

CALIFORNIA COASTAL COMMISSION

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Filed: 2/20/22
270th Day: 11/17/22
Staff: C. Boyle-SD
Staff Report: 7/21/22
Hearing Date: 8/10/22

STAFF REPORT: REGULAR CALENDAR

Application No.: 6-20-0593

Applicant: Ben Kimmich

Agent: Ed Mahony

Location: 529-531 9th Street, Imperial Beach, San Diego County. (APN 626-090-39)

Project Description: Construction of new detached 1,188 sq. ft. 2-story accessory dwelling unit (ADU), new detached 1,144 sq. ft. office and storage structure, and 383 sq. ft. addition to an existing 1,828 sq. ft. duplex; conversion of 625 sq. ft. detached garage to ADU; and after-the-fact approval of construction of two detached 625 sq. ft. garages on a 11,250 sq. ft. lot.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The primary issues raised by the proposed development relate to coastal hazards, community character, and public access. The subject property is located in a low-lying neighborhood near the southern shoreline of San Diego Bay that is projected to experience flooding from sea level rise and groundwater rise in the near future. The proposed project would add two new accessory dwelling units (ADUs) to the site, resulting in an increase in density in an area that is very likely to be vulnerable to flooding. However, the site is located approximately 900 feet from the waters of San Diego Bay in an established neighborhood that includes many residences, many of

which are closer to the bay than this site and will need to address sea level rise and groundwater inundation as a risk before this site does. Hazards in this area will not be able to be addressed by individual shoreline protection, but will require a neighborhood or regional approach. Planning efforts are already underway to retrofit the Bayshore Bikeway, located in between the subject neighborhood and San Diego Bay, to provide flood protection to the area.

In the meantime, **Special Condition #1** requires the applicant to submit revised plans incorporating safety and floodproofing measures. **Special Condition #2** requires the applicant to acknowledge the development is proposed in a site subject to coastal hazards and assume the risks of development. **Special Condition #3** requires the applicant to waive any right to construct a future shoreline protective device. **Special Condition #4** requires the landowner to notify future occupants that the site is in a hazardous location. Given that the proposed ADUs would provide lower cost housing and are not anticipated to have adverse impacts on coastal resources, the risk of hazards associated with the development can be found to be less than significant.

Special Condition #5 puts the permittee on notice that future development that would add another ADU will require Commission review and approval through a coastal development permit. **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 6-20-0593 as conditioned. The motion is on page 4. The standard of review is Chapter 3 of the Coastal Act.

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EXHIBITS

[Exhibit 1 – Vicinity Map](#)

[Exhibit 2 – Aerial View](#)

[Exhibit 3 – Site Plan](#)

[Exhibit 4 – Coastal Hazards Map](#)

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit 6-20-0593 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 Imperial Beach that are in substantial conformance with the site and architectural plans by Pacific Coast Drafting, except that they shall comply with the following:
 - i. The proposed ADUs shall be designed to include safety and floodproofing measures recommended by a structural engineer to protect the development for up to three (3) feet of sea level rise, which may result in inundation of the lower floor of the residence. 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 +11 feet NAVD88 to resist expected hydrostatic and lateral loads; waterproofing all building elements below an elevation of +11 feet NAVD88; and/or installing pumps for crawl spaces. 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.
 - 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. **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.

3. 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. 6-20-0593 including, but not limited to, the residence, foundation, garages, and office and storage 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. 6-20-0593 does not allow encroachment onto public trust lands. Any future encroachment onto public trust lands shall be removed unless authorized by the Coastal Commission.
- 4. Notifications.** The landowner shall provide notice to all future occupants that: 1) the ADU is located in a low-lying area that may become hazardous in the future; 2) potential flooding caused by surface water and/or rising groundwater exacerbated by sea level rise could render it difficult or impossible to provide services to the site; 3) that the boundary between public lands (tidelands) and private land may shift with rising seas and the development approval does not permit encroachment onto public trust land; and 4) that additional adaptation strategies may be required in the future to address sea level rise consistent with the Coastal Act and certified LCP.
- 5. Future Development.** This permit is only for the development described in Coastal Development Permit No. 6-20-0593. Except as provided in Public Resource Code section 30610 and applicable regulations, any future development, as defined in Public Resource Code section 30106, including the conversion of non-habitable

space such as the garage, office, or storage structure to an ADU, 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 construction of an approximately 383 sq. ft. addition to an existing 1,828 sq. ft. duplex; a new detached 1,188 sq. ft. 2-story accessory dwelling unit (ADU); a new detached 1,144 sq. ft. office and storage structure in the rear yard of an existing 1,828 sq. ft. duplex; and after-the-fact construction of two existing detached 625 sq. ft. garages, one of which will be converted to an ADU, on a 11,250 sq. ft. lot ([Exhibits 1-3](#)). As proposed, the project would result in a total of two primary dwelling units with two detached ADUs. The proposed office and storage structure is an accessory non-habitable space that will contain storage on the first floor and an office and deck on the second floor. The City of Imperial Beach imposed a condition of approval that prohibits the office and storage structure from being converted to an ADU in the future.

The site is located south of San Diego Bay on the east side of 9th Street in the City of Imperial Beach. The existing duplex is a legal nonconforming structure that was constructed prior to the current land use and zoning designation of R-1-6000 (Single Family Residential).

The site is within an area of original jurisdiction where the Chapter 3 policies of the Coastal Act are the standard of review with the City's certified LCP 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.

Policy S-11 of the City of Imperial Beach General Plan & Local Coastal Plan (certified LUP) mirrors the language above.

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 S-7 of the certified LUP states, in relevant part:

S-7 Flood Control Program

The City should take the necessary action to develop and constantly update an adequate flood control program including:

- a. Construction permits should not be granted in obvious areas of future flooding unless adequate flood protection measures are developed.
- b. Whenever possible, the minimum finished floor level for structures should be above the known or projected flood plain level. [. . .]

Sea level rise (SLR) is expected to exacerbate existing coastal hazards by raising mean water levels and extending flood zones inland. The subject site is located in a low-lying area near the southern shoreline of San Diego Bay. The City's 2016 Sea Level Rise Assessment described nuisance flooding occurring at Bayside Elementary, located north of the site, due to storm drain backup during precipitation events at high tides. Therefore, under current conditions, the site could periodically experience flooding during these events. The Assessment also identified the area encompassing the subject site as vulnerable to flooding during a 100-year storm event with 0.5 meters (1.6 ft.) of sea level rise. Commission staff analyzed the area with the Our Coast Our Future Hazards Map, which is based on an updated version of the USGS Coastal Storm Modeling System (CoSMoS) used in the City's assessment, and found that this area is projected to experience flooding during a 100-year storm with 0.8 ft. of SLR ([Exhibit 4](#)). The model also predicts that the groundwater could become very shallow with 0.8-1.6 ft.

of SLR. Therefore, the proposed ADUs and addition could be subject to flooding from the Bay or from groundwater within their design life.

Allowing development in areas that are likely to be affected by coastal hazards can result in impacts to coastal resources. As sea levels rise, beaches, wetlands, and other upland habitat trapped between the rising seas and the first line of development could be threatened. Often, the first line of development impedes the ability of the beach or wetlands to naturally migrate inland over time and reduces the sources of sand supply created by erosion that contribute to beach accretion. This process is commonly referred to as “coastal squeeze,” and leads to the narrowing and eventual loss of beaches and other shoreline habitats. Without strategic planning, this may lead to economic losses due to reduced recreational visitors, and also to occasional flooding of public coastal facilities and related damages. The loss of beach and wetland area from coastal squeeze represents a loss of many coastal resources protected by the Coastal Act, including public access, recreational opportunities and associated economic benefits, habitats and marine resources, scenic and visual qualities of coastal communities. Coastal squeeze also presents challenges for carrying out the public trust doctrine, and presents a significant environmental justice issue if the public loses its ability to access the shore as public beach spaces diminish over time. Coastal squeeze also decreases the likelihood of successful preservation of the coastal resources associated with the beach, wetlands, and other public upland resources.

The Commission has in some cases determined that increasing residential density through a subdivision on a site highly vulnerable to inundation, flooding, wave impacts, and storm flooding is not consistent with the hazard protection policies of the Coastal Act, which require new development minimize risks to life and property in areas of high geologic, flood, and fire hazard, and assure stability and structural integrity (see CDPs #5-18-0907 & #5-18-0908). The Commission’s adopted 2018 Sea Level Rise Policy Guidance provides strategies appropriate for addressing sea level rise, consistent with the Coastal Act. With regard to subdivisions as a comparison, the guidance provides:

Limit subdivisions in areas vulnerable to sea level rise: Prohibit any new land divisions, including subdivisions, lot splits, lot line adjustments, and/or certificates of compliance that create new beachfront or blufftop lots unless the lots can meet specific criteria that ensure that when the lots are developed, the development will not be exposed to hazards or pose any risks to protection of coastal resources.

Such specific criteria could include: resultant parcels contain a buildable area in which development on new lots would comply with LCP policies protecting coastal resources, remain located on private property despite the migration of the public trust boundary, not require the future construction or augmentation of a shoreline protective device, be adequately served by public services (e.g., water, sewer, and safe, legal, all-weather access as applicable) over the anticipated duration of the development, and otherwise be consistent with all LCP policies. While this approach anticipates impacts from SLR on beachfront and blufftop lots, the same logic applies to inland lots that will be impacted by SLR.

The proposed project would add two new residential units, resulting in an increase in density in an area that is very likely to be vulnerable to sea level rise and groundwater inundation in the relatively near future. However, the subject project does not include a subdivision. The project site is in an established neighborhood with two existing residences already on the site. The proposed ADUs would increase density, but not to the extent that a subdivision would, which would allow both new primary units and new ADUs. In addition, the site is not a shoreline lot, but is located approximately 900 feet from the waters of San Diego Bay. Future flooding is therefore unlikely to result in the migration of public trust lands onto the subject site. Additionally, the surrounding neighborhood contains a substantial number of residences that are projected to be vulnerable to future flooding due to sea level rise and the associated rise in groundwater levels ([Exhibit 4](#)). As such, the City of Imperial Beach will need to address future flooding in this area on a neighborhood scale. In fact, the City is in the planning phase for a multi-benefit climate adaptation project that would retrofit the Bayshore Bikeway, located along the southern shoreline of the Bay, and provide flood protection to the neighborhood to the south, including the subject site. Finally, the proposed ADUs would provide lower cost housing and are not anticipated to have adverse impacts on coastal resources. Therefore, the Commission finds it appropriate to add two housing units to this site.

The Commission's 2018 Sea Level Rise Policy Guidance states that to comply with Section 30253 of the Coastal Act, "projects will need to be planned, located, designed, and engineered for the changing water levels and associated impacts that might occur over the life of the development." Adaptation on site for groundwater flooding can make a development more resilient for its projected lifespan. Therefore, **Special Condition #1**, which requires the submittal of final project plans with specific adaptation measures incorporated for the new ADUs, such as waterproofing all elements below +11 ft. NAVD88 in order to accommodate for 3 ft. of sea level rise above the base flood elevation of +8 ft. NAVD88. **Special Condition #2** 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 #3**. 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. In order to minimize risks to future tenants, **Special Condition #4** requires the landowner to notify all future occupants that the ADUs are located in an area that could become hazardous in the future. To provide notice to future property owners, **Special Condition #6** requires the applicant to record a deed restriction against the property that imposes the conditions of the permit.

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 Imperial Beach LCP.

C. Community Character/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 30250 of the Coastal Act states, in relevant part:

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

Section 30251 of the Coastal Act states:

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. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

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....

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

New development shall do all of the following:

[...]

(c) Minimize energy consumption and vehicle miles traveled.

Section 30604 of the Coastal Act states, in relevant part:

(f) The commission shall encourage housing opportunities for persons of low and moderate income.

Relevant LCP policies include the following:

Policy C-22 of the Imperial Beach General Plan & Local Coastal Plan (LUP) states, in relevant part:

Parking for both residents and visitors shall be provided as part of new development.

GOAL 14 SHORELINE ACCESS

To provide physical and visual access in the City's five coastal resource areas for all segments of the population without creating a public safety concern, overburdening the City's public improvements, or causing substantial adverse impacts to adjacent private property owners.

The presence of two existing primary residential units represents a legal nonconforming density on a site currently zoned and designed for single-family uses. The proposed 383 sq. ft. addition to one of the units complies with the City's standards for nonconforming structures because it would not increase the degree of nonconformity. The proposed project would also add two ADUs to the site by constructing a new 1,188 sq. ft. ADU and converting a 625 sq. ft. garage to an ADU. Thus, the proposed project would result in a total of four residential units, when only two would be permitted under the existing certified LCP, which is used for guidance in the area.

The Commission is aware that the state has an affordable housing crisis, and this issue is only more acute in the state's coastal zone. To address this critical need, the state legislature has enacted a number of housing laws in the last several years designed to eliminate barriers to the provision of housing, and to help foster additional housing units—particularly critically needed affordable units—where they can be appropriately accommodated by adequate public services and where, in the coastal zone, they will not adversely affect coastal resources. The proposed project includes the construction of additional residential development that is likely to be relatively affordable housing that

helps bring the City closer to achieving its housing goals. New affordable accommodations can also provide access to the Coastal Zone for a wider range of individuals of different means.

In addition, Coastal Act Section 30250 provides that new residential development shall be located in or in close proximity to existing developed areas that are able to accommodate it, or in other areas with adequate public services and where it will not have significant, cumulative adverse effects on coastal resources. Section 30253 requires that new development must minimize energy consumption and vehicle miles traveled. These policies together encourage “smart” growth by locating new development in appropriate areas to minimize impacts on coastal resources and discourage residential sprawl in more rural or sparsely populated areas that are not adequately developed to support new residential development and where coastal resources could be threatened.

Nevertheless, it is necessary to ensure that new development protect and preserve coastal resources, including visual resources and public access. Section 30251 requires new development to protect public views to and along the beach and other coastal areas; minimize landform alteration; and be designed consistent with the character of the surrounding area.

Construction of new residential units can potentially impact public access where demand for on-street parking spills over into street parking spaces used by the public to access the shoreline. The certified LCP requires new primary dwelling units to provide two 100% enclosed off-street parking spaces each, but the existing duplex is legal nonconforming with respect to this requirement. As proposed, the site would provide two 100% enclosed spaces in the garage and two uncovered tandem spaces in the driveway. Therefore, the site would not be brought into conformance with the LCP requirement for covered parking spaces, but an adequate number of off-street parking spaces (4) would be provided for the existing duplex. The City has indicated that the project in its proposed configuration will be approvable. The lack of enclosed parking spaces at this site would not impact public views or coastal resources.

As proposed, no off-street parking spaces would be provided for the two new ADUs. The subject site is located within a half-mile of a bus stop. State ADU law does not require off-street parking for new ADUs located within a half-mile of a bus stop, nor does it require replacement parking for a garage-to-ADU conversion. Nevertheless, the two primary units on the site and thus, the number of proposed ADUs, is twice what would be allowed under the existing LCP. In the case of the proposed project, potential spillover parking on 9th Street from future ADU occupants is unlikely to significantly impact public access. While the Bayshore Bikeway is a popular public recreational trail, the subject site is approximately ½ mile away from the nearest access point, and all of the surrounding streets have public parking. Thus, this area is not likely to be a reservoir of parking for shoreline access.

The proposed development will not impact public views and will be consistent with the character of the surrounding area. The new development will be located in the rear of

the lot, adjacent to an alley which will provide access to the two new ADUs. The two primary dwelling units have existed on the site since at least the 1960s. The surrounding neighborhood consists of both one and two-story structures as well as single- and multi-family residences. The subject site is in an area that is zoned for single-family residential but appears to have several nearby legal nonconforming multi-family residences. Additionally, the single-family area is surrounded by a much larger area designated for two-family residential. **Special Condition #5** puts the permittee on notice that future development that would add another ADU will require Commission review and approval through a coastal development permit.

The two ADUs will provide much-needed and relatively affordable housing that will not impact public access or community character. Therefore, as conditioned, the Commission finds the project consistent with the community character and public access policies of Chapter 3 of the Coastal Act.

D. Unpermitted Development

Unpermitted development has been carried out on the subject site without the required coastal development permit. During review of the project, Commission staff determined that the two detached 625 sq. ft., 25.5 ft. high garages in the rear yard were constructed in 2010 without benefit of a coastal development project. The applicant is requesting after-the-fact approval of these structures. The structures comply with the LCP requirements regarding setbacks and height, and no coastal resources were impacted as a result of the development. Approval of this application pursuant to the staff recommendation, issuance of the permit, and the applicant's subsequent performance of the work authorized by the permit in compliance with all of the terms and conditions of the permit will result in resolution of the violations specifically described herein.

Although 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 and the City's certified LCP. Commission review and action on this permit does not constitute a waiver of any legal action with regard to the alleged violations (or any other violations), nor does it constitute an implied statement of the Commission's position regarding the legality of development, other than the development addressed herein, undertaken on the subject site without a coastal permit.

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 Imperial Beach has a certified LCP, the subject site is in an area of original jurisdiction where the Commission retains permit authority. As detailed above, the revised project, as conditioned, is consistent with the certified Imperial Beach LCP

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 Imperial Beach to continue to implement its certified LCP.

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 Imperial Beach found the proposed project to be a ministerial project exempt from CEQA review.

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 coastal 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

- City of Imperial Beach General Plan & Local Coastal Plan
- California Coastal Commission Sea Level Rise Policy Guidance (2018)