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Filed:	9/25/24
270th Day:	6/22/25
Staff:	L. Cain-SD
Staff Report:	5/22/25
Hearing Date:	6/12/25

STAFF REPORT: REGULAR CALENDAR

Application No.:	**6-24-0375**
Applicant:	**Craig and Terri Rubenstein**
Agent:	Tim Golba
Location:	2865 & 2867 Ocean Front Walk, Mission Beach, San Diego, San Diego County. (APN: 423-711-05)
Project Description:	Demolition of an existing 4,675 sq. ft. three-story duplex with attached two-car garage and construction of a 4,602 sq. ft. three-story duplex with an attached 565 sq. ft. garage on a 4,323 sq. ft. beachfront lot.
Staff Recommendation:	Approval with conditions.

STAFF NOTE

This item was previously scheduled for the Commission hearing on May 7, 2025. However, on May 6, 2025, the applicant requested postponement. The applicant is allowed one such postponement as a matter of right (pursuant to California Code of Regulations Section 13073). Since the postponement, the applicant has not provided any new information, project revisions, or comments in response to the staff report and addendum that were published as part of the May 2025 agenda. Thus, staff's recommendation remains the same, including all special conditions.

SUMMARY OF STAFF RECOMMENDATION

The primary issues raised by this project relate to the protection of public views and public access and potential impacts to the proposed structure from flooding and sea

level rise over the proposed project's lifetime. The subject property is located on the southern end of Ocean Front Walk adjacent to the east-west Deal Court pedestrian right-of-way, which serves as an access and visual corridor for this part of Mission Beach.

The project site is located between Mission Boulevard and the beach (Exhibit 1). As a near-shore development, the proposed project is subject to coastal hazards such as flooding and wave overtopping, risks that increase with sea level rise. This neighborhood currently experiences periodic flooding and wave overtopping that will likely increase with sea level rise. Although there is an existing seawall that protects the public boardwalk along Ocean Front Walk, the subject project must not be designed to rely on the seawall.

In recent years, the City of San Diego has updated its LCP to require new development be sited and designed to minimize flood hazards and established construction standards for development in areas of future sea level rise. Specifically, the City's LCP requires that all dwelling units constructed outside of a FEMA Special Flood Hazard Area, but within an area of future sea level rise, must comply with the construction standards for development within Special Flood Hazard Areas. The subject site is within an area of future sea level rise as mapped by CoSMoS and partially within the FEMA Coastal High Hazard Area or "VE" FIRM zone (Exhibit 4[1]). Therefore, to address the potential adverse impacts to coastal resources and minimize risk from hazards, Commission staff is recommending several special conditions to ensure compliance with LCP standards, and to minimize risk as required by Coastal Act section 30253. **Special Condition No. 1** requires submittal of revised final construction plans that require the structure to be designed consistent with the LCP, including elevated on piles at least two feet above base flood elevation, in order to reduce impacts of wave overtopping and flooding as exacerbated by sea level rise. This will require significant redesign of the project that may impact the size of the overall structure, including removing the first floor living area and inability to replace that floor due to the strict City-imposed 30 ft. height limit in Mission Beach. Additionally, the City's LCP has requirements to maintain the existing density on site to be compliant with the state Housing Crisis Act. Therefore, in order for the project to remain compliant with this requirement and the sea level rise LCP requirements, **Special Condition No. 3** requires the retention of two primary duplex units on site for the life of the development.

The applicant is opposed to the recommendation to require the structure be on piles, arguing several points (see Exhibit 11), including that all sea level rise models demonstrate that the proposed duplex, in South Mission Beach, is not in an area that will be subject to sea level rise during its 75-year design life; the site is in FEMA FIRM Zone X and therefore has no base flood elevation; the development site has never

[1] This exhibit was revised since publication of the May 2025 agenda staff report to add "FEMA FIRM" to the box describing and pointing to Zone VE. The reason for the revision is to provide further clarification and to match terminology used throughout the report.

flooded and is not subject to wave runup or overtopping; this site should be treated the same as the approval for CDP No. 6-24-0271/Saliterman which was approved by the Commission at the April 2025 hearing; and finally requiring the structure to be on piles results in a structure “grossly out of character” with the rest of Mission Beach. Rebuttals to each point are further explained in the staff report and summarized here. First, based on observations of wave overtopping (Exhibit 10), current FEMA mapping, and projections in CoSMoS, this site is subject to hazards now, and these hazards are anticipated to become more extreme with increased sea level rise. Second, as shown in Exhibit 4, the site is partially within the FEMA VE zone, which extends approximately to the western wall of the proposed new duplex. Third, the primary and immediate concern at this site is waves overtopping the seawall and crashing into the structure. Overtopping has already happened throughout Mission Beach, including at the site and documented in video within 0.4 miles of the site, and is expected to continue to happen and worsen with sea level rise (Exhibit 5 & 6). Fourth, the proposed project has been conditioned to comply with the same LCP policies to address sea level rise as CDP No. 6-24-0271/Saliterman, so that the treatment of the two projects is the same. Finally, impacts on community character would not be significant as the LCP specifically allows the area below the lowest floor to be enclosed according to specific standards. Additionally, there are some instances of raised structures in Mission Beach, typically second story structures raised on pilings over open parking. Overall, with an enclosed garage and storage space, the structure could utilize the lowest floor and have less alleged impact on community character.

While the proposed project will not block any public views to the beach along the shoreline, visual resources could be impacted if the required view corridors were blocked by landscaping as it grows in the future. **Special Condition No. 2** requires the submittal of final landscaping plans that limit landscaping in the public view corridors to a height of three feet at maturity. In addition, the presence of construction workers and equipment in such a densely populated, popular beach area could impact public access by occupying public parking spaces for storage or blocking the right-of-way to and along the beach, especially during the summer months when beach use is at its peak. **Special Condition No. 4** prohibits development activity during the busy summer months from Memorial Day Weekend to Labor Day to remove the potential of development activity impeding coastal access. **Special Condition No. 5** requires the property owner to submit a written agreement that acknowledges and accepts the construction timing limitations. **Special Condition No. 6** requires the applicant to acknowledge the development is proposed in a site subject to coastal hazards and assume the risks of development. **Special Condition No. 7** requires the applicant to waive any right to construct a future shoreline protective device and remove the development in specific scenarios. **Special Condition No. 8** requires the applicant to provide notice to all future occupants that the residence is in a hazardous location. **Special Condition No. 9** requires the applicant to record a deed restriction against the property that expresses all conditions of the permit for the purpose of providing notice to future property owners.

Therefore, as conditioned, the project will be consistent with the public access and visual resource protection policies of Chapter 3 of the Coastal Act, and no impacts to coastal resources are anticipated.

Commission staff recommends that the Commission **APPROVE** coastal development permit application 6-24-0375, as conditioned. The motion is on page 6. The standard of review is Chapter 3 of the Coastal Act, with the Mission Beach Planned District Ordinance (PDO) and City of San Diego Land Development Code used as guidance.

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EXHIBITS

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Exhibit 3 – Project Plans

Revised Exhibit 4 – Adjacent Flood Zone

Exhibit 5 – CoSMoS sea level rise projections (4.9ft/100-year storm)

Exhibit 6 – CoSMoS sea level rise projections (4.1ft/100-year storm)

Exhibit 7 – CoSMoS wave runup projections (0ft./no storm)

Exhibit 8 – CoSMoS wave runup projections (0ft./annual storm)

Exhibit 9 – CoSMoS wave runup projections (0ft./100-year storm)

Exhibit 10 – Dec. 2022 Aerial Image of Wave Overtopping Impact

Exhibit 11 – May 2, 2025, Letter from Applicant

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit 6-24-0375 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 THIS COASTAL DEVELOPMENT PERMIT,** the applicant shall submit to the Executive Director for review and written approval one full size set of revised final project plans. Said plans shall first be stamped approved by the City of San Diego and be in substantial conformance with the plans submitted by Golba Architecture dated 07/03/2024 and received on 07/05/2024, except that they shall comply with the following:

(1) The structure shall comply with Section 132.0404(a)(1), Section 143.0146(c), and Section 143.0146(g) of the City of San Diego certified LCP, specifically the following:

(a) The structure shall have the lowest floor, including basement, elevated, on pilings or columns, at least two feet above the nearest base flood elevation. Upon completion of the development, the elevation of the lowest floor, including basement, shall be certified by a registered professional engineer or surveyor to be properly elevated.

(b) The structure shall have the lowest horizontal structural member elevated, on pilings or columns, at or about the nearest base flood elevation. Upon completion of the development, the elevation of the lowest horizontal structural member, shall be certified by a registered professional engineer or surveyor to be properly elevated.

(c) All permitted, permanent structures and other significant improvements shall be anchored to prevent flotation, collapse, or lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

(d) All permitted permanent structures, and other significant improvements shall be constructed with materials and utility equipment resistant to flood damage.

(e) Construction methods and practices that minimize flood damage shall be used.

(f) All electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities shall be designed and located to prevent water from entering or accumulating within the equipment components during conditions of flooding.

(g) Breakaway walls shall be certified by a registered engineer or architect to meet all applicable FEMA requirements. The certification shall be provided to the City Engineer before final inspection approval.

(h) Fully enclosed areas below the lowest floor that are subject to flooding shall be certified by a registered professional engineer

or architect that they comply with the flood proofing requirements of FEMA.

(i) All new construction and substantial improvements of structures with fully enclosed areas below the lowest floor, excluding basements, that are usable solely for parking of vehicles, building access, or storage, and which are subject to flooding, shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater as required by federal regulation 44 C.F.R. § 60.3(c)(5), as may be amended. Designs for meeting this requirement must be certified by a registered professional engineer or architect, and meet or exceed the following minimum criteria:

(i) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;

(ii) The bottom of all openings shall be no higher than one foot above grade; and

(iii) Openings may be equipped with screens, louvers, valves or other coverings or devices provided that they permit the automatic entry and exit of floodwater.

(j) All new development shall be located on the landward side of the reach of mean high tide.

(k) Fill shall not be used for structural support of buildings.

(l) Artificial alteration of sand dunes that would increase potential flood damage is prohibited.

(m) Certification by a registered engineer or architect that a proposed structure complies with these requirements.

(2) All utility connections shall be elevated a minimum of two ft. above grade.

(3) All development outside of the property line as generally depicted in Exhibit 2 shall be removed.

(4) Any public area exposed by removing the encroachments shall either (1) be left as a dirt patch or (2) paved with concrete that matches the existing Ocean Front Walk right-of-way. No structures, landscaping, decorative concrete, etc. are permitted within the public right-of-way.

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

2. Final Landscape and Yard Area Plans.

a) **PRIOR TO THE ISSUANCE OF THIS COASTAL DEVELOPMENT PERMIT**, the applicant shall submit to the Executive Director for review and written

approval one full size set of final landscape plans. Said plans shall be in substantial conformance with the landscape plans submitted by Golba Architecture dated 07/03/2024 and received on 07/05/2024, and shall include the following:

(1) A view corridor, 15-feet wide, shall be preserved in the north yard area adjacent to Deal Court. Additionally, a view corridor, 10-feet wide, shall be preserved in the west yard area adjacent to Ocean Front Walk. All proposed landscaping in the north and west yard areas shall be maintained at a height of three feet or lower (including raised planters) to preserve the views from Mission Boulevard toward the ocean and along Ocean Front Walk. A maximum of two (2) trees with thin trunks and canopies that do not encroach into the view corridor below a height of 8 feet above the finished grade are permitted, provided they are planted within five feet of the primary structure and outside of the 15-foot-wide or 10-foot-wide view corridors and do not block views toward the ocean.

(2) No landscaping or hardscape shall be retained or erected within the Deal Court or Ocean Front Walk right-of-way. Trees may not overhang into the public right-of-way.

(3) All landscaping shall be drought tolerant and 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 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. micro spray) and drip irrigation. Use of weather-based irrigation controllers and reclaimed water for irrigation is encouraged.

(4) Any fencing and walls, including glass walls, trellis walls, and retaining walls, in the northern and western yard setback areas along Ocean Front Walk and Deal Court shall not exceed a height of three feet above the existing grade or proposed grade, whichever is lower.

(5) An acknowledgement that 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 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 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 applicant shall undertake the development in accordance with the approved plans. Any proposed changes to the approved plans shall be reported to the Executive Director. No changes to the plans shall occur without a Coastal Commission-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

3. **Retention of Two-Units Onsite**. BY ACCEPTANCE OF THIS PERMIT, the permittee agrees that:
   a) The development approved by Coastal Development Permit No. 6-24-0375 is for construction of a duplex with two primary dwelling units. The same density shall be maintained for the life of the development.
   b) At no point may one residential unit be incorporated into another residential unit or converted to a non-residential use.
   c) Ingress and egress (doors) between the residential units are prohibited.

4. **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).

5. **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. 4 and provide an updated weekly construction schedule to confirm that no construction will occur from Memorial Day Weekend to Labor Day.

6. **Assumption of Risk, Waiver of Liability and Indemnity.** BY ACCEPTANCE OF THIS PERMIT, the applicant acknowledges and agrees (i) that the site may be subject to hazards from flooding, sea level rise, erosion and wave uprush; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission’s approval of the project

against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.

7. No Future Bluff or Shoreline Protective Device; Development Removal

a) BY ACCEPTANCE OF THIS PERMIT, the applicant agrees, 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. 6-24-0375 including, but not limited to, the residences, including in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, liquefaction, bluff retreat, landslides, or other coastal hazards in the future, and as may be exacerbated by sea level rise. By acceptance of this Permit, the applicant hereby waives, on behalf of themselves all successors and assigns, any rights to construct such devices that may exist under applicable law.

b) By acceptance of this Permit, the applicant further agrees, 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, including the entire residences and restore the site, if:

   (1) The City of San Diego or any other government agency with legal 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;

   (2) essential services to the site (e.g., utilities, roads) can no longer feasibly be maintained due to the coastal hazards listed above.

   (3) removal is required pursuant to LCP policies for sea level rise adaptation planning; or

   (4) the development requires new and/or augmented shoreline protective devices that conflict with relevant LCP or Coastal Act policies.

c) In addition, this approval does not permit any development to be located on lands impressed with a public trust interest, and any development that comes to be located on such lands due to the movement of the mean high tide line must be removed unless the Coastal Commission determines, pursuant to a permit amendment, that the development may remain pursuant to the Coastal Act. If the development comes to be located on lands impressed with a public trust interest due to the movement of the mean high tide line, the applicant would also be subject to the State Lands Commission's (or other designated trustee agency's) discretionary leasing approval.

d) Prior to removal/relocation, the permittee shall submit two copies of a Removal/Relocation Plan to the Executive Director for the review and written approval. The Removal/Relocation Plan shall clearly describe the manner in

which such development is to be removed/relocated, and the affected area restored so as to best protect coastal resources, including the Pacific Ocean. In the event that portions of the development fall to the bluffs or ocean before they are removed/relocated, the landowner shall remove all recoverable debris associated with the development from the bluffs and ocean and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit.

8. **Notifications.** The landowner shall provide notice to all future occupants that: 1) the residence 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. The permittee shall also provide notice to all tenants as part of each lease and post notices in each unit of recommended evacuation measures in the event of a tsunami.

9. **Deed Restriction. PRIOR TO THE ISSUANCE OF THIS 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 demolition of an existing, 4,675 sq. ft, 29 ft. tall, three-story duplex with attached garage and construction of a 4,602 sq. ft., 29 ft. tall, three-story duplex with attached 565 sq. ft. garage, including decks and a roof deck, on a 4,323 sq. ft. lot at 2865 and 2867 Ocean Front Walk in the Mission Beach community of the City of San Diego (Exhibit 1). The existing duplex has a 2,215 sq. ft., 3-bed, 2-bath unit and

a 2,869 sq. ft. 3-bed, 4-bath unit. The proposed project consists of two duplex units; one is proposed to be a 3,162 sq. ft. 3-bed, 3-bath and the other a 919 sq. ft., 2-bed, 2-bath unit (Exhibit 3). The site contains existing walls, landscaping, and hardscape in the public right-of-way between the property line and Ocean Front Walk. The applicant is proposing to remove all existing encroachments in the City's right-of-way (Exhibit 2). There is no Commission permit history for this site, and the existing structure was built in 1975.

The site is located on the east side of Ocean Front Walk, a public boardwalk on the beach, and is within an existing residential area zoned Residential South (R-S) of the Mission Beach Planned District Ordinance (PDO). Under the PDO, this site is entitled to a maximum of two dwelling units. The proposed development is similar in size and scale to the surrounding development and is consistent with the development standards contained in the City's certified LCP, including those standards related to building height and floor area ratio, but not consistent with the LCP construction standards relating to sea level rise, as explained in the next section. Additionally, a six-inch eave encroachment on the south side of the proposed residence adjacent to the neighboring property is proposed. This encroachment is allowable in the Mission Beach PDO under Section 1513.0304(d)(1).

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 Land Development Code, specifically Article 2 of Chapter 13 and Article 3 of Chapter 14 and the Mission Beach Planned District Ordinance, comprised of Article 13 of Chapter 15 of the San Diego Land Development Code, are used as guidance for review of the project.

B. Coastal Hazards and Sea Level Rise

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. Existing marine structures causing water stagnation contributing to pollution problems and fishkills should be phased out or upgraded where feasible.

Section 30253 of the Coastal Act states:

> 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.

(c) Be consistent with requirements imposed by an air pollution control district or the State Air Resources Board as to each particular development.

(d) Minimize energy consumption and vehicle miles traveled.

(e) Where appropriate, protect special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses.

Section 132.0404 of the City's LCP states:

Supplemental Regulations within Areas of Future Sea Level Rise

(a) Within the Coastal Overlay Zone, the following regulations apply to dwelling units constructed outside of Special Flood Hazard Areas and within an area of future sea level rise (within a 75-year horizon), as determined by the City Manager based on the most current sea level rise vulnerability maps:

(1) The dwelling units shall comply with the regulations in Section 143.0146(c) and if applicable, Section 143.0146(g). The base flood elevation utilized, and the applicability of Section 143.0146(g), shall be based on the FIRM Zone of the Special Flood Hazard Area in closest proximity to the premises on which the dwelling unit is proposed. The permit requirements of 143.0110(b) and other regulations of Chapter 14, Article 3, Division 1 do not apply unless the premises contains Environmentally Sensitive Lands.

(A) Hard shoreline armoring shall not be constructed to protect dwelling units from the effects of sea level rise.

(B) The record owner of the dwelling unit shall, in a form that is approved by the City Manager, acknowledge the following:

(i) The dwelling unit is located in an area of future sea level rise that may become hazardous in the future;

(ii) Sea level rise could render it difficult or impossible to provide public services to the premises;

(iii) The boundary between public land (tidelands) and private land may shift with rising seas and the development approval does not permit encroachment onto public trust land;

(iv) Additional adaptation strategies may be required in the future to address sea level rise consistent with the Coastal Act and certified Local Coastal Program; and

(v) The dwelling unit may be required to be removed or relocated and the premises restored to City standards if it becomes unsafe; and

(vi) The record owner shall waive in writing any rights under Public Resources Code Section 30235 and related Local Coastal Program policies to any hard shoreline armoring to protect the dwelling unit.

(C) The record owner of the dwelling unit shall provide written notice to all occupants of the dwelling unit of the provisions in Section 132.0404(a)(1)(B) upon occupancy.

Section 143.0146 of the City's LCP states, in relevant part:

Supplemental Regulations for Special Flood Hazard Areas

All proposed development in a Special Flood Hazard Area, including substantial improvements, is subject to the following requirements and all other applicable requirements and regulations of FEMA. […]

(c) Standards of Construction

In all Special Flood Hazard Areas, the following standards apply for all development.

(1) All permitted, permanent structures and other significant improvements shall be anchored to prevent flotation, collapse, or lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

(2) All permitted permanent structures and other significant improvements shall be constructed with materials and utility equipment resistant to flood damage.

(3) Construction methods and practices that minimize flood damage shall be used.

(4) All electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities shall be designed and located to prevent water from entering or accumulating within the equipment components during conditions of flooding.

(5) Breakaway walls shall be certified by a registered engineer or architect to meet all applicable FEMA requirements. The certification shall be provided to the City Engineer before final inspection approval.

(6) New construction or substantial improvement of any structure shall have the lowest floor, including basement, elevated at least 2 feet above the base flood elevation. Upon completion of the development, the elevation of the lowest floor, including basement, shall be certified by a registered professional engineer or surveyor to be properly elevated. The certification shall be provided to the City Engineer before final inspection approval. The City Engineer reserves the right to require a preliminary certification before foundation inspection approval.

[…]

(9) Fully enclosed areas below the lowest floor that are subject to flooding shall be certified by a registered professional engineer or architect that they comply with the flood proofing requirements of FEMA. The certification shall be provided to the City Engineer before final inspection approval.

[…]

(11) All new construction and substantial improvements of structures with fully enclosed areas below the lowest floor, excluding basements, that are usable solely for parking of vehicles, building access, or storage, and which are subject to flooding, shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater as required by 44 C. F. R. § 60.3(c)(5), as may be amended. Designs for meeting this requirement must be certified by a registered professional engineer or architect, or meet or exceed the following minimum criteria:

(i) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;

(ii) The bottom of all openings shall be no higher than one foot above grade; and

(iii) Openings may be equipped with screens, louvers, valves or other coverings or devices provided that they permit the automatic entry and exit of floodwater.

[…]

(g) Standards for Coastal High Hazard Area

(1) A coastal high hazard area is an area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms. It is subject to high velocity waters, including coastal and tidal inundation. The area is designated on a FIRM Zone V1-30, VE, or V.

(2) Within coastal high hazard areas, FIRM Zones V1-30, VE, and V, the following standards shall apply:

(A) All new development, including substantial improvement to an existing structure, shall be elevated on adequately anchored pilings or columns and securely anchored to such pilings or columns so that the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to or about the base flood level. The pile or column foundation and structure attached thereto shall be anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Water loading values used shall be those associated with the base flood. Wind loading values used shall be those required by applicable state or local building standards.

(B) All new development shall be located on the landward side of the reach of mean high tide.

(C) All new development and any substantial improvement to an existing structure shall have the space below the lowest floor free of obstructions or constructed with breakaway walls. Such enclosed space shall be used solely for parking of vehicles, building access or storage.

(D) Fill shall not be used for structural support of buildings.

(E) Man-made alteration of sand dunes which would increase potential flood damage is prohibited.

(F) The applicant for any new development shall provide the following records to the satisfaction of the City Engineer:

(i) Certification by a registered engineer or architect that a proposed structure complies with Section 143.0146(g); and

(ii) Plans that identify the elevation (in relation to mean sea level) of the bottom of the lowest horizontal structural member of the lowest floor (excluding pilings or columns) of all new structures and any substantial improvements to existing structures, and whether such structures contain a basement.

Sea level rise is expected to exacerbate existing coastal hazards by raising mean water levels, extending flood zones inland, and causing more frequent storms that contribute to wave runup and overtopping. As noted in the Commission's 2024 Sea Level Rise Guidance Update[2] 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. The neighborhood currently experiences periodic flooding that will likely increase with sea level rise. While there is a wide sandy beach (approximately 200 feet wide) and a public boardwalk (approximately 20 feet wide) protected by a seawall between the subject property and the Pacific Ocean, wave run up and overtopping are expected to impact this site over the life of the proposed improvements, impacts that will be aggravated by sea level rise. Even under current sea levels, waves periodically overtop the fronting public boardwalk and cause flooding of low-lying properties, including as recently as February of 2024.[3] The subject site (and entirety of the Mission Beach community) is also within the Tsunami Hazard Area developed by the California Geological Survey for purposes of evacuation planning. A portion of the subject site is also within a current FEMA Coastal High Hazard Area or "VE Zone" which extends approximately 10 feet into the property (Exhibit 4).

The applicant provided a Coastal Hazard and Sea Level Rise Discussion prepared by Skelly Engineering that concludes that "[the] site is reasonably safe from shoreline erosion and basic flooding due to the elevation of the site and setback from the shoreline … [and that the] vulnerability of the site to 100-year storm flooding (wave flooding) will be increased with [sea level rise]." The report also concluded that "based upon the CoSMoS modeling and the analysis [sea level rise] would need to be in excess of ~4.1 feet before the site/building may be subject to temporary flooding from the 100-year storm." The Commission's coastal engineer, Jeremy Smith, disagrees with the conclusions of Skelly Engineering and notes that significant wave overtopping has already been documented near the project site during conditions less extreme than a 100-year storm. Furthermore, Mr. Smith notes that the project site is seaward of projected wave runup during 100-year storm conditions in CoSMoS and what Skelly Engineering appears to refer to are the conditions when the site is located within the "flooding extent" of CoSMoS, which does not account for wave runup. In conclusion, the

[2] Available at https://www.coastal.ca.gov/climate/slr/.

- [3] https://www.youtube.com/watch?v=Abp5GUOyf0M (December 2019)
- https://www.youtube.com/watch?v=GxcVYxukRUQ (January 2023)
- https://www.instagram.com/missionbeach.sd/reel/C1h48G_pmQH/?hl=en (December 2023)
- https://www.youtube.com/watch?v=PdjtfypVANU (January 2024)
- https://www.youtube.com/watch?v=6m0zzwpYDeA (February 2024)
- https://www.youtube.com/watch?v=yazgz-XNrLw (November 2024)
- https://www.youtube.com/playlist?list=PLXgN9WpmbmppvP9ksq_pra6oV_LY_I8HN (King Tides playlist created by Surfrider Foundation)

Commission's engineer has significant concerns about coastal flood risk at the subject site and throughout the larger Mission Beach community, which is also subject to flooding from high water levels in the other direction that originate from Mission Bay. Further, several recent wave overtopping events (cited above) and flooding in Mission Beach have demonstrated the immediate vulnerabilities of this community. The measures that the City and the Commission have previously employed will no longer adequately protect the Mission Beach community from coastal hazards exacerbated by sea level rise. Additional adaptation measures, including a more comprehensive planning effort, are necessary to ensure continued protection of the Mission Beach community.

Towards this goal, the City of San Diego has updated its LCP in recent years to address sea level rise (REF: LCP-6-SAN-24-0025-2). The LCP requires that new development be sited and designed to minimize flood hazards and establishes construction standards for development in areas of future sea level rise. The City first incorporated these requirements for accessory dwelling units and development constructed under Senate Bill 9 (Atkins, 2021). In a subsequent amendment, the City expanded the requirements to apply to more development, rather than just accessory units, within these areas of future sea level rise to ensure that all development has consistent requirements. Now, all dwelling units across the City's coastal zone must comply with the updated standards. The Commission recently required a redevelopment project nearby at 701 Sunset Court, Mission Beach, to comply with these same requirements (REF: CDP #6-24-0271/Saliterman).

Specifically, the City's LCP requires that all dwelling units constructed outside of a FEMA Special Flood Hazard Area, but within an area of future sea level rise, must comply with the construction standards for development within Special Flood Hazard Areas. In other words, development outside of the currently mapped floodplain but within an area identified by the best available science as vulnerable to future sea level rise, must take certain measures, such as designing the development to be resistant to future flooding, waiving rights to future shoreline protection, and giving tenants notice of future coastal hazard risk. Application of these measures greatly improves the readiness of coastal development for future sea level rise.

As described above, Mission Beach is within an area of future sea level rise over the next 75 years, including as mapped by CoSMoS. Therefore, the development on this site must comply with the City's flood area standards. The LCP states that dwelling units must comply with the flood area regulations, cited above and explained further below, and the base flood elevation, based on the FIRM Zone of the Special Flood Hazard Area in closest proximity to the site. The FIRM zone closest to this site is the Coastal High Hazard Area or "VE Zone." [4] The proposed structure is therefore required to comply with Construction Standards of LCP Section 143.0146(c) and Standards for Coastal High Hazard Area of Section 143.0146(g). Section 143.0146(c) requires

[4] https://msc.fema.gov/portal/search?AddressQuery=Mission%20Beach

structures to have the lowest floor elevated at least two feet above the base flood elevation. Section 143.0146(g), which applies to coastal flood hazard areas, requires structures to be elevated on pilings or columns so that the bottom of the lowest horizontal structural member of the lowest floor is elevated to or about the base flood level. Note that section (c) addresses the finished floor elevation (top of the floor), requiring it to be at least two feet above the base flood elevation. Section (g) addresses the bottom of the lowest horizontal structural member, requiring it to be at or about the base flood elevation. Section (c) and (g) work together to elevate the structure on piles or columns and ensure it is properly supported by the necessary structural members.

The project plans dated July 3, 2024 currently depict the proposed first floor at approximately 13.5 ft. NAVD88. The closest proximity base flood elevation is 18 ft. NAVD88. Therefore, **Special Condition No. 1** requires the applicant to revise the project plans to have the structure raised on piles so that the lowest finished floor level is 2 ft. above 18 ft. NAVD88 (20 ft. NAVD88, approximately 6.5 ft. above grade) and the lowest horizontal structural member must be at or about 18 ft. NAVD88 (approximately 4.5 ft above grade) to meet the requirements of the LCP. The LCP also has specific requirements, required in Special Condition No. 1, for designing the garage or carport below the first floor. This includes designing the area to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater and requirements to provide openings. The applicant has the option of using those policy requirements to design the area below the raised structure to allow for non-habitable uses.

In addition to elevation, the LCP requires additional construction standards, including anchoring foundations and structures to resist flotation, collapse, and lateral movement from wind and water loads; that the space below the lowest floor must be free of obstructions or constructed with breakaway walls and such enclosed space shall be used solely for parking of vehicles, building access or storage; constructing with materials and utility equipment resistant to flood damage; and all electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities must be designed and located to prevent water from entering or accumulating within the equipment components during conditions of flooding. **Special Condition No. 1** also requires the revised final plans to comply with these requirements to ensure consistency with the LCP and minimize risk to life and property as required by Section 30253.

These requirements to elevate and remove habitable space on the first floor will require significant redesign of the project, including raising the structure on piles approximately six and a half feet above grade resulting in no habitable first floor, which is currently proposed but is not approvable per the City's LCP. The area below and between the approximately six-foot-high piles can be used as a garage and/or storage space. These requirements will impact the habitable space of the overall structure, due to the removal of the proposed first floor living area. Additionally, due to the strict City-imposed 30 ft. height limit in Mission Beach, the applicant will be unable to keep the proposed three floors of habitable living area, as the bottom floor will be removed due to the requirement for the structure to be on piles (but can accommodate a garage and storage area if compliant with the requirements outlined in Special Condition No. 1), and

a replacement floor cannot be constructed above the now-proposed third floor because that would exceed the 30 ft. height limit.

The applicant has made several arguments regarding the requirement to raise the structure on piles, specifically, that the issue of wave overtopping is a regional issue that will not be solved by one structure required to be raised on piles. Additionally, the applicant notes that raising this structure on piles may endanger properties behind the structure on piles. While properties behind the structure may continue to experience periodic flooding, the velocity of waves will not be as extreme for structures further from the ocean and seawall that is being overtopped. And as these structures redevelop, they too will need to comply with the same LCP policies regarding sea level rise to protect the structure from overtopping and periodic flooding. Also, the applicant's argument that the structures behind the proposed structure would be in danger of flooding if the subject structure were built on piles, further demonstrates the hazards at this site from wave overtopping.

The applicant reiterates these ideas into written arguments in a letter received on May 2, 2025 in response to the May 2025 agenda staff report (Exhibit 11). The letter outlines the following five points:

1. All sea level rise models demonstrate that the proposed duplex, in South Mission Beach, is not in an area that will be subject to sea level rise during its 75-year design life.
2. The site is in FEMA FIRM Zone X and therefore has no base flood elevation.
3. The development site has never flooded and is not subject to wave runup or overtopping.
4. This site should be treated the same as the approval for CDP No. 6-24-0271/Saliterman which was approved by the Commission at the April 2025 hearing.
5. Requiring the structure to be on piles results in a structure "grossly out of character" with the rest of Mission Beach.

The first point made throughout the letter and corresponding to point number 1 above is that all sea level rise models demonstrate that the proposed duplex, in South Mission Beach, is not in an area that will be subject to sea level rise during its 75-year design life. However, based on observations of wave overtopping (Exhibit 10), current FEMA mapping, and projections in CoSMoS, this site is subject to hazards now, and these hazards are anticipated to become more extreme with increased sea level rise. Thus, while the applicant asserts that sea level rise will not aggravate the risk on this site, the projections and visual evidence demonstrate otherwise.

The applicant argues that the site is safe from flooding given that the site is located approximately 700 ft. west of Mission Bay, and as such, the requirements of the LCP policies for the structure to be raised on piles are extreme and unnecessary for this site. However, CoSMoS modeling shows that the site is at risk from both flooding from Mission Bay and from wave overtopping from the Pacific Ocean. The Commission's 2024 Sea Level Rise Guidance recommends that technical analyses for medium-high

risk averse development, meaning development that would experience greater consequences or have a lower ability to adapt, such as residential development, should be evaluated according to the intermediate-high sea level rise scenario. The intermediate-high scenario for the 75-year anticipated lifespan for the duplex is 4.9 ft of sea level rise and a 100-year storm scenario. In CoSMoS, this scenario depicts the entirety of Mission Beach, including the subject site, completely inundated and with wave overtopping extending beyond the Mission Beach community and to Mariner's Point in Mission Bay (Exhibit 5). The risk of sustained inundation as a result of flooding and wave overtopping is present when analyzing under several different scenarios, such as 4.1 ft. of sea level rise and 100-year storm, the scenario is used by the applicant in their Coastal Hazard and Sea Level Rise Report dated August 26, 2024. In the applicant's report, they claim that the 4.1 ft. scenario shows the site is safe from flooding. While the site may not be within the sustained inundation, or blue flooded area, with 4.1 ft. of sea level rise, it is within the area potentially effected by wave overtopping, which is the primary and more immediate concern at this site (Exhibit 6).

To further the point that the site is unsafe from coastal hazards, specifically wave overtopping, a scenario was assessed with no sea level rise, but rather focused on the projected wave runup in CoSMoS. On a non-storm day with no added sea level rise, the waves are approximately 300 feet seaward of the subject site (Exhibit 7). Adding an annual storm to the projection and again with no sea level rise, the maximum projected wave runup extends landward and through the site, just west of Mission Blvd (Exhibit 8). During an extreme, 100-year storm with no sea level rise, the maximum wave runup is projected to be at Mariner's Point in Mission Bay, well beyond the site and other structures in Mission Beach (Exhibit 9). Thus, even without sea level rise, the site is anticipated to be exposed to wave runup during storms.

Furthermore, the presence of the FEMA VE Zone at the site, which extends up to the proposed new structure and represents an area with intense wave action and fast-moving water predicted during a 100-year storm event, also supports the conclusion that the proposed development would be subject to wave-related flooding over its design life. Therefore, the proposed development is in an area of current and future hazards and must comply with LCP policies for a raised structure now to minimize risk to the new development from wave overtopping and flooding.

The second point made by the applicant is that the site is in FEMA FIRM ZONE X and therefore not subject to flooding or the construction standards in the LCP. As shown in Exhibit 4, the site is partially within the FEMA VE zone, which extends approximately to the western wall of the proposed new duplex. However, even if the site was not partially within the flood zone, or if the argument was made that partially within is not the same as entirely within, Section 132.0404 of the City's LCP specifically applies to sites in the coastal overlay zone that are outside of a flood zone, but in an area of future sea level rise. Staff at the City reviewed this site and the certified LCP and confirmed the flood policy requirements apply to this site. Specifically, the City confirmed that the site needs to comply with the LCP requirements, including raising the structure on piles two feet above the base flood elevation of 18ft. NAVD88 (i.e. 20ft. NAVD88), meaning the

structure must be raised 6.5 ft. above grade. Special Condition No. 1 requires the applicant to submit the final revised plans to the City engineer first for review, for which the City will expect the structure to be raised in conformance with the LCP policies. In summary, the LCP requires that development on the subject site must comply with the construction standards in the LCP for development in a flood zone based on the closest proximity flood zone, whether the new structure is in that zone or not, due to the site's vulnerability to sea level rise.

The third point made by the applicant is that the site has never flooded and is not subject to wave runup overtopping. The main basis for this argument by the applicant is that there is a difference between "north" and "south" Mission Beach, including that the subject site is elevated slightly higher than the rest of Mission Beach and therefore is in a less hazardous location in terms of flooding from Mission Bay and wave overtopping from the Pacific Ocean. While the site may be higher in elevation than properties closer to the Bay, the primary and immediate concern at this site is waves overtopping the seawall and crashing into the structure. This overtopping has happened and will continue to happen and worsen with sea level rise (Exhibit 5 & 6). The applicant also asserts that the video evidence referenced in the staff report is misleading because it depicts only northern Mission Beach properties. However, the video "High surf floods Mission beach boardwalk" posted to YouTube by CBS 8 San Diego is less than half a mile from the subject site at Ventura Place just north of Belmont Park. Additionally, aerial imagery of the site shows evidence of wave overtopping directly at the subject site (Exhibit 10).

The applicant has also stated that north and south Mission Beach do not experience the same types of hazards. While there may be some variation in the frequency of overtopping events or flooding events in the most northern or southern portions of Mission Beach, there is no significant difference or specific projections in CoSMoS to conclude that these areas of the same community should be treated differently when implementing adaptation measures. For context, the entire Mission Beach community is about two miles long, and such a short length means there is little variation in the projected impacts associated with sea level rise. In particular, the subject site has similar projected impacts as the northern lots, with some minor variations due to slight differences in current beach width, which overall results in the entire community being vulnerable to sea level rise. Additionally, the LCP policies apply to all of Mission Beach and there are no differing policies regarding sea level rise for the northern or southern portion.

The applicant's fourth point states that this site should be treated the same as CDP No. 6-24-0271/Saliterman which was approved by the Commission at the April 2025 hearing. The proposed project has been conditioned to comply with the same LCP policies to address sea level rise. For the subject property, the specific requirements are different because the FEMA FIRM ZONE that the site is partially within is different. In the Saliterman matter, the site was within FEMA FIRM ZONE VE with base flood elevation 14ft. NAVD88. The subject site is within FEMA FIRM ZONE VE with base flood elevation 18ft. NAVD88 ("VE Zone" is specified as a "Coastal High Hazard Zone"

in the City's LCP). The difference in the base flood elevation results in significant differences between the required elevation for the structure. However, each of these are established FEMA zones and the City's LCP requires compliance with the FEMA zone in closest proximity, which is the VE zone, with base flood elevation 18ft. NAVD88, in this case.

The applicant's fifth point asserts that a structure on piles will be "grossly out of character" with the rest of Mission Beach. However, it is not uncommon for structures throughout Mission Beach to have an elevated living space over parking. Additionally, while the structure would need to be raised on piles so that the lowest finished floor of habitable living space is two feet above the base flood elevation, the construction standards in the LCP allow for a garage or storage space below the lowest finished floor. The LCP allows this area below the lowest floor to be enclosed according to specific standards, such as equalizing hydrostatic flood forces on exterior walls and specific requirements for any openings. Thus, with an enclosed garage and storage space, the structure could appear very similar to the surrounding development.

The applicant proposes two changes to the special conditions to resolve the disagreement between staff and the applicant. First, the applicant proposes to elevate the structure to approximately 15.5ft NAVD88, four and a half feet lower than the staff recommendation and that required by the LCP. As explained above, the site is subject to wave overtopping that could damage the structure and pose a threat to human life and property. A shorter elevation conflicts with the requirements of Section 30253 to minimize risk to life and property in high hazard areas, along with assuring the stability and structural integrity of the project. On a wider scale, subdivision (e) of Section 30253 requires the Commission to protect the Mission Beach neighborhood at large as a popular visitor destination point. Therefore, the applicant's proposal of raising to 15.5ft NAVD88 is not consistent with Section 30253 of the Coastal Act. It is also possible that the City would not support an elevation of this height, as it does not conform to the certified LCP. The applicant also proposes edits to Special Condition No. 7 that would require removal of the residence when the site is inaccessible. However, Special Condition No. 7(b)(2) (essential services) already includes the suggested removal language with regard to Mission Boulevard, as it is a road that provides an essential service and therefore, the change proposed by the applicant is already included and an additional language is not necessary.

Finally, the applicant asserts that wave overtopping is a regional issue that requires adequate review, analysis, and publication of the policies. The Commission does not dispute that regional planning is essential to prevent impacts from sea level rise. As noted above, these policies are certified within the City's LCP. Additionally, the City of San Diego is working on additional adaptation measures, like comprehensive planning efforts and vulnerability assessments, with the goal of protecting the Mission Beach community from sea level rise hazards. Implementation of these policies is the first step towards regional resilience, as large-scale regional adaptation measures, such as creating a dune system in Mission Beach require significant work on the local and state level, and such projects will not be available to provide protection to this site and other

Mission Beach sites in the near-term. Regional resilience is a long-term goal, and this project requires immediate conditions to render the new development safe from wave overtopping as exacerbated by sea level rise. Nevertheless, the Commission continues to encourage the City to work with Commission staff on finding solutions to the growing issue of sea level rise. The City's efforts to certify policies to protect structures in hazardous areas is a significant first step, but more needs to be done to reach regional resilience.

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. Thus, 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" and requires new development to minimize risks to life and property. Section 30235 of the Coastal Act recognizes that existing development, meaning development constructed prior to January 1, 1977, 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. Therefore, the Commission's action on this project must consider the effects of wave runup and overtopping, flooding, and storm events along with sea level rise considerations.

The project, as new development, is not entitled to shoreline protection under 30235 and as such, the applicant is required to waive any possible right to construct a shoreline protective device to protect the property in the future, as outlined in **Special Condition No. 7**. Further, the landowner must remove the development if 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, essential services to the site can no longer feasibly be maintained (e.g., utilities, roads), the development is no longer located on private property due to the migration of the public trust boundary, removal is required pursuant to LCP policies for sea level rise adaptation planning, or the development would require a shoreline protective device that is inconsistent with the coastal resource protection policies of the Coastal Act or certified LCP. **Special Condition No. 6** 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. Additionally, in order to minimize risks to future tenants, **Special Condition No. 8** requires the landowner to provide notice to all future occupants that the residences are located in a hazardous location. Finally, **Special Condition No. 9** requires recordation of the permit conditions against the property to ensure future property owners are aware of the above-mentioned protections and conditions.

In conclusion, the site is vulnerable to coastal hazards under current conditions and that are expected to increase with anticipated sea level rise. With additional design modifications required by the LCP, including elevation and construction on piles, risk to hazards and adverse impacts on coastal resources will be minimized. Therefore, as conditioned, the Commission finds the project consistent with Sections 30235 and 30253 of the Coastal Act and the City's certified 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, or (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway. […]

Section 30212.5 of the Coastal Act states:

> Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

Section 30214 of the Coastal Act states, in relevant part:

> (a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

(1) Topographic and geologic site characteristics.

(2) The capacity of the site to sustain use and at what level of intensity.

(3) The appropriateness of limiting public access to the right to pass and repass depending on such factors as the fragility of the natural resources in the area and the proximity of the access area to adjacent residential uses.

(4) The need to provide for the management of access areas so as to protect the privacy of adjacent property owners and to protect the aesthetic values of the area by providing for the collection of litter. […]

Section 30221 of the Coastal Act states:

> Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

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 30604 of the Coastal Act states, in relevant 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).

Section 1513.0403 of the Mission Beach PDO states, in relevant part:

(b) Residential Subdistricts

Every premises used for one or more of those uses permitted in Section 1513.0303 shall be provided with a minimum of two permanently maintained off-street parking spaces per dwelling unit [. . .]

The project site is located adjacent to the public beach and Ocean Front Walk. The boardwalk is accessible from the east and west courts as well as the streets off of Mission Boulevard, which provide access to the sandy beach at stairways located at various points along the seawall. Ocean Front Walk is a popular thoroughfare,

especially during the summer, and is frequented by pedestrians, bicyclists, skateboarders, and others. Ocean Front Walk is part of the larger network of public rights-of-way that make up the Mission Beach community's public accessways. Like many of the residences along this stretch of Ocean Front Walk, the subject property contains walls, landscape, and hardscape that encroach into the public right-of-way (Exhibit 2). The applicant has proposed to remove the encroachments and replace it with concrete that matches Ocean Front Walk. In order to ensure that the re-designed duplex does the same, **Special Condition No. 1** requires all development located outside the property line to be removed.

The proposed development is similar in size and scale to the surrounding development and is consistent with the development standards contained in the City's certified LCP, including those standards related to building height, floor area ratio, and parking. Additionally, a six-inch eave encroachment attached to the roof is proposed on the southern side of the structure adjacent to the neighboring property. This encroachment is allowable in the Mission Beach PDO under Section 1513.0304(d)(1).

California Assembly Bill 2097 (AB 2097, Friedman, 2022) prohibits public agencies from imposing minimum parking requirements within a half-mile of a major transit stop, which would apply to this site. Thus, the project does not necessarily require parking for the residences; however, the applicants have proposed to provide four parking spaces. Providing adequate parking at the site is important for protecting public access to the beach. Mission Beach is one of the most parking-constrained communities in the City of San Diego, and the majority of parking used to access the coast is street parking. There are few public parking lots throughout Mission Beach that can be used to access the bay and the ocean, and those that are close to the water are frequently at full capacity, particularly in the summer months. Further demonstrating the parking constraints in Mission Beach, the site is mapped within the City of San Diego Beach Impact Area, an area recognized in the LCP that warrants additional protections given its high level of visitation and recreation by the public. This overlay has been used to identify the areas of the City that due to high visitor demand and inadequate parking supply experience chronic parking deficiencies, and thus off-street parking requirements are higher in these areas than elsewhere in the city. Therefore, while not necessarily required under AB 2097, the provision of onsite parking is important for protecting coastal access.

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. Therefore, demolition and construction activity could impede public access by occupying public parking spaces or blocking the public right-of-way with materials or debris. The applicant has provided a construction staging plan that utilizes empty space on the lot for construction materials. Nevertheless, **Special Condition No. 4** prohibits any development during the peak summer months when public access could be impacted and **Special Condition No. 5** requires the property owners to submit a written agreement indicating that they acknowledge and accept the construction timing limitations and will submit an updated weekly construction schedule to confirm that work will not occur during summer.

Therefore, as conditioned, the subject permit is in conformance with the public access and recreation policies in Chapter 3 of the Coastal Act.

D. Community Character and Visual Resources

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 landforms, 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 1513.0302 of the Mission Beach PDO states:

> Residential Subdistricts — Northern and Southern — Definition and Intent
> (a) The Residential Subdistricts are designated R-N and R-S. The purpose of the Residential Subdistrict is to regulate the small-scale and low-profile developed area with a maximum residential density of approximately 36 dwelling units per net residential acre.
>
> (b) It is the intent of these regulations to allow the improvement or development of the standard Mission Beach lots with little or no need for variances.

Section 1513.0303 of the Mission Beach PDO states, in relevant part:

> Permitted Uses – Residential Subdistricts
> No building or improvement or portion thereof shall be erected, constructed, converted, established, altered or enlarged, nor shall any lot or premises be used except for one or more of the following purposes:
>
> (a) Primary Uses
>
> (1) Single dwelling units.

(2) Duplexes (2 dwelling units in a single structure).

[…]

Section 1513.0304 of the Mission Beach PDO states:

> Property Development Regulations – Residential Subdistricts
> (a) Density Regulations
>
> One dwelling unit shall be allowed per 1,200 square feet of lot area, except as follows:
>
> (1) A single R-S lot of 2,000 to 2,400 square feet shall be entitled to a maximum of 2 dwelling units;
> […]
> (3) Fractions of a dwelling unit shall not be rounded up when determining the total units permitted on a lot or lots.

The Mission Beach Precise Plan states in its Overall Goals on Page 13, in relevant part:

- The continuation of the existing medium-density character of Mission Beach, exemplified by the overall low profile and random mix of housing types and styles.
  […]
- The promotion of a community balanced by housing types, dwelling unit sizes, a variety of individuals and family sizes, housing price, and racial and ethnic composition.

Additionally, Page 17 of the Mission Beach Precise Plan states in the “Goals” of the “Residential” section, in relevant part:

- The continuation of the existing medium-density character of Mission Beach exemplified by the overall low profile and random mix of housing types and styles.
- The establishment of an overall maximum density in Mission Beach in order to prevent overdevelopment.
- The permanent control of height and building bulk so that structures in Mission Beach will not have adverse effects on surrounding property, the beaches, and the community in general.

The project is located between the first public road and the sea, meaning there is the potential for the project to impact views of the shoreline. 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 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.

The subject property is located on the southern end of Ocean Front Walk adjacent to the east-west Deal Court pedestrian right-of-way, which serves as an access and visual corridor for this part of Mission Beach (Exhibit 1). In the Mission Beach neighborhood, the public right-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. Additionally, the public boardwalk – Ocean Front Walk – which runs north-south along the beach, serves not only as a highly popular public accessway, but also serves as a public view corridor along the shoreline.

The Commission typically reviews projects to ensure that any new development, including structures or landscaping, does not encroach into the yard setback areas or the public right-of-way, which could impede public access and/or public views. As proposed, no new structures will be located within the required setbacks. The proposed structure complies with the 10 ft. Ocean Front Walk setback and the 15 ft. court setback as required through Section 1513.304(c). To ensure that public views and public access towards the ocean are protected, **Special Conditions No. 1 and 2** require the applicant to submit final plans confirming that no structures will be located in the view corridors and that all landscaping and hardscape in the northern and western yard area will consist of low-lying materials not exceeding three feet in height.

Density

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 minimize energy consumption and vehicle miles traveled. As the Commission has found in prior actions, Coastal Act Sections 30250 and 30253 together encourage "smart" growth by locating new development in appropriate areas that minimize impacts on coastal resources and discouraging residential sprawl in more rural or sparsely populated areas that are not adequately developed to support new residential development or where coastal resources could be threatened.

Thus, the Commission has emphasized the importance of preserving existing housing stock in already developed areas of the Coastal Zone where appropriate, thereby minimizing impacts to coastal resources (per Coastal Act sections 30250 and 30253) and in some cases encouraging more affordable housing (consistent with Coastal Act section 30604(f)). Concentrating development in existing developed areas provides more opportunities for people to live near places where they work and recreate, such as the beach, and, thereby, reduces impacts to coastal resources. Vehicle miles traveled would be reduced by having a higher density stock of housing located closer to employment and recreational opportunities within the coastal zone. Also, by having a higher residential density in an existing developed area, more people are placed in a shared location. encouraging the utility of public transit service, which further aids in

reducing the number of cars on streets, thus reducing impacts to coastal resources and public access.

The project site is located in a densely developed area where numerous amenities are available in adjacent areas. Grocery stores, shops, and restaurants are located within one mile of the subject property, and can be accessed by walking, taking local buses, or by bicycle. The surrounding residences adjacent to the site along Ocean Front Walk are a mix of single and multifamily.

The California Department of Housing and Community Development (HCD) projects that more than 2.5 million homes must be developed over an eight-year period to meet the housing needs of California residents, and at least one million of these must be developed to meet the needs of lower-income households. As a result of this housing shortage, the Legislature has enacted numerous laws in recent years to prevent the net loss of residential density and to encourage infill residential development in developed areas, particularly in locations nearby existing transit and services. In 2019, the Legislature enacted the Housing Crisis Act (Gov. Code, § 66300 et seq.), which prohibits affected cities and counties (including the City of San Diego) from approving housing development projects that would result in the demolition of more housing units than they would create (Gov. Code, § 66300.6(a)). The Housing Crisis Act remains in effect until January 1, 2034. The City of San Diego added standards to its LCP regarding dwelling unit protections in response to the Housing Crisis Act. The City's LCP incorporates similar provisions to maintain housing units, such as Section 143.1210, which states that development subject to the dwelling unit protections regulations must include at least as many dwelling units as the most recent permitted development on the premises, which in this case is two. The proposed project complies with this requirement, however, due to the significant redesign required for the project to comply with the sea level rise LCP policies, **Special Condition No. 3** requires that the density be maintained; the two proposed primary duplex units are to be maintained in the project redesign for the life of the development.

As conditioned, the Commission finds the project consistent with Sections 30250 and 30251 of the Coastal Act and with the provisions of the Mission Beach PDO protecting community character and ensures that development will be located in appropriate areas to avoid impacts to community character and visual resources.

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 subject site is located in an area of original jurisdiction, where the Commission retains permanent permit authority and Chapter 3 of the Coastal Act remains the legal standard of review. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and the City's certified LCP. 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 this is not a project requiring CEQA review as outlined in San Diego Municipal Code (SDMC) Section 128.0202 and CEQA guidelines (see Cal. Code of Regs., tit. 14, § 15378 [definition of a 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 and sea level rise, will avoid and minimize all adverse environmental impacts. As conditioned, there are no feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed project is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

- Certified Mission Beach Precise Plan
- Certified Mission Beach Planned District Ordinance
- City of San Diego Land Development Code
- Coastal Hazard and Sea Level Rise Discussion conducted by Skelly Engineering dated June 24, 2024, and revised August 26, 2024