts and Places shall protect pedestrian view corridors by emphasizing canopy trees that reach a height of 24 feet at maturity and ground cover. Landscaping materials shall not encroach or overhang into the Courts and Places rights-of-way and view corridors. Mature trees shall be maintained so that branches do not encroach below a height of 8 feet above the finish surface or finished grade, as measured at the trunk. Any trees proposed in the required yard areas along Courts, Places, or Walks shall be limited to no more than two trees which shall be planted within 4 and 5 feet of the primary structure. All landscaping and irrigation within the public-right-of-way shall be developed in accordance with the Landscape Standards of the Land Development Manual.*

Section 126.0708 of the San Diego Land Development Code states, in relevant part:

***§126.0708 Findings for Coastal Development Permit Approval***

*An application for a Coastal Development Permit may be approved or conditionally approved only if the decision maker makes all of the findings in Section 126.0708(a) and the supplemental findings in Section 126.0708(b) that are applicable to the proposed development.*

*(a) Finding for all Coastal Development Permits*

*(1) The proposed coastal development will not encroach upon any existing physical accessway that is legally used by the public or any proposed public accessway identified in a Local Coastal Program land use plan; and the proposed coastal development will enhance and protect public views to and along the ocean and other scenic coastal areas as specified in the Local Coastal Program land use plan;*

*(2) The proposed coastal development will not adversely affect environmentally sensitive lands; and*

*(3) The proposed coastal development is in conformity with the certified Local Coastal Program land use plan and complies with all regulations of the certified Implementation Program.*

*(4) For every Coastal Development Permit issued for any coastal development between the nearest public road and the sea or the shoreline of any body of water located within the Coastal Overlay Zone the coastal development is in conformity with the public access and public recreation policies of Chapter 3 of the California Coastal Act.*

The appellants contend that the project as approved does not conform to the visual protection policies and community character of the certified LCP. Mission Beach is an approximately two-mile long peninsula that is no more than a quarter-mile at its widest, bounded by the Pacific Ocean to the west and Mission Bay Park to the east. Despite the close proximity of coastal waters, public views of the water from within the community are limited because Mission Beach is the most densely developed community in San Diego, consisting predominantly of hundreds of 25 x 50-ft. and 30 x 80-ft. lots bounded by pedestrian courts and vehicular alleys. Due to the dense, compact nature of development in Mission Beach, there is minimal open space outside of the beaches and Belmont Park, and thus the majority of public views of coastal waters from within Mission Beach are down the aforementioned east-west courts, places, walks, and alleys. In order to maximize these view corridors, the LCP requires either ten or fifteen-ft. front yard setbacks for development along courts, walks, and places, with landscaping and hardscape within these setbacks limited to three feet in height.

In its review of the project, the City of San Diego identified the subject property as not being located within a public view corridor. However, San Luis Rey Place, like the other courts, places, walk, and alleys, runs east-west between the Pacific Ocean and Mission Bay, bisected - as the rest of Mission Beach - by the central, north-south Mission Boulevard. The eastern half of San Luis Rey Place, where the subject property is located, terminates directly onto the sandy beach along Mission Bay Park, and there is a direct view of the bay from San Luis Rey Place. Thus, contrary to the City's determination, San Luis Rey Place is a public view corridor and the LCP requires that views to and along the shoreline from public areas be protected from blockage by development or vegetation.

The appellants contend that the approved approximately fifteen-foot wide driveway located off the south side of San Luis Rey Place in the front yard setback of the new duplex will result in encroachment into this view corridor whenever a car or cars are parked on it, as any vehicle will be taller than the three-foot height limit placed on landscaping and hardscaping in front yard setbacks. While the presence of a car in the driveway will be taller than three feet in height and be an impact in the San Luis Rey view corridor, the appeal nevertheless does not raise a "substantial issue" with respect to the LCP provisions of the public access policies of the Coastal Act.

The first factor in determining the presence of a "substantial issue" is the degree of factual and legal support for the local government's decision that San Luis Rey Place is not a view corridor and that the retention of the driveway and related parking did not



constitute impacts to public views. As described above, the dense configuration of the Mission Beach community necessitates the treatment of the east-west courts, places, and walks as view corridors. San Luis Rey Place is unique in that it is one of the few east-west public right-of-ways in Mission Beach that is wide enough to accommodate both pedestrian and vehicular traffic, further enhancing its status as a view corridor to the bay. Both the City and the Commission have consistently treated courts, places, and walks as view corridors when processing development elsewhere in Mission Beach, and landscape height limits of three feet in the front yard setbacks along courts, places, and walks were instituted in order to protect and enhance these view corridors. Based on the status of San Luis Rey Place as a view corridor and height of any vehicles parked on the driveway being taller than three feet in height, the appellants' contention that the City's action did not conform to the requirements and policies of the LCP is valid.

The second factor is the extent and scope of the development as approved or denied by the local government. The approved development will have only one driveway approximately fifteen feet wide and twenty feet long off of the approximately 800-ft. long San Luis Rey Place. The property is one of dozens along San Luis Rey Place, the majority of which do not have such a driveway, and does not constitute a substantial portion of the road. At most, the driveway will be able to park two vehicles simultaneously.

The third factor is the significance of the coastal resources affected by the decision. As described above, San Luis Rey Place is one of the wider east-west public right-of-ways in Mission Beach and provides a not insignificant view corridor to the bay. Due to its dense nature, protecting public views of coastal waters from within the community is one of the constant goals when reviewing development in Mission Beach. However, as described above, San Luis Rey Place already allows public parallel parking along its southern boundary, the same side from which the subject driveway is located. The presence of this public parking already obstructs public views toward the bay when looking east, and the presence of the driveway, even when a car is parked on it, is not expected to substantially impact the view beyond what the public parking already accomplishes along the southern perimeter.

The fourth factor is the precedential value of the local government's decision for future interpretations of its LCP. As the vast majority of the Courts, Places, and Walks in Mission Beach are pedestrian paths with no vehicular access, the number of structures that would meet the listed criteria of the above section is limited in number to begin with, and as described herein, the Commission does not accept the City's interpretation of the regulations and there should be no expectation that this should be allowed to occur in the future. Furthermore, while three other properties exist along this stretch of San Luis Rey Place that are similarly non-conforming regarding taking vehicular access off the street rather than the alley, two of them have the same or more alley frontage than the subject site, and with the City put on notice in the action regarding the proper application of Section 1513.0403(b)(3), it is expected that when they redevelop they will be able and required to provide all off-street parking off the rear alley.

The fifth, final factor is whether the appeal raises only local issues, or those of regional or statewide significance. The approved development consists of only one duplex on one parcel within one of the smallest coastal communities within the City of San Diego. With the Commission finding that the language of the LCP was misapplied in allowing retention of the driveway and putting the City on notice that it should not repeat the decision to allow previously conforming development to remain when the site is redeveloped, repetition of this matter is not expected and thus will not result in statewide impacts.

In conclusion, while the appellants' contentions with regard to the status of San Luis Rey Place as a public view corridor and the driveway's potential to introduce an encroachment into said view corridor are correct, the Commission finds that in this case the impacts are minor in both frequency and size. The project thus does not raise a substantial issue on the grounds filed by the appellants relative to potential impacts to existing public views.

## **F. SUBSTANTIAL ISSUE FACTORS**

As discussed above, while there is inadequate factual and legal support for the City's determination that the proposed development is consistent with the certified LCP, when analyzed in the totality, the locally approved development does not rise to the level of substantial issue. Generally speaking, the Commission considers five specific findings when considering whether a project raises a "substantial issue." These factors are listed on Page 7 of this staff report and while some of them support a finding of substantial issue in this case, the majority do not. Therefore, the objections to the project suggested by the appellants do not raise any significant coastal resource or public access concerns, and as such, do not raise any substantial issues of regional or statewide significance. Finally, the City's approval of this coastal development permit will not create an adverse precedent for future interpretation of this LCP.

**APPENDIX A**

**SUBSTANTIVE FILE DOCUMENTS:** Appeal by Mission Beach Precise Planning Board dated August 13, 2018;