

**CALIFORNIA COASTAL COMMISSION**

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**STAFF REPORT: APPEAL – SUBSTANTIAL ISSUE and  
 DE NOVO/REGULAR CALENDAR**

**Appeal/Application Number:** A-5-DRL-17-0026/5-17-0459

**Applicant:** Angelo Mazzone

**Agent:** Brian Noteware

**Local Government:** City of Los Angeles

**Local Decision:** Approval with Special Conditions

**Appellant:** Coastal Commission Executive Director

**Project Location:** 6401-6405 Ocean Front Walk, Playa Del Rey, City of Los Angeles  
 (APNs: 4116-002-025, 4116-002-026)

**Project Description:** Appeal of City of Los Angeles Local Coastal Development Permit No. ZA 2014-1500, approved with conditions for the demolition of two 2-story duplex buildings, lot merger, and construction of a 3-story, approximately 10,513 sq. ft., approximately 37 foot high single family dwelling with attached 5 car garage over habitable basement. The proposed development will have a structural rear (seaward) setback of 7 feet on the ground floor and 1 foot on the upper levels, and a side yard (north) setback of 3 feet. Also includes the dual permit jurisdiction coastal development permit application for the same proposed project.

**Staff Recommendation:** Substantial Issue On Appeal, and Approval With Conditions on Dual Permit Application.

**Important Hearing Procedure Note:** The Commission will not take testimony on this “substantial issue” recommendation unless at least three commissioners request it. The Commission may ask

questions of the applicant, any aggrieved person, the Attorney General or the executive director prior to determining whether or not to take testimony regarding whether the appeal raises a substantial issue. If the Commission takes testimony regarding whether the appeal raises a substantial issue, testimony is generally and at the discretion of the Chair limited to 3 minutes total per side. Only the applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify during this phase of the hearing. Others may submit comments in writing. If the commission finds that the appeal raises a substantial issue, the de novo phase of the hearing will follow, unless it has been postponed, during which the Commission will take public testimony.

## SUMMARY OF STAFF RECOMMENDATION

Staff first recommends that the Commission determine that a **substantial issue exists** with respect to the grounds on which Appeal A-5-DRL-17-0026 has been filed for the following reasons: the project, as approved by the City of Los Angeles, is inconsistent with the Public Access and Recreation policies and the Scenic and Visual policies of Chapter 3 of the Coastal Act. Staff also recommends that, after a public hearing, the Commission **approve the de novo permit/Dual Permit** with special conditions.

The City-approved project is not consistent with the public access and recreation policies or the scenic and visual policies of Chapter 3 of the Coastal Act because it permits private development that has inadequate setbacks from public spaces along the beach and public promenade, and along the side yard. The inadequate separation between the private development and public space could result in public access conflicts and the loss of public access in this area, as well as a reduction of public view corridors to the ocean from public areas. In addition, the proposed project will result in a 10,513 square-foot, 37-foot high, 3-story single-family residence – approximately double the size of any other single-family residence in the area. The City found the proposed building consistent with community character based solely on its height; however, the City did not analyze the proposed project's bulk and scale in comparison with the bulk and scale of structures in the surrounding area. Consequently, the City's incomplete analysis did not provide sufficient evidence to demonstrate that the proposed project is compatible with the community character policies of the Coastal Act. Therefore, as approved by the City, the project raises a substantial issue with regard to the public access and recreation policies and the scenic and visual policies of Chapter 3 of the Coastal Act.

Next, Staff recommends the Commission **approve** the de novo coastal development permit A-5-DRL-17-0026 and Dual permit 5-17-0459 application with special conditions. **Special Condition 1** requires revised plans providing: 1) a 5 foot minimum rear yard setback between all portions of the structure (including balconies, patio covers, eaves, and foundations), except for ground level patios, and the rear (seaward) property line; and 2) a 6 foot side yard setback along 64<sup>th</sup> Avenue to protect public beach access and public coastal views. Because the project is located on the beach and may be subject to flooding and wave hazards, **Special Condition 2** requires the applicant to acknowledge and accept the risks, waive liability, and indemnify the Commission. **Special Condition 3** places the applicant and any future property owner on notice that no future shoreline protective device will be permitted to protect the proposed structure. **Special Condition 4** requires the applicant to submit an application for a

Coastal Development Permit or an amendment to this permit for any future improvements. **Special Condition 5** requires the applicant to follow additional Best Management Practices. Special Condition 6 requires Landscape and Irrigation plan showing the use of native and noninvasive plants along the proposed landscaping areas. **Special Condition 7** requires the applicant to record a deed restriction referencing all of the special conditions of this permit.

The **motions** to carry out the staff recommendations are on **Page 5 (Substantial Issue) and Page 18 (De Novo and Dual Permit)**.

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### **APPENDICES**

[Appendix A - Substantive File Documents](#)

### **EXHIBITS**

[Exhibit 1 – Vicinity Map](#)

[Exhibit 2 – Site Photos](#)

[Exhibit 3 – Site Plans/Elevations](#)

[Exhibit 4 – City Determination](#)

## I. MOTION AND RESOLUTION- SUBSTANTIAL ISSUE

### Motion:

*I move that the Commission determine that Appeal No. A-5-DRL-17-0026 raises **NO Substantial Issue** with respect to the grounds on which the appeal has been filed under § 30602 of the Coastal Act.*

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

### Resolution:

*The Commission hereby finds that Appeal No. A-5-DRL-17-0026 presents A **SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed under § 30602 of the Coastal Act regarding consistency with Chapter 3 policies of the Coastal Act.*

## II. APPELLANT’S CONTENTIONS

On March 31, 2017, the City of Los Angeles approved Local Coastal Development Permit No. ZA-2014-1500-CDP-ZAA-MEL-1A for the construction of a 10,513 square foot single family residence. [\(Exhibit 4\)](#). On April 20, the Coastal Commission’s South Coast District Office received the Notice of Final Action for the local permit. On May 17, 2017, the Executive Director of the Coastal Commission filed an appeal of the permit authorizing the proposed project. The appellant contends that the proposed rear (seaward) setback of 7 feet on the ground level and 1 foot on the upper levels is inadequate to protect public access along the beach and on Ocean Front Walk. Similarly, the appellant contends that the proposed side yard setback of 3 feet adjacent to 64<sup>th</sup> Avenue does not protect public access to the beach along 64<sup>th</sup> Avenue and decreases the public view corridor along 64<sup>th</sup> Avenue. Finally, the appellant asserts that the City of Los Angeles did not properly address the proposed project’s conformance to community character using all of the relevant criteria.

## III. LOCAL GOVERNMENT ACTION

The City of Los Angeles approved a CEQA exemption (2014-1501-CE) for this project on November 24, 2014, and a Mitigated Negative Declaration (ENV-2014-1501-MND) was subsequently completed on June 8, 2015. A public hearing was held on October 29, 2015 for this project. On October 18, 2016, the City of Los Angeles, Office of Zoning Administration (Administration), denied the local CDP ZA-2014-1500-CDP-ZAA-MEL for “the demolition of two, two-story duplex buildings totaling approximately 4,840 square feet, for the construction of

a four-story, 45-foot tall, approximately 10,513 square-foot single family dwelling with an attached five-car garage over a habitable basement, on an approximately 5,100 square-foot lot.” The Administration also denied the “Zoning Administrator’s Adjustments to allow for a reduced northerly side yard of 3 feet in lieu of the 7 feet otherwise required.” The Administration did approve the Mello Act Compliance Review Determination for the demolition of the two duplexes.

On November 1, 2016, the applicant submitted an appeal of the City’s Zoning Administration’s denial of the project. On February 1, 2017, the City of Los Angeles, West Los Angeles Area Planning Commission held a public hearing for Local CDP ZA-2014-1500-CDP-ZAA-MEL-1A for the project. On March 31, 2017 the West Los Angeles Area Planning Commission granted the appeal and overturned the Zoning Administrator’s Determination to deny a CDP for the project, effectively approving the project with conditions as modified by the Planning Commission.

The City’s Notice of Final Action for the local CDP was received in the Coastal Commission’s South Coast District Office on March 20, 2017; however, the notification was found to be deficient, as “Exhibit A” was not attached, per Special Conditions 2 and 8 of the local permit; also, the description of the approved development was not clear. On March 24, 2017, a Notification of Deficient Notice was sent to the City of Los Angeles, West Los Angeles Area Planning Commission, the effective date of the local government action was suspended, and the 20 working day Commission appeal period was not established. On April 3, 2017, the Coastal Commission’s South Coast District Office received a revised Notice of Coastal Development Permit Issuance from the City of Los Angeles, West Los Angeles Area Planning Commission which superseded the previous notice dated March 20, 2017. This notice was also found to be deficient as it was still missing “Exhibit A”. Therefore, a second Notice of Deficient Notice was sent to the City on April 7, 2017. On April 10, 2017, the Coastal Commission’s South Coast District Office received a revised Notice of Coastal Development Permit Issuance from the City of Los Angeles, West Los Angeles Area Planning Commission which superseded the previous notice. This notice was also found to be deficient as “Exhibit A” was again not included in the notice. A third Notice of Deficient Notice was sent to the City on April 14, 2017. On April 19, 2017 the City submitted a Notice of Coastal Development Permit Issuance that included the missing material, and on April 20, 2017, Coastal Commission staff established the twenty working-day appeal period of the California Coastal Commission for the local action. On May 17, 2017, one appeal was received from the Executive Director. No other appeals were received prior to the end of the appeal period on May 17, 2017. On May 17, 2017, a Notification of Appeal was sent to the City of Los Angeles, West Los Angeles Area Planning Commission and the applicant, notifying each party of the appeal of local CDP ZA-2014-1500.

#### **IV. APPEAL PROCEDURES**

Section 30600(b) of the Coastal Act provides that prior to certification of its LCP, a local jurisdiction may, with respect to development within its area of jurisdiction in the coastal zone and consistent with the provisions of Sections 30604, 30620 and 30620.5, establish procedures for the filing, processing, review, modification, approval or denial of a coastal development permit. Pursuant to this provision, the City of Los Angeles developed a permit program in 1978 to exercise its option to issue local CDPs. Sections 13301-13325 of Title 14 of the California Code of

Regulations provide procedures for issuance and appeals of locally issued CDPs. Section 30602 of the Coastal Act allows *any* action by a local government on a CDP application evaluated under Section 30600(b) to be appealed to the Commission. The standard of review for such an appeal is the Chapter 3 policies of the Coastal Act. [Cal. Pub. Res. Code §§ 30200 and 30604.]

After a final local action on a local CDP application, the Coastal Commission must be noticed within five days of the decision. After receipt of such a notice, which contains all the required information, a twenty working-day appeal period begins during which any person, including the applicant, the Executive Director, or any two members of the Commission, may appeal the local decision to the Coastal Commission. [Cal. Pub. Res. Code § 30602; 14 Cal. Code Regs. § 13316.] As provided under section 13318 of Title 14 of the California Code of Regulations, the appellant must conform to the procedures for filing an appeal as required under section 13111 of Title 14 of the California Code of Regulations, including the specific grounds for appeal and a summary of the significant question raised by the appeal.

The action currently before the Commission is to find whether there is a “substantial issue” or “no substantial issue” raised by the appeal of the local approval of the proposed project. Sections 30621 and 30625(b)(1) of the Coastal Act require a de novo hearing of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds for appeal.

Commission staff recommends a finding of **substantial issue**. If the Commission decides that the appellant’s contention raises no substantial issue as to conformity with Chapter 3 of the Coastal Act, the action of the local government becomes final. Alternatively, if the Commission finds that a substantial issue exists with respect to the conformity of the action of the local government with the Chapter 3 policies of the Coastal Act, the local CDP is voided and the Commission may continue the public hearing to a later date in order to review the CDP as a de novo matter. However, in this case, Commission staff has included the De Novo matter and the Commission’s Dual CDP as part of a combined staff report with the substantial issue staff report. [Cal. Pub. Res. Code §§ 30621 and 30625.] Section 13321 of the Coastal Commission regulations specifies that de novo actions will be heard according to the procedures outlined in Sections 13114 and 13057-13096 of the Commission’s regulations.

If there is no motion from the Commission to find no substantial issue, it will be presumed that the appeal raises a substantial issue and the Commission will continue into the hearing for the de novo phase of the public hearing on the merits of the application. A de novo public hearing on the merits of the application uses the Chapter 3 policies of the Coastal Act as the standard of review. Sections 13110-13120 of Title 14 of the California Code of Regulations further explain the appeal hearing process.

If the Commission decides to hear arguments and vote on the substantial issue question, those who are qualified to testify at the hearing, as provided by Section 13117 of Title 14 of the California Code of Regulation, will have three minutes per side to address whether the appeal raises a substantial issue. The only persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. The Commission will then vote on the substantial issue matter. It takes a majority of Commissioners present to find that the grounds for the appeal raise no substantial issue.

## V. SINGLE/DUAL PERMIT JURISDICTION AREAS

Within the areas specified in Section 30601, which is known in the City of Los Angeles permit program as the *Dual Permit Jurisdiction* area, the Coastal Act requires that any development which receives a local CDP permit also obtain a second (or “dual”) CDP from the Coastal Commission. The Commission's standard of review for the proposed development in the *Dual Permit Jurisdiction* area is the Chapter 3 policies of the Coastal Act. For projects located inland of the areas identified in Section 30601 (i.e., projects in the *Single Permit Jurisdiction*), the City of Los Angeles local CDP is the only CDP required. The proposed project site is located within the *Dual Permit Jurisdiction Area*. The applicant’s application (5-17-0459) for the Coastal Commission dual permit was received on May 25, 2017.

## VI. FINDINGS AND DECLARATIONS – SUBSTANTIAL ISSUE

### A. PROJECT DESCRIPTION AND LOCATION

The applicant proposes to demolish two existing 2,421 sq. ft., 2-story, approximately 24 ft.-high duplexes and their attached garages (four dwelling units). The applicant also proposes to record a lot tie to allow for the construction, use, and maintenance of a three-story, approximately 10,513 sq. ft., single family residence with an attached, approximately 1,122 sq. ft., 5-car garage over an approximately 3,525 sq. ft. habitable basement ([Exhibit 3](#)). The height of the new single family residence will be approximately 37 feet from existing grade to the ridgeline of the roof. Although the existing residences are set back from the seaward property line and Ocean Front Walk by approximately 14 feet, the proposed single family residence would extend further seaward than the existing residences on the first floor, with a structural setback of 7 feet and a covered patio extending to within 1 foot of Ocean Front Walk. The proposed residence will also extend seaward on the upper stories, with both the second and third floors extending to within 1 foot of the property line and Ocean Front Walk. In addition, the applicant is proposing to reduce the required 6 foot side yard setback down to 3 feet along the northern side of the proposed building adjacent to 64<sup>th</sup> Avenue, remove all private encroachments (paved driveway, wall, and fence) within the City’s right-of-way, and construct a public 6 foot wide sidewalk adjacent to the northern property line, extending from Speedway to the beach promenade.

The project site includes two beach fronting lots located at 6401-6405 Ocean Front Walk, Playa del Rey, in the City of Los Angeles. The proposed project site consists of two identical lots, each approximately 2,551 sq. ft. in size and developed with a 2,421 sq. ft., two-story duplex. The two lots have a total frontage of 60 feet along Ocean Front Walk, a depth of 85 feet along 64<sup>th</sup> Avenue and a frontage of 60 feet along Speedway. The proposed combined lot area of the two lots (when merged) is approximately 5,102 sq. ft. ([Exhibit 3](#)). The lots are zoned R3-1 (Medium Residential). The property abuts the City’s 12-foot wide, concrete Ocean Front Walk sidewalk along the seaward side of the property. The property is located north of Culver Boulevard and south of Ballona Creek. The subject lot is located within a row of beach fronting residentially developed lots consisting of single and multi-family structures. Vertical access to the beach is available along the north side of the project site along the terminus of 64<sup>th</sup> Avenue.



The subject site is situated in an urbanized neighborhood. The majority of the nearby residential buildings were constructed in the 1960s, with the average residential floor area being just above 2,400 sq. ft. Adjoining properties to the north, south, and east are also zoned R3-1. The properties to the north, across 64<sup>th</sup> Avenue, are developed with three- and four-story multi-family dwellings consisting of condominiums and apartments. The multi-family buildings range in size from 8,000 to 20,000 sq. ft., while the floor area of the individual dwelling units ranges in size from 1,100 to 2,600 sq. ft.

## **B. FACTORS TO BE CONSIDERED IN SUBSTANTIAL ISSUE ANALYSIS**

Section 30625(b)(1) of the Coastal Act states that the Commission shall hear an appeal of a local government action carried out pursuant to Section 30600(b) unless it finds that no substantial issue exists as to conformity with Chapter 3 of the Coastal Act. The term “substantial issue” is not defined in the Coastal Act or its implementing regulations. Section 13115(b) of the Commission’s regulation simply indicates that the Commission will hear an appeal unless it “finds that the appeal raises no significant question.” In previous decisions on appeals, the Commission had been guided by the following factors:

1. The degree of factual and legal support for the local government’s decision that the development is consistent or inconsistent with the relevant provisions of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government’s decision for future interpretations if its LCP; and,
5. Whether the appeal raises local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government’s coastal permit decision by filing petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5.

Staff is recommending that the Commission find that **a substantial issue exists** with respect to whether the local government action conforms to the provisions of Chapter 3 of the Coastal Act for the reasons set forth below.

## **C. SUBSTANTIAL ISSUE ANALYSIS**

As stated in Section IV of this report, the grounds for an appeal of a CDP issued by the local government prior to certification of its LCP are the project’s conformity with Chapter 3 policies of the Coastal Act. Any local government CDP issued or denied prior to certification of its LCP may be appealed to the Commission. The Commission shall hear an appeal unless it determines that no substantial issue exists as to conformity with Chapter 3 policies of the Coastal Act. There is no certified LCP for this area of the City of Los Angeles. As such, the Coastal Act is the standard of review for this CDP. [Cal. Pub. Res. Code § 30625(b)(1); 14 C.C.R. § 13321.]

Section II of this staff report outlined the appellant’s contentions regarding the project. Concerns raised by the appellant include the City-approved project’s consistency with sections 30210, 30211, 30212, 30214, 30221 and 30251 of the Coastal Act. The Commission’s decision will be guided by the factors listed in the previous section of this report (B. Factors to be Considered in Substantial Issue Analysis).

Here, a substantial issue exists with respect to the proposed project’s conformance with Chapter 3 of the Coastal Act because the City-approved project is not consistent with the public access and recreation policies or the scenic and visual policies of Chapter 3 of the Coastal Act. In particular, the project permits inadequate setbacks between the private and public spaces, which could result in public access conflicts and the loss of public access in this area, and it reduces a view corridor to the ocean from public areas. The project’s mass and scale also raises a substantial issue with regards to community character. The City’s staff report did not provide adequate findings to justify the approval.

Coastal Act Section 30210 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:[...]  
(2) adequate access exists nearby, ...  
Dedicated accessways 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 30214 of the Coastal Act states, in relevant part (emphasis added):

*(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:*

- (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 30251 of the Coastal Act states that:

*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...*

## **1. Rear Yard Setback**

The subject property abuts the City's 12-foot wide designated location for Ocean Front Walk boardwalk. Although Ocean Front Walk's concrete pedestrian walkway has been constructed adjacent to the subject site, the pedestrian walkway is not currently constructed across all lots in the vicinity, and is intermittent in its construction along this stretch of beach between Culver Boulevard and Ballona Creek. The City of Los Angeles requires proposals for new development or redevelopment of these oceanfront lots to include the construction of the portion of Ocean Front Walk sidewalk immediately adjacent to their property as part of the project, or pay an in-lieu fee to the City for the future development of the walkway. The homeowners with completed portions of the Ocean Front Walk boardwalk can then be granted permission by the City, in the form of a Revocable Permit (R-permit), to temporarily encroach onto the walkway (i.e. it can be used as a temporary patio space with no permanent or semi-permanent structures) until such a time that the entire length of the boardwalk is complete. The R-permit grants conditional approval for encroachment on the public area designated for Ocean Front Walk by private parties not otherwise authorized to occupy the walkway area. The R-permit review process ensures that encroachments are checked for compliance with the City's specifications for design, use, materials, and inspections. The intent of the City is to complete the boardwalk upon the redevelopment of all lots. Upon completion, the homeowners will be required by the City to remove their items from the public area designated for Ocean Front Walk, which will be opened for public use. However, there is no indication from the City when the walkway will be open for public use.

The existing duplexes are set back from the seaward property line and Ocean Front Walk by approximately 14 feet; however, the proposed single family residence would extend further seaward than the existing residences on the first floor, with a structural setback of 7 feet and a covered patio extending to within 1 foot of Ocean Front Walk. The proposed residence will also extend seaward on the upper stories, with both the second and third floors extending to 1 foot seaward of the property line and Ocean Front Walk. No encroachment into the area designated for Ocean Front Walk is proposed as part of this project.

In the past, for beachfront properties in this area north of Culver Boulevard, the City of Los Angeles has allowed development, including habitable structures, to reduce the normally required 15 foot rear yard setback for R3-1 zoned lots to as little as 1 foot from the rear (seaward) property line pursuant to City Ordinance No. 164763 (4/12/1989). The City does not allow for these reductions to rear yard setbacks for residential lots where the rear yards abut other residentially developed lots or streets. Thus, for this beach front area of Playa del Rey, the City is clearly prioritizing the importance of providing setbacks for new development from other private residential properties over the provision of adequate setbacks from public land—specifically the sandy beach and designated public coastal access ways.

Until recently, the Commission has also not required a greater setback than the City when acting on permits in this area. However, this previous pattern of development has resulted in inadequate setbacks between private and public spaces, which can result in the appearance that the areas designated for future public access (Ocean Front Walk in this case) are actually private. Without adequate buffers between private residential development and public spaces, conflicts arise which could potentially result in the obstruction and/or loss of public access in this area. Specifically, the provision of only a 1 foot setback between the private structure and the public walkway, Ocean Front Walk, would not allow adequate space on the applicants' property for painting and other normal repair and maintenance activities to occur without encroaching into the public accessway and interfering with public access. Furthermore, this area has been subject to flooding during storm events, and with an inadequate rear yard (seaward) setback, the property may not have adequate room for adaptive measures addressing flooding and future sea level rise, and any adaptive measures that could be implemented may impact public access or coastal resources because they would likely need to occur on the public accessway and sandy beach. Moreover, without adequate setbacks, the close proximity of the residents effectively privatizes the public beach and walkway area in front of the residences because the public is uncomfortable being so close to the residential structures and will not use that portion of the beach. The Commission recently recognized the impacts caused by inadequate setbacks in this area when it approved CDP 5-16-0757 in March, 2017 with conditions to require a rear setback of 5 feet rather than the proposed 0 foot to 1.5 foot setbacks.

The provision of an adequate setback between private development and areas specifically designated for public access and recreation is critical given the potential for such areas to appear to be private property, and to avoid potential conflicts between private property owners and members of the public. In the City's staff report, with the approved setback, the City did not address public/private conflicts, nor how flooding and sea level rise would be addressed on the property without impacting public access ([Exhibit 4](#)). Therefore, the proposed single-family residence and setback from the beach and boardwalk raises a substantial issue with respect to the Chapter 3 policies of the Coastal Act.

## 2. Side Yard Setback

The applicant is also seeking a reduction in the side yard setback requirement along the north side of the property, without which he claims that the proposed 10,513 sq. ft. residential structure could not be constructed as designed. The City Municipal Code typically requires residential structures to be situated at least 6 feet from the public right-of-way. The applicant is proposing a reduction in this setback to only 3 feet from the public-right-of-way along 64<sup>th</sup> Avenue. The proximity of the 10,513 sq. ft., 37 ft.-high building to the property line and the public right-of-way would adversely affect the public's view of the beach by narrowing the distance between buildings along the north and south side of 64<sup>th</sup> Avenue and by reducing the visual corridor along 64<sup>th</sup> Avenue to the ocean. As substantial redevelopment of the site, the proposed structure should conform to the current building regulations, including the 6 foot side yard setback, in order to maximize to the fullest extent possible the scenic public view corridor along 64<sup>th</sup> Avenue to the coastline. Additionally, the inadequate setback along the side yard adjacent to a public right-of-way would result in the public access issues described above, including the applicant's inability to perform normal private residential maintenance—such as painting and other repair and maintenance activities—without encroaching into the public accessway and impacting the public's access to the beach. This encroachment into the public right-of-way can already be seen along the north side of the property along 64<sup>th</sup> Avenue where the homeowner has encroached 6.5 feet north of the property line into the public right-of-way. The public area has been fenced in and paved to create extra on-site private parking area along the north side of the house. On the street side of the fence, the home owner appears to use the public space as a place to store trash and recycle bins. There is no public sidewalk along the south side of 64<sup>th</sup> Avenue. The encroachment into the standard side yard setback will result in public/private space conflicts and will adversely impact coastal views along 64<sup>th</sup> Avenue. Therefore, the proposed development raises a substantial issue with respect to the Chapter 3 policies of the Coastal Act.

## 3. Community Character

The City found the proposed project consistent with community character based solely on its height in comparison with other nearby structures; however, the City did not analyze the bulk and scale of the project in comparison with other structures in the surrounding area. The City's staff report did not include a streetscape analysis of the surrounding area and did not include findings addressing how the proposed development would be consistent with the character of the area. Without an analysis of these issues, there is insufficient evidence to support a finding that the proposed home is compatible with the community's character ([Exhibit 4](#)). This is particularly true given that most of the lot sizes in proximity to the subject site are approximately 2,500 sq. ft., and the proposed 5,100 sq. ft. lot/project site would be the largest single-family residential site in the immediate neighborhood. In addition, the majority of the nearby single family residential buildings and duplexes have an average residential floor area just above 2,400 sq. ft., and the floor area of individual units in large multifamily complexes range from 1,100 to 2,600 sq. ft. Because the City did not consider whether the size of the proposed home, which would be the largest single

family home in the area, was compatible with the neighborhood, its approval of the proposed development raises a substantial issue with respect to the Chapter 3 policies of the Coastal Act.

### **Substantial Issue Factors**

Applying the five factors listed in the prior section clarifies that the appeal raises “a substantial issue” with respect to Chapter 3 of the Coastal Act, and therefore does meet the substantiality standard of Section 30265(b)(1), because the nature of the proposed project and the local government action are not consistent with policies of Chapter 3 of the Coastal Act.

The first factor is the degree of factual and legal support for the local government’s decision that the development is consistent or inconsistent with the relevant provisions of the Coastal Act. The City-approved residential project with only a 1 foot setback between the private structure and the public area where Ocean Front Walk is located would not allow adequate space on the applicant’s property for normal private residential maintenance—such as painting and other repair and maintenance activities—to occur without encroaching into the public accessway and impacting the public’s ability to walk along Ocean Front Walk. Furthermore, this area has been subject to flooding during storm events, and with an inadequate rear yard (seaward) setback the property may not have room on the site for adaptive measures, and any adaptive measures that could be implemented may impact public access or coastal resources because they would likely need to occur on the public accessway and sandy beach. Moreover, the lack of an adequate setback between private beachfront development and public access walkways, such as Ocean Front Walk, can result in potential conflicts between users of private property and public accessways, and could potentially result in the loss of public access in this area or pressure by private property owners to relocate the planned location of the lateral beach public accessway further seaward, which would take up sandy beach. In addition, although the beach seaward of the subject site is currently relatively wide, the beach is expected to continue to narrow over time due to sea level rise, resulting in less beach area that will be available for public access and recreation. Thus, the importance of Ocean Front Walk for use by the public for access and recreation will become even greater over time. The City did not evaluate the proposed development’s potential impacts on the public walkway and the effects of having the public and private space within 1 foot of each other.

In addition, the City granted a side yard variance to reduce the required 6 foot setback down to 3 feet along the northern side of the proposed building adjacent to 64<sup>th</sup> Avenue ([Exhibit 4](#)). The allowance of a reduced setback along a public street that provides public beach access will ultimately narrow this view corridor and could adversely impact public access and coastal views. The City determined that the variance was needed because “the proposed 10,513 square-foot dwelling could not be constructed as designed” without the side yard reduction. However, in carrying out the Coastal Act and the California Environmental Quality Act, the City is not obligated to only consider approving a project as designed; rather, it must consider mitigation measures and alternatives—including a modified project—that reduce impacts to coastal and environmental resources. In addition, the City found that the reduction in the side yard setback was allowable since “the proposed project will observe the same building footprint as the existing multi-family structures on the subject property, and thereby not cause any reduction in width of this existing coastal access route.” However, this project represents substantial redevelopment of

the current site, and therefore, new development must conform to current building requirements, including the 6 foot side yard setback. The new development does not automatically get to retain its existing setbacks from 1989, and impacts to existing coastal resources, such as public accessways and view corridors, need to be taken into account and protected to the maximum extent feasible.

The proposed project will result in a 10,513 square-foot, 37-foot high, 3-story single-family residence – approximately double the size of any other single-family residence in the area. Buildings comparable in size in proximity to the proposed site only include large multi-family structures, such as apartment buildings and condominiums. Paragraph 3 and 7 on page F- 2 of the West Los Angeles Area Planning Commission’s Corrected Findings for this project do not substantiate the claim that the proposed development is compatible with the character of the surrounding neighborhood. These findings merely indicate that because the height of the structure is within the acceptable limits, and the “single-family residence as well as individual dwelling units in the surrounding area feature individual amenities for a household such as bedrooms, bathrooms, a dining area, a balcony and garage space,” with some including a “pool, patio, a fitness center or a roof top open space” it is compatible with the character of the neighborhood. However, the findings fail to mention that the majority of the nearby single family residential buildings and duplexes have an average residential floor area just above 2,400 sq. ft. While the multi-family buildings in the immediate area range in size from 8,000 to 20,000 sq. ft., the floor area of the individual dwelling units ranges in size from 1,100 to 2,600 sq. ft. The proposed single-family residence will be closer to the size of a local condominium than a neighboring single-family residence along the beachfront.

Therefore, the Coastal Commission finds that the City provided inadequate factual or legal support for its decision to approve this project.

The second factor is the extent and scope of the development as approved or denied by the local government. The City-approved development would not allow adequate space between the proposed residential structure and Ocean Front Walk, the public accessway that is directly adjacent to the inland extent of the beach. The lack of an adequate setback between private beachfront development and public access walkways can result in conflicts between users of private property and public accessways and could potentially result in the loss of public access in this area. A side yard reduction would deprive the public of a view corridor that maximizes the public space to the fullest extent possible, and it also raises many of the same public access issues as the reduced seaward setback. The extent and scope of the development as approved by the City is not consistent with the public access and recreation policies of Chapter 3 of the Coastal Act, nor the scenic and visual policies of Chapter 3 of the Coastal Act.

The third factor is the significance of the coastal resources affected by the decision. The project site is located between the first public road and the sea. As approved by the City, the new development will not allow adequate space between the proposed residential structure and Ocean Front Walk. Inadequate setbacks between private and public spaces can result in the appearance that the areas designated for future public access (Ocean Front Walk in this case) are actually private, and therefore, the public loses public access opportunities along the coast. Sections 30210, 30211, 30212, 30214 and 30221 of the Coastal Act protect public access and recreational opportunities along the coast. Additionally, the side yard reduction would deprive the public of a view corridor that maximizes the public space to the fullest extent possible; public views are

protected under Section 30251 of the Coastal Act. Public coastal access is one of the most significant coastal resources identified in the Coastal Act, and public views of the coast are also significant resources. Therefore, the Commission finds that the coastal resources affected by the development are significant.

The fourth factor is the precedential value of the local government's decision for future interpretations of its LCP. The City does not currently have a certified LCP for the Playa Del Rey area. The coastal resources affected by the City-approved development are significant in that future public access along this stretch of Playa Del Rey could be lost or impaired as the buffer between the private residences and the public walkway is reduced as homes are developed up to, or nearly up to, the public walkway. Previous patterns of development in this area have resulted in inadequate setbacks between private and public spaces, which can result in the appearance that the areas designated for future public access (Ocean Front Walk in this case) are actually private. Without adequate buffers between private residential development and public spaces, conflicts arise which could potentially result in the obstruction and/or loss of public access in this area. In addition, the reduction of view corridors through improper side yard reductions can deprive the public of views of the ocean. Therefore, the Commission finds that the City's action sets a bad precedent that prejudices the ability of the City to prepare an LCP that is in conformity with Chapter 3 of the Coastal Act.

The final factor is whether the appeal raises local issues, or those of regional or statewide significance. Public access and recreation to the coast are both local and statewide issues. The City's action is not consistent with the public access and recreation policies or the scenic and visual policies of the Coastal Act. The particular accessway here is part of a larger improved coastal access system in the City, and allowing the City to permit development that may cause the loss or impairment of the accessway in the future is inconsistent with the public access and recreation policies of the Coastal Act and would set a bad statewide precedent. Therefore, the Commission finds that the City's action does raise issues of statewide significance.

In conclusion, the issues raised by the appeal relate to public access and recreation and scenic and visual impacts, which are fundamental principles protected by the Coastal Act. Therefore, the Commission finds that the appeal raises a substantial issue as to conformity with Chapter 3 policies of the Coastal Act.



## **VII. MOTION AND RESOLUTION-DE NOVO PERMIT A-5-DRL-17-0026**

### **Motion:**

*I move that the Commission **approve** Coastal Development Permit Application No. A-5-DRL-17-0026 subject to the conditions set forth in the staff recommendation.*

Staff recommends a **YES** vote. 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 the Commissioners present.

### **Resolution:**

*The Commission hereby approves Coastal Development Permit Application No. A-5-DRL-17-0026 and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that will substantially lessen any significant adverse impacts of the development on the environment.*

## **VIII. MOTION AND RESOLUTION-DUAL PERMIT 5-17-0459**

### **Motion:**

*I move that the Commission **approve** Coastal Development Permit Application No. 5-17-0459 pursuant to the staff recommendation.*

Staff recommends a **YES** vote. 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 the Commissioners present.

### **Resolution:**

*The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or*

*alternatives that would substantially lessen any significant adverse impacts of the development on the environment.*

## **IX. STANDARD CONDITIONS- DE NOVO PERMIT A-5-DRL-17-0026/DUAL PERMIT 5-17-0459**

This permit is granted subject to the following standard conditions:

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

## **X. SPECIAL CONDITIONS-DE NOVO PERMIT A-5-DRL-17-0026/DUAL PERMIT 5-17-0459**

This permit is granted subject to the following special conditions:

1. **Submittal of Revised Final Plans.**
  - A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit, for the review and written approval of the Executive Director, two full-size sets of the following revised final plans, modified as required below:
    1. The rear (seaward) setback of the structure shall not be less than 5 feet from the property line. This shall apply to all habitable and non-habitable areas, stories and foundation of the structure, except for ground level patios.

2. The side yard setbacks of the structure shall not be less than 6 feet from the property line. This shall apply to all habitable and non-habitable areas, stories and foundation of the structure.
  - B. All revised plans shall be prepared and certified by a licensed professional or professionals as applicable (e.g., architect, surveyor, geotechnical engineer), based on current information and professional standards, and shall be certified to ensure that they are consistent with the Commission’s approval and with the recommendations of any required technical reports.
  - C. The permittee shall undertake development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director provides a written determination that no amendment is legally required for any proposed minor deviations.
2. **Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the applicants acknowledge and agree (i) that the site may be subject to hazards, including but not limited to waves, storms, flooding and earth movement, many of which will worsen with future sea level rise; (ii) 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; (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.
3. **No Shoreline Protective Device.**
  - A. By acceptance of this Permit, the applicants agree, on behalf of themselves (or himself or herself, as applicable) 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 Permits A-5-17-0026 and 5-17-0459 including, but not limited to, the resulting proposed development of a 10,513 sq. ft., 37 ft.-high single family residence, 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 applicants hereby waive, on behalf of themselves (or himself or herself, as applicable) and all successors and assigns, any rights to construct such devices that may exist under applicable law.
  - B. By acceptance of this Permit, the applicants further agree, on behalf of themselves (or himself or herself, as applicable) and all successors and assigns, that the landowner shall remove the development authorized by this Permit, including the resulting proposed development of a 10,513 sq. ft., 37 ft.-high single family residence, 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. The approved project may be constructed and used consistent with the terms and conditions of

this permit for only as long as it remains safe for occupancy and on private property. If any portion of the development at any time encroaches onto public property, the permittee shall remove the encroaching portion of the development. The permittee(s) shall obtain a coastal development permit for removal of approved development unless the Executive Director determines that no coastal development permit is legally required.

**4. Future Permit Requirement.** This permit is only for the development described in coastal development permit (CDP) Permits A-5-17-0026/ 5-17-0459. Pursuant to Title 14 California Code of Regulations (CCR) Section 13250(b)(6), the exemptions otherwise provided in Public Resources Code (PRC) Section 30610(a) shall not apply to the development governed by CDP Permits A-5-17-0026 and 5-17-0459. Accordingly, any future improvements to this structure authorized by this permit shall require an amendment to A-5-17-0026 and 5-17-0459 from the Commission or shall require an additional CDP from the Commission or from the applicable certified local government. In addition thereto, an amendment to Permits A-5-17-0026 and 5-17-0459 from the Commission or an additional CDP from the Commission or from the applicable certified local government shall be required for any repair or maintenance identified as requiring a permit in PRC Section 30610(d) and Title 14 CCR Sections 13252(a)-(b).

**5. Construction Responsibilities and Debris Removal.** By acceptance of this permit, the permittees agree that the approved development shall be carried out in compliance with the following BMPs:

- (a) No demolition or construction materials, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion.
- (b) No demolition or construction equipment, materials, or activity shall be placed in or occur in any location that would result in impacts to environmentally sensitive habitat areas, streams, wetlands or their buffers.
- (c) Any and all debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project.
- (d) Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters.
- (e) All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.
- (f) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
- (g) Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.

- (h) All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.
- (i) Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.
- (j) The discharge of any hazardous materials into any receiving waters shall be prohibited.
- (k) Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible.
- (l) Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity.
- (m) All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

**6. Landscape and Irrigation.** By acceptance of the permit, the permittees agree, on behalf of all future successors and assigns, that:

- (a) Vegetated landscaped areas shall consist of native plants or non-native drought tolerant plants, which are non-invasive. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be 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 a “noxious weed” by the State of California or the U.S. Federal Government shall be utilized within the property. All plants shall be low water use plants as identified by California Department of Water Resources (See: <http://www.water.ca.gov/wateruse/efficiency/docs/wucols00.pdf>).
- (b) Use of reclaimed water for irrigation is encouraged. If using potable water for irrigation, only drip or microspray irrigation systems may be used. Other water conservation measures shall be considered, such as weather based irrigation controllers.

The permittees shall undertake development in accordance with the approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this

coastal development permit unless the Executive Director provides a written determination that no amendment is required.

**7. Deed Restriction** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and approval documentation demonstrating that the landowner(s) have 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.

**8. Bird Strike Prevention.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit revised plans showing the location, design, height, and materials of oceanfront deck railing systems, fences, screen walls, gates, windows and the like for the review and written approval of the Executive Director. Said plans shall include, at a minimum, the following requirements:

Oceanfront deck railing systems, fences, screen walls, gates, and windows and the like that are subject to this permit shall use materials designed to minimize bird-strikes with the deck railing, fence, gate, window or similar feature. Such materials may consist of all or in part of wood, wrought iron, frosted or partially-frosted glass, Plexiglas or other visually permeable barriers that are designed to prevent creation of a bird strike hazard. Clear glass or Plexiglas may be installed only if it contains UV-reflective glazing that is visible to birds or is used with appliqué (e.g. stickers/decals) designed to reduce bird-strikes by reducing reflectivity and transparency. Any appliqué used shall be installed to provide coverage consistent with manufacturer specifications (e.g. one appliqué for every 3 foot by 3 foot area). Use of opaque or partially opaque materials is preferred to clear glass or Plexiglas and appliqué. All materials and appliqué shall be maintained throughout the life of the development to ensure continued effectiveness at minimizing bird strikes and shall be maintained at a minimum in accordance with manufacturer specifications.

Within 60 days of the completion of the development authorized by coastal development permit CDP A-5-DRL-17-0026 and 5-17-0459, the applicants shall submit evidence in the form of a narrative report and photographs, for the review and written approval of the Executive Director, showing that all deck railing systems, fences, screen walls, gates, and windows, or other features covered by this condition installed subject to this permit were installed in accordance with this condition.

## **XI. FINDINGS AND DECLARATIONS – DE NOVO PERMIT A-5-DRL-17-0026/DUAL PERMIT 5-17-0459**

### **A. PROJECT DESCRIPTION AND LOCATION**

The applicant proposes to demolish two existing 2,421 sq. ft., 2-story, approximately 24 ft.-high duplexes and their attached garages (four dwelling units). The applicant also proposes to record a lot tie to allow for the construction, use, and maintenance of a three-story, approximately 10,513 sq. ft., single family residence with an attached, approximately 1,122 sq. ft. 5-car garage over an approximately 3,525 sq. ft. habitable basement. The height of the new single family residence will be approximately 37 feet from existing grade to the ridgeline of the roof. The first floor has a structural setback of 7 feet and a covered patio extending to within 1 foot of Ocean Front Walk, while both the second and third floors extend to within 1 foot of the property line and Ocean Front Walk. In addition, the applicant is proposing to reduce the required 6 foot side yard setback down to 3 feet along the northern side of the proposed building adjacent to 64<sup>th</sup> Avenue. All encroachments within the public right of way adjacent to 64<sup>th</sup> Avenue (paved driveway, wall, and fence) will be removed and a 6 foot wide public sidewalk will be constructed as part of the project ([Exhibit 3](#)).

The project site includes two beach fronting lots located at 6401-6405 Ocean Front Walk, Playa del Rey, in the City of Los Angeles. The proposed project site consists of two identical lots, each approximately 2,551 sq. ft. in size and developed with a 2,421 sq. ft., two-story duplex. The two lots have a total frontage of 60 feet along Ocean Front Walk, a depth of 85 feet along 64<sup>th</sup> Avenue and a frontage of 60 feet along speedway. The proposed combined lot area of the two lots (when merged) is about 5,102 sq. ft. The lots are zoned R3-1 (Medium Residential). The property abuts the City's 12-foot wide designated location for Ocean Front Walk. The property is located north of Culver Boulevard and south of Ballona Creek. The subject lot is located within a row of beach fronting residentially developed lots consisting of single and multi-family structures. Vertical access to the beach is available along the north side of the project site along the terminus of 64<sup>th</sup> Avenue.

### **B. PUBLIC ACCESS, RECREATION AND SCENIC QUALITIES**

Coastal Act Section 30210 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:[...]*  
*(2) adequate access exists nearby, ...*  
*Dedicated accessways 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 30214 of the Coastal Act states, in relevant part (emphasis added):

- (b) 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:*  
*(5) 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.*  
*(6) 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.*

The project site is a beach fronting lot located within a row of beach fronting residentially developed lots consisting of single and multi-family structures. Lateral public access is available immediately seaward of the property via an improved 12 foot wide public sidewalk and the sandy beach (Dockweiler State Beach). Vertical access to the beach is available directly north of the property along the improved terminus of 64<sup>th</sup> Avenue ([Exhibit 1](#)). The proposed single-family residence will have a structural rear yard (seaward) setback of 7 feet on the first floor, with a covered patio that extends to one foot from the property line, and setbacks of one foot from the property line on the second and third floor. There is also a side yard variance request to reduce the required 6 foot setback to 3 feet along the sides adjacent to 64<sup>th</sup> Avenue and the neighboring property. As described in the substantial issue portion of the staff report, the findings of which are incorporated here by reference, these proposed rear and side yard setbacks effectively encroach onto public areas and serve to reduce public beach access and recreation areas.

#### Rear Yard Setback



The property abuts the City's 12-foot wide Ocean Front Walk boardwalk. Although the existing residences are set back from the seaward property line and Ocean Front Walk by approximately 14 feet, the proposed single family residence would extend further seaward than the existing residences on the first floor, with a structural setback of 7 feet and a covered patio extending to within 1 foot of Ocean Front Walk. The proposed residence will also extend seaward on the upper stories, with both the second and third floors extending to within 1 foot of the seaward property line and Ocean Front Walk ([Exhibit 2](#)).

In the past, for beachfront properties in this area, the City of Los Angeles has allowed development, including habitable structures, to reduce the normally required 15 foot rear yard setback for R3-1 zoned lots to as little as 1 foot from the rear (seaward) property line pursuant to City Ordinance No. 164763 (4/12/1989). The City has also permitted temporary private encroachment onto Ocean Front Walk until such time as the entire walkway is completed. However, this previous pattern of development has resulted in actual private use of public space as well as inadequate setbacks between private and public spaces, which can result in the appearance that the areas designated for future public access (Ocean Front Walk in this case) are actually private. Without adequate buffers between private residential development and public spaces, conflicts arise which could potentially result in the obstruction and/or loss of public access in this area. Specifically, the provision of only a 1 foot setback between the private structure and Ocean Front Walk would not allow adequate space on the applicants' property for painting and other repair and maintenance activities to occur without encroaching into the public accessway. Furthermore, this area has been subject to flooding during storm events, and with an inadequate rear yard (seaward) setback, the property may not have adequate room on the site to implement adaptive measures addressing flooding and future sea level rise without impacting public access or coastal resources. Moreover, without adequate setbacks, the close proximity of the residents effectively privatizes the public beach and walkway area in front of the residences because the public is uncomfortable being so close to the residential structures and will not use that portion of the beach. In response to these concerns, at the Commission hearing on March 9, 2017, on CDP no. 5-16-0757 (Greene), the Commission determined that a 5-ft. rear setback for all floors, including upper story decks, of development along this stretch of Playa Del Rey was required to allow for maximum public access and recreation opportunities and to protect both public access and privacy of residents.

As mentioned above, the intent of the City has been to complete Ocean Front Walk upon redevelopment of each individual lot, and upon completion, the homeowners will be required by the City to remove their private items that currently obstruct public use of the boardwalk, and the boardwalk will be opened to the public for use. However, as a result of the current allowance of private use on the public accessway, whether authorized through an R-permit or not, there has been a growing privatization of public areas. This trend has the consequence of resulting in the perception that the areas seaward of the development are private (i.e. backyard areas) when, in fact, because the residences are built so close to the property line (within 1-foot), the area almost immediately adjacent to the buildings is actually public. As a consequence, the public has perceivably lost approximately 12 feet of beach access area.

The existing two-story duplexes have a ground-floor and second-floor structural setback of approximately 14 feet from the rear (seaward) property line, with a ground level patio improved to the property line. The proposed single family residence will reduce the ground floor structural

setback to 7 feet and 1 foot on the upper stories for habitable area. With the proposed seaward setbacks of the proposed residence, there will be no area on the private parcel that will function as a privacy buffer between the proposed single family residence and Ocean Front Walk, as the upper stories will almost be directly above the public walkway.

For the reasons discussed above, the provision of an adequate setback between private development and areas specifically designated for public access and recreation is critical given the potential for such areas to appear to be private property, and to avoid potential conflicts between private property owners and members of the public. In this case, the normally required rear yard setback for a structure on the subject site is 15 feet. The City's approval of the project and the reduction in the normally required setback would not provide for an adequate area on the applicant's private property for even normal maintenance of the structure to occur, much less provide for an adequate buffer between private development and the public access way.

Additionally, the allowance of a minimal beachfront setback of 1 foot has the potential for cumulative future public access loss, including the loss of the boardwalk altogether in this area. Upon completion of the boardwalk, the City is supposed to require homeowners to remove their items from the public area designated for Ocean Front Walk and open the walkway for public use. However, because these homeowners have been allowed to use the public area designated for the walkway, in lieu of having their own private yards because they have built out their residence so far as to eliminate any potential yard space, they have created a rear yard buffer using public beach between their private area and the public. This has the potential to result in conflicts between users of private property and users of the public accessway, and potentially conflicts between the City and the homeowners at the time when the boardwalk is complete. If homeowners refuse to remove their property, or even if they do remove it but then act in other ways to discourage public use of the pathway that is adjacent to their homes, this would cause conflicts with the public access policies of the Coastal Act. In the Commission's experience in past permit actions, property owners have often objected to having trails or public accessways in close proximity to their residences because of concerns over noise, privacy, and other effects of having the public walking close to their homes. Examples of these conflicts have come before the Commission in several forms including, but not limited to, (1) homeowners presenting evidence of conflicts between beachfront homeowners and public users of the beach, including homeowners' claims of invasion of privacy by the public (e.g., CDP No. A-1-MEN-16-0040), and (2) homeowners arguing that a public trail near their home interferes with their privacy interests and property rights, and the Commission imposing measures on the trail project to mitigate conflicts between homeowners and trail users (e.g., CCC-05-CD-09).

When the entire boardwalk is eventually opened to the public, the misleading, temporary privacy buffer that has been created through the privatization of the public area designated for Ocean Front Walk will be eliminated, and the public will be able to walk on the boardwalk within 1 foot of these residences. This could lead to conflicts between the public and homeowners similar to what the Commission has seen in other instances (see examples above), and could result in complaints to the City of Los Angeles concerning privacy and security of the private residences due to the lack of a buffer between the private and public areas.

Relatedly, Section 30214 demonstrates that the Coastal Act recognizes the inherent conflicts between public use and private property that must be managed in a way that maximizes public access while also protecting private property. In this case, Ocean Front Walk is a known,

dedicated public walkway, and new development should not be allowed to be constructed in a manner that could foreclose the ability of the homeowner to maintain some privacy. As Section 30214 describes, public access may have to be curtailed due to safety issues in some instances if adjacent residential uses are too close and privacy could be compromised. As mentioned before, upon completion of the entire length of Ocean Front Walk, the walkway is supposed to be open for public use. However, if property owners continue to build structures with inadequate setbacks from the public space, homeowners will not have the ability to obtain privacy, and they may attempt to restrict or modify public access to the public walkway in front of their homes. While the existing homeowner has expressed no concern over having a public walkway just 1 foot from his doorway and windows, this owner will not be there forever, and the Commission must look at the long-term effect of allowing residential structures in close proximity to the walkway and must protect future homeowners too.

Furthermore, this residential area is designated R3-1 (Medium Residential) by the City, which according to the City's Municipal Code, is required to provide a rear yard setback of no less than 15 feet (Ord. No. 121925, 6/4/62). The only residential areas in the City allowed a smaller rear setback requirement are those zoned RU (10-foot setback), RZ2.5 (0-foot setback), RZ3 (0-foot setback) and RZ4 (0-foot setback). In addition, south of this location and south of Culver Boulevard, beach fronting residences along Trolleyway, in Playa del Rey, are consistently required to have a 15-foot setback from their rear (seaward) property line to ensure an adequate buffer between the private residential areas and the public beach. However, between Culver Boulevard and Ballona Creek, the City has allowed buildout to within 1 foot of the property line and Ocean Front Walk through Building Line Ordinance No. 164763 (4/12/1989), which has not been approved by the Commission.

Overall, the previously approved pattern of development has led to inadequate setbacks between the private and public spaces, which is likely to result in public access conflicts and the loss of public access in this area. Therefore, the Commission imposes **Special Condition 1**, which requires that the proposed development have a *minimum* 5-foot rear (seaward side) setback on both the ground floor and all upper-stories (including decks) and the applicants submit revised plans showing these changes for review and approval by the Executive Director prior to the issuance of the permit ([Exhibit 3](#)). The Commission further finds that an even greater setback than required by **Special Condition 1** may be appropriate, such as the normally required 15 foot rear yard setback for residential areas and that this issue should be carefully evaluated as part of the City's future Local Coastal Program for this area. In this case, the provision of a 5 foot setback from the rear (seaward) property line should be considered the minimum setback necessary to allow for normal repair and maintenance activities of the residence on site to occur on the applicants' property without requiring encroachment into public beach and Ocean Front Walk areas, provide for a minimum privacy buffer, avoid the appearance of privatization of the area designated for Ocean Front Walk, and minimize potential conflicts between private property owners and members of the public using Ocean Front Walk.

### Side Yard Setback

The existing duplexes currently observe a side yard setback of 3 feet on both the northern and southern ends of the property. The side yard minimum setback is typically 6 feet in this area; however, a side yard variance was granted for the duplexes in 1989 to reduce the side yard setback requirement from six feet to three feet from the property. The property also has an

unpermitted 6 foot encroachment into the public right of way of 64th Avenue that is currently being used as a private parking area for the adjacent duplex ([Exhibit 2](#)). The encroachment includes a paved driveway that is enclosed with a wall and fence with a combined height of approximately 6 feet. No record of a City Revocable Permit (R-Permits) has been found for this private encroachment. Approval of Permits A-5-DRL-17-0026 and 5-17-0459 will resolve this current violation by limiting all development on the side adjacent to 64<sup>th</sup> Avenue with a minimum 6 foot setback from the property line (See **Special Condition 1**). This ensures that no development extends beyond the property line and into the public right-of-way.

As part of the proposed project, the applicant has requested a side yard variance to reduce the northern setback adjacent to 64<sup>th</sup> Avenue from 6 feet to 3 feet in order to construct the proposed residence as designed. The side yard setback on the southern side of the property adjacent to the neighboring residence will have the required 6 foot setback. The project plans also show that the existing encroachments beyond the property line will be removed and that a public sidewalk and curb will be constructed in its place within the right-of-way.

Similar to the rear setback discussion, having an inadequate side yard setback can negatively impact beach access. Although the conversion of the private parking area back into a public sidewalk will serve to improve pedestrian beach access, the opportunity afforded by this action can be lost or reduced with too small of a side setback. Similar to Ocean Front Walk, pedestrians may be discouraged from using the sidewalk or avoid using the walkway due to the proximity of the private residence. More concretely, repair or maintenance of that side of the home would almost certainly require equipment to be stored, and workmen to utilize, the public sidewalk. Although a sidewalk is provided on the other side of 64<sup>th</sup> Avenue, the pedestrian access corridor has the potential to shrink due to these factors.

Therefore, **Special Condition 1** requires that the proposed development have at least 6 foot sideyard setback on all levels ([Exhibit 3](#)). The applicants must submit revised plans showing these changes for review and approval by the Executive Director prior to the issuance of the permit.

Thus, as conditioned, the proposed development conforms to Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

## C. HAZARDS

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

*New development shall:*

- (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.*

Section 30253 of the Coastal Act requires that new development assures stability and structural integrity and does not create or contribute to significant erosion, geologic instability or destruction of the area or in any way necessitate the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

The beach area in front of the property is a broad beach, approximately 400- to 500-feet in width. Due to the width of the beach and the location of the jetty for the entrance channel, properties along this area of beach area are generally protected from storm wave impacts and have not required shoreline protective devices. However, to analyze the suitability of the site for the proposed development relative to potential hazards from sea level rise, erosion, wave attack, flooding and other coastal hazards, Commission staff requested the preparation of a hazards analysis, prepared by an appropriately licensed professional (e.g. coastal engineer). The purpose of this analysis was to determine the potential for future storm damage and identify any possible mitigation measures that could be incorporated into the project design.

The applicants submitted the following coastal hazard investigation: *Coastal Hazard and Wave Runup Study for 6401-6405 Ocean Front Walk, Playa del Rey, City of Los Angeles, California* prepared by GeoSoils, Inc., dated 7/16/2017. The study identifies the presence of a relatively wide area of approximately 550 feet between the proposed project and the mean high tide line, consisting of a beach and concrete public boardwalk/bike path that protects the proposed improvements from maximum projected wave runup elevation. Additionally, the study states that even with an approximate 5-foot rise in sea level rise over the next 75 years, the proposed improvements are reasonably safe from flooding and wave runup erosion. Ultimately, this study concludes: “*The overtopping waters over the next 75 years most likely will not reach the subject site even under the extreme design conditions.*”

Although the applicants’ report indicates that the site is safe for development at this time, beach areas are dynamic environments and may be subject to unforeseen changes. Such changes may affect beach processes. For example, the County constructs a seasonal berm along the beach to protect County improvements such as restrooms, bicycle path, and lifeguard stations in the area. As long as the wide sandy beach is intact, the new development should be safe from sea level rise. However, if something were to happen that would cause damage to the beach, then shoreline retreat may occur.

In addition, the Commission is aware of growing concerns among residents in this location regarding flooding and wave uprush. Most recently, Coastal Development Permit No. 5-14-1345 (Los Angeles County Department of Beaches and Harbors) for the “*Construction of 9 seasonal sand berms, for winter storm wave protection, and measuring approximately 15 feet high and varying in length from approximately 200 feet to 1,500 feet in length,*” for Venice Beach, Dockweiler State Beach, and Hermosa Beach, was presented for Commission approval at the hearing on September 9, 2015 in Arcata. At this hearing, members of the public, who live in Playa del Rey, raised concern over the length (300 feet) of the berm proposed in the area and requested it be longer to provide protection to the private residences in the area. One member of the public, representing the West Playa del Rey Homeowners Association, discussed flooding caused by paths of water flowing past the berm on the north and south sides causing the street to flood including subterranean parking areas. Citing past flooding occurrences during winter storm events and the lack of natural vegetation or dunes, the residents wanted the berm to not

only protect the public facilities (i.e. lifeguard station) but to extend farther in order to protect the private residences.

Therefore, the proposed development is located in an area where coastal hazards exist that could adversely impact the development, particularly due to sea level rise. The Commission imposes **Special Condition 1** which requires that the proposed development have at least a 5-foot rear (seaward) setback and the applicants submit revised plans showing these changes for review and approval by the Executive Director prior to the issuance of the permit. While the Commission staff would prefer an even greater setback than this, it recognizes that 5 feet will provide at least a minimal buffer between the public and private entities. This buffer will, in the event of flooding or wave uprush, allow an area on the applicants' property to install protection measures, such as placing sandbags or temporary plywood barriers, without obstructing or interfering with public access.

Development adjacent to the ocean is inherently hazardous. Therefore, the Commission also imposes **Special Condition 2**, where the applicants must assume the risks inherent with the development.

In addition, development which may require a protective device in the future cannot be allowed due to the adverse impacts such devices have upon, among other things, public access, visual resources and shoreline processes. Although the applicants submitted a hazards report stating that the development would most likely be safe from coastal hazards over the next 75 years, if something were to happen that caused damage to the beach, then shoreline retreat may occur more rapidly, endangering the proposed development. In particular, sea levels have been rising slightly for many years. Recent satellite measurements have detected global sea level rise from 1993 to present of 3 mm/yr or a significant increase above the historic trend observed from tide gauges. Recent observations of sea level along parts of the California coast have shown some anomalous trends, however; and there is a growing body of evidence that there has been a slight increase in global temperature and that an accelerated rate of sea level rise can be expected to accompany this increase in temperature. Sea level rise is expected to increase significantly throughout the 21st century. The National Research Council (NRC) report, *Sea-Level Rise for the Coasts of California, Oregon, and Washington: Past Present and Future* indicates that sea level rise of 1.5 to 5.5 ft. could occur by the year 2100.<sup>1</sup> The NRC report was adopted by the Ocean Protection Council and recognized by the Coastal Commission's Sea Level Rise Policy Guidance as the current best available science on sea level rise in California. However, although this represents the best current estimate of sea level rise, there is uncertainty in sea level rise science, particularly regarding ice-sheet dynamics and future greenhouse gas emissions. In particular, it is possible that future research will conclude that sea levels will rise at an even more accelerated rate than currently predicted, resulting both in earlier impacts to coastal sites as well as more significant impacts over time. If this occurs, property owners such as the applicants may wish to construct shoreline protective devices.

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<sup>1</sup> National Research Council (NRC). 2012. *Sea-Level Rise for the Coasts of California, Oregon, and Washington: Past, Present, and Future*. Report by the Committee on Sea Level Rise in California, Oregon, and Washington. National Academies Press, Washington, DC. 250 pp.  
<http://www.nap.edu/catalog/13389/sea-level-rise-for-the-coasts-of-california-oregonand-washington>.

However, shoreline protective devices, by their very nature, tend to conflict with Chapter 3 policies because they can have a variety of adverse impacts on coastal resources, including adverse effects on sand supply, public access, coastal views, natural landforms, and overall shoreline beach dynamics on and off site, ultimately resulting in the loss of beach. Shoreline protection devices also directly interfere with public access to tidelands by impeding the ambulatory nature of boundary between public and private lands. The impact of a shoreline protective device on public access is most evident on a beach where wave run-up and the mean high tide line are frequently observed in an extreme landward position during storm events and the winter season. As the shoreline retreats landward due to the natural process of erosion, the boundary between public and private land also retreats landward. Construction of rock revetments and seawalls to protect private property prevents any current or future migration of the shoreline landward, thus eliminating the distance between the high water mark and low water mark. As the distance between the high water mark and low water mark becomes obsolete, the seawall effectively eliminates lateral access opportunities along the beach as the entire area below the fixed high tideline is inundated. The ultimate result of a fixed tideline boundary (which would otherwise normally migrate and retreat landward, while maintaining a passable distance between the high water mark and low water mark overtime) is a reduction or elimination of the area of sandy beach available for public access and recreation.

Interference by shoreline protective devices can result in a number of adverse effects on the dynamic shoreline system and the public's ability to access the beach. First, changes in the shoreline profile, particularly changes in the slope of the profile which results from a reduced beach berm width, alter the usable beach area. A beach that rests either temporarily or permanently at a steeper angle than under natural conditions will have less horizontal distance between the mean low water and mean high water lines. This narrows the beach area available for public access. The second effect on access is through a progressive loss of sand as shore material is not available to nourish the nearshore sand bar. The lack of an effective bar can allow such high wave energy on the shoreline that materials may be lost far offshore where it is no longer available to nourish the beach. This affects public access again through a loss of beach area. Third, shoreline protective devices such as revetments and bulkheads cumulatively affect shoreline sand supply and public access by causing accelerated and increased erosion on adjacent public beaches. This effect may not become clear until such devices are constructed individually along a shoreline and they reach a public beach. In addition, if a seasonal eroded beach condition occurs with greater frequency due to the placement of a shoreline protective device on the subject site, then the subject beach would also accrete at a slower rate. Fourth, if not sited landward in a location that ensures that the seawall is only acted upon during severe storm events, beach scour during the winter season will be accelerated because there is less beach area to dissipate the wave's energy.

Therefore, the proposed development is located in an area where coastal hazards exist that could adversely impact the development. To minimize the project's potential future impact on shoreline processes and public access, and to put the applicants and future owners on notice that Section 30253 limits their ability to ever construct a protective device to protect the new development, the Commission imposes **Special Condition 3** which prohibits construction of any future shoreline protective device(s) to protect the development approved pursuant to Coastal Development Permit No. A-5-DRL-17-0026 and 5-17-0459 including, but not limited to residence, foundations, decks, balconies, patios, and hardscape in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, liquefaction,

flooding, and sea level rise or other natural coastal hazards in the future. **Special Condition 3** also protects future public access opportunities if sea level rise causes public lands to migrate landward by clarifying that the permit only allows the development to remain for so long as it is on private property and by requiring removal if at any time it encroaches onto public property<sup>2</sup>. Relatedly, **Special Condition 4** is imposed to provide clear notice that only the development described in this permit is authorized to be kept and maintained, and development activity beyond the parameters spelled out in the special conditions of this permit shall require a separate approval from the Commission.

Therefore, only as conditioned, the Commission finds that the development conforms to the requirements of Section 30253 of the Coastal Act regarding the siting of development in hazardous locations.

#### **D. DEVELOPMENT/COMMUNITY CHARACTER; VISUAL/SCENIC QUALITIES**

Section 30251 of the Coastal Act states that:

*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...*

The proposed project site contains two 2,550 square foot beachfront lots ([Exhibit 1](#)). The lots are zoned R3-1 (Medium Residential) according to the Los Angeles Planning and Zoning code. The project site is currently developed with two two-story residential duplex structures, each with an attached garage, and a parking area adjacent to the property along 64<sup>th</sup> Avenue.

The neighborhood is developed with residential structures that are two to three story single-family and high density multi-family residences, with maximum heights of approximately 35 to 37 feet. Based on past permit actions, the Commission has limited residential structures in the area to a maximum height of 37 feet. As such, the proposed project, with a height of 36 feet 11 inches, complies with the 37-foot height limit. Therefore, the maximum height of the residence will be consistent with the surrounding area.

The single family residences in the vicinity of the project site have an average square footage of approximately 2,400 square feet, while the floor area of individual units within large multifamily complexes ranges from 1,100 to 2,600 square feet. The surrounding residential structures in the area are built on single and multiple lots and vary from 30 feet to 90 feet wide, and 95 feet deep, along the oceanfront. Most structures are rectangular or square in shape, with flat roofs, little architectural articulation, and are built out setback line to setback line. The proposed single family residence, standing at 10,513 square feet, is larger than any individual unit of a multi-

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<sup>2</sup> Although Special Condition 3 is discussed under this Hazards section, it also serves to protect public access and visual resources, as discussed in this section. Accordingly, this section should be read together with Section C: Public Access and Recreation, and the findings in this section also apply to the Public Access and Recreation section, and vice versa, to the extent applicable.



family residential structure or individual single-family residential structure in the area, and the City's findings regarding consistency with community character did not consider this fact, nor did they analyze the relative bulk of the proposed home in comparison with surrounding buildings. However, upon further review of existing development in the surrounding area by Commission staff, the proposed single-family residence, although larger than other single-family residences, is consistent with the size and bulk of surrounding development. Therefore, although the City's analysis was inadequate, based on further analysis, the structure itself has a similar bulk and size as other buildings in the immediate area, so does conform with the character of the surrounding neighborhood.

The applicant is proposing a reduced side yard setback from 6 feet down to 3 feet along the northern property line, between Speedway and Oceanfront Walk, adjacent to the terminus of 64<sup>th</sup> Avenue ([Exhibit 3](#)). The roadway is approximately 43 feet wide where it terminates at Oceanfront Walk. This and other perpendicular streets to the ocean that end at Oceanfront Walk provide public coastal views of the sandy beach, ocean and horizon. Because this area is highly developed with single and multi-family residences that are built close together, these streets provide the only public views from inland streets such as Speedway and Pacific Avenue. These corridors are surrounded by primarily 37 foot residences. Therefore, it is imperative that public view corridors in this area are protected to the maximum extent feasible. The existing duplexes are approximately 24 feet tall; the proposed development has a height increase of 13 feet. This is a significant height increase, and a minimum 6 foot setback is necessary to comply with Section 30251 of the Coastal Act, which requires the protection of scenic and visual qualities of the area and views to and along the ocean, requires that development be visually compatible with the character of the area, and requires restoration and enhancement of the visual quality in the area, where feasible.

Here, allowing a reduced setback for a new development that is larger in scale than the existing development would effectively reduce the view corridor along 64<sup>th</sup> Avenue rather than protect views to the ocean. The proposed reduced setback allows the structure to encroach 3 feet farther into the side yard than what is normally required, reducing the distance between buildings on either side of 64<sup>th</sup> Avenue and narrowing the public view corridor. Although there are similar setbacks in the area, these are older structures. With the proposed development, there is an opportunity to both protect and enhance the visual quality of the area by requiring a larger setback than the duplexes currently provide.

Therefore, the Commission finds that, only as conditioned, the development will conform with Section 30251 of the Coastal Act.

## **E. BIOLOGICAL RESOURCES**

### **WATER QUALITY AND LANDSCAPING**

The proposed development has a potential for a discharge of polluted runoff from the project site. Drainage is directed into the City's main storm drain system, which eventually leads out into the ocean. Storage or placement of construction materials, debris, or waste in a location subject to erosion and dispersion or which may be discharged into coastal water via rain or wind would result in adverse impacts upon the marine environment that would reduce the biological

productivity of coastal waters. For instance, construction debris entering the storm drain system and then coastal waters may cover and displace soft bottom habitat.

The City's coastal development permit for these projects requires that the applicants comply with the City's Best Management Practices for controlling runoff during and after construction. To ensure the prevention of pollution of the coast, the Commission requires construction-related requirements and best management practices under **Special Condition 5**.

## **2. Post-Construction Impacts to Water Quality**

Drainage from the roof drains, gutters, and downspouts will be diverted into landscaped areas and permeable surfaces which will direct the runoff to the street's main storm drain system. To address water quality, the Commission requires **Special Condition 6**, which requires that the applicants conform to the submitted drainage and run-off control plans to prevent pollution and impacts to water quality.

The applicant has indicated that drought-tolerant, non-invasive vegetation will be used for new landscaping. Because of the close proximity of the Ballona wetlands, which is an Environmentally Sensitive Habitat Area, located approximately 900 feet east of the project site, and the wetlands restoration efforts that are on-going, the placement of any vegetation that is considered to be invasive which could supplant native vegetation should not be allowed. Invasive plants have the potential to overcome native plants and spread quickly. Invasive plants are generally those identified by the California Invasive Plant Council (<http://www.cal-ipc.org/>) and California Native Plant Society ([www.CNPS.org](http://www.CNPS.org)) in their publications. Furthermore, any plants in the landscape plan should be drought tolerant to minimize the use of water (and preferably native to coastal Los Angeles County). The term drought tolerant is equivalent to the term 'low water use' as defined and used by "A Guide to Estimating Irrigation Water Needs of Landscape Plantings in California" prepared by University of California Cooperative Extension and the California Department of Water Resources dated August 2000 available at <http://www.water.ca.gov/wateruseefficiency/docs/wucols00.pdf>. To ensure that all newly vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants, which are non-invasive, the Commission imposes **Special Condition 7**.

The development, as proposed and as conditioned, incorporates design features to minimize the effect of construction and post-construction activities on the marine environment, biological productivity and coastal water quality. Therefore, the Commission finds that the proposed development, as conditioned, conforms to Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to protect marine resources, promote the biological productivity of coastal waters and to protect human health.

### **BIRD STRIKE PREVENTION**

The subject property is located on an oceanfront lot, and is in close proximity to the Ballona Wetland Preserve, a known sensitive habitat for several bird species. The proposed development includes second and third-floor decks with railings stretching the length of the seaward side of the structure. Glass railing systems, walls or wind screens are known to have adverse impacts upon a variety of bird species. Birds are known to strike these glass walls causing their death or stunning them, which exposes them to predation. To ensure bird strike prevention, **Special Condition 8** requires that the applicants use a material for the large glass doors, windows and

railings on the seaward side of the structure that is designed to prevent creation of bird strike hazard. These materials include wood, metal, and *nonreflective/transparent glass* (i.e. glazed, UV-treated, etched, frosted, decaled).

## **F. DEED RESTRICTION**

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes **Special Condition 7** requiring that the property owner record a deed restriction against the property, referencing all of the above Special Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, this permit ensures that any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land in connection with the authorized development, including the risks of the development and/or hazards to which the site is subject, and the Commission’s immunity from liability.

## **G. LOCAL COASTAL PROGRAM (LCP)**

Coastal Act section 30604(a) states that, prior to certification of a local coastal program (“LCP”), a coastal development permit can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that is in conformity with Chapter 3. The City of Los Angeles has neither a certified LCP nor a certified Land Use Plan (LUP) for the Playa de Rey planning area. The proposed development is consistent with Chapter 3 of the Coastal Act. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3 of the Coastal Act, as required by Section 30604(a).

## **H. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

Section 13096 of the Commission's regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, 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 is the lead agency for CEQA compliance and after preparing an Initial Study the City issued a CEQA Mitigated Negative Declaration (ENV-2014-1501-MND) on June 8, 2015.

As conditioned to maximize public access and enhance water quality and biological productivity, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that, as conditioned, the proposed project does not have any significant environmental impacts within the meaning of CEQA, is the least environmentally

damaging feasible alternative and is consistent with CEQA and the requirements of the Coastal Act to conform to CEQA.

## **APPENDIX A- SUBSTANTIVE FILE DOCUMENTS**

1. California Coastal Commission Meeting Agenda 3/9/17
2. Coastal Development Permit 5-16-0757
3. Coastal Development Permit 5-89-1094
4. Coastal Development Permit 5-89-1095
5. Coastal Development Permit 5-91-552
6. Coastal Development Permit 5-91-553