

**CALIFORNIA COASTAL COMMISSION**

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**Th5d**

Filed: 03/01/2018  
180th Day: 08/28/2018  
Staff: S. Vaughn-LB  
Staff Report: 04/20/2018  
Hearing Date: 05/10/2018

**STAFF REPORT: DE NOVO/CONSENT CALENDAR**

**Application Nos.:** A-5-VEN-17-0051 & 5-17-0892

**Applicant:** 305 Ocean Front Walk, LLC / Blake Fogel

**Appellant:** Coastal Commission Executive Director

**Agent:** DU Architects, Robert Thibodeau

**Location:** 305 – 309 Ocean Front Walk, Venice, City of Los Angeles, Los Angeles County (APN: 4286-030-022)

**Project Description:** Demolition of a one-story, 1,728 sq. ft. commercial structure and surface parking lot, and the construction of a 35-ft. high, three-story mixed use structure with 2,850 sq. ft. of retail space on the ground floor, three residential units on the second and third floors, each with a roof deck and a 39.5-ft. high roof access structure, and one semi-subterranean level of parking providing 25 on-site parking spaces, on two beachfront lots totaling 8,206 sq. ft. in area.

**Staff Recommendation:** Approval with conditions

**SUMMARY OF STAFF RECOMMENDATION**

On August 2, 2017, the City of Los Angeles Director of City Planning approved Local Coastal Development Permit (CDP) DIR-2016-1341 for demolition of the existing commercial structure and surface parking lot and construction of the above-described development with the exception of the parking, which originally consisted of two subterranean levels of parking providing 50 on-site parking spaces. The proposed subterranean parking would have reached a depth of approximately 22 ft. below grade. One appeal of the local CDP was filed by the Coastal Commission Executive Director.

The appeal primarily focused on the proposed project's consistency with sections 30210, 30211 and 30253 of the Coastal Act because the City failed to require or conduct a sea level rise analysis despite the fact that the project is located on two beach front lots that will likely be subject to the effects of sea level rise. Additionally, the appeal contended that the subterranean parking structure

can act as a sea wall if wave scour and beach erosion reach the project site, which could alter natural landforms and impede and degrade public access seaward of the site. On November 9, 2017 the Commission found a substantial issue with respect to the grounds on which the appeal was filed.

The project site is in the dual permit jurisdiction area of the City of Los Angeles. On October 19, 2017, the applicant submitted the dual permit application. This is a combined staff report for the de novo appeal hearing and the dual permit application. The applicant has since submitted a coastal hazards analysis and has revised the project description to remove much of the subterranean parking as described above. The City has not reviewed the applicant's revised project. The proposed parking is now semi-subterranean and would reach a depth of 3.5 ft. below grade thereby removing the potential for the subterranean parking structure to act as a seawall.

Therefore, staff is recommending **APPROVAL** of the coastal development permit applications with the following special conditions: **(1)** permit compliance; **(2)** parking; **(3)** building height; **(4)** public right-of-way; **(5)** landscaping; **(6)** drainage and water quality; **(7)** construction BMPs; **(8)** no future shoreline protection; **(9)** assumption of risk; and **(10)** deed restriction. The applicant agrees with the staff recommendation. The motion to approve the permits, as conditioned, is on **Page Four**.

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### APPENDICES

Appendix A - Substantive File Documents

### EXHIBITS

[Exhibit 1 – Vicinity Map and Project Location](#)

[Exhibit 2 – Revised Project Plans](#)

[Exhibit 3 – CoSMoS Images](#)

## 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. **Permit Compliance.** Coastal Development Permits A-5-VEN-17-0051 and 5-17-0892 approve the construction of three residential condominium units and 2,850 square-feet of ground floor retail-commercial space. This coastal development permit does not authorize any sit-down restaurant use. All development must occur in strict compliance with the proposal as set forth in the application for this permit, subject to any special conditions. Any proposed change in use, change in commercial floor area, change in number of residential units, change in number of parking stalls, use of the parking to satisfy the parking requirements of new development or future commercial intensification, or any other deviation from the approved development, shall be submitted for review by the Executive Director to determine whether an amendment to this coastal development permit is necessary pursuant to the requirements of the Coastal Act and the California Code of Regulations. If the Executive Director determines that an amendment is necessary, no changes shall be made until a permit amendment is approved by the Commission and issued by the Executive Director.
2. **Parking.** The proposed on-site parking supply (25 spaces) shall be provided and maintained in the garage of the approved structure as shown on the proposed project plans. Additionally, the applicant is proposing to provide eight on-site bicycle parking stalls. Vehicular access to the on-site parking shall be taken only from Speedway Alley.
3. **Building Height.** The roof of the approved structure shall not exceed thirty-five feet in elevation above the Ocean Front Walk right-of-way. Chimneys, exhaust ducts, ventilation shafts and other similar devices essential for building function may extend up to forty feet in elevation above the Ocean Front Walk right-of-way. Roof access structures may extend up to forty feet in elevation above the Ocean Front Walk right-of-way. No portion of any structure shall exceed forty feet in elevation above the Ocean Front Walk right-of-way.
4. **Public Right-of-Way.** The development approved by this coastal development permit is limited to the applicant's private property. Private use or development of the public right-of-way of Ocean Front Walk is not permitted. Unpermitted off-site development includes, but is not limited to, construction, landscaping, fencing, tables, vending and posting of signs.
5. **Landscaping – Drought Tolerant, Non-Invasive Plants.**
  - a) Vegetated landscaped areas shall only 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> and <http://ucanr.edu/sites/WUCOLS/files/183488.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.

**6. Drainage & Water Quality.** By acceptance of this Coastal Development Permit, the applicant agrees that:

- a) During construction of the proposed project, no runoff, site drainage or dewatering shall be directed from the site onto the beach or Ocean Front Walk or to street that drains into a canal, onto the beach, or to the ocean, unless specifically authorized by the California Regional Water Quality Control Board.
- b) All equipment and materials shall be stored and managed in a manner to minimize the potential of pollutants to enter the canals.
- c) All runoff leaving the site shall be directed away from the beach, Ocean Front Walk, and the City storm drain system.

The permittee and all successors in interest shall construct and maintain the development consistent with the drainage plans approved by the Executive Director.

**7. Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris.**

The permittee shall comply with the following construction-related requirements:

- 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 on the beach or 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(s) 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.

**8. No Future Shoreline Protection.**

- a) By acceptance of this Permit, the applicant agrees, on behalf of itself and all successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit Nos. A-5-VEN-17-0051 or 5-17-0892 including, but not limited to, the foundation, commercial space, residential structures, or parking garage including in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, flooding, liquefaction, landslides, or other coastal hazards in the future, and as may be exacerbated by sea level rise. By acceptance of this Permit, the applicant hereby waives, on behalf of itself and all successors and assigns, any rights to construct such devices that may exist under applicable law.
- b) By acceptance of this Permit, the applicant further agrees, on behalf of itself and all successors and assigns, that the landowner shall remove the development authorized by this Permit, including parking garage, foundation, retail space, and residential structures, 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. If any portion of the development at any time encroaches onto public property, the permittee shall either remove the encroaching portion of the development or apply to retain it. Any application to retain it must include proof of permission from the owner of the public property. 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 or with permission from the owner of the public property. The permittee shall obtain a coastal development permit for removal of approved development unless the Executive Director provides a written determination that no coastal development permit is legally required.
- c) Prior to removal/relocation, the permittee shall submit two copies of a Removal/Relocation Plan to the Executive Director for the review and written approval. The Removal/Relocation

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

**9. Assumption of Risk.** By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards, including but not limited to waves, storms, flooding, erosion, and earth movement, many of which will worsen with future sea level rise; (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.

**10. Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant(s) 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.

## **IV. FINDINGS AND DECLARATIONS**

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

The applicant is proposing to demolish a one-story, 1,728 sq. ft. commercial structure and surface parking lot with approximately 23 parking spaces, and to construct a 35-ft. high, three-story mixed use structure with 2,850 sq. ft. of retail space on the ground floor, three residential units on the second and third floors, each with a roof deck and 39.5-ft. high roof access structures, and one semi-subterranean level of parking providing 25 on-site parking spaces and reaching a depth of approximately 3.5 ft. below grade ([Exhibit 2](#)).

The project site is located on two contiguous beach-front lots at 305-309 Ocean Front Walk in the North Venice subarea of the Venice community in the City of Los Angeles ([Exhibit 1](#)). The lots total approximately 8,206 sq. ft. in area and are zoned C1-1 by the City of Los Angeles General Plan and designated as a Community Commercial land use by the certified Venice LUP. Ocean Front Walk is an improved public walkway that exists immediately inland of the public beach. The subject portion of Ocean Front Walk sits directly inland of the Rose Avenue public beach parking lot. The surrounding neighborhood is comprised primarily of two- and three-story single- and multi-unit residential structures with commercial structures lining the inland side of the boardwalk.

The Coastal Act is the standard of review for the proposed project, however, the certified Venice Land Use Plan (LUP) is used for guidance. The certified LUP allows new structures in this sub-area of Venice to reach a height of 35 ft. if they have a varied or stepped-back roofline, such as the proposed development. The certified LUP also allows roof access structures to reach a height of 40 ft. in this area. As such, the proposed development is consistent with the height requirements set forth in the development standards section of the certified LUP.

Additionally, the certified LUP requires two vehicle parking spaces for each residential unit, plus one guest parking space for each four (or fewer) units for multiple dwelling developments, one vehicle parking space for each 225 sq. ft. of floor area for general retail uses, and one Beach Impact Zone (BIZ) parking spaces for each 640 sq. ft. of ground floor area. In this case, the applicant would be required to provide seven vehicle parking spaces for the proposed residential uses ((2 spaces/unit X 3 units) + 1 guest space = 7 spaces), 13 vehicle parking spaces for the proposed retail use (1 space / 225 sq. ft. of floor area / 2,850 sq. ft. of floor area = 13 spaces), and 4 BIZ vehicle parking spaces (2,850 sq. ft. of ground floor area / 640 sq. ft. of ground floor area = 4 spaces). In total, the applicant is required to provide 24 on-site vehicle parking spaces for the proposed project. The applicant is proposing to provide 25 on-site vehicle parking spaces. Additionally, the applicant is proposing to provide eight on-site short-term bicycle parking stalls. As such, the proposed project meets the vehicle parking requirements set forth in the certified Venice LUP.

#### **Project History**

In 1988, the Commission approved CDP 5-88-474 (Oheb) for a proposed addition to the existing commercial structure, but the project was never built. In 1991, the Commission approved CDP 5-91-540 (Alai) for another proposed addition to the existing commercial structure, but that project was also never built. On November 14, 2007, the Commission approved CDP 5-07-222 (Ted Shelton & Associates, LLC) for the demolition of a one-story, 1,728 square foot commercial structure on a 8,208 square foot beachfront site (two lots), and construction of a three-story (over a subterranean parking garage), 35-foot high, 10,815 square foot mixed-use structure containing five

residential condominium units, four ground floor commercial condominium units with a total of one thousand square feet of retail space, and nineteen parking spaces. The Commissions CDP was issued on November 28, 2007, but the project was never built.

On January 23, 2017, the City of Los Angeles Director of City Planning held a public hearing for Local CDP DIR-2016-1341 for the project. On August 2, 2017, the Director of City Planning issued a determination letter approving the local CDP for the proposed project, as well as a Specific Plan Project Permit (SPP). The City's decision on the local CDP was not appealed to the City of Los Angeles West Los Angeles Area Planning Commission. The City's Notice of Final Local Action for the local CDP was received in the Coastal Commission's Long Beach Office on August 22, 2017, and the Coastal Commission's required twenty working-day appeal period was established. On September 20, 2017, one appeal was received from the Commission's Executive Director. No other appeals were received prior to the end of the appeal period on September 20, 2017.

The appeal primarily focused on the proposed project's consistency with sections 30210, 30211 and 30253 of the Coastal Act because the City failed to require or conduct a sea level rise analysis despite the fact that the project is located on two beach front lots that may be subject to the effects of sea level rise. Additionally, the appeal contended that the subterranean parking structure, which would reach a depth of approximately 22 ft. below grade, could act as a sea wall if wave scour and beach erosion reach the structure, which could alter natural landforms and impede and degrade public access seaward of the site. On November 9, 2017 the Commission found a substantial issue with respect to the grounds on which the appeal was filed. The applicant has since revised the project description to remove much of the subterranean parking as described above. The City has not yet approved the revised project.

### Coastal Hazards

Because shoreline protection devices, such as seawalls, revetments, and groins, can create adverse impacts on coastal processes, Coastal Act Section 30253 specifically prohibits development that could "...create [or] contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs." However, Section 30235 of the Coastal Act recognizes that *existing* development may be protected by shoreline protective devices subject to certain conditions. This limitation is particularly important when considering new development, such as in this case, because if it is known that a new development would require shoreline protection now or in the future, it would be unlikely that such development could be found to be consistent with Section 30253 of the Coastal Act. Therefore, the Commission's action on this project must consider the effects of wave uprush, flooding, and storm events (with sea level rise considerations) on public access and recreation.

### Sea Level Rise

Sea level has been rising for many years. Several different approaches have been used to analyze the global tide gauge records in order to assess the spatial and temporal variations, and these efforts have yielded sea level rise rates ranging from about 1.2 mm/year to 1.7 mm/year (about 0.5 to 0.7 inches/decade) for the 20th century, but since 1990 the rate has more than doubled, and the rate of sea level rise continues to accelerate. Since the advent of satellite altimetry in 1993, measurements of absolute sea level from space indicate an average global rate of sea level rise of 3.4 mm/year or 1.3 inches/decade – more than twice the average rate over the 20th century and greater than any

time over the past one thousand years. Recent observations of sea level along parts of the California coast have shown some anomalous trends; however, there is unequivocal evidence that the climate is warming, and such warming is expected to cause sea levels to rise at an accelerating rate throughout this century.

The State of California has undertaken significant research to understand how much sea level rise to expect over this century and to anticipate the likely impacts of such sea level rise. In 2013, the Ocean Protection Council adopted the National Research Council (NRC) report, “Sea level Rise for the Coasts of California, Oregon, and Washington: Past Present and Future”, as best available science for the State of California, and recommended in its 2013 State Sea level Rise Guidance that state agencies and others use these projections in their planning processes (the Coastal Commission also adopted the NRC report as best available science its 2015 Sea level Rise Policy Guidance). This report estimates that sea levels could rise between 1.5 and 5.5 feet by the year 2100 for areas south of Cape Mendocino. This projection is given in a range largely because researchers cannot know exactly how much greenhouse gases we will continue to emit over the coming decades – large-scale curtailment of greenhouse gas emissions would keep sea level rise towards the lower end of the projections, while business as usual emissions scenarios would result in the higher end of the projections. Because the world has continued along the “business as usual” scenario (and data suggests temperatures and sea level rise are tracking along the higher projections), OPC and the Natural Resources Agency have continued to recommend that we avoid relying on the lower projections in planning and decision-making processes.

The NRC report also noted that there are additional sources of uncertainty that could result in rates of sea level rise that are outside the projected ranges. One major source of uncertainty is related to the dynamics of ice sheet loss, and this topic has continued to be extensively researched since the NRC report came out. This more recent research informed the April 2017 “Rising Seas in California: An Update on Sea-Level Rise Science” report, which is being incorporated into OPC’s 2018 update to the State Sea-Level Rise Guidance. The updated projections in the Rising Seas report suggest sea levels could rise between 1.6 and 6.9 feet by 2100, depending on greenhouse gas emissions. The updated science report also includes an extreme scenario (termed the “H++” scenario) of 10.2 feet of sea level rise by 2100 based on recent modelling efforts that look at possible sea level rise associated with rapid ice sheet loss.

As our understanding of sea level rise continues to evolve, it is possible that sea level rise projections will continue to change as well (as evidenced by the recent updates to best available science). While uncertainty will remain with regard to exactly how much sea levels will rise and when, the direction of sea level change is clear and it is critical to continue to assess sea level rise vulnerabilities when planning for future development. Importantly, maintaining a precautionary approach that considers high or even extreme sea level rise rates and includes planning for future adaptation will help ensure that decisions are made that will result in a resilient coastal California.

On the California coast, the effect of a rise in sea level will be the landward migration of the intersection of the ocean with the shore, which will result in increased flooding, erosion, and storm impacts to coastal areas. On a relatively flat beach, with a slope of 40:1, a simple geometric model of the coast indicated that every centimeter of sea level rise will result in a 40 cm landward movement of the ocean/beach interface. For fixed structures on the shoreline, such as a seawall, an increase in sea level will increase the inundation of the structure. More of the structure will be inundated or underwater than is inundated now and the portions of the structure that are now underwater part of the

time will be underwater more frequently. Accompanying this rise in sea level will be an increase in wave heights and wave energy. Along much of the California coast, the bottom depth controls the nearshore wave heights, with bigger waves occurring in deeper water. Since wave energy increases with the square of the wave height, a small increase in wave height can cause a significant increase in wave energy and wave damage. Combined with the physical increase in water elevation, a small rise in sea level can expose previously protected back shore development to increased wave action, and those areas that are already exposed to wave action will be exposed more frequently, with higher wave forces. Structures that are adequate for current storm conditions may not provide as much protection in the future.

Coastal hazards and shoreline protective devices also raise public trust concerns. As discussed above, future sea level rise will cause the landward migration of the intersection of the ocean with the shore and, thus, the tidelands and submerged lands that are public trust resources. To the extent that shoreline protective devices contribute to erosion and blockage of the natural inland migration of the beach and shoreline, and thus result in the loss of natural beaches that allow the public to access tidelands and submerged lands, their construction is also inconsistent with the State's obligation to protect the public's right to access these areas. Knowing, as we do, that our understanding of how fast and how severe sea level rise will occur, and the precise impacts on particular coastal areas, is an evolving area of scientific inquiry, the Coastal Commission must act conservatively to manage public trust resources in a way that will protect them for future generations. For this additional reason, the Coastal Commission is unlikely to approve proposals for new development that, either now or sometime in the future, require shoreline protective devices, as their construction threatens public trust resources protected by the Coastal Commission. Moreover, private residential uses are not public trust uses and the existence of private residential uses, such as the proposed project, on future public trust lands would conflict with the public's right to use and enjoy such lands.

### **Application to this Project**

After the appeal was filed, the applicant commissioned a coastal hazards study (*Coastal Hazard and Wave Runup Study for 305-309 Ocean Front Walk, Venice, City of Los Angeles, California*, GeoSoils Inc, October 9, 2017) which did include a sea level rise analysis. The study was transmitted to Commission staff on October 10, 2017 (hard copy received via U.S. Postal Service on October 13, 2017), subsequent to the City's action approving the project and after the appeal was filed. The sea level rise analysis assumed local sea level rise between 1.8 – 4.3 feet. The study concluded that over the next 75 years, sea level rise will not significantly impact the project site, including wave attack, wave run-up, wave overtopping, tsunamis, groundwater intrusion, erosion, or flooding.

Commission staff reviewed the Coastal Hazards Study submitted by the applicant, and also conducted a simple sea level rise analysis using the CoSMoS tool, which was developed by the United States Geologic Service (USGS) "in order to allow more detailed predictions of coastal flooding due to both future sea level rise and storms." The CoSMoS tool shows potential flooding reaching the site given a 2.5-foot rise in sea level with a 20-year storm scenario and a 1.6-foot rise in sea level with a 100-year storm scenario. As the sea level rise input increases, the CoSMoS tool shows a significant increase in potential flooding and waves reaching the site and beyond with the given storm scenarios ([Exhibit 3](#)).

Given the discrepancy in the applicant's coastal hazards study and the information obtained using the CoSMoS tool, there is uncertainty as to whether this project may require shoreline protection at some point in the future, though it does not require shoreline protection at this time and the

applicant's coastal hazards study suggests that no such shoreline protection will be necessary. To ensure the risks and uncertainties of development in this inherently hazardous coastal area are appropriately born by the applicant enjoying the benefits of private development, and not the public, the Commission imposes **Special Conditions 8 and 9**, which require the applicant to waive any rights to future shoreline protection for the proposed project that may exist under applicable law.

The Commission also imposes **Special Condition 10**, which requires the applicant to record a deed restriction that reflects the conditions of this CDP so any future owners of the site are aware of the restrictions associated with the development of the site.

## **B. PUBLIC ACCESS AND RECREATION**

Although the proposed project will generate demand for parking in an area that is adjacent to the beach and in which parking is scarce, the proposed development will include sufficient parking to meet the anticipated demand created by this project. Thus, the proposed development will not affect the public's ability to gain access to, and/or to use the coast and nearby recreational facilities. Therefore, as proposed, and conditioned, the development conforms to Sections 30210 through 30214, Sections 30220 through 30224, and 30252 of the Coastal Act.

## **C. MARINE RESOURCES AND WATER QUALITY**

The proposed development has a potential for a discharge of polluted runoff from the project site into coastal waters. The development, as proposed and as conditioned, incorporates design features to minimize the effect of construction and post-construction activities on the marine environment. These design features include, but are not limited to, the appropriate management of equipment and construction materials, reducing runoff through the use of permeable surfaces, the use of non-invasive drought tolerant vegetation to reduce and treat the runoff discharged from the site, and for the use of post-construction best management practices to minimize the project's adverse impact on coastal waters. 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 promote the biological productivity of coastal waters and to protect human health.

## **D. DEVELOPMENT**

As proposed, the development is located within an existing developed area and is compatible with the character and scale of the surrounding area. As noted above, the project provides adequate parking based on the Commission's typically applied standards. Therefore, as proposed, the development conforms to Sections 30250, 30251, and 30252 of the Coastal Act.

## **E. HAZARDS**

Development adjacent to the ocean is inherently hazardous. As discussed in detail above, 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. To minimize the project's impact on shoreline processes, and to minimize risks to life and property, the development has been conditioned to: require an appropriate set-back from the water; require a drainage and runoff control plan to direct, treat, and minimize the flow of water offsite; prohibit construction of protective devices (such as a seawall) in the future; and to require that the landowner and any successor-in-interest assume the risk of undertaking the development. As conditioned, the Commission finds that the development conforms to the

requirements of Sections 30235 and 30253 of the Coastal Act regarding the siting of development in hazardous locations.

**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 one additional condition 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 Venice Land Use Plan was certified by the Commission on June 14, 2001 and is advisory in nature and may provide guidance. The proposed development is consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan for the area. Approval of the project as proposed will not prejudice the ability of the local government to prepare an LCP that is in conformity with the provisions of Chapter 3 of the Coastal Act.

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

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 Commission finds that 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.

## **Appendix A - Substantive File Documents**

1. City of Los Angeles Venice certified Land Use Plan
2. Appeal A-5-VEN-17-0051
3. City of Los Angeles Local CDP DIR-2016-1341