

CALIFORNIA COASTAL COMMISSION

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



W13b

Filed: 8/9/2019
180th Day: 2/5/2020
Staff: S. Leach-SD
Staff Report: 11/21/2019
Hearing Date: 12/11/2019

STAFF REPORT: REGULAR CALENDAR

Application No.: 6-19-0609

Applicant: Domenic J. Lupo

Agent: Tim Golba and Isabela Guzman, Golba Architecture Inc.

Location: 3680 Mission Boulevard, Mission Beach, San Diego, San Diego County (APN: 423-595-10)

Project Description: Demolition of an existing non-conforming 2-story, 2,173 sq.ft. 3-unit residence and construction of a new 3-story, 3,532 sq.ft. duplex including a 496 sq. ft. junior companion unit with two attached tandem garages totaling 826 sq.ft. on a 3,281 sq.ft. lot.

Staff Recommendation: Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

This application was rescheduled after being taken off the Consent Calendar during the Commission's October 2019 hearing due to concerns regarding loss of residential density. At that time, the project description was the demolition of a 4-unit non-conforming building and construction of a new duplex. Since the October hearing, staff has received updated and corrected information from the applicant in regards to both the number of existing units on site, and the existing and proposed parking. The most significant correction is that the existing structure only contains 3 units, rather than 4 units, as was originally stated by the applicant. The applicant has clarified that a fourth electric and gas meter on site, previously thought to have been attached to a fourth unit, is

in fact associated with a common laundry room for the three other units on-site. Plans and building records confirm that there are 3 existing units on the site.

Under the City's zoning code and the certified LCP, which is used for guidance in this area, only two units are allowed on the site. However, after working with Commission staff, the applicant has proposed to incorporate a junior accessory dwelling unit into the project. While the existing development is not in conformance with local zoning, the proposed development will comply with all required zoning and represents the maximum allowable density (2 units and one companion unit) under the current set of regulations in the Mission Beach Planned District Ordinance (PDO) of the San Diego Land Development Code. Thus, the project will not result in the loss of any housing stock.

The existing development includes a front yard patio and wooden fence that extend approximately 2 ½ feet south beyond the front property line into the 10-foot wide public right-of-way, as well as encroachments into the building setback required along Mission Boulevard. The proposed project includes removal of all encroachments and all new development will be on private property. Mission Beach is not only the most densely developed community in San Diego, but also has lot sizes among the smallest in the City of San Diego. Many of the Coastal Act concerns with development in this neighborhood tie back into this characteristic, such as blockage of view corridors, encroachments into public right-of-ways, and construction schedules potentially disrupting coastal access during the summer months. While the proposed project will not block any public views to the beach, 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 rights-of-way to and along the beach, especially during the summer months when beach use is at its peak.

To address these potential adverse impacts the Commission staff is recommending several special conditions. **Special Condition No. 1** requires submittal of final site plans that remove any private encroachments within the public right-of-way. Because the preliminary landscape plan submitted shows some of the existing encroachments remaining, **Special Condition No. 2** requires the applicant to submit a revised final landscaping plan with no encroachments and with all landscape and hardscape in the southern yard area consisting of low-lying materials not exceeding three feet in height. **Special Condition No. 2** also limits trees in the view corridor to a maximum of two, within four to five feet of the primary structure, and which must be maintained so that branches do not encroach below a height of eight feet above the finished grade. **Special Condition No. 3** prohibits development activity during the busy summer months from Memorial Day Weekend through Labor Day in order to remove the potential of development activity impeding coastal access. **Special Condition No. 4** requires the property owner to submit a written agreement that acknowledges and accepts the construction timing limitations. **Special Condition No. 5** requires the applicant to acknowledge the development is proposed in a site subject to coastal hazards and assume the risks of development. **Special Condition No. 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 6-19-0609 as conditioned.

The motion and resolution to carry out the staff recommendation is found on **Page 5**.

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. DEVELOPMENT: RESIDENTIAL DENSITY	10
C. COMMUNITY CHARACTER/VISUAL QUALITY	14
D. PUBLIC ACCESS/PARKING	16
E. COASTAL HAZARDS	18
F. LOCAL COASTAL PLANNING.....	19
G. CALIFORNIA ENVIRONMENTAL QUALITY ACT	20

APPENDICES

[Appendix A – Substantive File Documents](#)

EXHIBITS

[Exhibit 1 – Vicinity Map](#)

[Exhibit 2 – Location Maps](#)

[Exhibit 3 – Site Plan](#)

[Exhibit 4 – Existing Units](#)

[Exhibit 5 - Draft Junior Unit](#)

[Exhibit 6 – Elevations](#)

[Exhibit 7 – Landscaping Plan](#)

[Exhibit 8 – Example Mapping of Mission Beach Density](#)

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** Coastal Development Permit Application No. 6-19-0609 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 6-19-0609 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 or 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 Golba Architecture Inc. dated 9/11/19 and date-stamped received 9/13/19, except that they shall comply with the following:

- i. A junior or companion unit, as generally depicted in [Exhibit 5](#), shall be incorporated into the final project design as allowed by Section 141.0302 City of San Diego Land Development Code.
- ii. All development, including brick pavers and decorative concrete, located outside the property line as generally depicted in [Exhibit 3](#) shall be removed and a note will be added to the Proposed Site Plan to indicate all development will be removed from the public right-of-way.
- iii. Any 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 Ostend Court right-of-way. No structures, landscaping, decorative concrete, etc. is permitted within the public right-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. Revised 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 be in substantial conformance with the landscape plans prepared by Golba Architecture Inc.

that are dated 9/11/19 and date-stamped received 9/13/19 and shall include the following:

- i. All proposed development, including brick pavers and decorative concrete, located outside the property line as generally depicted in [Exhibit 7](#) shall be removed.
- ii. A view corridor, fifteen feet wide, shall be preserved in the south yard area adjacent to Ostend Court. A maximum of two trees, preferably canopy trees, may be planted within four to five feet of the primary structure. Trees must be maintained so that branches do not encroach below a height of eight feet above the finished grade. All other proposed landscaping in the south yard area shall be maintained at a height of three feet or lower (including raised planters) to preserve the views along Ostend Court towards the ocean.
- iii. No landscaping or hardscape shall be retained or erected within the ten-foot wide Ostend Court pedestrian right-of-way. Trees may not overhang into the public right-of-way.
- iv. 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.
- v. Any fencing and walls, including glass walls, trellis walls, and retaining walls, in the southern yard setback area along Ostend Court and the eastern yard setback area along Mission Boulevard shall not exceed a height of three feet above the existing grade or proposed grade, whichever is lower.
- 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.

(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 through Labor Day of any year. Access corridors and staging areas shall be located in a manner that has the least impact on public access to the beach 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 No. 3, and provide a weekly construction schedule to confirm that no construction will occur from Memorial Day Weekend through Labor Day.
5. **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.
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

The subject property currently contains a 2-story, 2,173 square foot, 3-unit residence including two attached tandem garages fronting Ostend Court in the Mission Beach community of the City of San Diego. The proposed development will demolish the existing residence and construct a new 3-story, 30-foot high, 3,532 sq.ft. duplex with two attached tandem garages totaling 826 sq.ft., including a 496 sq. ft. junior companion unit on a 3,281 sq.ft. lot. A fifth parking space is planned for the western interior side yard adjacent to the alley ([Exhibit 3](#)). The existing development is non-conforming in terms of both the allowed density on site and encroachments into public property and setbacks. These encroachments include approximately 2 ½ feet of front yard patio and a wooden fence that extend into the Ostend Court public right-of-way, as well as a portion of the building that encroaches into a required setback along Mission Boulevard. The Mission Beach Planned District Ordinance (PDO) of the San Diego Land Development Code states that a single lot of 2,000 to 2,400 square feet in the R-S subdistrict is entitled to a maximum of 2 dwelling units. The site is located in the original permit jurisdiction of the Coastal Commission where Chapter 3 of the Coastal Act is the standard of review ([Exhibit 1](#)).

When it was first presented to Commission staff, the project proposed the demolition of the existing structure and the construction of a new duplex. The proposed duplex was found to be consistent with the maximum density allowed under the LCP, and Commission staff's interpretation was verified with City of San Diego Development Services Department staff on October 3, 2019. However, in recognition of Commissioner concerns over a loss of density from the existing number of units on-site, Commission staff researched the applicability of local accessory dwelling unit (ADU) regulations within the City of San Diego in general and Mission Beach in particular, and found that ADU's presented an exception to the maximum dwelling unit regulations for the subject site. From there, Commission staff and the applicant worked together and were able to agree to a draft design for a junior accessory dwelling unit (JADU) that will be

incorporated into the proposed building footprint upon the drafting of final site plans ([Exhibit 5](#)). Through inclusion of the JADU, the proposed development constitutes a 1:1 replacement of units currently on site and represents the maximum allowable density (2 units and one companion unit) under the current set of regulations in the Mission Beach Planned District Ordinance (PDO) of the San Diego Land Development Code.

The site is within the original permitting jurisdiction of the Coastal Commission where Chapter 3 of the Coastal Act is the standard of review. The Mission Beach Planned District Ordinance, comprised of Article 13 of Chapter 15 of the San Diego Land Development Code, was also used as guidance in review of the project. Additionally, select sections of the San Diego Land Development Code were also consulted, including Section 143.0212 on Historic Resources Regulations, and Section 141.0302 on Separately Regulated Uses, including companion units and junior units.

B. DEVELOPMENT: RESIDENTIAL DENSITY

Section 30250 of the Coastal Act states, in relevant part:

- (a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources...*

Section 30253 of the Coastal Act states, in relevant part:

New development shall do all of the following:

- (a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*

[...]

- (c) Minimize energy consumption and vehicle miles traveled.*

Conformance with Local Zoning

When the application was originally submitted, the applicant indicated that there were 4 existing units on the site. The applicant then submitted updated information clarifying that the existing structure only contains 3 units, rather than 4 units, as was originally stated by the applicant. A fourth electric and gas meter on site, previously thought to have been attached to a fourth unit, is in fact associated with a common laundry room for the three other units on-site. To substantiate this correction, the applicant has supplied a labelled Google photo exhibit of the building layout and staff has verified that building records from the County of San Diego indicate the duplex portion of the building was completed in 1941 and a single unit was added to the building in 1960 ([Exhibit 4](#)).

Three units is considered non-conforming under the Mission Beach PDO. The PDO allows for a maximum of two dwelling units for a lot this size located in the R-S Subdistrict, as well as consideration of the separately regulated uses outlined in Chapter 14, Article 1 of the San Diego Land Development Code, which includes accessory dwelling units.

Specifically, Section 1513.0304(a) of the PDO states:

(a) Density Regulations

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

(1) A single R-S lot of 2,000 to 2,400 square feet shall be entitled to a maximum of 2 dwelling units;

[...]

(3) Fractions of a dwelling unit shall not be rounded up when determining the total units permitted on a lot or lots.

Mission Beach is not only the most densely developed community in San Diego, with a maximum permitted density of thirty-six dwelling units per acre, but also has lot sizes among the smallest in the City of San Diego ([Exhibit 8](#)). While there exists some previously conforming pre-coastal structures that are above thirty feet in height or have non-standard setbacks, the pattern of development within Mission Beach has been fairly consistent since the community was first platted out in 1914. The historical pattern substantially consists of larger lots containing residential structures with up to three dwelling units along the eastern and western boardwalks or on corner lots, and the inland properties between the boardwalks consisting of smaller 30-foot by 80-foot or 25-foot by 50-foot lots containing single family residences or duplexes. Currently, inland Mission Beach predominantly consists of single family residences and duplexes, with some triplexes on corner lots by the side streets, and the predominant pattern of development in the inland lots of Mission Beach is separate structures on lots of 30 ft. by 80 ft.

Coupled with the highest density in the City of San Diego, Mission Beach has many sites that were originally developed decades ago without the current set of regulations governing setbacks, density, height limits, architectural features, angled setbacks and encroachments into the public right-of-way. As these sites are redeveloped, projects are reviewed to ensure their consistency with both the Coastal Act as well as the Mission Beach planned district ordinance (PDO), which is a community-specific subset of development regulations that are considered part of the Mission Beach LCP.

Additionally, the Mission Beach Precise Plan, which serves as the certified Land Use Plan (LUP) for Mission Beach and was first adopted by the San Diego City Council in 1974, explicitly states that the threat of overbuilding and past allowances of high densities directly contribute to the environmental degradation of Mission Beach. It goes on to state that the (then proposed) limitation of two units on a 2,400 square foot lot would further the community's goal of achieving 36 dwelling units per acre and so

ameliorate the intensified development underway at the time that would have resulted in a density of over 70 dwelling units per net residential acre if left unchanged. As of the time of the writing of the Precise Plan, the proposed 36 units per acre was still twice the existing density of any other community in San Diego.¹ Out of this concern with overcrowding as well as height limitations, landscaping, parking, and building bulk came the effort to produce and ratify the first Planned District Ordinance for the Mission Beach neighborhood in 1979.

Specifically, the Mission Beach Precise Plan states in its Overall Goals on Page 12:

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

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

Additionally, Page 15 of the Mission Beach Precise Plan states in the “Goals” of the “Residential” section:

The establishment of an overall maximum density in Mission Beach in order to prevent overdevelopment.

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

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

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

The subject lot is 3,281 sq. ft. and measures approximately 35 feet wide on its southern boundary, 44 feet wide on its northern boundary, 84 feet deep on its eastern boundary, and 83 feet deep on its western boundary. Under Section 1513.0304(a) referenced above, the site does not fall under the standard density determination of one dwelling unit per 1,200 square feet because it is both in the R-S zone and is a lot larger than 2,000 square feet. While the actual lot size is indeed larger than the 2,000 to 2,400 described in exception (1), the lot shall still only be entitled to a maximum of two dwelling units because fractions of a dwelling unit (i.e. excess square footage) shall not be rounded up when determining the total units permitted on the lot. Therefore, a maximum of two units can be found consistent with the maximum density allowed under the LCP.

¹ Page 17 of the Mission Beach Precise Plan: https://www.sandiego.gov/sites/default/files/mbpp_full_04_02_18.pdf

While two units represents the maximum density allowed on site, an exception to this would be the inclusion of an accessory dwelling unit (ADU), or companion unit, on site. In response to previous ADU legislation passed at the state level, the City of San Diego adopted regulatory changes that streamlined provisions for accessory dwelling units and provided an overall framework for adoption of regulations for junior units. As a result, while the Mission Beach PDO does not explicitly reference the inclusion of companion or junior units, Section 1513.0103 of the PDO does incorporate the relevant section of code (Chapter 14, Article 1 on Separately Regulated Uses). According to Section 151.0401(c) of the San Diego Municipal Code, separately regulated uses such as the companion and junior units are allowed as a use if the use is allowed in a like citywide base zone. In determining the like citywide base zone, Commission staff verified with the City of San Diego that the Mission Beach base residential zones allow 1 dwelling unit per 1,200 sq. ft. of lot area and would therefore be most similar to RM-2-6 zone. In accordance with the limited provisions described in Section 141.0302, the RM-2-6 zone, and therefore the R-S zone of the subject site, does allow a companion or junior unit.

As is described in Section 141.0302(a)(2) of the San Diego Land Development Code:

Within a multiple dwelling unit zone, a companion unit is permitted on any premises that is limited to a maximum of two dwelling units based on the allowable density, existing area of the premises, and zone.

Importantly, the definition of multiple dwelling unit found in Section 113.0103 of the Land Development Code explicitly states that it does not include companion units or junior units. Therefore, while the maximum density for a lot the size of the project site located in the R-S zone is understood as 2 units under the Mission Beach PDO, the PDO/Land Development Code does not preclude the possibility of including a companion unit or junior unit on site.

In determining how and if a companion unit or junior unit could theoretically be proposed on site, several key elements of current regulation must be understood. As it presently stands, only one companion unit or junior unit is permitted on a premises, accessory units shall not be used for a rental term of less than 30 consecutive days, and they may not be sold or conveyed separately from the primary dwelling unit. Companion units are exempt from parking requirements if located within a transit priority area (as is this project, and almost all of Mission Beach in general). For junior units specifically, there are no parking requirements. Finally, Section 141.0302(a)(7)(B) states that replacement parking shall be provided on the premises when an existing garage is converted to a companion unit.

In applying the regulations laid out in Section 141.0302, particularly those described above, staff determined that a junior unit could be accommodated. After working with Commission staff, the applicant revised the proposed project design to include one junior unit on the first floor of the new residence ([Exhibit 5](#)). As required by **Special Condition No. 1**, revised site plans will include an approx. 496 sq. ft. junior unit that meets all applicable requirements of Section 141.0302 of the Land Development Code. By incorporating the junior unit, the proposed project will retain the same level of density as the existing site (i.e. 3 units) while meeting all current zoning regulations. As an

alternative that still allowably increases the density of the project, **Special Condition No. 1** allows for the applicant to apply for a companion unit instead.

On a related note and in light of the above discussion on the densely-populated nature of Mission Beach and its relatively small lot sizes, it also becomes important to understand the project in terms of how many bedrooms are on site and therefore, how many people could physically reside there. The existing development has a duplex with 2 bedrooms each and one smaller unit with 1 bedroom, for a total of 5 bedrooms. The proposed development contains two units that have 3 bedrooms each, and a junior unit with 1 bedroom, for a total of 7. Thus, not only will the proposed development maintain the existing on-site density, but it will also physically house more people. Therefore, the project will not reduce housing stock or contribute to depopulation of the Coastal Zone.

The proposed development, as conditioned, can be found to be consistent with Sections 30250 and 30253 of the Coastal Act.

C. 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. . . .

The project site is located on the north side of Ostend Court, an east-west public pedestrian right-of-way within an existing residential area zoned R-S ([Exhibit 2](#)). It is also located directly west of Mission Boulevard, which constitutes the first public roadway and is the main accessway into and out of the Mission Beach community and to the ocean and bayfront beaches in Mission Beach. The proposed development is similar in height, bulk, and scale to the surrounding residential development. The proposed project is also consistent with the development standards contained in the City's certified Local Coastal Program (LCP).

Because the existing structure was built in 1941, it is 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 of 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.

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. 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 Mission Boulevard. The yards and setbacks required of all types of development within Mission Beach are the primary tool of creating, protecting, and enhancing the public's visual access to the ocean and the bay in this area of the city. The east-west courts, places, and alleys provide flat, continuous view corridors, such that the public can simultaneously view both the ocean and bay on either end from anywhere along the corridors, as well as from Mission Boulevard, the major coastal access route through Mission Beach. In this particular case, while Ostend Court is legally mapped as a ten-foot wide public right-of-way, the existence of private encroachments in the forms of walls and patios along its length, including some on the subject property, have narrowed the pedestrian right-of-way to approximately five feet in width, impacting the ability of the public to access the coast.

The Commission typically reviews projects to ensure that any new development does not encroach into the yard setback areas, which could impede public views, or into public rights-of-way, which could impede public access. Such encroachments could include structures and/or landscaping. As proposed, there are no encroachments into the public right-of-way, property setbacks or height limitation, including the decks facing Ostend Court, Mission Boulevard, and the alley, as well as the roof decks ([Exhibit 6](#)). While trees are allowable in the front yard under the PDO, they must be located within 4-5 feet of the primary structure and must be maintained so that they encroach below a height of 8 feet above grade and potentially disrupt public access or the public view corridor. The proposed project also complies with all setbacks for required yards from both Ostend Court and Mission Boulevard, and also adheres to the required 45-degree angled setbacks from Ostend Court beginning at 25 feet above proposed or existing grade, whichever is lower. All encroachments in the Ostend Court public right-of-way will be removed. Furthermore the applicant will be complying with regulations in the PDO concerning height of fencing around the property, and has proposed a fence of a maximum 3 feet in height for the yards adjacent to Mission Boulevard and Ostend Court.

To ensure that public views and public access towards the ocean are protected, **Special Condition No. 1** requires the applicant to submit final plans confirming that no structures will be located in the view corridors and all existing development will be removed from the public right-of-way. Because the preliminary landscape plan submitted shows some of the existing encroachments remaining, **Special Condition No. 2** requires the applicant to submit a revised final landscaping plan with no encroachments and with all landscape and hardscape in the southern yard area consisting of low-lying materials not exceeding three feet in height ([Exhibit 7](#)). **Special Condition No. 2** also specifies that maximum of two trees, preferably canopy trees, may be planted within four to five feet of the primary structure. Trees must be maintained so that branches do not encroach below a height of 8 feet above the finished grade. Thus, visual quality and public views along Ocean Front Walk and down the alley towards the ocean will be protected, consistent with Coastal Act Section 30251.

D. 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 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 (1) facilitating the provision or extension of transit service. . . (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:

[. . .]

(d) 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).

When the project was first submitted, the applicant had indicated that 2 existing legal tandem garages are existing on-site, but the applicant has since clarified that the existing development has only 2 one-car garages and a set of tandem parking spaces located in the western interior side yard off of the alleyway. All existing development will be removed, and the proposed project will have 2 tandem garages and a fifth parking space on the western interior side yard adjacent to the alley (Exhibit 3). The proposed development will bring the site into conformance with the parking requirements of 2 parking spaces per unit as stated in Section 1513.0403(b)(1) (A) of the PDO. The existing development includes only 4 parking spaces for 3 units and presents a deficiency of 2 spaces; however, the proposed development will include a total of five parking spaces, or 2.5 per unit. The inclusion of the junior accessory dwelling or companion unit in final site plans per **Special Condition 1** will not result in parking deficiency on-site because City regulations explicitly state junior units do not have parking requirements, and companion units located in a transit priority area (as this site, and virtually all of Mission Beach, is) also do have parking requirements. Thus, adequate parking will be provided consistent with Section 30252 of the Act.

The Commission typically reviews projects to ensure that any new development does not encroach into the yard setback areas, which could impede public views, or into public rights-of-way, which could impede public access. Such encroachments could include structures and/or landscaping. As proposed, no encroachments will take place into the property setbacks or height limitation, including the decks facing Ostend Court, Mission Boulevard, and the alley, as well as the roof decks (Exhibit 6). All encroachments in the Ostend Court public right-of-way will be removed. To ensure that public views and public access towards the ocean are protected, **Special Condition No. 1** requires the applicant to submit final plans confirming that no structures will be located in the view corridors and all existing development will be removed from the public right-of-way. Because the preliminary landscape plan submitted shows some of the existing encroachments remaining, **Special Condition No. 2** requires the applicant to submit a revised final landscaping plan with no encroachments and with all landscape and hardscape in the northern yard area consisting of low-lying materials not exceeding three feet in height (Exhibit 7).

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. 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 No. 3** prohibits development during the busy summer month when beach-going is at its peak. **Special Condition No. 4** requires the applicant to submit a written agreement memorializing the landowner's acknowledgment of and acceptance to the timing of development. **Special Condition No. 4** also requires the applicant to submit a weekly construction schedule to express the intent 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 No. 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, the Commission finds the proposed development, as conditioned, consistent with Chapter 3 of the Coastal Act.

E. COASTAL HAZARDS

Coastal Act Section 30235 addresses the use of shoreline protective devices:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply.

Coastal Act Section 30253 addresses the need to ensure long-term structural integrity, minimize future risk, and to avoid landform altering protective measures. Section 30253 provides, in applicable part:

New development shall do all of the following:

- (a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.*
- (b) Assure stability and structural integrity, and neither create nor 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...*

Many beaches within the City of San Diego, including Mission Beach, Ocean Beach, La Jolla Shores, and Blacks Beach already experience flooding and erosion. The Mission Beach community is a low-lying area on a narrow peninsula situated between the Pacific Ocean to the west and Mission Bay to the east, and currently experiences periodic flooding that will likely increase with sea level rise. In this geographic area, the main concerns raised by beach fronting developments are not only impacts to public access and recreation, but also potential exposure of the proposed development to coastal flooding hazards.

The subject site is not a shoreline fronting lot, but is adjacent to Mission Boulevard, the main north/south roadway on Mission Beach, which is approximately 250 feet inland from the beach, and 500 feet inland from the bay. Because there is a wide sandy beach (approximately 200 feet wide) and a public boardwalk (approximately 20 feet wide)

protected by a seawall between the subject property and the Pacific Ocean, as well as at least five rows of development, wave run up and overtopping are not expected to significantly impact this inland site over the life of the proposed improvements. Nevertheless, as a near-shore property, the proposed development may be threatened by sea-level rise at some point in the future. In this particular case, the subject site may be threatened from both the bayside as well as the ocean side, and so consideration of impacts due to protecting the proposed development must be considered not just from the ocean, but from Mission Bay as well.

The applicant has acknowledged that periodic storm and flood events occur throughout the Mission Beach community and has designed the new development to accommodate potential flooding. The applicant has also indicated that the subject property does not have a history of flooding and site topography slopes from west to east, meaning that even if water were to crest the boardwalk along Ocean Front Walk, it would drain east towards Mission Boulevard. This section of Mission Boulevard also slopes south, which would assumedly prevent water from flooding this corner property and allow for flow southeast of the site. Finally, the proposed lowest finished floor of the structure (6.27' MSL) is well above the flow line in Mission Boulevard (5.30' to 5.08' MSL). Because periodic storm and flood events occur throughout the Mission Beach community, **Special Condition No. 5** 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. The proposed development, as conditioned, can be found to be consistent with Sections 30235 and 30253 of the Coastal Act.

F. 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 located within the Residential – South (R-S) subdistrict of the Mission Beach Planned District. The purpose of the Residential Subdistricts is to regulate small-scale and low-profile developed area with a maximum residential density of approximately 36 dwelling units per net acre residential area. The proposed residential use of the subject site is therefore consistent with the certified LCP. 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 that 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.

G. 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, construction activity, and hazards, 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