

**CALIFORNIA COASTAL COMMISSION**

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**F6b**

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**STAFF REPORT: CONSENT CALENDAR**

**Application No.:** 5-17-0185

**Applicant:** Dr. Bruce Hensel

**Agent:** Donald Schmitz, Schmitz & Associates

**Location:** 17526 Tramonto Drive, Pacific Palisades, City of Los Angeles, Los Angeles County (APN: 4416-021-057)

**Project Description:** Request for after-the-fact lot line adjustment and construction of a debris fence; upgrades, reconstruction, and repair of a series of retaining walls; installation of retaining wall drainage, soldier piles, and tiebacks; and placement of artificial impermeable turf on retaining wall terraces.

**Staff Recommendation:** Approval with conditions

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**SUMMARY OF STAFF RECOMMENDATION**

The applicant is requesting after-the-fact approval for repairs and maintenance of a series of existing retaining walls. The applicant received an emergency permit (G-5-06-074) in 2006 for part of the project. The City of Los Angeles acknowledged the unpermitted work at the site and approved an after-the-fact coastal development permit (CDP) on December 15, 2016 (DIR-2016-3212). On February 21, 2017, after receiving the local CDP, the applicant applied for a follow-up CDP for the emergency permit.

Staff is recommending **approval** of the proposed coastal development permit with **five (5)** special conditions. The special conditions would: **1) Landscaping; 2) Retaining Wall Finish; 3) Geotechnical Recommendations; 4) Future Improvements; and 5) Assumption of Risk, Waiver of Liability and Indemnity.**

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### APPENDIX

Emergency Permit 5-06-074-G

### EXHIBITS

[Exhibit 1 – Vicinity Map](#)

[Exhibit 2 – Project Plans](#)

[Exhibit 3 – Pictures](#)

## I. MOTION AND RESOLUTION

### Motion:

*I move that the Commission **approve** the coastal development permit applications included on the consent calendar in accordance with the staff recommendations.*

Staff recommends a **YES** vote. Passage of this motion will result in approval of all of the permits included on the consent calendar. 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.*

## II. STANDARD CONDITIONS

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 of interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

### III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Landscaping.** Any future landscaping of the site shall be consistent with the following:
  - 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/wateruseefficiency/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.
2. **Retaining Walls.** As proposed by the applicant, the retaining walls (as shown in [Exhibits 2 & 3](#)) will maintain a surface finish (paint) that blends in with the surrounding area in order to reduce their visibility from public vantage points and to protect public views along the coast.
3. **Geotechnical Recommendations.** All recommendations of the geology and geotechnical report titled “Geotechnical Engineering and Geologic Review of the Remedial Armored Wall Construction,” prepared by Ralph Stone and Company Inc. and dated January 19, 2015 and updated on November 16, 2015 shall be adhered to including recommendations for site preparation, structural fills, compaction standards, seismic design parameters, foundation design, pavement subgrade preparation, drainage, and all other recommendations.

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.

4. **Future Permit Requirement.** This permit is only for the development described in coastal development permit (CDP) 5-17-0185. Pursuant to Title 14 California Code of Regulations (CCR) Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code (PRC) Section 30610(b) shall not apply to the development governed by the CDP 5-17-0185. Accordingly, any future improvements to this structure authorized by this permit shall require an amendment to CDP 5-17-0185 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 CDP 5-17-0185 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. **Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards, including but not

limited to landslide, bluff retreat, erosion, and earth movement; (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.

## **IV. FINDINGS AND DECLARATIONS**

### **A. PROJECT LOCATION & DESCRIPTION**

The proposed project is located on an approximately 10,430 sq. ft. lot zoned R1-1 (Low Density Residential) by the City of Los Angeles zoning code in the Brentwood area of Pacific Palisades, City of Los Angeles, Los Angeles County ([Exhibit 1](#)). The project site is located approximately 1,320 feet from the Pacific Ocean in the City of Los Angeles Dual Permit Jurisdiction Area and about ½ of a mile from PCH. The site is currently developed with a single-family residence built circa 1951, a swimming pool, guesthouse, and a series of retaining walls ([Exhibit 3](#)). The surrounding neighborhood is composed of single-family residences, many of which have retaining walls because of the sloping topography of the area.

The applicant is requesting a lot line adjustment and after-the-fact approval for repairs, maintenance, and upgrades to the existing retaining wall system, including: construction of a debris fence; in-kind repairs and upgrades to failed parts of the retaining wall system in the same location to the same height of the existing walls; the installation of a drainage system behind the existing walls; the installation of soldier piles and tiebacks, consistent with Emergency Permit 5-06-074-G; the placement of artificial turf on top of the terraces created by each section of the retaining wall system; and painting the retaining wall system green so it matches the existing vegetation of the surrounding area.

Given the project's distance from PCH, the developed surrounding area, and the hilly topography of the area, the proposed project is not significantly visible from any public vantage points. The applicant is not proposing any landscaping at this time. However, if in the future the applicant wishes to landscaped the area, **Special Condition 1** requires all landscaping to be non-invasive and primarily drought tolerant.

### **B. PUBLIC ACCESS**

The proposed development will not affect the public's ability to gain access to, and/or to make use of, the coast and nearby recreational facilities. Therefore, as proposed the development conforms with Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

### **C. PUBLIC RECREATION**

The proposed development, as submitted, does not interfere with public recreational use of coastal resources and conforms with Sections 30210 through 30214 and Sections 30220 through 30223 of the Coastal Act regarding the promotion of public recreational opportunities.

**D. VISUAL RESOURCES**

As proposed, the development is located within an existing developed area and is compatible with the character and scale of the surrounding area. However, to reduce potential adverse visual impacts associated with the retaining wall system, Commission staff recommends special conditions which recognize that the proposed retaining wall system shall maintain a finish that blends in with the natural surrounding area in order to protect public views along the coast. As conditioned, the project will not disrupt public coastal views. Therefore, the Commission finds that the development, as conditioned, conforms with Sections 30250, 30251, and 30252 of the Coastal Act

**E. HAZARDS**

The development is located within an existing developed area and is compatible with the character and scale of the surrounding area. However, the proposed project raises concerns that future development of the project site potentially may result in a development which is not consistent with the Chapter 3 policies of the Coastal Act. Therefore, only as conditioned, the development conforms with the Chapter 3 policies of the Coastal Act.

**F. LOCAL COASTAL PROGRAM**

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 Pacific Palisades area of the City of Los Angeles has neither a certified LCP nor a certified Land Use Plan. As conditioned, the proposed development will be 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.

**G. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

As previously discussed, the City determined the proposed project to be categorically exempt from CEQA (Class 3, Section 15303 [new construction of small structures] & Section 15061(b)(3) [the so-called common sense exemption].) As conditioned, 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 proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

**H. UNPERMITTED DEVELOPMENT**

Development has occurred on the subject site without the benefit of the required coastal development permit consisting of repairs to a retaining wall system, the installation of soldier piles and tiebacks, and the installation of a drainage system and artificial turf. As previously stated, the soldier piles and tiebacks were installed circa 2006 pursuant to emergency permit 5-06-074-G, issued on February 27, 2006. A follow-up permit was not filed consistent with Condition 4 of the emergency permit. Additionally, there are no records for approval of the proposed repairs to the retaining wall system or the installation of the drainage system or artificial turf. According to the

City's CDP (DIR-2016-3212), the repairs to the retaining wall system were conducted in 2006. The work that was undertaken constitutes development that requires a coastal development permit. A coastal development permit was not issued by the Commission to authorize/make permanent the work undertaken under the emergency permit. Nor was any coastal development permit issued by the City of Los Angeles. Any development activity conducted in the Coastal Zone without a valid coastal development permit, or which does not substantially conform to a previously issued permit, constitutes a violation of the Coastal Act. The applicant is requesting after-the-fact approval of the unpermitted development described above through this CDP application. Therefore, issuance of the CDP and compliance with all of the terms and conditions of this permit will result in resolution of the aforementioned violations of the Coastal Act on the subject property going forward.

Consideration of the permit application by the Commission has been based solely on the consistency of the proposed development with the Coastal Act. Approval of this permit does not constitute a waiver of any legal action with regard to the alleged unpermitted development, nor does it constitute admission as to the legality of any development undertaken on the subject site, other than the development addressed herein, without a coastal permit. In fact, approval of this permit is possible only because of the conditions included herein, and failure to comply with these conditions despite undertaking development pursuant to this permit would also constitute a violation of this permit and of the Coastal Act. Accordingly, the applicant remains subject to enforcement action for the unpermitted development described herein, just as the applicant was prior to this permit approval, unless and until the conditions of approval included in this permit are satisfied.