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STAFF REPORT: APPEAL - SUBSTANTIAL ISSUE & DE NOVO

Appeal Number: A-4-MMT-17-0059

Applicant: Los Angeles County

Local Government: Los Angeles County

Local Decision: Approval with Conditions

Appellants: Commissioners Dana Bochco and Mark Vargas

Project Location: Three segments of Pacific Coast Highway in unincorporated Los Angeles County: 1) north side of PCH from 2,850 feet west of Coastline Drive to 230 feet west of Coastline Drive; 2) south side of PCH from the Leo Carrillo State Beach State Park entrance to the City of Malibu boundary east of the Leo Carrillo State Beach State Park entrance; 3) north side of PCH from the City of Malibu boundary west of Topanga Canyon Boulevard to 1,580 feet west of Topanga Canyon Boulevard

Project Description: Appeal of Coastal Development Permit RPPL-2017-007901, to authorize installation of “No Parking 2 AM - 4AM” signs along three segments of Pacific Coast Highway in the vicinity of Coastline Drive, Topanga State Beach, and Leo Carrillo State Beach.

Staff Recommendation: Determine that a substantial issue exists and deny a permit for the proposed project.

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 hearing will occur following the substantial issue vote or at a future Commission meeting, during which time the Commission will take public testimony.

SUMMARY OF STAFF RECOMMENDATION

The County-approved project would restrict public parking along three segments of Pacific Coast Highway in the vicinity of Topanga State Beach and Leo Carrillo State Beach. The proposed parking prohibition between 2:00 a.m. and 4:00 a.m. would apply along approximately 2,500 feet of the ocean side of Pacific Coast Highway and approximately 3,000 feet of the inland side of Pacific Coast Highway and would restrict approximately 275 public parking spaces.

The area where the restricted parking hours are proposed is directly adjacent to two beaches popular with coastal visitors, which are accessible on foot 24 hours per day. However, the public beach parking lots adjacent to Topanga State Beach and Leo Carrillo State Beach (managed by California State Parks) are gated and closed to the public at night. Additionally, Metro Bus Route 534 does not run late at night. Bicycling and walking along Pacific Coast Highway at nighttime is dangerous. For some coastal visitors to enjoy access to the subject coastal amenities at nighttime, driving and parking along Pacific Coast Highway in the area where the restricted parking hours are proposed may be the only option. If the County’s parking restriction were implemented, beachgoers would have to walk a much longer distance to access the beach, enjoy a moonlight walk along the sand, observe a grunion run, or go swimming or surfing at night.

The project is located between the first public road (Pacific Coast Highway) and the sea and also within 300 feet of the inland extent of the beach in an area regulated by the policies of the Los Angeles County Santa Monica Mountains Local Coastal Program, certified by the Commission in 2014. Both the Land Use Plan and Implementation Plan components of the LCP include policies which state that “restrictions on public parking...including imposition of maximum parking time periods...shall be prohibited except where such restrictions are needed to protect public safety and where no other feasible alternative exists to provide public safety.” The County did not make adequate findings to support the restriction and did not provide any evidence of a public safety need. Additionally, because of the site’s location, the County is required to make findings that the proposed development is consistent with the public access policies of the Coastal Act. The County’s argument that the restriction will not affect public access is contradicted by the plain language of the restriction, which prohibits public parking during certain hours at nighttime. The County also did not consider any alternatives to the proposed restriction, which is required by the certified LCP.

Finally, the County lacks written authorization for the proposed restriction from the California Department of Transportation (Caltrans), the agency that maintains and operates Pacific Coast Highway. The proposed restriction would create inconsistency in parking rules along the public right-of-way and could inspire other local governments to restrict access in a similar manner.

Caltrans has conducted a study in coordination with the City of Malibu, which may result in a plan to relocate some substandard width public parking spaces on the inland side of Pacific Coast Highway consistent with public safety needs. The loss of those parking spaces may be offset by the establishment of new public parking areas, elimination of unnecessary red curbs and curbcuts, elimination of confusing signage, and greater consistency in parking regulations. Additionally, bicycle lanes and bus stops may be more clearly defined, consistent with public safety needs and public access enhancements.

That plan may or may not apply to the three subject segments of Pacific Coast Highway in unincorporated Los Angeles County on either side of Malibu, and will require Coastal Commission approval through an LCP amendment. However, such changes could serve the same objectives the County has identified through the subject application – preventing large recreational vehicles and commercial vehicles from parking on the highway for extended periods, opening up parking opportunities for coastal visitors, and improving safety for all users. The County could also change its enforcement strategy to promote turnover of recreational vehicles and enhance access for smaller vehicles by providing new parking areas or extended hours in popular areas that are currently restricted. The County did not analyze whether these might provide feasible alternatives to address its objectives.

A comprehensive plan that has been vetted by the Coastal Commission and Caltrans, includes mitigation for any restriction of parking, and was implemented through an LCP amendment, could be found to be consistent with the LCP and the public access policies of the Coastal Act. However, analyzed by itself, the proposed restriction would adversely affect public access and is inconsistent with the LCP and with the public access policies of the Coastal Act.

Therefore, Commission Staff recommends that the Commission find that a substantial issue exists with respect to the grounds upon which the appeal has been filed. The motion to carry out the staff recommendation is on page 7. Commission Staff also recommends that the Commission deny the coastal development permit after the de novo hearing on the matter because the proposed project is not consistent with the public access and recreation policies of the certified Los Angeles County Santa Monica Mountains LCP and the Coastal Act. The motion to carry out the staff recommendation for the de novo portion of the appeal is on page 13.

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APPENDICES

Appendix A – Substantive File Documents

EXHIBITS

Exhibit 1 – Vicinity Maps

Exhibit 2 – Streetviews and Photos

Exhibit 3 – Local CDP RPPL-2017-007901

Exhibit 4 – Coastal Commission Appeal

I. APPEAL JURISDICTION AND PROCEDURES

A. APPEAL PROCEDURES

The Coastal Act provides that after certification of a local government's Local Coastal Program (LCP), the local government's actions on Coastal Development Permit applications for development in certain areas and for certain types of development may be appealed to the Coastal Commission. Local governments must provide notice to the Commission of their coastal development permit actions. During a period of ten working days following Commission receipt of a notice of local permit action for an appealable development, an appeal of the action may be filed with the Commission.

Appeal Areas

Approvals of CDPs by cities or counties may be appealed if the development authorized is to be located within the appealable areas, which include the areas between the sea and the first public road paralleling the sea; within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is greater; on state tidelands; or along or within 100 feet of natural watercourses and lands within 300 feet of the top of the seaward face of a coastal bluff. (Coastal Act Section 30603(a)). Any development approved by a County that is not designated as a principal permitted use within a zoning district may also be appealed to the Commission irrespective of its geographic location within the Coastal Zone. (Coastal Act Section 30603(a)(4)). Finally, developments that constitute major public works or major energy facilities may be appealed to the Commission. (Coastal Act Section 30603(a)(5)).

In this case, the portion of the project that is adjacent to Leo Carrillo State Beach is located between the first public road (Pacific Coast Highway) and the sea (**Exhibit 1**) and also within 300 feet of the inland extent of the beach. The portions of the project along Pacific Coast Highway to the west of Coastline Drive and to the west of Topanga Canyon Boulevard are within 300 feet of the inland extent of the beach. As such, the County's coastal development permit for the subject project is appealable to the Commission.

Grounds for Appeal

The available grounds for an appeal of a local government approval of development are limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in the Coastal Act. (Coastal Act Section 30603(b)(1)).

Substantial Issue Determination and De Novo Permit Hearing

Section 30625(b)(2) of the Coastal Act requires a de novo hearing of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds for appeal. If Commission staff recommends a finding of substantial issue, and there is no motion from the Commission to find no substantial issue, the substantial issue question will be considered moot, and the Commission will proceed to the de novo public hearing on the merits of the project. The de novo hearing can be scheduled at the same hearing or a subsequent Commission hearing. A de novo public hearing on the merits of the project uses the certified LCP as the standard of review. In addition, for projects located between the first public road and the sea or within 300 feet of the inland extent of a beach, findings must be made that any approved project is consistent with the

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public access and recreation policies of the Coastal Act. Sections 13110-13120 of the California Code of Regulations further explain the appeal hearing process.

The grounds for the current appeal include contentions that the approved development does not conform to the policies set forth in the certified LCP regarding public access and recreation, nor with the public access policies of Chapter 3 of the Coastal Act.

B. LOCAL GOVERNMENT ACTION AND FILING OF APPEAL

On September 5, 2017, a Los Angeles County Department of Regional Planning Hearing Officer held a public hearing on the proposed project identified in the County record: “to authorize the installation of “No Parking 2 AM - 4AM” (“Parking Restriction”) signs along three specific segments of Pacific Coast Highway.” After receiving written and verbal testimony from Los Angeles County Department of Public Works staff and from members of the public, the Hearing Officer approved Local Coastal Development Permit RPPL-2017-007901 with conditions.

The Coastal Commission’s South Central Coast District Office received the Notice of Final Action for the local coastal development permit on September 25, 2017. Coastal Commissioners Dana Bochco and Mark Vargas filed an appeal of the local coastal development permit on October 9, 2017, during the Commission’s 10 working day appeal period (**Exhibit 4**). No other appeals were filed.

II. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE

Motion:

*I move that the Commission determine that Appeal No. A-4-MMT-17-0059 raises **No Substantial Issue** with respect to the grounds on which the appeal has been filed under § 30603 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 affirmative vote of the majority of the Commissioners present.

Resolution:

The Commission hereby finds that Appeal No. A-4-MMT-17-0059 presents a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the certified Local Coastal Plan and/or the public access policies of the Coastal Act.

III. FINDINGS AND DECLARATIONS – SUBSTANTIAL ISSUE

A. PROJECT LOCATION AND DESCRIPTION

The proposed project is to install signs and prohibit parking between 2:00 a.m. and 4:00 a.m. daily along approximately 2,500 feet of the ocean side of Pacific Coast Highway and approximately 3,000 feet of the inland side of Pacific Coast Highway. The restriction would apply to three different locations approximately 20 miles apart in unincorporated Los Angeles County (on either side of the City of Malibu; **Exhibit 1**). The first location is the north (inland) side of PCH from 2,850 feet west of Coastline Drive to 230 feet west of Coastline Drive. The second location is the south (ocean) side of PCH from the Leo Carrillo State Beach State Park entrance to the City of Malibu boundary east of the Leo Carrillo State Beach State Park entrance. The third location is along the north (inland) side of PCH adjacent to Topanga State Beach from the City of Malibu boundary to 1,580 feet west of Topanga Canyon Boulevard.

Pacific Coast Highway is operated by the California Department of Transportation and provides lateral vehicle, bicycle, and pedestrian access along the coast. Additionally, unrestricted free public parking along both sides of the highway is utilized by coastal visitors. The proposed project would restrict approximately 275 public parking spaces which are currently unrestricted (**Exhibit 2**).

B. LOCAL COASTAL PROGRAM CERTIFICATION

The Coastal Commission certified the Los Angeles County Santa Monica Mountains Local Coastal Program on October 10, 2014. The County's LCP is comprised of a Land Use Plan and Implementation Plan, which, along with the public access policies of the Coastal Act, are the standard of review for the subject appeal.

C. APPELLANTS’ CONTENTIONS

The appeal of the local government decision is based on: a) the proposal to restrict public access to a significant coastal resource; b) the inconsistency of the decision with the relevant policies of the LCP and the Coastal Act; c) the failure to analyze project alternatives; and d) the precedential value of the proposed restriction of access. The appellants contend that the local government’s decision would restrict access to an important coastal resource. The appellants further contend that the certified LCP specifically prohibits such restrictions to public access. Additionally, the appellants note that the local government’s findings and resolution did not adequately analyze alternatives to the restricted hours, alternative maximum time limits, or the no project alternative. The appellants argue that the local government’s approved permit would set a precedent for future restrictions on parking in Los Angeles County and elsewhere in California on Caltrans’ right-of-way, which would have a cumulative effect of reducing public access to the coast.

D. FACTORS TO BE CONSIDERED IN SUBSTANTIAL ISSUE ANALYSIS

Section 30625(b)(2) of the Coastal Act states that the Commission shall hear an appeal of a local government action carried out pursuant to a certified LCP unless it finds that no substantial issue exists with respect to the grounds on which the appeal was filed. 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 public access and recreation policies of the certified LCP and the Coastal Act for the reasons set forth below.

E. SUBSTANTIAL ISSUE ANALYSIS

The appellants contend that the project, as approved by the County, does not conform to the following public access policies of the Los Angeles County Santa Monica Mountains Local Coastal Program and the Coastal Act.

Santa Monica Mountains Land Use Plan Policy CO-172

Provide adequate parking to serve recreation uses. Existing parking areas serving recreational uses shall not be displaced unless a comparable replacement area is provided.

Santa Monica Mountains Land Use Plan Policy CO-174

The implementation of restrictions on public parking, which would impede or restrict public access to beaches, trails or parklands, (including, but not limited to, the posting of “no parking signs”, red curbing, physical barriers, imposition of maximum parking time periods, and preferential parking programs) shall be prohibited except where such restrictions are needed to protect public safety and where no other feasible alternative exists to provide public safety. Where feasible, an equivalent number of public parking spaces shall be provided nearby as mitigation for impacts to coastal access and recreation.

Santa Monica Mountains Implementation Plan Section 22.44.1 400.1.6.a

Adequate parking to serve recreation uses shall be provided. Existing parking areas serving recreational uses shall not be displaced unless a comparable replacement area is provided.

Santa Monica Mountains Implementation Plan Section 22.44.1 400.1.6.c

The implementation of restrictions on public parking, which would impede or restrict public access to beaches, trails or parklands, (including, but not limited to, the posting of “no parking” signs, red curbing, physical barriers, imposition of maximum parking time periods, and preferential parking programs) shall be prohibited except where such restrictions are needed to protect public safety and where no other feasible alternative exists to provide public safety. Where feasible, an equivalent number of public parking spaces shall be provided nearby as mitigation for impacts to coastal access and recreation.

Coastal Act Section 30210

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.

Coastal Act Section 30211

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.

Los Angeles County has approved a coastal development permit that would restrict public access to the shoreline and two public beaches during certain hours at nighttime (**Exhibit 3**). The stated intent of the application and analysis initially prepared by the County’s Public Works Department was to discourage recreational vehicles from parking on Pacific Coast Highway overnight, in response to complaints from nearby residents. The findings in the County-approved local coastal development

permit state “the loss of overnight parking can be mitigated by the camping and vehicle dwelling opportunities within the vicinity of the project site.”

However, while recreational vehicles and overnight camping may be accommodated elsewhere, that is not the standard for public access and recreation. The LCP and the Coastal Act require that public access and recreation be maximized, and the LCP prohibits the implementation of restrictions on public parking that would reduce public access, except where such restrictions are needed to protect public safety and where no other feasible alternative exists to provide public safety.

The County’s findings do not acknowledge that the nighttime parking prohibition would restrict public access to the coast. Rather, they state: “the proposed project would not restrict public access to the beach outside the Parking Restriction, a timeframe that is more appropriate for safe public access on these segments of PCH,” and “especially with the proposed restriction limited to just two hours in the middle of the night, there will be no negative impact to coastal access or recreation.”

Based on a plain reading of the project description and the proposed signs: “No Parking 2AM - 4AM”, the County-approved permit would restrict coastal access and would not provide any alternatives for coastal visitors who wish to recreate at night. Topanga State Beach and Leo Carrillo State Beach are popular visitor serving destinations and both beaches are accessible at nighttime. Because of work schedules and other constraints, not everyone can visit the beach during the day. The Coastal Act and the certified LCP protect the public’s right to access the beach at all times, not only during daytime hours. If the County’s nighttime parking restriction were implemented, beachgoers would have to walk a much longer distance from other on-street parking areas before reaching the beaches.

The County’s findings cite public safety concerns in support of its action and reference state: “The proposed project is consistent with Santa Monica Mountains Land Use Plan Policy CO-157. The proposed Parking Restriction supports this policy because it addresses public safety concerns related to late-night activities on these segments of PCH, which is a County-designated major highway. For example, each of these segments does not have multiple signals to facilitate adequate pedestrian crossing for public safety during late night hours.”

Land Use Plan Policy CO-157 does reference public safety. It states:

In carrying out the requirements 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.

Additionally, Land Use Plan Policy CO-174 and Implementation Plan Section 22.44.1 400.1.6.c cite public safety as a potential reason to restrict access through the imposition of maximum parking time periods, but only where no other feasible alternative exists to protect public safety. Additionally, those policies require that, where feasible, an equivalent number of public parking spaces shall be provided nearby as mitigation for impacts to coastal access and recreation.

The County’s finding that the proposed restriction is necessary for public safety is not supported by any evidence. The County did not provide any collision or injury data related to vehicles crashing

into objects or pedestrians along the highway during the proposed restricted hours, or any other data that indicates there is a specific traffic hazard present in the project locations. Additionally, the County's statement that there are not *multiple* signals to facilitate adequate pedestrian crossing is misleading. In fact, there is a signalized intersection at Coastline Drive, just 230 feet west of the first proposed restricted segment of highway. The second proposed restricted segment of highway, adjacent to Leo Carrillo State Beach, is on the south (ocean) side of the highway, so no pedestrian crossing is necessary to access that public parking area. The third proposed restricted segment of highway is the furthest away from a signalized pedestrian crossing, approximately ¼ mile distance from Topanga Canyon Boulevard; however, this is a feasible distance to walk. So, there is a signalized pedestrian crossing close to each of the inland parking restriction areas which would provide safe crossing of the highway at all hours of the day. There is no evidence in the administrative record that there is an inadequate number of signalized crossings or why it would be necessary to provide multiple signals to ensure safe access across the highway. Finally, the County did not make findings or refer to evidence that there is any safety hazard on the seaward side of Pacific Coast Highway near Leo Carrillo State Beach. In any event, to the extent there may be any safety issues with regard to parking in these areas, the County's action does little to address them, as parking would still be allowed 22 hours of the day.

If the County is concerned about public safety, the LCP requires it to analyze alternatives to address those concerns without restricting access. Coastal Commission staff advised the County of this requirement in a comment letter dated August 31, 2017 and provided multiple suggestions for alternative projects that would improve public safety at all hours without restricting access to the coast. The County findings did not reference any alternatives. The County's action to restrict parking without demonstrating a public safety need, and without identifying alternatives, is not consistent with Land Use Plan Policy CO-174 and Implementation Plan Section 22.44.1 400.1.6.c.

Additionally, the County's action is not consistent with Land Use Plan Policy CO-172 and Implementation Plan Section 22.44.1 400.1.6.a because it would displace existing parking areas serving recreational uses without providing a comparable replacement. The County found: "no mitigation [required] in this case for two reasons. First, this is not a wholly new parking restriction. Parking between 2:00 a.m. and 4:00 a.m. has been limited in these areas since 1954. The proposed project only modifies this existing parking restriction to make it more enforceable. Second, mitigation is only required for impacts to coastal access and recreation. Especially with the proposed restriction limited to just two hours in the middle of the night, there will be no negative impact to coastal access or recreation." Based on a review of aerial imagery, the first statement is not true. Vehicles can be observed parked along the first proposed restricted segment of the public highway in 2007, along the second segment in 1989, and along the third segment in 2004. Google streetview shows vehicles parked along two segments of the public highway in 2011 and two segments in 2016, with no visible restriction signs (**Exhibit 2**). While there may have been an existing parking restriction ordinance, there is no evidence that it has been applied in the areas that are the subject of this permit. Applying the parking restriction in these areas would impact public access, this would be a new impact, and the LCP requires mitigation in the form of new parking spaces.

The County's action is inconsistent with Coastal Act Sections 30210 and 30211 for similar reasons. The nighttime parking prohibition will not maximize access for all the people. As referenced by the appellants, the nighttime restriction would reduce the public's ability to access the beach, enjoy a

moonlight walk along the sand, observe a grunion run, or go swimming or surfing. Coastal Act Section 30210 also requires that maximum access “shall be conspicuously posted;” however, in this instance the County proposes to conspicuously post signs that would restrict access. The posting of these signs and the enforcement of the restriction would constitute development and would interfere with the public’s right of access to the sea, which would not be consistent with Coastal Act Section 30211.

There are no policies in the certified LCP that allow the restriction of public parking along a public right-of-way, where public parking has historically been unrestricted, and where there is no demonstrated public safety need. In fact, the LCP specifically states that maximum public access shall be provided, consistent with Coastal Act policies, and specifically forbids the posting of “no parking” signs or imposition of maximum parking time periods, unless there is a public safety need to do so and mitigation is provided. Thus, the local government’s decision that the development is consistent with its LCP and the relevant provisions of the Coastal Act lacks factual and legal support.

Coastal access and parking restrictions along a State highway are statewide issues. Visitors travel long distances to access the subject section of California coast, which is famous for its beaches and surf breaks. Public transportation is limited (one route) during the day, and non-existent at night. Often, personal vehicles are the only option for people to access this relatively remote section of the coast. The Chapter 3 public access policies of the Coastal Act state that maximum access shall be provided for *all* the people, that development shall not interfere with the public’s ability to access the coast, and that lower cost facilities, including parking, shall be protected. It is fundamentally important to protect public parking supplies that support coastal access, especially in areas with limited public parking, such as the subject area.

Allowing the County to proceed with the development would set a precedent for restricting access in other areas of Los Angeles County as well as other popular coastal areas in the state. Pacific Coast Highway has historically been managed by the California Department of Transportation, not by local governments, and unrestricted free public parking along the public highway is the predominant management approach throughout the state. The restriction of public parking in these sections of the coast could inspire other local governments to restrict access in a similar manner, which could cause a statewide reduction in public access to the coast. Accordingly, the appellants’ contentions raise concerns about the future interpretation of LCP and Coastal Act compliance. Therefore, the appeal is both precedential and raises issues of statewide significance.

For these reasons, the Commission finds that the appellants’ contentions raise a substantial issue with regard to the approved project’s consistency with the policies and provisions of the Los Angeles County Santa Monica Mountains Local Coastal Program and the public access policies of the Coastal Act.

IV. MOTION AND RESOLUTION – DE NOVO

Motion:

*I move that the Commission **approve** Coastal Development Permit No. A-4-MMT-17-0059 for the development proposed by the applicant.*

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit 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 denies a coastal development permit for the proposed development on the ground that the development will not conform with the policies of the Los Angeles County Santa Monica Mountains LCP or the public access and recreation policies of Chapter 3 of the Coastal Act. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

V. FINDINGS AND DECLARATIONS – DE NOVO

A. PROJECT LOCATION AND DESCRIPTION

The findings included in Section III, Subsection A of this staff report are hereby incorporated by reference.

B. PUBLIC ACCESS AND RECREATION

As a de novo matter, the standard of review for the proposed development is the Los Angeles County Santa Monica Mountains certified LCP. Since the proposed project is located between the first public road and the sea and within 300 feet of the inland extent of the beach, Coastal Act Section 30604(c) applies and any development approved by the Commission must also conform with the public access and recreation policies of Chapter 3 of the Coastal Act.

Policies of the certified Local Coastal Program and the public access policies of the Coastal Act are hereby incorporated from Section III, Subsection E above. The following recreation policies of the Coastal Act also apply:

Coastal Act Section 30220

Coastal areas suited for water-oriented recreational activities that cannot readily be provided at inland water areas shall be protected for such uses.

Coastal Act Section 30223

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

Protecting public access to the coast is one of the highest charges of the Coastal Act. The proposed project would affect public access along three segments of a public highway in a highly visited coastal area. Recreational activities in this area include swimming, surfing, kayaking, fishing, bicycling, hiking, whale watching, star gazing, meditation, picnicking, bird watching, and exercise. The approximately 275 parking spaces which would be restricted by Los Angeles County's proposed enforcement and signage are significant because they provide direct physical access to coastal dependent recreational opportunities at nighttime when other parking and transportation options are not available.

The County's proposal would restrict public access to two public beaches and a portion of the shoreline at nighttime. This is in direct contradiction to Land Use Plan Policy CO-174 and Implementation Plan Section 22.44.1 400.1.6.c, which state that such restrictions, specifically including imposition of maximum parking time periods, shall be prohibited except where such restrictions are needed to protect public safety and where no other feasible alternative exists to provide public safety. The County has not provided any evidence that the proposed restriction is needed to protect public safety. The County did not provide any collision or injury data related to vehicles crashing into objects or pedestrians along the highway during the proposed restricted hours, or any other data that indicates there is a specific traffic hazard present in the project locations.

The County also did not justify the need for a parking prohibition between the specific hours of 2:00 a.m. and 4 a.m. If there is a legitimate public safety risk along any of the subject segments of the public highway, then the risk would presumably be greatest when traffic is greatest. Even if risks were greater at night, which the County has not provided any evidence to support, then a safety solution would be needed for longer than the two hours of the proposed parking prohibition. If changes to public access are required to provide public safety, the LCP requires the local government to analyze alternatives that would not restrict access. The County did not analyze any alternatives to the proposed project.

Coastal Commission staff encouraged the County to consider project alternatives in a comment letter dated August 31, 2017. One suggested alternative was to work with Caltrans to enhance pedestrian crossing signals or provide new signalized crossings, if necessary. This alternative would improve public safety at all hours of the day and night and would increase the public's ability to access the beach and the shoreline. In the County's local coastal development permit findings, it was noted that there are not *multiple* signals to facilitate adequate pedestrian crossing. However, there is a signalized intersection at Coastline Drive, just 230 feet west of the first proposed restricted segment of highway. The second proposed restricted segment of highway, adjacent to Leo Carrillo State Beach, is on the south (ocean) side of the highway. No new pedestrian crossing is necessary to access that public parking area, but a crossing to access the inland side of Pacific Coast Highway could be installed to improve safety and public access. The third proposed restricted segment of highway is the furthest away from a signalized pedestrian crossing, approximately ¼ mile distance from Topanga Canyon Boulevard. This is a feasible distance to walk, but the County and Caltrans could develop a program to improve the shoulders in that area to provide a greater buffer from the traffic flow and improve pedestrian safety. Additionally, the County and Caltrans could consider installing additional pedestrian crossing points near any of the three parking areas, or along other stretches of the highway which are currently a long distance from signalized intersections.

The County's proposal is also inconsistent with Land Use Plan Policy CO-172 and Implementation Plan Section 22.44.1 400.1.6.a because it would impose a restriction on parking without providing new parking in the immediate vicinity, as explicitly called for by the policy and implementation plan section. The County found that no mitigation was required, stating that "this is not a wholly new parking restriction. Parking between 2:00 a.m. and 4:00 a.m. has been limited in these areas since 1954. The proposed project only modifies this existing parking restriction to make it more enforceable."

This interpretation appears to be based on Los Angeles County Code Section 15.64.060, which provides: "Except in that portion of the unincorporated territory of West Hollywood within the Third Supervisorial District, the operator of any vehicle shall not park such vehicle on any highway, street, alley or public way or public place for a period of time longer than 30 minutes between the hours of 2:00 a.m. and 4:00 a.m. on the same day." However, this argument is not supported by any evidence that parking has ever been so restricted along the portions of Pacific Coast Highway in question. Further, the County regulates parking with different time restrictions in different areas, and does not regulate it at all along the majority of Pacific Coast Highway or most local roads. The subject code section was not certified as part of the County's LCP in 2014 and is therefore not relevant in the context of a coastal development permit application.

Additionally, based on a review of aerial imagery, the County has not regulated parking along the three segments of highway for at least ten years, so any new regulation would represent a change in intensity of use and would affect public access. Vehicles can be observed parked along the first proposed restricted segment of the public highway in 2007, along the second segment in 1989, and along the third segment in 2004. Google streetview shows vehicles parked along two segments of the public highway in 2011 and two segments in 2016, with no visible restriction signs. Applying the parking restriction in these areas would impact public access, this would be a new impact, and the LCP requires mitigation in the form of new parking spaces.

The proposed parking restriction is inconsistent with Coastal Act Sections 30210 and 30211 for similar reasons. The parking prohibition during the night will not maximize access for all the people. As referenced by the appellants, not all members of the public visit the coast at the same hours. The proposed parking prohibition would reduce access to the beach, enjoyment of a moonlight walk along the sand, observation of a grunion run, or a nighttime swim or surf session. Coastal Act Section 30210 also requires that maximum access "shall be conspicuously posted;" however, in this instance the County proposes to conspicuously post signs that would restrict access. The posting of these signs and the enforcement of the restriction would constitute development and would interfere with the public's right of access to the sea, which would not be consistent with Coastal Act Section 30211.

There are no policies in the County's certified LCP that allow the restriction of public parking along a public right-of-way, where public parking has historically been unrestricted, and where there is no demonstrated public safety need. In fact, the LCP specifically states that maximum public access shall be provided, consistent with Coastal Act policies. Thus, as proposed, the development is not consistent with the LCP or the relevant provisions of the Coastal Act.

The County and State governments, as well as multiple private parking lot operators have addressed the daytime demand for coastal access to Topanga State Beach, Leo Carrillo State Beach, and other

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nearby amenities by providing other areas to park during the daytime, as well as bus access which stops directly in front of both beaches (Los Angeles Metro Bus Route 534). Coastal visitors who are unable to park at one of the free unrestricted parking spaces subject to this appeal have other options during the daytime. However, the public beach parking lots adjacent to Topanga State Beach and Leo Carrillo State Beach (managed by California State Parks) are gated and closed to the public at night. Additionally, Metro Bus Route 534 does not run late at night. For some coastal visitors to enjoy access to the subject coastal amenities at nighttime, driving and parking along Pacific Coast Highway in the area where the restricted parking hours are proposed may be the only option.

The County's proposal to restrict this coastal access option at nighttime would not provide any alternatives for coastal visitors who wish to recreate at night. Topanga State Beach and Leo Carrillo State Beach are popular visitor serving destinations. Because of work schedules and other constraints, not everyone can visit the beach during the day. The Coastal Act and the certified LCP protect the public's right to access the beach at all times, not only during daytime hours. If the County's proposed nighttime parking restrictions were implemented, beachgoers would have to walk a much longer distance from these on-street parking areas before reaching the beach.

Another procedural matter the Coastal Commission must consider is whether a permit applicant has the legal right to carry out the proposed development. Generally, the Commission requires written proof of ownership of the property where development is proposed, or written authorization from the property owner for the applicant to request and obtain a coastal development permit on their behalf. LIP Section 22.44.840 requires an application for a CDP to contain evidence that the applicant is the owner of the property involved, or has written permission of the owner (or in the case of a public agency is involved in an eminent domain action to acquire the property, or is negotiating to acquire all or part of the property). In this case, the administrative record for the permit contains no evidence that the County of Los Angeles holds fee title to the property (or is in the process of acquiring ownership) where development is proposed, or that the County obtained an encroachment permit or other written authorization to carry out the development from the California Department of Transportation (Caltrans), which either owns or has a property interest in, and also manages, the right-of-way.

The County's staff report and special conditions state that authorization from Caltrans must be obtained prior to installation of the no parking signs, but Caltrans is not listed as an applicant on the subject application; the Los Angeles County Public Works Department is the listed applicant. There is no communication from Caltrans in the administrative record which the County provided to the Coastal Commission in support of its action. Additionally, there is no indication in the record that Caltrans has consented to a change in the parking rules and a restriction of public access.

Caltrans owns and/or has a legal property interest in, and also maintains, the public right-of-way adjacent to state highways along the coast in California, which provide coastal access for millions of people. As such, Caltrans is responsible for working with local governments and the Coastal Commission before eliminating or restricting public parking spaces that provide the public access to the coast. For the section of Pacific Coast Highway that spans Malibu, Caltrans and the City of Malibu have been coordinating on a comprehensive parking study, considering both public access needs and public safety needs. The comprehensive study began in 2014 and may support a set of recommendations that would eliminate or restrict public parking in some areas; however, in order to be consistent with LCP and Coastal Act policies, the final plan may also establish new public

parking areas, eliminate unnecessary red curbs and curbcuts, eliminate confusing signage, and create greater consistency in parking regulations. Additionally, bicycle lanes and bus stops may be more clearly defined, consistent with public safety needs and public access enhancements.

That plan may or may not apply to the three subject segments of Pacific Coast Highway within unincorporated Los Angeles County on either side of Malibu, and will require Coastal Commission approval through an LCP amendment. However, such changes could serve the same objectives the County has identified through the subject application – preventing large recreational vehicles and commercial vehicles from parking on the highway for extended periods, opening up parking opportunities for coastal visitors, and improving safety for all users. The County could also change its enforcement strategy to promote turnover of large vehicles, and could enhance access by providing new parking areas or extended hours in popular areas that are currently restricted.

A comprehensive plan that has been vetted by the Coastal Commission and Caltrans, which includes mitigation for any restriction of parking, and which would be implemented through an LCP amendment, could be found to be consistent with the Coastal Act and the rest of the LCP. However, analyzed by itself, the proposed restriction would adversely affect public access and does not have Caltrans' written authorization. The Commission finds that, as proposed, the project is not consistent with multiple policies of the Los Angeles County Santa Monica Mountains Local Coastal Program, including Land Use Plan Policy CO-172, Land Use Plan Policy CO-174, Implementation Plan Section 22.44.1 400.1.6.a, and Implementation Plan Section 22.44.1 400.1.6.a. Additionally, the Commission finds that, as proposed, the project is not consistent with Coastal Act Sections 30210, 30211, 30220, or 30233. Because the proposed project is not consistent with the certified LCP for the area and is not consistent with the public access and recreation policies of the Coastal Act, the Commission finds that the project must be denied.

C. CALIFORNIA ENVIRONMENTAL QUALITY ACT

Section 13096 of the Commission's Code of Regulations requires Commission approval of coastal development permits to be supported by a finding showing the permit, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080(b)(5) of CEQA, as implemented by section 15270 of the CEQA Guidelines, provides that CEQA does not apply to projects which a public agency rejects or disapproves. The Commission finds that denial, for the reasons stated in these findings, is necessary to avoid the significant effects on coastal access that would occur if the coastal development permit were approved. Accordingly, the Commission's denial of this project represents an action to which CEQA, and all requirements contained therein that might otherwise apply to regulatory actions by the Commission, do not apply.

Even if CEQA did apply, 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. As discussed above, the proposed project is inconsistent with the certified LCP and the public access policies of the Coastal Act. The proposed parking regulation has not been crafted to avoid adverse effects to public access; however, denial of the proposed development would avoid any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project cannot be found consistent with the requirements of the Coastal Act to conform to CEQA and denies a permit for the proposed project.

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Appendix A – Substantive File Documents

1. Administrative Record Associated with Local Coastal Development Permit 17-057 and Appeal No. 17-005
2. Los Angeles County Santa Monica Mountains certified LCP (2014)
3. Los Angeles County Code [Title 15, Vehicles and Traffic, Division 1, Section 15.64.060]