

CALIFORNIA COASTAL COMMISSION

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

**W13c**

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STAFF REPORT: REGULAR CALENDAR

Application No.: 6-19-0827

Applicant: Dale Carlsen

Agent: Tim Golba and Ricardo Torres, Golba Architecture Inc.

Location: 3869 Ocean Front Walk, Mission Beach, San Diego, San Diego County (APN: 423-571-01)

Project Description: Demolition of an existing 1-story, 946 sq.ft. single-family residence with a 220 sq. ft. attached garage and construction of a new 3-story, 2,380 sq.ft. single-family residence with a 321 sq. ft. attached 1-car garage and roof deck on a 2,375 sq.ft. lot.

Staff Recommendation: Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

The primary issues raised by this project relate to the protection of public views and public access.

The subject property is located adjacent to and landward of Ocean Front Walk, which serves as a popular public boardwalk and visual corridor adjacent to the beach. The site is also located on the south side of the east-west Toulon Court pedestrian right-of-way, which serves as an access and visual corridor for this part of Mission Beach. The existing development includes a brick wall and planter area that extends approximately 2 ½ feet north beyond the front property line into the 10-foot wide public right-of-way along Toulon Court, as well as

building encroachments into the setbacks required along Ocean Front Walk and the southern interior side yard. The proposed project includes removal of all encroachments in the public right-of-way and all new development will be on private property.

For the subject project, one particular aspect of concern was a newly restored view corridor that will be opening up upon the removal of a non-conforming garage located at the western terminus of the alley. While not explicitly designated a view corridor under the Mission Beach Planned District Ordinance (PDO), the alley and the interior side yard directly west of the alley do provide a public view towards the ocean that should be enhanced or restored where possible. Originally, the applicant had proposed putting a parking space in the southern interior side yard where a 5-foot setback is required; this would have created a 9.5 foot ground floor view corridor, except that views would be blocked whenever a car was in the spot. Staff worked with the applicant to revise the building design to relocate the parking space to the eastern side of the project lot. The revised design maintains a 5-foot setback/view corridor down the alley that will not be occupied by a car. In order to ensure that the view corridor down the southern interior side yard is protected, **Special Condition No. 2** establishes a 5-foot wide view corridor within the southern interior side yard area adjacent to the alley where nothing above a height of 3 feet, including landscaping, is allowed, and where any fencing must be installed in accordance with the Coastal Zone Overlay Supplemental Regulations of the San Diego Land Development Code regarding height, transparency, and utilized materials.

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 parked vehicles in the southern interior side yard and/or 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 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 along a public boardwalk and the western side of the property faces the beach. As a beachfront development, the proposed project could be subject to coastal hazards such as flooding as sea level rise increases. Although there is an existing seawall located seaward of the development that protects the public boardwalk on Ocean Front Walk, the subject project should not be designed to rely on the seawall.

To address these potential adverse impacts the Commission staff is recommending several special conditions. **Special Conditions No. 1 and 2** require submittal of final site plans as well as final landscaping plans that limit landscaping in the public view corridors to a height of three feet, and prohibit encroachments into the setbacks. **Special Condition No. 3** 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 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 waive any right to construct a future shoreline protective device.

Special Condition No. 7 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 6-19-0827 as conditioned.

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

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I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** Coastal Development Permit Application No. 6-19-0827 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 6-19-0827 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. 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 site plans stamped approved by the City of San Diego that are in substantial conformance with the plans prepared by Golba Architecture Inc. dated 11/5/19 and shall comply with the following:
 - i. All development located outside the applicant's property lines 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.
 - ii. Any public area exposed by removing the encroachments shall either (1) be left as a dirt patch or (2) paved with concrete that matches the existing Toulon Court and Ocean Front Walk rights-of-ways. No structures, landscaping, decorative concrete, or other development 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. Final Landscape/Yard Area Plans.

- (a) **PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and written approval final landscape plans. Said plans shall first be stamped approved by the City of San Diego and be in substantial conformance with the landscape plans prepared by Golba Architecture Inc. dated 11/5/19 and shall include the following:
 - i. A view corridor, seven feet wide, shall be preserved in the west yard area adjacent to Ocean Front Walk, as well as ten-foot wide view corridor in

the north yard area along Toulon Court. Additionally, a five-foot wide view corridor shall be preserved in the southern interior side yard area adjacent to the alley ([Exhibit 3](#)). All proposed landscaping in the west, northern, and southern yard setbacks shall be maintained at a height of three feet or lower (including raised planters) to preserve the views along Ocean Front Walk and from Mission Boulevard towards the ocean.

- ii. No landscaping or hardscape shall be retained or erected within the ten-foot wide Toulon Court pedestrian right-of-way. Trees may not overhang into the public right-of-way.
- iii. All landscaping shall be drought tolerant, and native or if native are not feasible, 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 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 area along Ocean Front Walk and the northern yard setback area along Toulon Court shall not exceed a height of three feet above the existing grade or proposed grade, whichever is lower. Any fencing and walls, including glass walls, trellis walls, and retaining walls, in the southern interior side yard shall not exceed a combined height of six feet above existing grade or proposed grade, whichever is lower. Any fencing above three feet in the southern interior side yard must be seventy-five percent open in accordance with Section 142.0310 of the San Diego Land Development Code.
- v. 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 to Labor Day of any year. Access corridors and staging areas shall be located in a manner that has the least impact on public access via the maintenance of existing public parking areas and traffic flow on coastal access routes (e.g., no street closures or use of public parking as staging areas).
4. **Written Agreement. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT,** the property owner shall submit a written agreement, in a form and content acceptable to the Executive Director, that acknowledges and accepts the timing of development approved pursuant to Special Condition No. 3, and provide a weekly construction schedule to confirm that no construction will occur from Memorial Day Weekend to 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. **No Future Bluff or Shoreline Protective Device.** By acceptance of this Permit, the applicant agrees, on behalf of itself and all successors and assigns, that no bluff or shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development No. 6-19-0827 including, but not limited to, the residence, foundation and garage, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, or other coastal hazards in the future. 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.

By acceptance of this Permit, the applicant further agrees, on behalf of itself and all successors and assigns, that the landowner shall remove the development authorized by this Permit, including the residence, foundation and garage, if (a) any government agency has ordered that the structures are not to be occupied due to any of the hazards identified above, 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, etc.); (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 permittee 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.

7. **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 demolition of an existing 1-story, 946 square foot single-family residence including a 220 sq. ft. attached garage and construction of a 2,701 square foot, 30-foot tall, 3-story residence including an attached 1-car garage and an uncovered parking space. The subject site is a 2,375 square foot lot adjacent to Ocean Front Walk, a public boardwalk on the beach in the Mission Beach community of the City of San Diego within existing residential area zone Residential-North (R-N) of the Mission Beach Planned District Ordinance (PDO). The subject property is comprised of one lot

immediately east of Ocean Front Walk, and is bordered by Toulon Court, a pedestrian accessway to the north, a neighboring residence to the east, and both an alley and neighboring residence to the south ([Exhibit Nos. 1 and 2](#)).

In November 2002, the Commission approved construction of a 3-foot high, approx. 58-foot long concrete privacy wall on the seaward side of the structure, next to the public boardwalk, that extends approximately 3 feet into the public right-of-way. Because historically a number of existing residences on the Mission Beach boardwalk were constructed immediately adjacent or encroached into the boardwalk right-of-way, when the City expanded the width of the boardwalk around 2001, the Commission allowed construction of a privacy wall within the public right-of-way at this and several other nearby sites in order to provide a buffer between the existing residential properties and businesses and the expanded public boardwalk (CDP #s 6-02-9, 6-02-37, 6-02-40, 6-02-47, 6-02-56, 6-02-71 and 6-02-73). Conditions of these permits required that when the existing structure (in this case, the single-family residence) was demolished or redeveloped, the wall would be removed in its entirety.

The existing development also includes previously conforming building encroachments into the setbacks required along Ocean Front Walk and the southern interior side yard, as well as a brick wall and planter area that extends approximately 2 ½ feet north beyond the front property line into the 10-foot wide public right-of-way along Toulon Court ([Exhibit 6](#)). As proposed, a fence that is a maximum of 3-feet in height will be constructed on the property lines along Ocean Front Walk and Toulon Court. The proposed project includes removal of all encroachments and all new development will be located on private property. There is an existing brick wall along the eastern side of the site that appears to be associated with the subject site, but is legally located on the neighboring property. This will remain in place and is not part of the proposed development.

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.

B. 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. . . .

With the exception of Belmont Park, the entire stretch of properties abutting Ocean Front Walk are a mix of single and multi-family residences, with a small number of commercial businesses scattered throughout the community. The character of the buildings in the Mission Beach community range from single-story beach cottages to three-story multi-family units. The subject site has a lot size of 2,375 sq. ft., which entitles it to a density of one dwelling unit under Section 1513.0304(a) of the PDO. The proposed 3-story, 30 foot high residence will be consistent with the character and bulk and scale of the community.

Because the existing structure was built in 1939, 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.

In addition to being a major public access and recreational facility, Ocean Front Walk also serves as a public view corridor along the shoreline. Additionally, in the Mission Beach community the public rights-of-way of the various courts and places, which are generally east-west running streets, as well as the yard setbacks of the adjacent properties, comprise the community's public view corridors. 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. The ability for Ocean Front Walk and Toulon Court to serve as public view corridors is degraded when structures in the yard setbacks that are not in compliance with the PDO are allowed to remain.

Additionally, while the PDO allows a zero-foot setback from the alley, there is a 5-foot setback between buildings required for the southern interior side yard. Thus, while not explicitly designated a view corridor under the PDO, the alley and the interior side yard directly west of the alley do provide a public view towards the ocean that the PDO asserts should be enhanced or restored where possible.

Section 132.0403 of the Supplemental Regulations of the Coastal Overlay Zone found in the San Diego Land Development Code, states in relevant part:

- (b) A visual corridor of not less than the side yard setbacks or more than 10 feet in width, and running the full depth of the premises, shall be preserved as a deed restriction as a condition of Coastal Development Permit approval whenever the following conditions exist:*
 - (1) The proposed development is located on premises that lies between the shoreline and the first public roadway, as designated on Map Drawing No. C-731; and*

- (2) The requirement for a visual corridor is feasible and will serve to preserve, enhance or restore public views of the ocean or shoreline identified in the applicable land use plan.*
- (c) If there is an existing or potential public view between the ocean and the first public roadway, but the site is not designated in a land use plan as a view to be protected, it is intended that views to the ocean shall be preserved, enhanced or restored by deed restricting required side yard setback areas to cumulatively form functional view corridors and preventing a walled effect from authorized development. [...]*
- (e) Open fencing and landscaping may be permitted within the view corridors and visual accessways, provided such improvements do not significantly obstruct public views of the ocean. Landscaping shall be planted and maintained to preserve public views.*

Section 142.0310 of the Land Development Code also states in relevant part:

- (c)(2)(C) An open fence shall have at least 35 percent of the vertical surface area of each 6-foot section open to light except within the Coastal Overlay Zone, where an open fence shall have at least 75 percent of its vertical surface area open to light.*

The Commission typically reviews projects in Mission Beach to ensure that all new proposed development complies with the City of San Diego's setback requirements and does not encroach into public access or public view corridors to the ocean. The proposed development must satisfy the setback requirements of the Mission Beach PDO for properties zoned R-N and abutting Ocean Front Walk. In accordance with Section 1513.0307(b)(3)(B), the applicant is required to have a seven-foot standard setback from Ocean Front Walk, with a maximum of 50% of the second and third stories observing a minimum 3-foot setback from the standard setback and the remaining portion of each story observing a minimum 5-foot setback from the standard setback. A ten-foot setback from Toulon Court is required, with the additional requirement that buildings wider than 25 feet in the R-N subdistrict must include a vertical offset. An 18-inch offset (not more than one-half of the total building width) with an undeveloped insert area of equal width behind the setback line parallel to the Court is proposed; therefore, Section 1513.0304(e)(1) of the PDO is satisfied. Finally, a five-foot setback is also required in both the eastern and southern interior yards according to Section 1513.0304(c)(3)(A) of the Mission Beach PDO. To protect view corridors, the PDO also states that building setbacks at a 45-degree angle from the standard setback along both Ocean Front Walk and Toulon Court beginning at 20 feet above existing or proposed grade, whichever is lower, should also be included as part of project design ([Exhibit 4](#)). The submitted plans demonstrate consistency with all of the above-cited requirements of the PDO; as conditioned, the new residence will be consistent with all setback requirements.

On many lots in Mission Beach, existing non-conforming structures (also known as previously conforming structures), were constructed without the required setback

between structures, and thus, there are no views down many alleys. Courts and Places are typically open, although encroachments are not uncommon. When sites are redeveloped, encroachments should be removed and all required setbacks enforced in order to create and preserve public view corridors. For the subject project, an existing non-conforming garage is located at the western terminus of the alley that does not observe the required 5-foot interior side yard setback. The adjacent house to the south also encroaches into the interior side yard setback, thereby blocking what should be a 10 foot-wide public view down the alley. Originally, the applicant had proposed a project design that included a 9.5-foot wide setback in the southern interior side yard to accommodate a ground level parking space. (The proposed second and third stories of the building would have provided the required minimum 5-foot setback). Parking in the side yard is allowable under the PDO, and this configuration would have provided a wider view corridor down the alley than the minimum 5-foot setback.

However, whenever a car was parked in that space, no view would have been available. Therefore, staff worked with the applicant to develop a revised design that retains the 1-car enclosed garage with an additional parking space located in the eastern interior side yard. With this alternative, as with the second and third stories, the ground floor of the building would provide the required 5-foot setback, which would not be blocked by a parked car. It is important to note that the PDO also permits construction of a fence a maximum of 6 feet in height in the side yard, with fencing over 3 feet high required to be 75% open, and thus views down the alley may not be entirely open regardless. However, the revised alternative will ensure that at 5-foot setback with no obstructions (other than a fence), will be located in the alley. A comparison of the effect both the original and proposed designs would have in respect to the presence of a parked vehicle and its impact on the newly opened view corridor is depicted in [Exhibit 5](#). In order to ensure that the view corridor down the southern interior side yard is protected, **Special Condition No. 2** establishes a 5-foot wide view corridor within the southern interior side yard area adjacent to the alley where nothing above a height of 3 feet, including landscaping, is allowed and where any fencing must be installed in accordance with the Coastal Zone Overlay Supplemental Regulations regarding its height, transparency, and utilized materials.

The setbacks along Ocean Front Walk and Toulon Court also serve as view corridors where nothing above a height of 3 feet, including landscaping, is allowed within required yards. In addition to the existing 3-foot high, 58-foot long concrete privacy wall that extends into the 3-foot landscaped buffer within the public right-of-way along Ocean Front Walk the existing development includes a brick wall and planter area that extends approximately 2 ½ feet north beyond the front property line into the 10-foot wide public right-of-way along Toulon Court. **Special Condition No. 1** requires that all development located outside the property line be removed and that public areas left exposed by the removal of encroachments be left as bare dirt or paved with concrete that matches the existing concrete in the public right-of-ways. **Special Condition No. 2** requires submittal of a landscape plan that limits landscaping in Ocean Front Walk and Toulon Court public view corridors to a height of three feet to protect view corridors. The removal of the encroachments and adherence to landscaping regulations will be sufficient to protect the identified view corridors. 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.

C. PUBLIC ACCESS/PARKING

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

Section 30210 of the Coastal Act states:

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

Section 30211 of the Coastal Act states:

Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.

Section 30212 of the Coastal Act states, in part:

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

[. . .]

Section 30252 of the Coastal Act states, in part:

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

Section 30604 of the Coastal Act states, in part:

[. . .]

(c) Every coastal development permit issued for any development between the nearest public road and the sea or the shoreline of any body of water located within the coastal zone shall include a specific finding that the development is

in conformity with the public access and public recreation policies of Chapter 3 (commencing with Section 30200).

The project site is located adjacent to the public beach and Ocean Front Walk. The boardwalk is accessible from the east/west courts and streets off of Mission Boulevard, which provide access to the sandy beach at stairways located at various points along the seawall. Ocean Front Walk is a popular thoroughfare, especially during the summer, and is frequented by pedestrians, bicyclists, skateboarders, and more. Ocean Front Walk is part of the larger network of public rights-of-way that make up the Mission Beach community's public accessways. **Special Condition No. 1** requires that all development located outside the property line be removed

The City's certified LCP requires applicant to provide two off-street parking spaces per dwelling unit. Parking in the alley is not permitted. The applicant is proposing to provide a total of three off-street parking spaces for this single family residence, with one enclosed parking space in an attached garage and two additional tandem parking spaces in the eastern interior side yard setback. Thus, adequate parking will be provided consistent with Section 30252 of the Act.

Like many project sites in Mission Beach, the site here is constrained and has limited access and space to accommodate all the demolition and construction activities. 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 months when beach-going is at its peak. **Special Condition No. 4** requires the landowner to submit a written agreement memorializing acknowledgment of and acceptance to the timing of development. **Special Condition No. 4** also requires the applicant to submit a weekly construction schedule to demonstrate 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. 7** 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.

D. 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...*

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 20th 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 20th century and greater than any time over the past one thousand years.¹ 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

¹ 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>.

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 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 redevelopment; 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 No. 6**. 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.

Coastal Act Sections 30235 and 30253 acknowledges 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 protection devices that would substantially alter natural landforms along the shoreline.

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, including a 3-foot solid fence facing Ocean Front Walk as well as along the path of Toulon Court, should floodwaters rise above the elevation of the boardwalk and flow east. As is discussed above, the public boardwalk along Ocean Front Walk and the concrete parapet on the western side of the boardwalk effectively serve as shoreline protection in and of itself. Additionally, 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. 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. Therefore, the Commission finds that the development, as conditioned, conforms to Section 30235 and 30253 of the Coastal Act.

E. UNPERMITTED DEVELOPMENT

Violations of the Coastal Act exist on the subject project including, but not limited to, non-compliance with Special Condition No. 2 of CDP No. 6-02-128. The authorized privacy wall was to be a maximum of 3 feet; however, the currently existing wall exceeds the authorized height limit, which is inconsistent with the requirements of the previous Commission action. As part of the current proposal, the new residence will be constructed within property lines and all encroachments will be removed from the public right-of-ways per **Special Condition No. 1**. Therefore, the entire wall will be removed. Approval of this applicant pursuant to the staff recommendation, issuance of the permit, and the applicant’s subsequent compliance with all terms and conditions of the permit will result in resolution of the future impacts from the violation(s) noted above.

Although the development has taken place prior to submission of this permit application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Commission review and action on this permit does

not constitute a waiver of any legal action with regard to the alleged violation (or any other violations), nor does it constitute an implied statement of the Commission's position regarding the legality of the development, other than the development addressed herein, undertaken on the subject site without a coastal permit and in violation of CDP 6-02-128. In fact, approval of this permit is possible only because of the conditions included herein and failure to comply with these conditions would also constitute a violation of this permit and of the Coastal Act. Accordingly, the applicant remains subject to enforcement action as it was prior to this permit approval for engaging in unpermitted development and in violation of a CDP, unless and until the conditions of approval included in this permit are satisfied.

In order to ensure that the unpermitted development component of this application is resolved in a timely manner, the subject permit will issue upon Commission approval, with all Special Conditions required prior to issuance of the CDP, as required by **Special Condition No. 1**. Failure to comply with the terms and conditions of this permit may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act. Only as conditioned is the proposed development consistent with 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 – North (R-N) 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 which the Commission uses as guidance for the subject area. Approval of the project—as conditioned—will not prejudice the ability of the City of San Diego to continue to implement its certified LCP for the Mission Beach community.

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
- Coastal Development Permit #6-02-128 (James and Carolyn Knight), approved by the Coastal Commission on November 7, 2002.