

CALIFORNIA COASTAL COMMISSION

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



W27d

Filed:	01/09/18
180th Day:	07/08/18
Staff:	D. Davis-SD
Staff Report:	03/21/18
Hearing Date:	04/11/18

STAFF REPORT: REGULAR CALENDAR

Application No.:	6-17-0962
Applicant:	Michael Turk
Agent:	Tim Golba
Location:	2761 Ocean Front Walk, Mission Beach, San Diego, San Diego County (APN No. 423-724-05)
Project Description:	Demolition of an existing 1,768 sq. ft. one-story duplex and construction of a new 2,050 sq. ft. three-story triplex on a 4,326 sq. ft. lot.
Staff Recommendation:	Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

The primary issues raised by the proposed development relate to public access and protection of public views. The project site is located adjacent to Ocean Front Walk, a popular public boardwalk adjacent to the beach. The site also abuts Brighton Court, a pedestrian access and visual corridor. The existing development includes a raised wood deck, wood fence, and vegetation that extend approximately twelve feet west of the private property line into the Ocean Front Walk public right-of-way easement, and two feet north into the Brighton Court public right-of-way.

Historically, there have been a variety of privately maintained fences, walls, decks, landscaping, and patio improvements located within the public right-of-way of the Ocean Front Walk boardwalk. Starting in 1999, the Commission approved a series of CDPs

authorizing the City of San Diego to remove the private encroachments and widen the segment of Ocean Front Walk north of Belmont Park to approximately twenty-three feet in width. However, due to a lack of funding, the City of San Diego has not conducted any widening south of Belmont Park, where the subject project site is located. Thus, nearly every property south of Belmont Park fronting the boardwalk still maintains private encroachments extending into the public right-of-way. The legal width of the boardwalk right-of-way adjacent to the project site is approximately 27 feet, but because of private encroachments in the area, the improved boardwalk is only approximately 15 feet wide.

As proposed, the entire existing residence will be demolished. New development adjacent to the boardwalk should be sited and designed without the use of public property. Cumulatively, the existing encroachments into the boardwalk significantly reduce the width of the public rights-of-way, thereby reducing the usability of these public shoreline accessways. The City has not expressed its intent to expand the boardwalk at this time or in the immediate future. However, the gradual removal of the encroachments on a case-by-case basis when each site redevelops will greatly facilitate the future expansion of the boardwalk and sets clear expectations for property owners that public accessways should not be used for private residential purposes. In the meantime, removing the existing encroachment will create space between the boardwalk and the private residential development, which reduces the privatization of the public boardwalk.

Furthermore, removing the encroachment on Brighton Court now will result in an immediate improvement in public access and sightlines to the ocean along this street end. The City of San Diego has given permission to condition the issuance of our CDP on the removal of encroachment.

Therefore, **Special Condition #1** requires the applicant to submit and adhere to the approved revised final plans. Any new fencing must be placed inside the property line and if the applicant chooses to pave the dirt patch left from removing the encroachment, it must match the existing concrete of the rights-of-way to avoid the appearance that it is private property. **Special Condition #5** requires the applicant to abate all existing development encroaching into the public rights-of-way—Ocean Front Walk and Brighton Court. **Special Condition #6** requires the recording of all conditions on the permit, including the requirement to remove the encroaching development.

The presence of workers and equipment in such a densely populated, popular beach area could impact public access by occupying public parking spaces for storage or blocking public rights-of-way to and along the beach, especially during the summer months when beach use is at its peak. Visual resources could be impacted by blockage of designated view corridors to or along the ocean by the new home or landscaping. Therefore, **Special Condition #2** requires submittal of landscape plan that limits landscaping in the public view corridors to a height of three feet. **Special Condition #3** prohibits work during the busy summer months to ensure that public use of the rights-of-way adjacent to the project site is not adversely impacted. To ensure the applicant fully understands the restriction of the timing condition, **Special Condition #4** requires the applicant to submit a written agreement memorializing their acknowledgment of and acceptance to the timing of development. Additionally, the

applicant must submit a weekly construction schedule as proof that no construction will occur during the busy summer months.

Thus, as conditioned, the project will be consistent with the public access and visual resources protection polices of Chapter 3 of the Coastal Act. Therefore, Commission staff recommends **approval of** coastal development permit application 6-17-0962 as conditioned.

TABLE OF CONTENTS

I. MOTION AND RESOLUTION.....	5
II. STANDARD CONDITIONS	5
III. SPECIAL CONDITIONS	6
IV. FINDINGS AND DECLARATIONS.....	9
A. PROJECT DESCRIPTION	9
B. HISTORY	9
C. PUBLIC ACCESS/PARKING	10
D. COMMUNITY CHARACTER/ VISUAL QUALITY	14
E. LOCAL COASTAL PLANNING.....	15
F. CALIFORNIA ENVIRONMENTAL QUALITY ACT	16

APPENDICES

Appendix A – Substantive File Documents

EXHIBITS

[Exhibit 1 – Location Map](#)

[Exhibit 2 – Site Photo](#)

[Exhibit 3 – 1985 Encroachment Maintenance and Removal Agreement \(ERMA\)](#)

[Exhibit 4 – Encroachment and Rights-of-Way](#)

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** Coastal Development Permit Application No. 6-17-0962 subject to the conditions set forth in the staff recommendation.*

Staff recommends a **YES** vote on the foregoing motion. 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:

The Commission hereby approves coastal development permit 6-17-0962 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. 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.

II. STANDARD CONDITIONS

This 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.

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. Revised Final Plans.

(a) **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit for the review and written approval of the Executive Director, revised final plans approved by the City of San Diego that are in substantial conformance with the plans prepared by Timothy J. Golba dated 10/2/17 except that they shall comply with the following:

- i. All development—including existing fencing, decking, and landscaping—located outside the property line as generally depicted in [Exhibit No. 4](#) shall be removed.
- ii. Any new fencing must be placed on the inside the property line.
- iii. The public area exposed by removing the encroachments must either (1) be left as a dirt patch or (2) paved with concrete that matches the existing boardwalk/Brighton Court rights-of-way. No structures, landscaping, decorative concrete, etc. is permitted within the rights-of-way.

(b) The permittee shall undertake development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director determines that no amendment is legally required for any proposed minor deviations.

2. Final Landscape/Yard Area Plans.

(a) **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and written approval final landscape plans. Said plans shall first be stamped approved by the City of San Diego and be in substantial conformance with the landscape plans prepared by Timothy J. Golba dated 10/2/17 and shall include the following:

- i. A view corridor, ten feet wide, shall be preserved in the west and north yard area adjacent to Ocean Front Walk and Brighton Court,

respectively. All proposed landscaping in the west and north yard area shall be maintained at a height of three feet or lower, including raised planters, to preserve the views from Mission Boulevard toward and along the ocean.

- ii. All landscaping shall be drought tolerant and native or non-invasive plan 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.
- iii. Any fencing and walls including glass walls, trellis walls, and retaining walls in the northern yard setback areas along Ocean Front Walk shall not exceed a height of three feet above the existing grade or proposed grade, whichever is lower.
- iv. A written commitment by the applicant that five years from the date of the issuance of the coastal development permit for the residential structure, the applicant will submit for the review and written approval of the Executive Director a 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 applicant, or successor in interest, shall submit a revised or supplemental landscaping plan must be prepared by a licensed Land Architect or Resource Specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

- (b) The permittee shall undertake development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director determines that no amendment is legally required for any proposed minor deviations.

3. **Timing of Development.** No construction shall take place for the project from Memorial Day Weekend to Labor Day of any year. Access corridors and staging areas shall be located in a manner that has the least impact on public access via the maintenance of existing public parking areas and traffic flow on coastal access routes (e.g. no street closures or use of public parking as staging areas).
4. **Written Agreement. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the property owner shall submit a written agreement, in a form and content acceptable to the Executive Director that acknowledges and accepts the timing of development approved pursuant to Special Condition #3 and provides a weekly construction schedule to confirm that no construction will occur from Memorial Day Weekend to Labor Day.
5. **Restrictions on Rights-of-Way.**
 - (a) BY ACCEPTANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant agrees and acknowledges no development, as defined in Section 30106 of the Coastal Act, may occur in the City's rights of way on Ocean Front Walk and Brighton Court as generally depicted on [Exhibit No. 4](#).
 - (b) BY ACCEPTANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant agrees, for itself and all successors in interest, that it has no development rights on the City's rights of way under any agreement in effect, and relinquishes any claim that it does under the previous encroachment agreement with the City of San Diego, recorded as Recording No. 85-327276, concerning the maintenance and liability for development encroaching onto the Easterly 12 Feet of Ocean Front Walk Right of Way.
 - (c) WITHIN 90 DAYS OF ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT, the applicant shall remove all existing development, including fencing, a deck, and landscaping, that currently encroaches onto the City's rights of way on Ocean Front Walk and Brighton Court, as generally depicted on [Exhibit No. 4](#). [Exhibit No. 4](#) shall be attached as an exhibit to the Notice of Intent to issue the Coastal Development Permit, and shall be recorded, as required by Special Condition 6, as an attachment to the Notice of Intent.
6. **Deed Restriction. PRIOR TO 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.

IV. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION

The proposed project is demolition of an existing 1,768 square foot, one-story duplex and construction of a new 2,050 square foot, 28-ft high, three-story triplex with two garages and a carport for a total of six parking spaces, in the Mission Beach community of the City of San Diego. New landscaping in the rear and interior yards is also proposed. The project site is located adjacent to Ocean Front Walk, a public oceanfront boardwalk. The approximately 4,326 square foot project site is located southeast of the intersection of Brighton Court and Ocean Front Walk. The subject site is within an existing residential neighborhood zoned R-S Subdistrict.

The existing development includes a raised wood deck, wood fence, and vegetation that extend approximately twelve feet west of the private property line into the Ocean Front Walk public right-of-way easement, and two feet north into the Brighton Court public right-of-way (see [Exhibit No. 4](#)). The applicant is proposing to retain all of the existing encroachments in the City's rights-of-way.

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

B. HISTORY

The Ocean Front Walk concrete boardwalk was originally constructed in 1928 and runs along the western side of Mission Beach from the South Mission Beach Jetty north approximately 2.5 miles to Garnet Avenue in the community of Pacific Beach. Ocean Front walk runs north/south along the beach and serves as a highly popular public accessway for bicyclists and pedestrians, as well as a view corridor along the shoreline.

Historically, there have a variety of privately maintained fences, walls, decks, landscaping, and patio improvements located within the public right-of-way of the boardwalk. The width of the existing boardwalk varies based on the encroachments and the location of the seawall/bulkhead on the seaward side of the boardwalk. At the subject site, the legal width of the boardwalk right-of-way is approximately 27 feet, but because of private encroachments in the area, the improved boardwalk is only approximately 15 feet wide.

Starting in 1999, the Commission approved a series of CDPs authorizing the City of San Diego to remove the private encroachments and widen the segment of Ocean Front Walk north of Belmont Park to approximately twenty-three feet (CDP Nos. 6-99-090, 6-00-001, 6-00-123, 6-01-029, and 6-01-029-A1). However, due to a lack of funding, the City of San Diego has not conducted any widening south of Belmont Park, where the subject project site is located. Thus, nearly every property south of Belmont Park fronting the boardwalk still maintains private encroachments extending into the public right-of-way.

Based on a review of aerial photos, the existing duplex appears to have been constructed prior to 1972. There is no history of Commission permit action on the site. The wooden fence and deck the encroach into the boardwalk and street right-of-way appear to have existed since at least 1979.

C. PUBLIC ACCESS/PARKING

The following Coastal Act policies are most pertinent to the issue of public access:

Section 30210 of the Coastal Act states:

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

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 part:

(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby,

[. . .]

Section 30213 of the Coastal Act states, in part:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Section 30252 of the Coastal Act states, in part:

The location and amount of new development should maintain and enhance public access to the coast by . . . (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation . . .

Section 30604 of the Coastal Act states, in part:

[. . .]

(c) Every coastal development permit issued for any development between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone shall include a specific finding that the development is in conformity with the public access and public recreation policies of Chapter 3 (commencing with Section 30200).

The project site is located adjacent to the public beach and Ocean Front Walk. The boardwalk is accessible from the east/west courts and streets off of Mission Boulevard, and provides access to the sandy beach at stairways located at various points along the seawall. Ocean Front Walk is a popular thoroughfare, especially during the summer, and is frequented by pedestrians, bicyclists, skateboarders, and more. Ocean Front Walk and Brighton Court are part of the larger network of public rights-of-way that make up the Mission Beach community's public accessways. Brighton Court sits north of the project and like other east-west public rights-of-way in Mission Beach, serves as a pedestrian access way for the public to reach the shoreline.

The Commission typically reviews projects in Mission Beach to ensure that all new proposed development complies with the City of San Diego's setback requirements and does not encroach into public access or public view corridors to the ocean. In this particular residential zone (R-S), there are a number of homes, including the subject site, that retain non-conforming setbacks and encroachments into Ocean Front Walk. For these properties, the City has typically required that property owners obtain an Encroachment Maintenance and Removal Agreement (EMRA) for such improvements. These agreements are required by the City of San Diego for any privately-owned and/or privately-maintained encroachment located in the public right-of-way. The conditions for an EMRA are detailed in Section 129.0715 of the City's Municipal Code. The EMRA requires a private landowner with an encroachment into a public right-of-way to comply with an enumerated list of conditions which are largely concerned with apportioning liability for the encroachment to the private owner, ensuring the encroachment does not adversely affect the public's safety, and stating the requirements for removal of the encroachment. For the subject site, the 1985 EMRA puts the property owner on notice that when the City is able to procure the funding, it will finish the

removal of private encroachments and widen Ocean Front Walk just as it has done north of Belmont Park (see [Exhibit No. 3](#)).

However, when the existing principal structures on a site are demolished—as is the case with the proposed project—the entire site should be brought into compliance with current requirements, including removal of any encroachments. Although the legal width of Ocean Front Walk in this location is twenty-seven feet, the raised wood deck, wood fence, and vegetation that extend approximately twelve feet into Ocean Front Walk reduces the usable width of the boardwalk to approximately fifteen feet. As for Brighton Court, the legal width of the walkway right-of-way is approximately ten feet; however, the usable width is only five feet due to the two foot encroachment on the subject site and the three foot encroachment from the property to the north.

New development adjacent to the boardwalk should be sited and designed without the use of or reliance on public property. Cumulatively, the existing encroachments into the boardwalk significantly reduce the width of the public rights-of-way, thereby reducing the usability of these public shoreline accessways. The City has not expressed its intent to expand the boardwalk at this time or in the immediate future. However, the gradual removal of the encroachments on a case-by-case basis when each site redevelops will greatly facilitate the future expansion of the boardwalk and sets clear expectations for property owners that public accessways should not be used for private residential purposes. In the meantime, removing the existing encroachment will create twelve feet of space between the boardwalk and the private residential development, which will discourage any future privatization of the public boardwalk.

As a property zoned R-S and abutting Ocean Front Walk and a Court, the proposed development must satisfy the setback requirements of the Mission Beach Planned District Ordinances. The applicant is required to have a ten-foot setback from Ocean Front Walk, a fifteen-foot setback from Brighton Court, and a five-foot setback in the southern interior yard. The proposed footprint of the residence will allow the applicant to satisfy all setback requirements and give the applicant an ample amount of private yard space to use even with the removal of the encroachment. Removal of the 672 square feet of encroachments will allow the applicant to have approximately 1,339 square feet of walkable yard space within the property line. Thus, removal of the encroachment will not impair the applicant's ability to have a usable private yard area.

Furthermore, removing the encroachment on Brighton Court now will result in an immediate improvement in public access and sightlines to the ocean along this street end. The City of San Diego has given permission to condition the issuance of our CDP on the removal of encroachment. Allowing the encroachments to remain would be inconsistent with the public access policies of the Coastal Act requiring that public access be maximized and public recreational facilities be protected, encouraged and provided.

Requiring removal of the encroachments on the site is also consistent with past Commission action in Mission Beach. The Commission has approved numerous permits for removal of existing encroachments into the boardwalk (CDPs 6-00-127; 6-04-38; 6-04-75; 6-06-67; 6-12-017; 6-12-018). The Commission has also advised applicants for

minor redevelopment projects with existing encroachments into the boardwalk on the site that at such time when the site was redeveloped, all encroachments would be required to be removed (CDPs 6-06-63; 6-08-11).

Therefore, **Special Condition #1** requires the applicant to submit revised final plans demonstrating that all development outside of the property line has been removed. This includes the encroaching wood fence, the wood deck, and the narrow strip of landscaping fronting the fence. The removal of the encroachment will leave an approximately 672 square feet dirt patch adjacent to the improved boardwalk. It is unclear whether the encroachments into Brighton Court were constructed on the paved street, but removal of these encroachments may also leave some exposed area. As conditioned, the exposed rights-of-way can be left as a dirt patch or paved it with concrete that is consistent with type of concrete used for Ocean Front Walk and Brighton Court. No structures, landscaping, decorative concrete or other design features that would privatize the rights-of-way are permitted. Additionally, any fencing must be entirely within the property line and if applicant paves the dirt patch left from removing the encroachment, it must match the existing concrete of the rights-of-way to avoid the appearance that it is private property. **Special Condition #5** requires the applicant to abate all existing development encroaching into the Ocean Front Walk and Brighton Court within 90 days of issuance of the permit so that these segments of the rights-of-way will be open to public to be used as it was originally intended to be used. To further ensure that neither the applicant or any future owner of the subject property attempts to rely on the EMRA for future encroachments into the public rights-of-way, **Special Condition #5** also requires that the applicant acknowledge that the ERMA is of no effect, and bars any future development in the City's rights-of-way. Removal of all development on the rights of way in particular will provide better access to Mission Beach, protect the visitor serving use of the boardwalk, and removing an impediment that interferes with the public's right of access to the sea, consistent with Sections 30210, 30211, and 30213 of the Coastal Act.

The City's certified LCP requires applicant to provide two off-street parking spaces per dwelling unit. The applicant is proposing to provide a total of six off-street parking spaces for three units. Thus, adequate parking will be provided consistent with Section 30252 of the Act. Like many project sites in Mission Beach, the site here is constrained and has limited access and space to accommodate all the demolition and construction activities. While the applicant is proposing to use the northern interior yard for staging, there are still concerns of public parking spaces or public rights-of-way that could be used for storage of construction equipment and/or worker parking. This is most concerning during the summer months when beach-going is at its peak and as a result so are public parking demands and use of public accessways. To avoid impacts to public access associated with demolition and construction activities, **Special Condition #3** prohibits development during the busy summer month when beach-going is at its peak. **Special Condition #4** requires the applicant to submit a written agreement memorializing his acknowledgment of and acceptance to the timing of development. **Special Condition #4** also requires the applicant to submit a weekly construction schedule as proof that no construction will take place from Memorial Day Weekend to Labor Day. Thus, public parking and public access impacts from demolition and construction activity are avoided

during the peak use of the beach and access to Mission Beach will be maintained pursuant to Coastal Act Section 30212.

Lastly, **Special Condition #6** requires the applicant to record a deed restriction against the property that imposes the conditions of the permit for the purpose of providing notice to future property owners.

In summary, the Commission finds that the removal of the encroachment will maximize public access to and along the shoreline. Additionally, public accessways and parking will not be usurped for private uses. Therefore, the Commission finds the proposed development—as conditioned—consistent with Chapter 3 of the Coastal Act.

D. COMMUNITY CHARACTER/ VISUAL QUALITY

Section 30251 of the Coastal Act states, in part:

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

As discussed above, the exact age of the residence is unknown, but review of aerial records indicates the existing structure has been located on the site since at least 1972. Section 143.0212 of the City's Land Development Code provides that the City shall determine the need for a site-specific survey for the purposes of obtaining a construction permit or development permit for development for any parcel containing a structure that is 45 or more years old. In this particular case, the City's Development Services did not find the structure to be eligible for historical designation and there is no evidence that the structure has historic value.

With the exception of Belmont Park, the entire stretch of properties abutting Ocean Front Walk are a mix of single and multi-family residences, with a small number of commercial scattered throughout the community. The character of the buildings in the Mission Beach community range from single-story beach cottages to three-story multi-family units. The proposed triplex will be consistent with the character and bulk and scale of the community.

In addition to being a major public access and recreational facility, Ocean Front Walk also serves as a public view corridor along the shoreline. Additionally, in the Mission Beach community the public rights-of-way of the various courts and places, which are generally east-west running streets, as well as the yard setbacks of the adjacent properties comprise the community's public view corridors. Brighton Court is one of the many east-west public rights-of-way in the Mission Beach community.

The ability for Ocean Front Walk and Brighton Court to serve as public view corridors is degraded when encroachments in the right-of-way are allowed to remain. It is anticipated that as the non-conforming structures redevelop, all properties with encroachments into Ocean Front Walk will eventually be required to abate any encroachments and keep the footprint of development within their respective property lines, creating greater public space and opening up views to and along the beach.

While the largest existing encroachment on the subject site is into the Ocean Front Walk setback, the smaller encroachment into Brighton Court is equally concerning. Even without any encroachment, the normal width of Brighton Court is ten feet. This already narrow public view corridor has been further reduced by private encroachments from the subject site and the property immediately to the north. Requiring removal of all encroachments beyond the private property line per **Special Conditions #1** and **#5** will restore public views of the ocean from Mission Boulevard and reduce the visual encroachment and privatization of the boardwalk associated with the encroachments on Ocean Front Walk. The restoration of views will also underscore to the City and the public the importance of removing the encroachments in this neighborhood. As stated above, even with the removal of the encroachment, the required yard setbacks will allow the applicant to have a spacious yard within the property line. Thus, public views along Ocean Front Walk and Brighton Court will be protected, consistent with Coastal Act Section 30251.

The Commission typically reviews projects to ensure that any new development does not encroach into the yard setback areas which could impede public views to and along the ocean. In this particular project, there is potential for landscaping in the northern and western yard areas to impede views to and along the ocean.

The location of the property within multiple view corridors and in close proximity to the beach raises the possibility of visual impacts from the landscaping in the required rear and interior yard setbacks. Landscaping and fixtures could reach a height that obstructs public views. As such, **Special Condition #2** requires submittal of a landscape plan that limits landscaping in the public view corridors to a height of three feet to protect view corridors, while allowing the property to keep in character with adjacent properties.

In summary, the Commission finds that only as conditioned to remove the existing encroachments into the public walkway can the project be found consistent with the character of the surrounding community. The property will still have a rear and interior yard for use by the applicant. In addition, the development of a three-story multi-family unit is consistent with the pattern of development in this area. Therefore, the Commission finds the proposed development—as conditioned—consistent with Chapter 3 of the Coastal Act.

E. LOCAL COASTAL PLANNING

Section 30604(a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the

local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, such a finding can be made.

The City of San Diego has a certified LCP and issues permits for development within its jurisdiction. The subject site is zoned R-S Subdistrict and the proposed residential development is consistent with the land use and zoning. However, the subject site is located in an area of original jurisdiction where the Commission retains permanent permit authority. Thus, Chapter 3 of the Coastal Act remains the legal standard of review.

As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act as well as with the certified LCP which the Commission uses as guidance for the subject area. 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.

F. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. The City of San Diego determined that the proposed project is exempted from CEQA review since it does not require a discretionary permit, but only a ministerial construction permit.

The proposed project has been conditioned in order to be found consistent with the Chapter 3 policies of the Coastal Act. Mitigation measures—including conditions addressing landscaping and construction activity—will minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally-damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

- Certified Mission Beach Precise Plan
- Certified Mission Beach Planned District Ordinances
- City of San Diego Land Development Code