

**CALIFORNIA COASTAL COMMISSION**

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# W27b

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## STAFF REPORT: REGULAR CALENDAR

<b>Application No.:</b>	<b>6-18-0277</b>
<b>Applicant:</b>	<b>Dean Goldman</b>
<b>Agent:</b>	James Gabriel
<b>Location:</b>	3613 Ocean Front Walk, Mission Beach, San Diego, San Diego County (APN No. 423-605-02)
<b>Project Description:</b>	Demolition of a two-story, 1,232 sq. ft. duplex and a one-story, 884 sq. ft. duplex and construction of a three-story, 2,998 sq. ft. duplex with a 482 sq. ft. attached garage on a 2,720 sq. ft. lot
<b>Staff Recommendation:</b>	Approval with Conditions

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### SUMMARY OF STAFF RECOMMENDATION

The proposed project would include the demolition of four existing units that were constructed prior to the effective date of the Coastal Act and replacement with only two units, resulting in the removal of two units from the City of San Diego's housing stock. The City evaluated the project's compliance with the requirements of the Mello Act and found that it was exempt under Government Code Section 65590(b)(1) because it involves the demolition of more than one residential structure with fewer than 10 dwelling units. In addition, the City's density regulations, which are included in the certified Local Coastal Program (LCP), allow a maximum of one dwelling unit per 1,200 sq. ft. of lot area. Because the subject lot is 2,998 sq. ft., a maximum of two dwelling units are allowed under the City's existing density regulations. Thus, the proposed project would bring the site into conformance with the City's certified LCP.

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

The project site is located directly adjacent to Ocean Front Walk, a public boardwalk on the beach. The primary issues raised by this project relate to the protection of public views and public access. While the proposed project will not block any public views to the beach or along the shoreline, visual resources could be impacted if the required view corridors were blocked by landscaping as it grows in the future. In addition, the presence of construction 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 right-of-ways to and along the beach, especially during the summer months when beach use is at its peak.

To address these potential adverse impacts, Commission staff is recommending several special conditions. **Special Condition 1** requires submittal of final site construction and landscaping plans that identify that all gates and fences in the side yards will be 75% open to the light and that limit landscaping to a height of 3 feet with the exception of two canopy trees in the side yards consistent with the certified LCP. **Special Condition 2** prohibits development activity during the busy summer months from Memorial Day Weekend to Labor Day in order to remove the potential of development activity impeding coastal access. **Special Condition 3** requires the property owner to submit a written agreement that acknowledges and accepts the construction timing limitations. **Special Condition 4** 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. Therefore, as conditioned, the project will be consistent with the public access and visual resource protection policies of Chapter 3 of the Coastal Act, and no impacts to coastal resources are anticipated.

Commission staff recommends **approval** of coastal development permit application 6-18-0277 as conditioned.

**TABLE OF CONTENTS**

**I. MOTION AND RESOLUTION..... 4**

**II. STANDARD CONDITIONS ..... 4**

**III. SPECIAL CONDITIONS ..... 5**

**IV. FINDINGS AND DECLARATIONS..... 7**

    A. PROJECT DESCRIPTION .....7

    B. VISUAL RESOURCES .....8

    C. PUBLIC ACCESS.....9

    D. AFFORDABLE HOUSING ..... 11

    E. LOCAL COASTAL PLANNING..... 12

    F. CALIFORNIA ENVIRONMENTAL QUALITY ACT ..... 12

**EXHIBITS**

[Exhibit 1 – Vicinity Map](#)

[Exhibit 2 – Aerial Photo](#)

[Exhibit 3 – Site Plan](#)

## I. MOTION AND RESOLUTION

### Motion:

*I move that the Commission **approve** Coastal Development Permit Application No. 6-18-0277 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 conditional approval of the permit 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 6-18-0277 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. Submittal of Final Plans

**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 final plans:

- (a) Final Project Plans that substantially conform with the plans submitted to the Commission, titled “Ocean Front Walk Apartments” dated 6/12/2017 and received at the San Diego Commission Office on 4/12/2018.
- (b) Final Landscape/Yard Area Plans that substantially conform with the plans submitted to the Commission, titled “Ocean Front Walk Apartments” dated 6/12/2017 and received at the San Diego Commission Office on 6/14/2018, and shall include the following:
  - i. A view corridor, 10 feet wide, shall be preserved in the west yard area adjacent to Ocean Front Walk. All proposed landscaping in the west yard area shall be maintained at a height of three feet or lower (including raised planters) to preserve the views along Ocean Front Walk.
  - ii. All proposed landscaping in the northern and southern side yard areas shall be maintained at a height of three feet or lower (including raised planters) to preserve views toward the ocean from Strandway, with the following exception:
    - A. A maximum of two canopy trees are allowed, providing the trees reach a maximum height of 24 ft. at maturity and are maintained as such so that the branches do not hang below a height of 8 ft.
  - iii. 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.

- iv. Any fencing and walls, including glass walls, trellis walls, and retaining walls, in the western 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.
- v. Any fencing and walls, including glass walls, trellis walls, and retaining walls, in the southern and northern yard setback areas shall not exceed a height of six feet above the existing grade or proposed grade, whichever is lower, and shall have at least 75% of the surface area open to light.
- vi. 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 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.

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. **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).

3. **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 No. 2, and provide a weekly construction schedule to confirm that no construction will occur from Memorial Day Weekend to Labor Day.
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.

## IV. FINDINGS AND DECLARATIONS

### A. PROJECT DESCRIPTION

The proposed project is the demolition of two existing pre-Coastal Act structures, including a two-story, 1,232 sq. ft. duplex and a one-story, 884 sq. ft. duplex, and the construction of a three-story, 2,998 sq. ft. duplex with a 482 sq. ft. attached garage on a 2,720 sq. ft. lot at 3613 Ocean Front Walk in the Mission Beach community of the City of San Diego ([Exhibit 1](#)). The project site is located on the east side of Ocean Front Walk, a public boardwalk on the beach ([Exhibit 2](#)) and is within an existing residential area zoned R-S. The proposed development is similar in size and scale to the surround residential development to the north and south.

Since the existing structures were built in 1927, they are subject to the City of San Diego's review for historical significance. 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 structures are approximately 91 years old, but the City's Development Services did not find the structures to be eligible for historical designation and there is no evidence that the structures have historic value.

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. VISUAL RESOURCES**

Section 30251 of the Coastal Act states, in part:

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

In the Mission Beach neighborhood, the public right-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. Additionally, the public boardwalk – Ocean Front Walk – which runs north-south along the beach, serves not only as a highly popular public access way, but also serves as a public view corridor along the shoreline.

Because the project is located between the first public road and the sea, there is the potential for the project to impact views to the shoreline from Strandway, as well as views along the shoreline from Ocean Front Walk. The front yard setback area is directly adjacent to Ocean Front Walk and considered the public view corridor along the beach boardwalk. The subject site's side yards are not located adjacent to a court or place; however, partial views of the ocean are available from Strandway, located directly east of the project site, through the side yards.

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. Such encroachments could include structures and/or landscaping. Originally, the proposed project included several tall plants and trees which would have impeded views along Ocean Front Walk; however, after coordinating with Commission staff, the applicant agreed to revise the project to remove landscaping taller than three feet from the Ocean Front Walk view corridor.

The applicant also proposed two trees and several fences and gates in the side yard setback areas that could obstruct potential views to the ocean from Strandway. However, the two trees would be canopy trees, with a mature height of 24 ft. and the applicant has agreed to maintain the tree branches so that they do not hang below a height of 8 ft. in order to preserve views toward the ocean. In addition, at least 75% of the surface areas of the proposed fences and gates would be open to light to allow public views. Both the trees and open fencing are permitted under the certified LCP. The existing pre-Coastal

Act development does not allow for any views toward the ocean due to a large solid fence in the northern side yard and no southern side yard setback. Thus, the proposed project will open up views in the side yards where none currently exist.

To ensure that public views west towards the ocean and along Ocean Front Walk are protected, **Special Condition 1** requires the applicant to submit final plans indicating that no structures or landscaping will be located in the Ocean Front Walk view corridor or the side yards with the exception of open fencing and two trees in the side yard setbacks. **Special Condition 4** requires recordation of the permit conditions against the property to ensure future property owners are aware of the above mentioned protections and conditions.

The subject site contains existing landscaping in the public right-of-way between the property line and Ocean Front Walk. Typically, in the Mission Beach community, the Commission has required the removal of any landscaping or structures that encroach into the public right-of-way to increase public access and avoid the appearance of private property; however, the landscaping at this particular site was previously authorized by the Commission in 2001 with the expansion of Ocean Front Walk, which included a 3 ft. wide landscape buffer from Santa Barbara Place north to Pacific Beach Drive (CDP No. 6-01-29).

The proposed development will be visually compatible with the character of surrounding development as the majority of the adjacent developments are also two- to three-story residences that contain multiple dwelling units. As such, the proposed development is similar in size and scale to the surrounding development.

The development is located within an existing developed area and, as conditioned, will be compatible with the character and scale of the surrounding area and will not impact public views. Therefore, the Commission finds that the development, as conditioned, conforms to Section 30251 of the Coastal Act.

### C. 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(a) of the Coastal Act states, in 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, [...]*

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 . . .*

Additionally, Section 30604(c) of the Coastal Act states, in part:

*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 beach boardwalk on 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 boardwalk. Ocean Front Walk is a popular coastal accessway, especially during the summer, and is frequented by pedestrians, bicyclists, skateboarders, and more. Ocean Front Walk is part of the larger network of public rights-of-way that make up the Mission Beach community's public accessways.

Because many of the lots in Mission Beach, including the subject site, are constrained and have limited access and space to accommodate construction activities and staging, demolition and construction activity could impede public access by occupying public parking spaces or blocking public right-of-ways with materials or debris. Therefore, **Special Conditions 2** prohibits any development during the peak summer months when public access could be impacted and **Special Condition 3** requires the property owner to submit a written agreement indicating that he acknowledges and accepts the construction timing limitations and will submit a weekly construction schedule to confirm that work will not occur during summer.

As conditioned, the proposed development will not have an adverse impact on public access to the coast or to nearby recreational facilities. As conditioned, the proposed development conforms to the public access policies of the Coastal Act.

#### **D. AFFORDABLE HOUSING**

Section 30604 of the Coastal Act states, in part:

*(f) The commission shall encourage housing opportunities for persons of low and moderate income. In reviewing residential development applications for low- and moderate-income housing, as defined in paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code, the issuing agency or the commission, on appeal, may not require measures that reduce residential densities below the density sought by an applicant if the density sought is within the permitted density or range of density established by local zoning plus the additional density permitted under Section 65915 of the Government Code, unless the issuing agency or the commission on appeal makes a finding, based on substantial evidence in the record, that the density sought by the applicant cannot feasibly be accommodated on the site in a manner that is in conformity with Chapter 3 (commencing with Section 30200) or the certified local coastal program.*

*(g) The Legislature finds and declares that it is important for the commission to encourage the protection of existing and the provision of new affordable housing opportunities for persons of low and moderate income in the coastal zone.*

From the date of its enactment in 1976 and until 1981, the California Coastal Act included specific policy language requiring the provision of affordable housing in the coastal zone for persons of low and moderate income. In 1981, the Legislature repealed the Commission's statutory authority to protect and provide affordable housing the Coastal Act; Senate Bill 626 (Mello) (Ch. 1007 Statutes of 1981) amended PRC Section 30213 by deleting the requirement to protect housing opportunities, and added Section 65590 to the Government Code, requiring local governments to protect and increase the supply of affordable housing in the coastal zone by requiring that affordable housing units that are demolished or converted are replaced within the same city or county, within three miles of the coastal zone. The City's certified LCP contains policies that mirror Section 65590.

While Section 30604 of the Coastal Act requires the Commission to encourage the provision of affordable housing opportunities, it is not a Chapter 3 policy and has not been interpreted as a basis for the Commission to mandate the provision of affordable housing through its regulatory program. Thus, the Commission has relied on local jurisdictions to implement the requirements of Government Code Section 65590 in order to protect affordable housing in the coastal zone.

The proposed project would include the demolition of four existing units that were constructed prior to the effective date of the Coastal Act and replacement with only two

units, resulting in the removal of two units from the City of San Diego's housing stock. The City evaluated the project's compliance with the requirements of the Mello Act and found that it was exempt under Government Code Section 65590(b)(1) because it involves the demolition of more than one residential structure with fewer than 10 dwelling units. In addition, the proposed project site is zoned R-S; the City's density regulations, which are included in the certified LCP, allow a maximum of one dwelling unit per 1,200 sq. ft. of lot area in R-S zones. Because the subject lot is 2,998 sq. ft., a maximum of two dwelling units are allowed under the City's existing density regulations. Thus, the proposed project would bring the site into conformance with the certified LCP.

#### **E. LOCAL COASTAL PLANNING**

Section 30604(a) 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 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 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.

#### **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 no CEQA review was required for the proposed project since it does not require a discretionary permit, but only a ministerial construction permit (Pub. Resources Code, § 21080(b)(1).)

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 visual resources and public access, 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 effect which the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and is consistent with the requirements of the Coastal Act to conform to CEQA.