

**CALIFORNIA COASTAL COMMISSION**

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# W7c

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 Hearing Date: 8/8/18

## STAFF REPORT: CONSENT CALENDAR

**Application No.:** 6-18-0277

**Applicant:** Dean Goldman

**Agent:** James Gabriel

**Location:** 3613 Ocean Front Walk, Mission Beach, San Diego, San Diego County (APN No. 423-605-02)

**Project Description:** 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

**Staff Recommendation:** Approval with Conditions

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### SUMMARY OF STAFF RECOMMENDATION

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.

The project site is located adjacent to and landward of a public boardwalk on the beach. As a beachfront development, the proposed project could be subject to coastal hazards such as flooding and wave uprush as sea level rise increases. Although there is an

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existing seawall located seaward of the development that protects the public boardwalk, the subject project should not be designed to rely on the seawall. In addition, if the seawall was no longer maintained, the development is not entitled to shoreline protection.

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 acknowledge the development is proposed in a site subject to coastal hazards and assume the risk of development. **Special Condition 5** requires the applicant to waive any right to construct a future shoreline protective device. **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. Therefore, as conditioned, the project will be consistent with the Chapter 3 policies 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.

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**EXHIBITS**

[Exhibit 1 – Vicinity Map](#)

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[Exhibit 3 – Site Plan](#)

## I. MOTION

### Motion:

*I move that the Commission **approve** the coastal development permit applications included on the consent calendar in accordance with the staff recommendations.*

Staff recommends a **YES** vote. Passage of this motion will result in approval of all the permits included on the consent calendar. The motion passes only by affirmative vote of a majority of the Commissioners present.

## 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. **Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from flooding, sea-level rise, erosion and wave uprush; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.
5. **Waiver of Rights to Future Shoreline Protective Device.** By acceptance of this permit, the applicant acknowledges that this project constitutes new development

under the Coastal Act, and is therefore not entitled to a shoreline protective device under Section 30235 of the Coastal Act. Thus, by acceptance of this permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to construct such devices that may exist under applicable law. The applicant further agrees, on behalf of itself and all successors and assigns, that the landowner(s) shall remove the development authorized by this permit, including the residence, garage, foundations, permitted landscaping encroachments, and patio if (a) any government agency has ordered that the structures are not to be occupied due to coastal hazards, or if any public agency requires the structures to be removed; (b) essential services to the site can no longer feasibly be maintained (e.g., utilities, roads); (c) the development is no longer located on private property due to the migration of the public trust boundary; (d) removal is required pursuant to LCP policies for sea-level rise adaptation planning; or (e) the development would require a shoreline protective device that is inconsistent with the coastal resource protection policies of the Coastal Act or certified LCP. In the event that portions of the development fall to the beach before they are removed, the landowner(s) shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

6. **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 AND LOCATION**

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. beachfront 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 and is within an existing residential area zoned R-S ([Exhibit 2](#)). The proposed development is similar in height, bulk, and scale to the surrounding residential development to the north and south.

The proposed project is also consistent with the development standards contained in the City's certified Local Coastal Program (LCP), including those standards related to building height and floor area ratio. 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.

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 accessway, 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 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. The front yard setback area is directly adjacent to Ocean Front Walk and considered the public view corridor along the beach boardwalk. 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 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 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.

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).

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. **Special Condition 6** requires recordation of the permit conditions against the property to ensure future property owners are aware of the above mentioned protections and conditions.

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 City's certified LCP.

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.

The project site is located on an oceanfront lot, and is therefore vulnerable to erosion, flooding, wave runup, and storm hazards. These hazard risks are exacerbated by sea-level rise that is expected to occur over the coming decades. In this geographic area, the main concerns raised by beach fronting developments are impacts to public access and recreation, and whether hazardous conditions might eventually lead to a request to build a shoreline protective device to protect the proposed development.

The Coastal Act discourages shoreline protection devices because they generally cause adverse impacts to coastal resources and can constrain the ability of the shoreline to respond to dynamic coastal processes. As a sandy beach erodes, the shoreline will generally migrate landward toward the structure, resulting in a reduction and/or loss of public beach area with no increase of the landward extent of the beach. A beach that rests either temporarily or permanently at a steeper angle than under natural conditions will have less horizontal distance between the mean low water and mean high water lines, which narrows the beach area available for public access. Shoreline protective devices also result in a progressive loss of sand because shore material is not available to nourish the nearshore sand bar. The lack of an effective sand bar can allow such high wave energy on the shoreline that materials may be lost offshore, where it is no longer available to nourish the beach. This also affects public access through a loss of beach area. Shoreline protection devices such as revetments, seawalls, and bulkheads cumulatively affect shoreline sand supply and public access by causing accelerated and increased erosion on adjacent public beaches. Such a protective structure is often placed on public land rather than on the private property it is intended to protect, resulting in a physical loss of beach area formerly available to the general public. In general, shoreline protection devices are not attractive, can detract from a natural beach experience, and adversely impact public views. Shoreline protective devices, by their very nature, tend to conflict with various Chapter 3 policies because shoreline structures can have a variety of adverse impacts on coastal resources, including adverse effects on sand supply, public access, coastal views, natural landforms, and overall shoreline beach dynamics on and off site, ultimately resulting in the loss of beach.

Because shoreline protection devices, such as seawalls, revetments, and groins, can create adverse impacts on coastal processes, Coastal Act Section 30253 specifically prohibits development that could "...create [or] contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs." However, Section 30235 of the Coastal Act recognizes that *existing* development may be protected by shoreline protective devices subject to certain conditions. This limitation is particularly important when considering new development, such as in this case, because if it is known that a new development may need shoreline protection in the future, it would be unlikely that such development could be found to be consistent with Section 30253 of the Coastal Act. Therefore, the Commission's action on this project must consider the effects of wave uprush, flooding, and storm events (with sea-level rise considerations) on public access and recreation.

### **Sea Level Rise**

Sea level has been rising for many years. Several different approaches have been used to analyze the global tide gauge records in order to assess the spatial and temporal variations, and these efforts have yielded sea level rise rates ranging from about 1.2 to 1.7 mm/year (about 0.5-0.7 inches/decade) for the 20<sup>th</sup> century. However, since 1990 the rate has more than doubled, and the rate of sea level rise continues to accelerate. Since the advent of satellite altimetry in 1993, measurements of absolute sea level from space indicate an average global rate of sea level rise of 3.4 mm/year or 1.3 inches/decade – more than twice the average rate over the 20<sup>th</sup> century and greater than any time over the

past one thousand years.<sup>1</sup> Recent observations of sea level along parts of the California coast have shown some anomalous trends; however, there is unequivocal evidence that the climate is warming, and such warming is expected to cause sea levels to rise at an accelerating rate throughout this century.

The State of California has undertaken significant research to understand how much sea level rise to expect over this century and to anticipate the likely impacts of such sea level rise. In 2013, the Ocean Protection Council (OPC) adopted the National Research Council (NRC) report, “Sea-Level Rise for the Coasts of California, Oregon, and Washington: Past Present and Future”, as best available science for the State of California, and recommended in its 2013 State Sea-Level Rise Guidance that state agencies and others use these projections in their planning processes (the Coastal Commission also adopted the NRC report as best available science in its 2015 Sea Level Rise Policy Guidance). Two subsequent OPC reports have updated the best available science, including the *Rising Seas in California: An Update on Sea-Level Rise Science*, released in April 2017 by a working group of OPC’s Science Advisory team, and the *State of California Sea Level-Rise Guidance: 2018 Update*. The OPC’s most recent projections in its statewide sea-level rise guidance is that in this area sea levels may rise between 1.6 and 5.7 feet by the year 2090, though there is a risk of much more significant sea level rise depending on various uncertainties, including the dynamics of ice sheet loss. The projection is given in a range largely because researchers cannot know exactly how much greenhouse gases we will continue to emit over the coming decades – large-scale curtailment of greenhouse gas emissions would keep sea level rise towards the lower end of the projections, while business as usual emissions scenarios would result in the higher end of the projections. Because the world has continued along the “business as usual” scenario (and data suggests temperatures and sea level rise are tracking along the higher projections), OPC and the Natural Resources Agency have continued to recommend that we avoid relying on the lower projections in planning and decision-making processes.

As our understanding of sea level rise continues to evolve, it is possible that sea level rise projections will continue to change as well (as evidenced by the recent updates to best available science). While uncertainty will remain with regard to exactly how much sea levels will rise and when, the direction of sea level change is clear and it is critical to continue to assess sea level rise vulnerabilities when planning for future development. Importantly, maintaining a precautionary approach that considers high or even extreme sea level rise rates and includes planning for future adaptation will help ensure that decisions are made that will result in a resilient coastal California.

On the California coast, the effect of a rise in sea level will be the landward migration of the intersection of the ocean with the shore, which will result in increased flooding, erosion, and storm impacts to coastal areas. On a relatively flat beach, with a slope of 40:1, a simple geometric model of the coast indicated that every centimeter of sea-level

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<sup>1</sup> California Ocean Protection Council Science Advisory Team, *Rising Seas in California: An Update on Sea-level Rise Science*, available at <http://www.opc.ca.gov/webmaster/ftp/pdf/docs/rising-seas-in-california-an-update-on-sea-level-rise-science.pdf>.

rise will result in a 40 cm landward movement of the ocean/beach interface. For fixed structures on the shoreline, such as a seawall, an increase in sea level will increase the inundation of the structure. More of the structure will be inundated or underwater than is inundated now and the portions of the structure that are now underwater part of the time will be underwater more frequently. Accompanying this rise in sea level will be an increase in wave heights and wave energy. Along much of the California coast, the bottom depth controls the nearshore wave heights, with bigger waves occurring in deeper water. Since wave energy increases with the square of the wave height, a small increase in wave height can cause a significant increase in wave energy and wave damage. Combined with the physical increase in water elevation, a small rise in sea level can expose previously protected back shore development to increased wave action, and those areas that are already exposed to wave action will be exposed more frequently, with higher wave forces. Structures that are adequate for current storm conditions may not provide as much protection in the future.

The proposed project is located directly adjacent to and east of Ocean Front Walk, an approximately 2.3-mile public beach boardwalk constructed prior to the effective date of the Coastal Act. The boardwalk consists of a 20-ft. wide sidewalk bordered on the seaward side by a concrete parapet above a sheetpile seawall that extends approximately 20 feet down into the sand. During the summer, sand typically covers most of the seaward side of the seawall; in the winter, more of the seawall is exposed, and during extreme storm events, waves have overtopped the parapet. The boardwalk effectively serves as a low seawall along the entire shoreline in Mission Beach, set back from the shoreline and fronted by the beach. If beach erosion were to continue unabated as a result of accelerated sea level rise, it would eventually lead to a situation where the water's edge would be at the base of the seawall that protects the boardwalk. Without the beach buffer, the waves – particularly storm waves – would eventually undercut the seawall and damage the boardwalk. While the seawall does reduce the risk to the structures inland of the boardwalk from flooding from overtopping waves, the seawall should not be relied upon to protect new private development, including the proposed project.

The Commission has authorized repair and maintenance to the boardwalk and associated seawall in the past (CDP Nos. 6-98-102, 6-00-130, 6-03-090-W, 6-05-0125-W, 6-13-1359); however, those repairs were authorized to maintain and protect existing public improvements, including the boardwalk itself, as well as public amenities located landward of the boardwalk (i.e., Belmont Park, public parking, and a grassy park).. While future repair and maintenance of the boardwalk and seawall could be considered and authorized by the Commission, any such repairs would likely be authorized only for the benefit of the existing public amenities, and would not be considered for the protection of private residential development landward of the boardwalk, including the proposed project.

Because there is a wide sandy beach (approximately 200 ft. wide) and a public boardwalk (approximately 20 ft. wide) protected by a seawall between the subject property and the Pacific Ocean, wave runup and overtopping are not expected to significantly impact this site over the life of the proposed improvements; however, as a beachfront property, the

proposed development may be threatened by sea-level rise at some point in the future and require a shoreline protective device.

In any case, new development is not entitled by right to shoreline protection under the Coastal Act, and the Commission would not likely approve this project if it required a shoreline protection device now or at some point in the future. Although a public seawall exists today that provides some protection of the site, the seawall is not guaranteed to be maintained into the future. The applicant must therefore acknowledge that the project, as new development, is not entitled to shoreline protection and it must waive any possible right to construct a shoreline protective device for the property in the future, as outlined in **Special Condition 5**. Further, the landowner must remove the development if (a) any government agency has ordered that the structures are not to be occupied due to coastal hazards, or if any public agency requires the structures to be removed; (b) essential services to the site can no longer feasibly be maintained (e.g., utilities, roads); (c) the development is no longer located on private property due to the migration of the public trust boundary; (d) removal is required pursuant to LCP policies for sea level rise adaptation planning; or (e) the development would require a shoreline protective device that is inconsistent with the coastal resource protection policies of the Coastal Act or certified LCP.

The applicant has acknowledged that periodic storm and flood events occur throughout the Mission Beach community and has incorporated the following design features to avoid and minimize potential adverse impacts from coastal hazards: a mat foundation to accommodate liquefaction and differential movement related to high water levels; locating all finishing materials, partitions, walls, cabinets, and other fixtures on top of six inch high raised concrete curbs to separate materials subject to water damage from potential water intrusion on the ground floor; using hard surface floor finish materials appropriate for water exposure (i.e., concrete or tile); designing ground floor elevations to allow possible water intrusion during storm events to flow through the residence and garage and out to the alley at the lower elevation; recognizing that the elevation change between the garage and the residence at the ground floor will help prevent the possible back up of water in the alley from reaching the residential spaces; and designing exterior patios and planters to allow excess storm water to flow through the site from the upper boardwalk elevation to the lower alley elevation. **Special Condition 4** requires the applicant to acknowledge the risk of building in a hazardous location and ensures that the risks of property damage or loss arising from sea level rise or other changed circumstances are borne by the applicant enjoying the benefits of its private new development, and not the public.

## **B. COASTAL HAZARDS**

Coastal Act Sections 30235 and 30253 acknowledge that seawalls, revetments, and other such “hard” structures designed to forestall erosion also alter natural landforms and natural shoreline processes. Accordingly, with the exception of coastal dependent uses, Section 30235 limits the construction of shoreline protective works to those required to protect existing permitted structures or public beaches in danger from erosion. Section 30253 requires that new development be sited, designed, and built in a manner to not

require construction of shoreline protective devices that would substantially alter natural landforms along the shoreline.

The proposed development has been designed to withstand periodic flooding and, as conditioned, will not rely on shoreline protection in the future. Therefore, the Commission finds that the development, as conditioned, conforms to Sections 30235 and 30253 of the Coastal Act.

**C. COMMUNITY CHARACTER/VISUAL QUALITY**

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.

**D. PUBLIC ACCESS/PARKING**

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 Sections 30210 through 30214, Sections 30220 through 30224, Section 30252 and Section 30604(c) of the Coastal Act.

**E. LOCAL COASTAL PLANNING**

The subject site is located in an area of original jurisdiction, where the Commission retains permanent permit authority and Chapter 3 of the Coastal Act remains the legal standard of review. As 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**

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. 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.