

**CALIFORNIA COASTAL COMMISSION**

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## STAFF REPORT: REGULAR CALENDAR

**Application No.:** 6-22-0448

**Applicant:** Brian Toppila & Michelle Chang

**Agent:** Michael Morton

**Location:** 2605 Ocean Front Walk, Mission Beach, San Diego, San Diego County. (APN: 423-761-14-00)

**Project Description:** Remodel and add approx. 400 sq. ft. to existing 3-story, 30-ft. tall, approx. 3,300 sq. ft. single family residence with attached 2-car garage to create an approx. 3,700 sq. ft. structure with 2,900 sq. ft. primary residence and 800 sq. ft. first-floor accessory dwelling unit, attached 2-car garage and 1-car carport on a 2,500 sq. ft. lot.

**Staff Recommendation:** Approval with conditions.

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## SUMMARY OF STAFF RECOMMENDATION

The primary issues raised by this project relate to the protection of public access, public views, and coastal hazards. The subject beachfront property is located on the west side of the southern terminus of Strandway, where it intersects with Mission Boulevard near the south end of the Mission Beach peninsula and the Mission Bay channel.

The existing residence is currently non-conforming with the requirements of the City of San Diego's certified Local Coastal Program (LCP), specifically regarding the side and rear yard setbacks and allowable floor area ratio (FAR). The garage currently sits on the eastern property line where a five-foot side yard setback would be required and has a

second and third-story balcony within the required 10-foot rear yard setback. Furthermore, the subject property is 2,457 sq. ft. in size, and the Mission Beach Planned District Ordinance (PDO) allows a maximum FAR of 1.1, for a total allowable gross floor area of 2,703 sq. ft. The existing residence is approximately 3,312 sq. ft., though the PDO allows for discounting 200 sq. ft. for each off-street parking space. Because the existing residence has a 460 sq. ft. two-car garage, 400 sq. ft. may be deducted for FAR calculations, resulting in a FAR of 2,912 sq. ft., which is still over the current allowable limit.

While this would normally be grounds for a redesign to bring the development into conformance with the certified LCP, in September 2022, the Coastal Commission certified LCP Amendment No. LCP-6-SAN-21-0005, which included amending Section 141.0302 of the Land Development Code, which serves in part as the certified Implementation Plan for the City's LCP, to allow an accessory dwelling unit (ADU) with a gross floor area of 800 sq. ft. to be permitted on a premises with an existing or proposed dwelling unit regardless of maximum lot coverage, maximum floor area ratio, and minimum open space requirements. Thus, even though the existing single-family residence is over the allowable FAR, the applicant is proposing to add approximately 160 sq. ft. to the first floor to convert the first floor into an 800 sq. ft. ADU, served by a new carport west of the garage. However, the applicant is also proposing to add approximately 150 sq. ft. to the primary residence, presuming that the excess of the 800 sq. ft. ADU allowance can be applied to the primary dwelling unit, as well. This is not allowed under the LCP, as the 800 sq. ft. allowance can only be applied to ADUs, and because the existing residence is already over the allowable FAR, no square footage can be added to the primary residence because it would exacerbate the non-conformity. The City has communicated in discussions with Commission staff that they agree the proposed project is inconsistent with LCP requirements.

The project also proposes to rebuild and expand the non-conforming rear balconies within the rear yard setback area. The LCP requires a 10-foot rear yard setback from Ocean Front Walk, the public boardwalk along the beach that abuts most of the beachfront homes in Mission Beach. While the boardwalk curves west toward the beach a few lots north of the subject property and does not abut it, there is still a paper public street adjacent to the rear property line, and it is possible that the City could decide in the future to construct a segment of the boardwalk down this section of beach. Furthermore, the LCP explicitly lists the allowable encroachments into required yard areas, and balconies are not on the list.

The project site is located between Strandway and the public beach. As a beachfront development, it could impact public views as well as be subject to coastal hazards such as flooding as sea level rise increases. While a portion of the existing structure sits along the eastern property line, it observes a three-foot setback along the western property line. Thus, there is an opportunity to enhance public views by providing a vertical view corridor across the western side yard setback. There is currently an approximately three-foot-tall rear wall with a visually permeable wrought-iron gate on the west end that opens onto the beach that would align with such a side yard view corridor. While the existing front gate on

Strandway is a solid door, a new visually permeable gate would allow a vertical view of the beach from Strandway across the property.

Regarding coastal hazards, the geotechnical investigation prepared by Engeo Inc. and reviewed by the Commission's staff geologist and civil engineer identified future flood risks from sea level rise and tsunamis. To address future flood events, the applicant proposes several measures, including installing a waterproof membrane within the bottom four feet of the structure and elevating utilities at least four feet above ground. While these measures are acceptable, certain other measures in the report, such as installing a moveable bulwark across the rear gate, are not acceptable due to their potential to act as shoreline protection and alter natural shoreline processes as wave action hits the bulwark. Furthermore, as water is still likely to enter the structure through doors even with the membrane, installation of flood vents in the ground floor walls is necessary to allow the passage of water.

To address these potential adverse impacts, Commission staff is recommending several special conditions. **Special Condition No. 1** requires the submittal of revised final plans that remove all additions not related to the ADU, remove any reconstruction and enlargement of the rear balconies, add further flood measures to the property, and remove impediments to public views along the western side yard setback. **Special Condition No. 2** requires submittal of final landscaping plans that limit landscaping and hardscape in the western side yard view corridor to a height of three feet and require gates to be at least seventy-percent open to light and air. **Special Condition No. 3** prohibits development activity during the busy summer months from Memorial Day Weekend to Labor Day to ensure development does not impede 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, as well as give notice to future tenants of coastal hazards. **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 that the Commission **APPROVE** coastal development permit application 6-22-0448, as conditioned. The motion is on page 4. The standard of review is Chapter 3 of the Coastal Act while the City's LCP is used for guidance.

## TABLE OF CONTENTS

<b>I. MOTION AND RESOLUTION .....</b>	<b>5</b>
<b>II. STANDARD CONDITIONS .....</b>	<b>5</b>
<b>III. SPECIAL CONDITIONS.....</b>	<b>6</b>
<b>IV. FINDINGS AND DECLARATIONS.....</b>	<b>10</b>
A. Project Description and Background .....	10
B. Public Access and Recreation.....	10
C. Visual Resources and Community Character .....	12
D. Coastal Hazards .....	14
E. Local Coastal Planning.....	16
F. California Environmental Quality Act .....	17
<b>APPENDIX A – SUBSTANTIVE FILE DOCUMENTS .....</b>	<b>18</b>

## EXHIBITS

[Exhibit 1 – Vicinity Map](#)

[Exhibit 2 – Aerial View](#)

[Exhibit 3 – Site Plans](#)

[Exhibit 4 – Site Photos](#)

[Exhibit 5 – Map of Beach Impact Area & Transit Priority Area](#)

## I. MOTION AND RESOLUTION

### Motion:

I move that the Commission approve Coastal Development Permit 6-22-0448 pursuant to the staff recommendation.

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of Commissioners present.

### Resolution:

The Commission hereby approves the Coastal Development Permit for the proposed project 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. 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

- 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 applicant or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
- 3. Interpretation.** Any questions of intent of interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4. Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
- 5. Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the applicant to bind all future owners and possessors of the subject property to the terms and conditions.

### **III. 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 Marengo Morton Architects dated August 30, 2022, and received November 2, 2022, but revised to comply with the following:
  - i. All additions to the existing structure not related to the construction of an accessory dwelling unit shall be removed.
  - ii. The primary structure shall incorporate flood vents along its ground floor sufficient to allow passage of flood waters during a storm event.
  - iii. The bulwark proposed across the rear gate shall be removed.
  - iv. All reconstruction and enlargement of the rear balconies shall be removed.
  - v. The front gate on Strandway allowing access to the proposed carport shall be replaced with a gate that is at least seventy-five percent open to light and air so as to conform to the public view corridor required in Special Condition No. 2(a)(i).
- 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 be in substantial conformance with the landscape plans prepared by Marengo Morton Architects, received November 2, 2022, and shall include the following:
  - i. A view corridor, three feet wide, shall be preserved in the western side yard area along the property. All landscaping and hardscape in the western yard area shall be maintained at a height of three feet or lower (including raised planters) to preserve the views across the property towards the ocean.
  - iii. All landscaping shall be drought tolerant, native or non-invasive plant species. All landscape materials within the identified view corridors shall

be species with a growth potential not to exceed three feet at maturity. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as “noxious weed” by the State of California or the U.S. Federal Government shall be utilized within the property. If using potable water for irrigation, the project shall use water-conserving emitters (e.g. microspray) and drip irrigation. Use of weather-based irrigation controllers and reclaimed water for irrigation is encouraged.

- iv. Any fencing and walls, including glass walls, trellis walls, and retaining walls, in the western side yard setback area shall not exceed a height of three feet above the existing grade or proposed grade, whichever is lower, unless it is at least seventy-five percent open to light and air.
- v. Five years from the date of the issuance of the coastal development permit for the residential structure, the permittee shall 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 shall 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.**

- a. 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.
- b. The permittee shall provide notice to all tenants as part of each lease and post notices in the principal structure and ADU of recommended evacuation measures in the event of a tsunami.

**6. No Future Shoreline Protective Device.**

- a. By acceptance of this Permit, the applicants agree, on behalf of themselves and all successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 6-22-0448 including, but not limited to, the residence and foundation in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, bluff retreat, landslides, or other natural hazards in the future. By acceptance of this Permit, the applicants hereby waive, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235.
- b. By acceptance of this Permit, the applicants further agree, on behalf of themselves and all successors and assigns, that they are required to remove all or a portion of the development authorized by this permit and restore the site, if:
  - i. The City or any government agency with jurisdiction has issued a final order, not overturned through any appeal or writ proceedings, determining that the structures are currently and permanently unsafe for occupancy or use due to damage or destruction from waves, flooding,



erosion, bluff retreat, landslides, or other hazards related to coastal processes, and that there are no feasible measures that could make the structures suitable for habitation or use without the use of bluff or shoreline protective devices;

- ii. Essential services to the site (e.g. utilities, roads) can no longer feasibly be maintained due to the coastal hazards listed above;
- iii. Removal is required pursuant to LCP policies for sea level rise adaptation planning; or
- iv. The development requires new or augmented shoreline protective devices that conflict with applicable LCP or Coastal Act policies.

The applicant acknowledges that approval of CDP No. 6-22-0448 does not allow encroachment onto public trust lands. Any future encroachment onto public trust lands shall be removed unless authorized by the Coastal Commission. Additionally, encroachment onto public trust lands is subject to approval by the State Lands Commission or other designated trustee agency.

- 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 and Background**

The proposed project is the remodel and addition to an existing 3-story, 30-ft. tall, approx. 3,300 sq. ft. single family residence with attached two-car garage to create an approx. 3,700 sq. ft. structure containing an attached two-car garage and an 800 sq. ft. accessory dwelling unit with one-space carport on the first floor, and a 2,900 sq. ft. primary residence on the second and third floors on an approx. 2,500 sq. ft. beach front lot in the Mission Beach community of San Diego.

In September 2000, the Commission approved Administrative Coastal Development Permit (CDP) No. 6-00-94 for an approx. 1,200 sq. ft. third-floor addition to what was then a two-story residence to create the existing three-story residence. In October 2000, the Commission approved CDP Amendment No. 6-00-94-A1 for the construction of an on-grade concrete patio and three-foot tall perimeter wall on the western side of the residence.

The existing primary residence is currently non-conforming with the requirements of the certified LCP, specifically regarding side and rear yard setbacks and allowable floor area ratio (FAR). The garage currently sits on the eastern property line where a five-foot setback is required and has second and third-floor balconies within the required ten-foot rear yard setback. Furthermore, the subject property is 2,457 sq. ft. in size, and the Mission Beach Planned District Ordinance (PDO) allows a maximum FAR of 1.1, for a total allowable gross floor area of 2,703 sq. ft. The existing residence is approximately 3,312 sq. ft., though the PDO allows for discounting 200 sq. ft. for each off-street parking space. Because the existing residence has a 460 sq. ft. two-car garage, 400 sq. ft. may be deducted for FAR calculations, resulting in a FAR of 2,912 sq. ft., which is over the current allowable limit.

However, the City of San Diego Land Development Code, which serves as the certified Implementation Plan, allows an ADU of up to 800 sq. ft. to be permitted on a premises with an existing or proposed dwelling unit regardless of maximum lot coverage, maximum floor area ratio, and minimum open space requirements. Thus, even though the existing single-family residence is over allowable FAR, the applicant is proposing to add approximately 160 sq. ft. to the first floor to convert the first floor into an 800 sq. ft. ADU. However, they are also proposing to add approximately 150 sq. ft. to the primary residence on the belief that the excess square footage can be applied elsewhere in the structure.

The site is located within the original permitting jurisdiction of the Coastal Commission where Chapter 3 of the Coastal Act is the standard of review. The City of San Diego has a certified Local Coastal Program for the Mission Beach area, which serves as guidance.

## **B. Public Access and Recreation**

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 City's certified LCP requires dwelling units to provide two off-street parking spaces. It also requires an off-street parking space for accessory dwelling units in the coastal zone that are within the Beach Impact Area (BIA) of the Parking Impact Overlay Zone – identified as an area warranting higher parking standards due to chronic parking shortages – but outside of the Transit Priority Area (TPA) – defined as within one-half mile of a major transit stop. The subject property is at the southern end of the Mission Beach peninsula, which is within the BIA but outside the TPA ([Exhibit 5](#)). The proposed project will retain the two-car garage serving the primary residence and will provide the

accessory dwelling unit with a one-space carport on the west side of the property. Therefore, the proposed project is consistent with the parking requirements of the City's certified LCP.

Because many of the lots in Mission Beach, including the subject site, are constrained and have limited access and space to accommodate construction activities and staging, the demolition and construction activity could impede public access by occupying public parking spaces or blocking public rights-of-way with materials or debris. To avoid impacts to public access associated with demolition and construction activities, **Special Condition No. 3** prohibits any development during peak summer months when public access could be impacted. **Special Condition No. 4** requires the applicant to submit a written agreement memorializing the landowner's acknowledgment and acceptance of the construction timing limitations and requires the applicant to submit a weekly construction schedule to confirm that work will not occur during summer. **Special Condition No. 7** requires recordation of the permit conditions against the property to ensure future property owners are aware of the above-mentioned protections and conditions.

Therefore, the Commission finds the proposed development, as conditioned, consistent with the public access policies of Chapter 3 of the Coastal Act.

### **C. Visual Resources and Community Character**

Section 30251 of the Coastal Act states, in part:

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

In the Mission Beach neighborhood, the public 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 and Strandway.

The project site is located on the west side of Strandway, a north-south public vehicular and pedestrian right-of-way within an existing residential area zoned R-S. The character of the buildings in the Mission Beach community range from single-story beach cottages to three-story multi-family units. From the exterior, the existing three-story residence appears similar to neighboring structures. However, it is currently non-conforming with regard to the allowable maximum floor area ratio, as the current size exceeds the limit, as well as side yard setback due to the garage sitting on the eastern property line and rear yard setback due to second and third-floor balconies encroaching into it.

While this would normally be grounds for a redesign to bring the development into conformance with the certified LCP, in September 2022, the Coastal Commission certified LCP Amendment No. LCP-6-SAN-21-0005, which included amending Section 141.0302 of the Land Development Code, which serves in part as the certified Implementation Plan for the City of San Diego's LCP, to allow an accessory dwelling unit with a gross floor area of 800 sq. ft. to be permitted on a premises with an existing or proposed dwelling unit regardless of maximum lot coverage, maximum floor area ratio, and minimum open space requirements. Thus, even though the existing single family residence is over the allowable FAR, the applicant is proposing to add approximately 160 sq. ft. to the first floor to convert the first floor into an 800 sq. ft. ADU served by a new carport west of the garage. However, the applicant is also proposing to add approximately 150 sq. ft. to the primary residence, presuming that the excess of the 800 sq. ft. ADU allowance can be applied to the primary dwelling unit, as well. This is not allowed under the LCP, as the 800 sq. ft. allowance can only be applied to ADUs, and because the existing residence is already over the allowable FAR, no square footage can be added to the primary residence because it would exacerbate the non-conformity. The City of San Diego has communicated in discussions with Commission staff that they are of the same position as staff.

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. The project site is located between Strandway and the public beach. The existing garage currently sits on the eastern property line where a five-foot setback would be required, blocking a potential public view, and the second and third floor balconies encroach into the rear yard setback along the beach. However, the project is not demolishing more than fifty percent of the exterior walls or load bearing structures, and this does not constitute redevelopment requiring that the entire development be brought into conformance with the current LCP.

However, the existing development does observe at least a three-foot setback along the western property line. Thus, there is an opportunity to enhance public views by providing a vertical view corridor across the western side yard setback. There is currently an approximately four-foot-tall rear wall on the property with a visually permeable wrought-iron gate on its western end that opens onto the beach that aligns with such a side yard view corridor. While the existing front gate on Strandway is a solid door, a new visually permeable gate would allow a vertical view of the beach from Strandway across the property.

The LCP requires a 10-foot minimum rear yard setback from Ocean Front Walk, the public boardwalk that abuts the majority of the beachfront homes on Mission Beach. While the boardwalk curves to the west a few lots north of the subject property and does not abut it, there is still a public paper street abutting the rear property line, and it possible that the City may construct an extension of the boardwalk along these properties in the future. Additionally, the LCP explicitly lists the allowable encroachments into required yards, and balconies are not listed. Thus, while the project is not triggering redevelopment and thus requiring removal of the non-conforming

balconies, any reconstruction or enlargement of the existing balconies would be exacerbating the non-conformity and is not allowed.

To ensure that public views and public access towards the ocean are protected, **Special Condition No. 1** requires the applicant to submit revised final plans that replace the solid front gate on Strandway with a visually permeable one to allow vertical views of the beach across the western side yard setback and remove any reconstruction and enlargement of the rear balconies. In addition, **Special Condition No. 2** requires the applicant to submit a final landscaping plan requiring all landscaping and hardscape in the western side yard view corridor to consist of low-lying materials not exceeding three feet in height. Thus, visual quality and public views will be protected, consistent with Coastal Act Section 30251.

## 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.

Sea level rise is expected to exacerbate existing coastal hazards by raising mean water levels and extending flood zones inland. As noted in the Commission's 2018 Sea Level Rise Guidance Update and other studies, increased sea level is expected to cause increased inundation of beaches, reduced accretion, and increased erosion of beaches.

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, which currently experiences periodic flooding that will likely increase with sea level rise. Because there is a wide sandy beach and parking lot (approx. 1,300 feet) between the subject property and the Pacific Ocean and 150 feet between the Mission Bay Channel and the subject property, wave runup and overtopping are not expected to significantly impact this site

over the life of the proposed improvements; however, as a near-shore property, the proposed development may be threatened by sea-level rise at some point in the future. Historically, the most common response to coastal hazards has been to construct shoreline protective devices in order to slow the erosion of beaches and bluffs, retain unstable slopes, and prevent flooding.

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. Shoreline protection devices are physical structures that take up space and displace or modify prior uses of coastal land (e.g., beach recreation, habitat, etc.), including the occupation of public beach. Seawalls and, in particular, revetments, may have large horizontal footprints, displacing what would otherwise be sandy beach, and resulting in a long-term loss of beach area for public access, recreation and other uses. In addition to frequently encroaching onto the public beach, shoreline protection devices, by slowing or stopping natural processes of shoreline retreat, also prevent the future creation of new beach and eliminate a supply of new sand that would otherwise have resulted from bluff and shoreline erosion. By design, shoreline protection devices establish a fixed landward boundary of the back beach (“fixing the back beach”), and prevent the natural, on-going inland adjustment of the beach that occurs on an eroding coast; over time, this restriction of a beach’s adaptive capacity can result in the narrowing or loss of the beach (“passive erosion”). Future sea level rise is expected to result in the drowning or “pinching out” of many California beaches (Vitousek et al. 2017), an effect that will only be exacerbated in locations with extensive shoreline protection.

By substituting hard materials (e.g., rock, concrete) in place of more erodible natural substrates (e.g., sand, soils, terrace deposits, sedimentary rocks), shoreline protection devices can also change wave reflection patterns, cause scour or winnowing of beach sediments along the shoreline, and increase erosion rates at unarmored locations up- and down-coast of the structure (“end effects”). In certain locations, shoreline protection devices may also interrupt or interfere with longshore and cross-shore sediment transport, resulting in deposition of sand in one location at the expense of other locations further “down drift” along the coast. Broader effects of shoreline protection devices include changes to the recreational and beach use experience, impacts to beach and other coastal ecosystems, and impairment of the aesthetic and visual character of the coast.

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, which requires new development to minimize risks to life and property. 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.

The property currently has an approximately three-foot tall rear wall with an iron gate that could act as partial protection during storm events. However, no work to the rear wall is proposed, and the new development proposed here is not entitled to shoreline protection. As such, the applicant is required to waive any possible right to construct a shoreline protective device to protect the development 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) removal is required pursuant to LCP policies for sea level rise adaptation planning; or (d) the development would require a shoreline protective device that is inconsistent with the coastal resource protection policies of the Coastal Act or certified LCP. Finally, according to Our Coast, Our Future sea level rise predictions, the shoreline could migrate onto the site within the lifetime of the proposed development. Thus, **Special Condition No. 6** further requires any future encroachment into public trust lands to be removed unless authorized by the Coastal Commission and the State Lands Commission.

The applicant has acknowledged that periodic storm and flood events occur throughout the Mission Beach community and has designed the development to be flood resistant with measures such as an impermeable membrane around the first floor and raising utilities four feet above grade. However, while those measures are appropriate, the applicant has also proposed a movable bulwark to place across the rear gate during storm events. Because this would act as shoreline protection and divert flood flows elsewhere, the Commission's staff coastal engineer recommends removal of the bulwark and installation of flood vents that would allow water that enters the structure to flow through and out of it. **Special Condition No. 1** requires revised final plans that modify the flood measures according to staff's recommendation, and because review of the applicant's coastal hazard study by the Commission's technical staff identified a relatively high risk of tsunami damage, **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 permittee who is enjoying the benefits of the new development, and not the public, as well as give adequate notice to tenants of the property of the risk and city evacuation routes. As conditioned, the Commission finds the project consistent with the coastal hazards policies of Chapter 3 of the Coastal Act.

## **E. Local Coastal Planning**

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



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

The City of San Diego has a certified LCP and issues permits for development within its jurisdiction. The subject site is located within the Residential-South (R-S) zone of the Mission Beach Planned District. The purpose of the zone is to provide adequate dwelling units for residents of the community, and as the proposed project will retain the existing dwelling unit while adding an accessory dwelling unit, the proposed residential use is consistent with the certified LCP.

As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act as well as with the certified LCP which the Commission uses as guidance for the subject area. Approval of the project—as conditioned—will not prejudice the ability of the City of San Diego to continue to implement its certified LCP for the Mission Beach community.

## **F. California Environmental Quality Act**

Section 13096 of the Commission's Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. The City of San Diego determined that no CEQA review was required for the proposed project.

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**

- 2605 Ocean Front Walk Geotechnical Investigation and Coastal Engineering Report, by ENGEO Inc. dated August 29, 2022