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STAFF REPORT: REGULAR CALENDAR

Application No.: 6-20-0375

Applicant: Elan Nachassi

Agent: Claude-Anthony Marengo

Location: 5162 Cape May Avenue, Ocean Beach, San Diego, San Diego County. (APN 448-023-04)

Project Description: Demolition of two existing 408 sq. ft. and 410 sq. ft. residences and a detached 397 sq. ft. garage and construction of a new 2,347 sq. ft 2-story duplex with attached garage with car lift on a 3,498 sq. ft. beachfront lot.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The primary issues raised by the proposed development relate to coastal hazards and protection of public access and public views. The subject property is located adjacent to the beach on Cape May Avenue, a designated view corridor in the Ocean Beach community of the city of San Diego. The existing development includes a deck and fence that extends into the public right-of-way on Cape May Avenue. In order to protect public views and public access, **Special Conditions #1 and #2** require the applicant to submit final plans to remove existing encroachments and limit the height of fencing and landscaping in order to protect public views. **Special Condition #5** puts the permittee on notice that future development, including the addition of bedrooms that would

increase the intensity of use or parking requirements, would require a coastal development permit.

As a beachfront development, the proposed project could be subject to coastal hazards such as flooding as sea level rise increases. **Special Condition #3** requires the applicant to acknowledge the development is proposed in a site subject to coastal hazards and assume the risks of development. **Special Condition #4** requires the applicant to waive any right to construct a future shoreline protective device. Finally, **Special Condition #6** requires the applicant to record a deed restriction against the property that imposes the conditions of the permit for the purpose of providing notice to future property owners.

Commission staff recommends that the Commission **APPROVE** coastal development permit application 6-20-0375, as conditioned. The motion is on page 4. The standard of review is Chapter 3 of the Coastal Act.

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I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit 6-20-0375 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 ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and written approval of the Executive Director, final site and architectural plans approved by the City of San Diego that are in substantial conformance with the site and architectural plans by Marengo Morton Architects dated May 19, 2022 and received June 1, 2022, except that they shall comply with the following:
 - i. The proposed residence shall be designed to include safety and floodproofing measures recommended by a structural engineer to protect the development for up to seven (7) feet of sea level rise, which may result in inundation of the lower floor of the residence up to elevations 20 - 22 ft NAVD88, or 3.9 – 5.9 feet above the finished floor elevation. Safety measures to minimize flood risks may include, but are not limited to, raising the foundation and/or finished floor elevations; strengthening all structural elements below an elevation of +22 feet NAVD88 to resist expected hydrostatic and lateral loads; waterproofing all building elements below an elevation of +22 feet NAVD88; and elevating external utility connections or placing them in floodproof enclosures. The safety and floodproofing measures shall be clearly indicated in the final plans and shall also be described in an accompanying narrative explaining how the selected measures will combine to protect the development over a 75-year project life.
 - ii. Any fencing, gates, or patio railings in the front and side yard setback area shall permit public views and have at least 75 percent of its surface area open to light.
 - iii. Oceanfront glass fences and gates subject to this permit shall use materials designed to minimize bird-strikes with the fence or gate. Such materials may consist, all or in part, of wood; metal; frosted or partially-frosted glass, Plexiglas or other visually permeable barriers that are designed to prevent creation of a bird strike hazard. Clear glass or Plexiglas shall not be installed unless a permanent ultraviolet-light reflective coating specially designed to reduce bird strikes by reducing reflectivity and transparency is also used. Use of opaque or partially opaque materials is preferred to clear glass or Plexiglas. All materials and coatings shall be maintained throughout the life of the development to ensure continued effectiveness at addressing bird strikes and shall be maintained at a minimum in accordance with manufacturer specifications and as recommended by the Executive Director.
- b. The permittee shall undertake development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director

determines that no amendment is legally required for any proposed minor deviations.

2. Revised Landscape/Yard Area Fence Plans.

- a. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and written approval of the Executive Director, final landscaping and fence plans approved by the City of San Diego that are in substantial conformance with the site and architectural plans by Marengo Morton Architects dated May 19, 2022 and received June 1, 2022, except that they shall include the following:
 - i. A 15 ft. wide view corridor shall be preserved in the south yard area adjacent to Cape May Avenue. All proposed landscaping (including raised planters) and hardscaping (patios and decks) in the south yard area shall be maintained at a height of three feet or lower to preserve views from the street toward the ocean.
 - ii. No landscaping or hardscape shall be retained or erected within the Cape May Avenue right-of-way. Trees may not overhang in a way that blocks public views.
 - 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. 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 landscape 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 and that all fences, gates, and railings are at least 75% open. 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

applicant, or successors 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 Resource Specialist and shall specify measures to remediate those portions of the original plan that have failed or are not in conformance with the original approved plan.

- b. The permittee shall undertake the development in accordance with the approved landscape plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Commission approved amendment to the permit unless the Executive Director determines that no such amendment is legally required.

- 3. Assumption of Risk, Waiver of Liability and Indemnity Agreement.** By acceptance of this permit, the applicant acknowledges and agrees (A) that the site may be subject to hazards, including but not limited to waves, storms, flooding, erosion, and earth movement, many of which will worsen with future sea level rise; (B) to assume the risks to the permittee and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (C) 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 (D) 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.

- 4. No Future Bluff or Shoreline Protective Device.**

- a) By acceptance of this Permit, the applicants agree, on behalf of themselves 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 Permit No. 6-20-0375 including, but not limited to, the residence, foundation, patios, and car lift, 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.
- c) Approval of CDP No. 6-20-0375 does not allow encroachment onto public trust lands. Any future encroachment onto public trust lands shall be removed unless authorized by the Coastal Commission.

5. Future Development. This permit is only for the development described in Coastal Development Permit No. 6-20-0375. Except as provided in Public Resource Code section 30610 and applicable regulations, any future development, as defined in Public Resource Code section 30106, including any change in intensity of use including the addition of bedroom(s) or conversion of existing space into an additional bedroom that triggers the need for additional parking, shall require an amendment to this permit from the California Coastal Commission or shall require an additional coastal development permit from the California Coastal Commission or from the applicable certified local government.

6. Deed Restriction. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and 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 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 on or with respect to the subject property.

IV. FINDINGS AND DECLARATIONS

A. Project Description and Background

The proposed project is the demolition of three existing structures, consisting of one 408 sq. ft. residence, one 410 sq. ft. residence, and one 397 sq. ft. detached garage, and construction of a new approximately 2,347 sq. ft two-story duplex with attached garage with a car lift, on a 3,498 sq. ft. beachfront lot at 5162 Cape May Avenue in the Ocean Beach community of the City of San Diego ([Exhibits 1 and 2](#)). The residential units will be 1,219 sq. ft. each, with one two-bedroom unit and one one-bedroom unit ([Exhibit 3](#)). Four off-street parking spaces will be provided in the above-ground car lift, and the garage will be capable of powering a future electric vehicle charging station. The site contains an existing deck and fence that encroaches into the public right-of-way along Cape May Avenue ([Exhibit 4](#)). The applicant is proposing to remove all existing development in the public's right-of-way ("ROW") and not pursue any further development in the ROW.

The site is located on the north side of Cape May Avenue and fronts a wide sandy beach. The proposed duplex is consistent with the underlying zoning and land use designations of RM 2-4 and Residential-Medium.

The site is within an area of original jurisdiction where the Chapter 3 policies of the Coastal Act is the standard of review, and the City's certified LCP may be used as guidance.

B. Coastal Hazards

Section 30235 of the Coastal Act states:

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.

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

New development shall do all of the following:

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

(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.

Policy 7.3.4 of the certified Ocean Beach Community Plan and Local Coastal Program (LUP) states, in relevant part:

Allow the placement of shoreline protective devices, such as concrete seawalls, and revetments, only when required to serve coastal-dependent uses or when there is no other feasible means to protect existing principal structures, such as homes, in danger from erosion, consistent with Coastal Act Section 30235 and 30253.

Policy 7.6.1 of the Ocean Beach Community Plan and Local Coastal Program states:

Development shall use the most current and best available scientific research data available when assessing climate change and sea level rise.

Policy 7.6.3 of the Ocean Beach Community Plan and Local Coastal Program states:

Use best available science and site-specific geotechnical reports as needed, to assess public and private projects for their vulnerability to impacts from sea level rise and, if vulnerable, propose a reasonable adaptation strategy. Analyze options for removal or relocation of structures that become threatened by coastal hazards. Use best available adaptation strategies that do not rely on shoreline protective devices in accordance with the California Coastal Act (see Coastal Act text boxes).

Policy 7.6.4 of the Ocean Beach Community Plan and Local Coastal Program states:

Avoid new bluff development in hazardous locations, and properly site development to avoid the need for future shoreline protective devices and to avoid and minimize risks from sea level rise over the life of the structure. Utilize adaptation strategies and the best available science, and monitor sea level rise impacts over time.

Policy 7.6.7 of the Ocean Beach Community Plan and Local Coastal Program states:

Ensure that implementation of any flood or wave action protection measures such as elevation of habitable areas, break-away walls, etc., as well as implementation of any other adaptation measures will not conflict with the City's LCP provisions designed to protect public coastal views and other coastal resources (See Figure 7-3).

To find a proposed beachfront residential development consistent with Section 30253, the Commission must find that the development will not be subject to threat throughout its useful life such that it requires a seawall or other shoreline protective device to protect it. The Commission has traditionally been concerned with the siting of new development directly along the shoreline in terms of both its encroachment onto public sandy beach as well as visual impacts. The Coastal Act Section 30235 acknowledges that seawalls, revetments, cliff retaining walls, groins and other such structural or "hard" solutions alter natural shoreline processes. Thus, such devices are required to be

approved only when necessary to protect existing structures or public beaches in danger from erosion and when designed to eliminate or mitigate adverse impacts on local sand supply.

In the case of the proposed development, the applicant is requesting to demolish two existing residences and a detached garage and construct a new residential structure with an attached garage on a beachfront site. Presently, there is no shoreline protection on the subject site and the applicant is not proposing any in connection with the new development.

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, or increased erosion of beaches. The applicant has submitted a coastal hazards analysis with a description of how the proposed project would accommodate future flooding due to sea level rise and an associated increase in the groundwater level. On the issue of groundwater rise, the analysis concluded that no emergent groundwater is anticipated for the lifetime of the proposed development because the groundwater is currently approximately 8 ft. below the existing and proposed grades of approximately +14.1 ft. and +14.3 ft. NAVD88, respectively. The analysis also concluded that future storm wave runup, abetted by sea level rise, will not reach the site due to the wide sandy beach fronting the site, which will provide a buffer against shoreline retreat. However, Commission staff uses a different, more conservative runup methodology and found that the structure may be impacted by flooding over its design life under sea level rise scenarios of 3 - 6 ft. or greater. Although sea level rise of this magnitude is not predicted to occur until the latter portion of a 75-year project life, extreme wave uprush may occur long before that time, and future storm wave flooding could threaten the proposed residence. Thus, adaptation and design measures are included in the project to minimize risk throughout the life of the development.

In order to address potential future flood risk, the applicant incorporated several flood adaptation measures into the proposed design. Materials that are resistant or highly resistant to floodwater damage will be used for the concrete slab foundation, finished floors, walls, and ceilings. Breakaway walls will be used to equalize internal and external hydrostatic pressure. Electrical and gas meters will be raised as high as possible and electric conduits will be waterproofed. In order to assure that future flood hazards to life and property are minimized and structural stability is assured over the expected project life, the Commission is including **Special Condition #1**, which requires the submittal of final project plans with specific adaptation measures incorporated. Additionally, all stormwater will be directed to and discharged into landscape areas and will not contribute significantly to flooding in the surrounding area. The proposed project would not greatly expand the portion of the site occupied by solid structures as compared to the existing development, and thus is not anticipated to significantly exacerbate future flooding at neighboring residences. **Special Condition #3** 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 assumed by the applicant, and not borne by the public. The project, as new development, is not entitled to shoreline protection and as such, the applicant is required to waive any right to construct a shoreline protective device to protect the development in the future, as outlined in **Special Condition #4**. Further, the landowner must remove the development if 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.

As conditioned, the Commission finds the project consistent with the coastal hazards policies of Chapter 3 of the Coastal Act and the applicable policies of the Ocean Beach LCP.

C. 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 relevant 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 relevant 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....

Policy 6.3.11 of the certified Ocean Beach Community Plan and Local Coastal Program (LUP) states:

Preserve, protect, and enhance public access to the beach/coast within the community. Maximize retention of existing on-street public parking for protection and maintenance of the public beach parking reservoir.

Section 142.0555 of the certified Land Development Code (IP) states:

(a) Tandem Parking for Residential Uses. Tandem parking shall be counted as two parking spaces toward the off-street parking required by this Division subject to the following requirements:

(1) Within the beach impact area of the Parking Impact Area Overlay Zone, access to the tandem parking space shall be provided from an abutting alley.

(2) The tandem parking spaces shall be assigned to the same dwelling unit. The owner of the premises or the owner's assigned representative shall enforce the use restrictions.

Section 142.0556 of the Land Development Code states:

Mechanical automobile lifts may be incorporated into developments to meet required parking in any area where tandem parking is permitted as identified in Section 142.0555, or where the mechanical automobile lift design allows for access to a specific car on demand. Parking spaces within the lift may be counted towards the required parking requirement. The mechanical automobile lift shall be fully enclosed in a structure.

The project site is located on Cape May Avenue between the ocean and the first public roadway (Abbott Street) and immediately adjacent to a popular wide sandy beach where lateral access along the shoreline is readily available. The beach can be accessed from the end of Cape May Avenue immediately south of the project site and from the unnamed alley north of the site. The subject site contains an existing deck that encroaches into the public right-of-way ([Exhibit 4](#)). The applicant has proposed to remove all development in the right-of-way and leave it as a bare patch of sand, thereby increasing the amount of space available for public beach access. The applicant submitted a construction staging plan indicating that all construction materials will be stored within the subject lot, and no staging and storage will take place on public beach or parking spaces. To ensure that public access is protected, **Special Condition #1** requires the applicant to submit final plans confirming that no permanent structures will be located in the public right-of-way and that all construction staging and storage will take place within the subject property.

The site is located within the City's Beach Impact Area, which generally comprises the area within 3-4 blocks of the beach or bay. The Beach Impact Area is subject to increased off-street parking requirements due to the high demand by both beach visitors and surrounding residents. The City's Land Development Code, parts of which serve as the certified implementation plan (IP), requires 1.75 spaces for a 1-bedroom unit and 2.25 spaces for a 2-bedroom unit within the Beach Impact Area. Thus, the total required off-street parking for the proposed duplex is four spaces. The proposed car lift will provide four off-street parking spaces for the two residences, consistent with Section 30252 of the Coastal Act and the certified LCP.

This parking requirement of four spaces would change if the current or future owner of the duplex changes the number of bedrooms in the units ([Exhibit 3](#)). Thus, for the subject project, changing the number of bedrooms, even if no other development is proposed, for example, by converting the proposed gym in the 1-bedroom unit to a second bedroom, would be considered a change in intensity of use that requires a coastal development permit. Therefore, **Special Condition #5** puts the permittee on notice that future development, including any addition of bedroom(s), will require Commission review and approval through a coastal development permit.

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

D. Public Views/Community Character

Section 30251 of the Coastal Act states, in relevant 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,....

Policy 4.1.13 of the certified Ocean Beach Community Plan and Local Coastal Program (LUP) states:

Encourage the use of special design and window treatments to improve the degree to which new developments are bird-safe. Green design that facilitates bird safety includes: reduction of reflectivity and transparency in glass, the avoidance of light pollution, reduced disturbance to natural landscapes and biological systems, and lowered energy use.

Policy 4.6.3 of the Ocean Beach Community Plan and Local Coastal Program states:

Enhance visual access by requiring development near the bluff top and within the area between the ocean and the first public right-of-way from the ocean to maintain setbacks free from structural or landscape elements greater than three feet (3') in height, allowing taller plants outside setbacks.

Policy 7.2.1 of the Ocean Beach Community Plan and Local Coastal Program states:

Maintain building setbacks free of structural elements over three feet in height between the ocean and the first public right-of-way from the ocean to protect public coastal views.

Section 132.0403 of the certified Land Development Code (IP) states:

(a) If there is an existing or potential public view and the site is designated in the applicable land use plan as a public view to be protected,

- (1) The applicant shall design and site the coastal development in such a manner as to preserve, enhance or restore the designated public view, and
 - (2) The decision maker shall condition the project to ensure that critical public views to the ocean and shoreline are maintained or enhanced.
- (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.

Section 142.0310(c)(2) of the Land Development Code states, in relevant part:

- (A) Standard, all metal chain link fences located on the front or street side property line shall not exceed 3 feet in height. Other open fences are permitted up to 6 feet in height.
- [. . .]
- (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 certified Ocean Beach Community Plan and Local Coastal Program (LUP) designates this stretch of Cape May Avenue as a framed view corridor offering a view of the ocean from a public right-of-way without obstruction from allowable building envelopes on adjacent private property. The proposed project will enhance public views within this corridor by removing the existing residence located within much of the 15 ft. front yard view corridor. The applicant is not proposing any structures or landscaping over three feet in height within the 15 ft. front yard view corridor, consistent with the LCP requirements.

The LCP allows open fences up to 6 ft. as long as at least 75% of the fence is open to light. However, the proposed fences along the west and east property lines do not meet this requirement and could therefore impact coastal views. As such, **Special Condition #1** requires revised plans that propose fences that are at least 75% open to light. Due to the amount of glass proposed by the project, there is a potential to adversely impact wildlife due to bird strikes. The certified LUP encourages the use of bird-safe window treatments. Therefore, **Special Condition #1** further requires the revised plans to incorporate materials designed to minimize bird-strikes.

The LUP describes Ocean Beach as an eclectic mix of beach cottages, larger single-family residences, multi-family housing and commercial establishments. The proposed duplex will be compatible with the character of the surrounding neighborhood, which contains a mix of single- and multi-family housing.

Since the existing structures were built in 1945, they are subject to the City of San Diego's review for historical significance. Section 143.0212 of the City's Land Development Code provides that the City shall determine the need for a site-specific survey for the purposes of obtaining a construction permit or development permit for development for any parcel containing a structure that is 45 or more years old. In this particular case, the structures are approximately 77 years old, but the City's Development Services did not find the structures to be eligible for historical designation and there is no evidence that the structures have historic value.

In summary, the proposed development, as conditioned, will not result in public view blockage and will be visually compatible with the character of the surrounding neighborhood, consistent with Section 30251 of the Coastal Act and the certified LCP

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.

While the City of San Diego has a certified LCP that governs the Ocean Beach community, the subject site is in an area of original jurisdiction where the Commission retains permanent permit authority. As detailed above, the revised project, as conditioned, is consistent with the certified Ocean Beach Community Plan and Local Coastal Program and all applicable Chapter 3 policies of the Coastal Act. Therefore, the Commission finds that approval of the proposed amendment, as conditioned, will not prejudice the ability of the City of San Diego to continue to implement its certified LCP for the Ocean 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 found the proposed development to be exempt under CEQA.

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 hazards and public access will minimize all adverse environmental impacts.

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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

- Ocean Beach Community Plan and Local Coastal Program
- City of San Diego Land Development Code