

CALIFORNIA COASTAL COMMISSION

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**Th10a**

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Staff:	A. Yee - LB
Staff Report:	11/21/2019
Hearing:	12/12/2019

STAFF REPORT: REGULAR CALENDAR

Application No.: 5-18-0872

Applicant: Sunshine Enterprises LP (Shore Hotel)

Agent: Sherman Stacey, Gaines and Stacey, LLP

Location: 1515-1525 Ocean Ave. and 1530 Second Street, Santa Monica (Los Angeles County)

Project Description:

Request for after-the-fact approval of demolition of two separate lower-cost motels with 87 rooms, and construction of a single 89,900 square foot, forty-five foot high, 164-room, hotel with high-cost overnight accommodations and 1,470 square feet of restaurant space at ground floor and a subterranean parking garage. The proposal includes elements that are not considered “after-the-fact,” such as a new 860 square-foot hotel restaurant/bar and conversion of a 3,306 square foot vacant retail space into a new 14-room low-cost hostel with a 562 square foot public café. The proposal includes a lower cost overnight accommodations mitigation package to include an in-lieu fee of \$8,288,312, construction of a 14 bed low-cost hostel with rates no more than \$52 per bed per night, and an overnight youth lodging program which will provide overnight stays, 12 nights per year, free to underserved youth groups of approximately 35-40 youths. The applicant has also proposed to immediately offer 14 rooms in the existing hotel to public service employees at a lower-cost rate of \$127 per night until the on-site hostel begins operation. The development provides a total of 284 parking spaces in a four-level subterranean parking garage, as well as a car rental facility, distribution of monthly parking passes, and a valet parking program.

Staff Recommendation: Approval with conditions

SUMMARY OF STAFF RECOMMENDATION

Commission staff is recommending **APPROVAL** of the project with conditions. The project raises significant issues concerning the loss of lower-cost overnight visitor accommodations, unpermitted development, and public access.

The applicant is seeking after-the-fact approval for: demolition of two separate lower cost motels, Pacific Sands Motel (57 rooms) and Santa Monica Beach Travelodge (30 rooms), and construction of a single 89,900 square-foot, forty-five feet high, 164-room hotel with high-cost overnight accommodations, including swimming pool and spa, an 860 square-foot hotel restaurant/bar, and a 1,470 square foot restaurant with frontage on Ocean Ave. A total of 284 parking spaces in a four-level subterranean parking garage is proposed to serve the development as well as the other proposed uses, including a car rental facility, distribution of monthly contract parking passes, and a valet parking program.

In 2009, the Commission approved Coastal Development Permit (“CDP”) No. 5-09-040 for replacement of the two lower-cost motels at the site with a low to moderately priced hotel, in other words, affordable accommodations. However, the applicant failed to comply with “prior to issuance” conditions of the permit prior to the permit’s expiration date and therefore, the permit was never issued. Nevertheless, by 2011, the applicant had already undertaken demolition of the two existing lower-cost budget motels, as well as construction of the new hotel, all of which was unpermitted development. Moreover, even if CDP No. 5-09-040 had issued, it approved the project on the basis that it would preserve affordable overnight accommodations on the site. The hotel actually constructed on site is, in fact, a luxury hotel.

The Coastal Act requires protection and provision of lower-cost visitor and recreational facilities, including overnight accommodations, pursuant to Section 30213 of the Coastal Act. When existing lower-cost accommodations are converted into or replaced by higher-cost accommodations or other land uses, the supply of lower-cost overnight accommodations in the coastal zone is reduced. The conversion of lower-cost visitor-serving facilities to high-cost facilities is described in the Commission’s recently adopted Environmental Justice Policy as “a barrier to access for those with limited income, and contributes to increase coastal inequality.” In past Commission actions, the Commission has required replacement of the lower cost rooms, or payment of an in-lieu fee for each lost lower-cost room at a rate of 1:1 plus 25% of the new high-cost rooms constructed in excess of the number of lower-cost rooms lost, in order to mitigate for the loss of lower-cost overnight accommodations both now and in the future.

When Commission staff learned that the demolition and replacement project described above had gone forward despite the expiration of CDP No. 5-09-040, and that the applicant had constructed a luxury boutique hotel rather than the hotel it had proposed, Commission staff sent the applicant a Notice of Violation letter in January 2014. In an attempt to address the unpermitted development and to avoid additional potential penalties going forward, staff directed the applicant to seek after-the-fact authorization of the development from the Commission, which would include provision of all legally required mitigation for loss of affordable accommodation. Subsequent to the 2014 Notice of Violation letter, in January 2015, the applicant applied to the Commission for a second coastal development permit, CDP No. 5-15-0030, to obtain after-the-fact approval of the demolition and the creation of the luxury boutique hotel that it had constructed on the site.

The Commission, in 2015, denied the applicant’s request for after-the-fact approval of the subject hotel, in part because the recommended mitigation amount (\$2,929,197) for loss of lower-cost overnight accommodations was found to be insufficient to bring the project into compliance with

Coastal Act policies, and in part because the proposal did not provide any lower cost accommodation onsite, consistent with the policy of the Coastal Act that requires that lower cost accommodation be provided where feasible, and encourages new lower cost facilities. The applicant filed a lawsuit to challenge the Commission's denial of the project. The trial court ruled in favor of the Commission, noting that the Commission had properly denied the project due to the project's failure to protect or to provide lower cost visitor accommodations or to provide an adequate mitigation fee, as required by Coastal Act Section 30213. The applicant appealed the trial court decision, and in March 2019, the Court of Appeal affirmed the trial court's ruling upholding the Commission's denial of CDP No. 5-15-0030 as inconsistent with the Coastal Act.

Discussions following the appellate court decision were, ultimately, productive and culminated in Consent Agreement No. CCC-19-CD-01/AP-02, which the Commission approved in May 2019. Pursuant to the terms of the Consent Agreement, the applicant agreed, among other things, to pay a monetary penalty, to stop all unpermitted development, in part by obtaining and complying with a coastal development permit for the Shore Hotel or ceasing operations if it fails to secure such a permit. In anticipation of facilitating implementation of such a requirement, in August of 2018, the applicant had submitted CDP application No. 5-18-0872, which requests approval of the hotel (the subject of this permit) with an enhanced mitigation amount and proposed an in-lieu fee (\$8,288,312) to mitigate for the impacts to lower-cost overnight accommodations. That proposal was heard by the Commission on May 9, 2019, subsequent to its approval of the Consent Agreement, and Commissioners voted to continue the permit item to a later hearing, directing the applicant to work with staff to identify ways to provide mitigation through the provision of on-site accommodations. Commission staff met with the applicants on multiple occasions and suggested that the applicant provide the 72 lower-cost rooms on-site in the existing hotel. The applicant asserted that it would not be financially feasible to provide 72 lower-cost rooms onsite, but that it would be feasible to provide some rooms within the hotel at lower cost rates for an interim amount of time. Since the May 2019 hearing, the applicants have revised their proposal to include a mitigation package with an on-site lower cost 14-room hostel, an overnight youth lodging program, and a mitigation fee. The applicants have also proposed to offer 14 rooms in the existing hotel at lower cost rates to public servants immediately and until such time as the hostel can be constructed and begin operations.

As part of a mitigation package for the loss of on-site lower cost overnight accommodations, the applicant proposes, in addition to the proposed in-lieu mitigation fee of \$8,288,312, to use 3,306 square feet of currently vacant ground floor street frontage as a 14-room lower cost hostel, to be operated in conjunction with the hotel, which will provide approximately 34 beds. The applicant proposes that these beds be offered at lower cost rates, at \$52 per night per bed, to be adjusted annually every three years according to the Consumer Price Index, and a 562 square foot public-serving café. The applicant has also proposed as part of the mitigation package, an overnight youth lodging program, which would provide the opportunity for community organizations and outdoor educational programs to bring underserved youth to the coast and stay at no-cost overnight in the hostel up to 12 nights per year, and could serve as many as 400 students/children per year.

In the interim until the lower cost hostel opens, the applicant proposes to offer 14 rooms in the existing hotel at a lower-cost rate of \$127 per room per night, made available to first responders, teachers, and military, government employees and generally public servants and their families. The general public may also have the option to book the rooms starting 30 days prior, but at a moderate-cost rate (although still high-cost when compared to the state-wide average daily rate, this proposed rate is significantly less than the typical rates of the subject hotel which are \$309 to \$812).

In the case of the proposed project, the two lower-cost motels that previously existed onsite contained a total of 72 lower-cost rooms. The new boutique hotel has 164 new high-cost rooms. Therefore, consistent with prior Commission actions and in order to off-set the loss of lower-cost overnight accommodations resulting from the proposed project, the applicant must pay an in-lieu mitigation fee to compensate for both the loss of the 72 lower-cost rooms and the failure to provide 25% of the new rooms at lower-cost rates. The Commission has typically required 25% of new higher-cost visitor accommodations to be provided at lower cost rates in order to ensure that overnight accommodations in the Coastal Zone are available at a range of price points. The payment of an in-lieu fee based on the total impact to the supply of lower-cost overnight accommodations within the coastal zone in Santa Monica represents adequate mitigation that can be used to fund future lower-cost overnight accommodations in the region, consistent with Section 30213 of the Coastal Act. In its 2015 denial of CDP 5-15-0030, the Commission found that unit-for-unit replacement of lost lower-cost motel rooms with hostel beds was insufficient and therefore inconsistent with Section 30213 of the Coastal Act. The current mitigation proposal is to provide an in-lieu mitigation fee for the lost 72 lower cost rooms and 25% of the new high cost rooms constructed for a total of \$ 9.5 million (less the amount already paid to the City as a condition of the local approval to mitigate for the lost lower cost rooms), in addition to constructing an on-site lower cost hostel and offering a free youth lodging program.

The project has been conditioned to implement the applicant's proposal, and as conditioned, the project can be found consistent with the Coastal Act. **Special Condition 7** requires the applicant to submit an in-lieu mitigation fee (\$8,288,312.00), and ensures the funds will be directed toward a public entity such as the California Department of Parks and Recreation, the State Coastal Conservancy, or a non-profit organization to provide for low-cost overnight accommodations elsewhere in the coast. The preferred use of the in-lieu fee is for the replacement of the lost motel rooms, however the condition was written broadly to allow for any form of lower-cost visitor accommodation. As additional mitigation, the applicant has also proposed to develop a 14-room hostel onsite, to be offered at a lower-cost rate. **Special Condition 8** requires that the applicant submit evidence of necessary local approvals for the hostel and a plan for targeted marketing outreach to underserved communities and the condition ensures the rates of the hostel remain lower-cost, as proposed. Anticipating that it may take additional time for the applicant to entitle, construct, and prepare the hostel for operation, **Special Condition 9** memorializes the applicant's proposal to provide 14 rooms within the existing hotel at lower-cost rates and moderate rates in the interim period until the hostel is operational.

Other special conditions imposed by the Commission ensure the project is consistent with the public access and recreation provisions of the Coastal Act. To ensure that the proposed new development does not impact public access opportunities to the coast, the development must provide adequate parking for the proposed facilities. **Special Condition 6** requires that the development continue to provide a minimum of 284 parking spaces, assuring that approximately 75 spaces will be available for public use. In addition, per Sections 30253 and 30252 of the Coastal Act, new development must minimize energy consumption and vehicle miles traveled and facilitate the provision of transit service in order to maintain and enhance public access. Therefore, **Special Condition 6** also requires alternative transportation programs for all hotel, associated retail and restaurant employees, and guests. **Special Condition 5** ensures that, with the exception of the interim lower-cost rooms, all hotel rooms shall be available to the general public and not privatized by long-term occupancy or otherwise restricted from public use. The Commission also imposes **Special Condition 1**, which limits the uses and development for the proposed project and requires an amendment to this permit

or a new coastal development permit for any changes to the development, including, but not limited to the parking provisions, land use, or intensification of use. **Special Condition 4** ensures continued compliance with local conditions imposed on the project.

Special Condition 2 requires that the applicant pay litigation costs should the Commission have to defend its approval of the proposed development against a third-party litigant. **Special Condition 3** requires a deed restriction incorporating the terms and conditions of this permit. Only as conditioned can the development be found consistent with the Coastal Act.

Staff recommends approval as conditioned.

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APPENDICES

Appendix A - Substantive File Documents

EXHIBITS

[Exhibit No. 1 – Location and project site](#)

[Exhibit No. 2 – Project Plans](#)

[Exhibit No. 3 – City of Santa Monica Ordinance 1516](#)

[Exhibit No. 4 – Analysis of Mitigation fees \(City’s fees\) and copy of payment to the City](#)

[Exhibit No. 5 – Hostelling International, Cost Estimates for New Hostel Development, 2014](#)

[Exhibit No. 6 – Evaluation of Hostelling International’s \(HI\) ‘Cost Estimates for New Hostel Development’; and thoughts on the sufficiency of the Shore Hotel’s Mitigation Fee by Maurice Robinson, Consultant](#)

[Exhibit No. 7 – Turner Building Cost Index \(2018 Quarter 4\)](#)

[Exhibit No. 8 – The applicant’s amended project description \(except the interim rooms\)](#)

[Exhibit No. 9 – The applicant’s proposed interim rooms program](#)

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** Coastal Development Permit No. 5-18-0872 pursuant to the staff recommendation.*

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution:

The Commission hereby approves a Coastal Development Permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that will 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 or interpretation of any condition will be resolved by the Executive Director or the Commission.
- 4. Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
- 5. Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

- 1. FUTURE DEVELOPMENT.** This permit is only for the development described in Coastal Development Permit No. 5-18-0872, consisting of the development request in the applicant's proposal (as stated in [Exhibit 8](#) and [Exhibit 9](#)) as modified by the conditions of this permit. 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 5-18-0872. Accordingly, any future improvements to this structure authorized by this permit shall require an amendment to CDP 5-18-0872 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 5-18-0872 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).
- 2. INDEMNIFICATION BY PERMITTEE.** Liability for Costs and Attorneys' Fees. By acceptance of this permit, the Applicant/Permittee agrees to reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys' fees – including: (1) those charged by the Office of the Attorney General, and (2) any court costs and attorneys' fees that the Coastal Commission may be required by a court to pay – that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the Applicant/Permittee against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or issuance of this permit. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.
- 3. DEED RESTRICTION.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the landowner has executed and recorded against the parcel(s) governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to 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.
- 4. CONDITIONS IMPOSED BY LOCAL GOVERNMENT.** This action has no effect on conditions imposed by the City of Santa Monica pursuant to an authority other than the Coastal Act, except as provided in the last sentence of this condition. The permittee is responsible for

compliance with all terms and conditions of this coastal development permit in addition to any other requirements imposed by other local government permit conditions pursuant to the local government's non-Coastal Act authority. In the event of conflicts between terms and conditions imposed by the local government and those of this coastal development permit, the terms and conditions of this coastal development permit shall prevail. If any part of the proposed project description has not been approved by the local government, the applicant is required to obtain all local approvals prior to commencement of construction.

5. GENERAL OCCUPANCY REQUIREMENT

BY ACCEPTANCE OF THIS PERMIT, and except as provided in Special Condition No. 9 the applicant agrees that all hotel facilities shall be open to the general public. No timeshare or other fractional ownership or long-term occupancy of units is permitted without an amendment to this permit. No rooms shall be rented for more than 30 consecutive days or in accordance with any local government limitations on length of hotel stay.

6. TRANSPORTATION DEMAND MANAGEMENT PROGRAM

- A. WITHIN 60 DAYS OF COMMISSION APPROVAL, the applicant shall provide for review and written approval by the Executive Director, a Transportation Demand Management program incorporating the following:
- i. Required distribution of information regarding transit, shared rides and shuttles, bike routes, bike rental and bike paring in all hotel guest rooms, upon guest reservation confirmation, and at the reception desk. The hotel must also provide walking and jogging maps to guests.
 - ii. Six (6) onsite bicycle parking spaces for hotel guests.
 - iii. Assistance to guests for booking shuttle services, bike rentals, "flex cars" and similar alternatives.
 - iv. Free bus tokens (or the equivalent) provided to guests upon request (a minimum of 1 per day per guest).
 - v. On-site showers shall be provided for employees who walk or bike to work.
 - vi. Free transit passes shall be made available to employees, as well as a parking "cash out" program.
 - vii. The applicant and its successors and assigns shall actively encourage employee participation in a Transportation Ride Sharing program and shall offer free-of-charge coordination services.
 - viii. A Parking Implementation Plan outlining how the hotel's 284 parking spaces shall be provided and maintained onsite to serve the hotel, commercial, restaurant, car rental facility, monthly contract parkers, employees, and to provide or increase electric vehicle charging capacity and ADA requirements. Hotel, restaurant, and public parking shall not be displaced by other parking uses.
 - ix. No commercial, retail, or restaurant tenants shall advertise or otherwise direct guests to park at offsite parking lots.
 - x. All commercial, retail, and restaurant tenants shall offer partial or full reimbursement to 100% of the employees of the development for public transit fare to and from work. As applied to existing leases, this provision shall apply upon any renewal of a lease.
 - xi. The applicant and its successors and assigns shall provide secure bicycle parking, free of charge, on the property for the public, employees, and visitors.
 - xii. The applicant and its successors and assigns shall implement a publicity program, the contents of which are subject to the review and approval of the Executive Director,

- which indicates how the future hotel employees and tenant employees of the development will be made aware of the provisions of this special condition. The publicity program shall be implemented within 30 days upon written approval of the Transportation Demand Management Program by the Executive Director.
- xiii. The applicant and its successors and assigns will maintain a Transportation Information Center, which will provide information to employees, visitors and hotel guests about local public transit services and bicycle facilities.
- B. The permittee shall implement the transportation demand management program upon its approval in writing by the Executive Director. Any proposed changes, including but not limited to, change in the number of parking spaces or assigned spaces, hotel rooms, or operation of the hotel, or change in use, including retail space shall be submitted to the Executive Director. No such change shall occur without an amendment to this permit unless the Executive Director determines that no amendment is legally necessary, pursuant to the requirements of the Coastal Act and the California Code of Regulations.
- C. Within 30 days of the Executive Director's written approval of the Transportation Demand Management Program, the applicant shall submit proof to the Executive Director that the program has been executed in accordance with the special conditions of this permit. Proof of such implementation shall include photographs of the parking lot, the valet area, and the Transportation Information Center, a legally executed contract with any valet parking company or equivalent operating on site, and any other items that may provide evidence that the parking requirements of this CDP are fully implemented upon approval by the Executive Director.

7. LOWER-COST OVERNIGHT ACCOMMODATIONS MITIGATION FEE

WITHIN 60 DAYS OF COMMISSION APPROVAL, the applicant shall pay a mitigation fee for the loss of 100% of the previously existing lower-cost accommodations onsite and shall pay a mitigation fee for 25% of the higher cost rooms developed in excess of the total number of lower-cost rooms lost, totaling \$9,500,000.

- A. The applicant shall submit the remaining in-lieu fee required to offset the impacts to lower-cost overnight visitor-serving facilities caused by the development, minus the amount paid according to the City's condition of approval, for a total of: \$8,288,312 (\$9,500,000 - \$1,211,688). The required total in-lieu fee of \$8,288,312 shall be deposited into one or more interest-bearing account(s), to be established and managed by one or more of the following entities approved by the Executive Director of the Coastal Commission: the California Department of Parks and Recreation (State Parks), the Mountains Recreation and Conservation Authority (MRCA), the State Coastal Conservancy, Hostelling International USA, or a similar entity approved by the Executive Director. The purpose of the account shall be to establish lower-cost overnight visitor accommodations, such as lower cost hotel and motel rooms, hostel beds, tent campsites, cabins or campground units, at appropriate locations within the coastal area of Santa Monica or the greater Los Angeles County coastal area, or a similar project to promote access to the coast.

- B. Except for in lieu fees transferred to the State Coastal Conservancy pursuant to subsection C below, the entire fee and accrued interest shall be used for the above stated purpose, in consultation with the Executive Director, within ten years of the fee being deposited into the account. All development funded by this account will require review and approval by the Executive Director of the Coastal Commission and a coastal development permit if in the coastal zone. If any portion of the fee remains ten years after it is deposited, it shall be donated to one or more of the State Park units or non-profit entities providing lower-cost visitor-serving amenities in a Southern California coastal zone jurisdiction or other organization acceptable to the Executive Director. The Executive Director may extend the aforementioned deadline to expend the funds for good cause if the recipient of the funds requests an extension of the deadline in writing prior to expiration of the deadline.
- C. Prior to expenditure of any funds contained in this account, the Executive Director shall review and approve, in writing, the proposed use of the funds as being consistent with the intent and purpose of this condition. In addition, prior to the Executive Director's approval of expenditure, the entity accepting the in-lieu fee funds required by this condition shall enter into a memorandum of understanding (MOU) with the Commission (except for the State Coastal Conservancy and State Parks, which are already party to existing MOUs (see subsections D and E, below)), which shall include, but not be limited to, the following: 1) a description of how the funds will be used to create lower-cost accommodations in the coastal zone; 2) a requirement that the entity accepting the funds must maintain operations of the accommodations at a lower-cost rate; 3) the terms provided in subsections A and B of this condition; and 4) an agreement that the entity accepting the funds will obtain all necessary regulatory permits and approvals, including but not limited to, a coastal development permit for development of the lower-cost accommodations required by this condition.
- D. If the in-lieu fee is transferred to the State Coastal Conservancy, the funds shall be used pursuant to the existing MOU between the Coastal Commission and the Conservancy, dated August 2018, and for the purposes described in subsection A, above. In addition, at least thirty days prior to the transfer of the funds, the Permittee shall provide the Conservancy with any documentation necessary to the Conservancy, including information needed to effectuate transfer of the Funds to the Conservancy, unless the Permittee receives a waiver of this requirement in writing from the Conservancy's Executive Officer. The terms in subsection B shall not apply to the State Coastal Conservancy.
- E. If the in-lieu fee is transferred to State Parks, the funds shall be used pursuant to the existing MOU between the Coastal Commission and State Parks, dated December 2017, and for the purposes described in subsection A, above. As required by the existing MOU, a Project Specific Agreement shall be developed and executed by both agencies prior to the use of any funds.
- 8. ON-SITE LOWER-COST HOSTEL ACCOMMODATIONS AND YOUTH LODGING PROGRAM**
PRIOR TO COMMENCEMENT OF CONSTRUCTION OF THE HOSTEL, the applicant shall provide for review and written approval by the Executive Director:

- A. Stamped plans for the onsite Lower Cost Hostel by the City of Santa Monica with an approval in concept that substantially conforms to the plans submitted to the Commission entitled Shore-Hotel Annex dated August 28, 2019. The applicant must inform the Executive Director of any changes to the plans required by the City of Santa Monica, and may be required to apply for an amendment to this Coastal Development Permit for any material changes.
- B. The program elements necessary to accomplish the reservation of the hostel beds for the proposed programmatic use and a detailed summary of the overnight youth lodging program.
- C. The permittees 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.
- D. BY ACCEPTANCE OF THIS PERMIT, THE PERMITTEE AGREES THAT:
 - i. The Lower Cost Hostel shall be constructed and a certificate of occupancy shall be issued within 2 years of the date of Commission Action. The Executive Director may extend this deadline for good cause, or if the Executive Director determines that any deadlines should be extended if additional time would benefit the success of the obligations of this permit. The Executive Director will not approve more than one 1-year extension to this deadline without a material amendment to this permit.
 - ii. The applicant has proposed a 14 room lower-cost hostel and a plan to ensure that the hostel beds are lower cost and remain so over time to mitigate for the demolished lower-cost rooms. Specifically, the applicant proposes to offer the Lower Cost Hostel at lower cost rates as stated in the applicant's proposal ([Exhibit 8](#)), to be adjusted according to the Consumer Price Index (CPI) not more than once every three years, with notice to the Executive Director. The permittee shall undertake development in accordance with the proposal unless the Commission amends this permit or the Executive Director provides a written determination that no amendment is legally required.
 - iii. The minimum 34 beds (in shared rooms) shall be rented per bed like a traditional hostel bed. They shall not be rented per room. The hostel-style accommodations shall not be converted into hotel rooms or private rooms at any point in the future. The applicant shall not change the number of rooms or the number of beds without an amendment to this CDP.
 - iv. A minimum of 34 beds in 14 rooms shall be made available for overnight stays specifically for the overnight youth lodging program at no cost to the students/children for a minimum of 12 nights per year to be divided equally across the seasons, and the program shall commence immediately upon the issuance of the certificate of occupancy.

9. INTERIM ON-SITE LOWER-COST ACCOMMODATIONS

- A. BY ACCEPTANCE OF THIS PERMIT THE APPLICANT AGREES TO implement the proposal to make available 14 rooms within the existing hotel at a lower-cost rate for public servants such as first responders (police and fire), teachers, military personnel, and government employees and their families. The lower-cost rates, as stated in the applicant proposal

(Exhibit 9) may be adjusted annually according to the Consumer Price Index (CPI). Notice of CPI increases must be sent in writing to the Executive Director for review and written approval prior to implementation. If any of the 14 rooms are not booked at least 30 days in advance by public servants, such rooms may be booked by the general public at a moderate rate. The applicant will designate the 14 rooms to satisfy this requirement. The applicant will create and advertise a special category of booking on its website for the targeted groups with booking rules as described above. The obligations of this condition shall continue to exist indefinitely until a certificate of occupancy for the improvement of the Second Street ground floor frontage with a 14-room lower-cost hostel is provided to the Executive Director in accordance with Special Condition 9, below.

- B. An Implementation Plan for review and written approval by the Executive Director must be submitted **WITHIN 30 DAYS OF COMMISSION ACTION**. The plan shall outline the booking rules and process for the interim rooms and how the applicant will actively promote availability of the interim rooms and rates to public servants online and via targeted marketing, such as promoting this option with organizations representing the prioritized groups (e.g. teachers unions), and identify additional actions which could be taken to ensure success of the program, if necessary. In addition, the Implementation Plan shall identify at least one staff member to be available per working shift as the designated point of contact for any interested individuals seeking information or assistance regarding booking the interim rooms. Immediately upon written approval by the Executive Director, the 14 rooms shall be made available at the lower-cost rate.
- C. By no later than May 1, 2020, and annually thereafter until the interim on-site rooms are no longer required, the applicant shall submit for review and written approval by the Executive Director, a monitoring report that analyzes and estimates the effectiveness of the Implementation Plan in extending access to the prioritized groups' coastal recreation and access to the beach and shall include at a minimum, vacancy rates for the rooms broken down by rate-type. The Executive Director will issue a written determination as to whether the additional actions identified in the Implementation Plan are necessary to be implemented.
- D. Upon the issuance of the Certificate of Occupancy for the separate on-site 14-room hostel, the applicant shall submit a copy of the Certificate to the Executive Director for review and written approval. The applicant shall continue to offer the 14 interim rooms at the lower-cost and moderate rate until written approval of the hostel Certificate of Occupancy is issued by the Executive Director, and the hotel shall honor any reservations booked at the lower-cost rate in advance of cessation of the interim on-site lower-cost accommodations program.

10. MARKETING PLAN AND MONITORING REPORTS

- A. **WITHIN 60 DAYS OF COMMISSION ACTION**, the applicant shall submit, for review and written approval by the Executive Director, a Marketing and Engagement Plan to market the Lower Cost Hostel and the youth lodging program. The plan shall outline how the applicant will actively promote and publicize availability of the hostel and the youth lodging program at lower cost rates to underserved communities such as low-income communities, communities of color, and other communities that have been historically marginalized and face greater barriers to coastal access. In addition to online advertising, marketing efforts shall include targeted outreach to community

organizations focused on underserved communities such as local non-profits, environmental justice groups, labor unions, or recipients of public benefits programs by coordinating with local program administrators. Marketing and media materials shall be distributed beyond the City of Santa Monica to neighboring underserved communities in the greater Los Angeles area and acknowledge the California Coastal Commission's role in providing public access at this location posting of marketing materials at relevant transit stops. The Marketing and Engagement Plan shall also include a language access protocol that outlines how materials will be developed to include non-English languages including but not limited to Spanish, tailored to be culturally relevant, and written in plain language to prevent educational and cultural barriers from access to the hostel. The Plan shall also identify additional actions or measures that could be taken to improve access by underserved communities, if necessary (for example, including but not limited to a targeted voucher program for guests to obtain the lower cost rate rooms).

- B. BY ACCEPTANCE OF THIS PERMIT, THE PERMITEE AGREES TO submit an annual monitoring report for review and written approval by the Executive Director for the first five years of operation of the hostel and the overnight youth lodging program. The report shall analyze and estimate the effectiveness of the Marketing and Engagement Plan in reaching underserved communities and access to the beach and shall include at a minimum, occupancy rates for the hostel rooms (occupancy shall be reported by bed), and number of nights per year in which the overnight youth lodging program is utilized. The Executive Director will issue a written determination as to whether any of the additional actions identified in the Marketing and Engagement Plan are necessary to be implemented in order to increase the success of the youth lodging program and to maximize occupancy of the lower-cost hostel.
- C. The permittees 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. The Executive Director may extend this deadline for good cause if he or she determines that the applicant cannot meet the deadline due to unforeseen circumstances beyond their control, or if the Executive Director determines that any deadlines should be extended if additional time would benefit the success of the obligations of this permit.

IV. FINDINGS AND DECLARATIONS:

A. DESCRIPTION AND PROJECT LOCATION

The applicant is seeking after-the-fact approval for: demolition of two separate motels, Pacific Sands Motel (57 rooms) and Santa Monica Beach Travelodge (30 rooms) and construction of a single 89,900 square-foot, forty-five feet high, 164-room hotel with high-cost overnight accommodations, including swimming pool and spa, an 860 square-foot hotel restaurant/bar, and a 1,470 square feet restaurant with frontage on Ocean Ave. A total of 284 parking spaces in a four-level subterranean parking garage is proposed to serve the development as well as the other proposed uses, including a car rental facility, distribution of monthly contract parking passes, and a valet parking program.

Additionally, the applicant proposes to use 3,306 square feet of currently vacant ground floor street frontage as a 14-room lower-cost hostel, to be operated in conjunction with the hotel, which will provide 34 beds. Six rooms contain 3 beds and the remaining eight rooms each contain two beds. The applicant proposes that these beds be offered at \$52 per night per bed, adjusted annually every three years according to the Consumer Price Index (while remaining consistent with a lower-cost rate), and a 562 square foot public-serving café. In the interim until the hostel opens, the applicant proposes to offer 14 rooms in the existing hotel at a lower-cost rate of \$127 per room per night, made available to first responders, teachers, and military. If the rooms have not been booked by such individuals at least 30 days prior, the general public may also have the option to book the rooms, but at a moderate-rate of approximately \$200 per night (moderate rates range from \$128-210 per night, with a mid-point of \$189).

The applicant has also proposed an overnight youth lodging program which would provide overnight stays in the hostel for small youth groups from underserved communities, subject to the review and approval of the Executive Director, including but not limited to the Bay Foundation, Community Nature Connection, boys and girls clubs, and the like, for approximately 40 youths and chaperones in the onsite hostel at least 12 times annually. Lastly, the applicant proposed to install a microfiber filtration system to the hotel laundry to capture and remove microfibers from the water during the laundering process, and to discontinue the use of single-use plastics on-site.

The site is located approximately 300 feet north of the corner of Ocean Avenue and Colorado Avenue, in the City of Santa Monica ([Exhibit 1](#)). The project site is on the east side of Ocean, across from the Palisades Park, a blufftop park which overlooks Pacific Coast Highway, the beach, ocean, and Santa Monica Pier. The project is located in the City's Downtown Commercial District.

The hotel is made up of two separate buildings with frontage on Ocean Ave. and on Second St., divided by an alley ([Exhibit 2](#)). The total site is 45,000 square feet. The parcel fronting Ocean Ave. consists of 30,003 square feet, and the parcel with frontage along Second Street consists of 14,998 square feet. The parcel located along Ocean is zoned RVC- Residential Visitor Commercial, which allows for lodging, dining, shopping, and dining type uses. The parcel along 2nd Street is zoned C3- Downtown Commercial, which allows general retail, office, residential, hotel, and visitor-serving uses.

The standard of review for this development is the Chapter 3 policies of the Coastal Act. In August 1992, the Commission certified the land use portion of the City of Santa Monica's Local Coastal Program (LCP). The City does not have a certified Implementation Plan, and therefore does not have a fully certified LCP. Coastal Act Section 30604(a) states that, prior to certification of an LCP, a coastal development permit can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Coastal Act, however, the LUP may be used as guidance.

The applicant is requesting after-the-fact approval of demolition and construction that has already occurred without the requisite authorization, as described below.. Because the completed work was not authorized, the Commission must address the project as if it had not yet occurred (*see* LT-WR v. CCC (2007) 152 Cal.App.4th 770, 797). In addition, on May 8, 2019, the Commission approved a consent cease and desist order (CCC-19-CD-01) and consent administrative civil penalty (CCC-19-AP02) for the Shore Hotel. The consent cease and desist order required, among other things, that the applicant

obtain a CDP from the Commission. The Commission's previous decision on related enforcement actions should not prejudice the Commission in independently reviewing this permit matter.

First Application CDP 5-09-040

The Commission approved CDP application (5-09-040) for the replacement of the original, lower-cost motels at the site with a low to moderately priced hotel on June 11, 2009, subject to special conditions including three "prior to issuance" conditions concerning archeological resources, geology, and water quality. The applicant did not fulfill these conditions prior to expiration of the Commission's approval, nor was an extension filed by the applicant before the expiration date of June 11, 2011; therefore, a permit for the development was not issued and the permit expired. Nevertheless, the application proceeded with the proposed demolition and construction without a valid CDP in place authorizing the development.

In 2009, the CDP 5-09-040 application stated the applicant's intent at the time was to continue to provide a lower to moderately-priced hotel within the City of Santa Monica, similar to the lower-cost motels that were demolished. The applicant did not propose to construct a luxury hotel. The proposed room rate was \$164 per night. The hotel was intended to be a "limited amenities" Travelodge hotel with 164 guest rooms, averaging 295 square feet in size, with floor-to-ceiling height of about 8 feet, a basic lobby, manager's office, a swimming pool, a small exercise room, standard housekeeping facilities, and a 750 square foot breakfast/meeting room. According to the applicant at the time, the new hotel would not contain a restaurant, bar, conferencing facilities, spa, florist, lounge, or similar amenities typically found in more upscale, or luxury hotels.

According to the plans on file, guestrooms range in size from approximately 315 sq. ft. on the low end to approximately 420 sq. ft. on the high end. The letter from the applicant in 2009 misrepresented the guest room square footage, stating each room was an average of 295 sq. ft. The plans on file from 2009 show the same guest room square footage as the current application.

Analysis of the proposed project at the time acknowledged that future improvements would require additional Commission actions to evaluate impacts to lower-cost overnight accommodations. In the 2009 staff report (5-09-040), the Commission did not require any mitigation for the loss of the lower-cost accommodations because they were proposed to be replaced onsite and the Commission found, with respect to the proposed hotel, that: "As currently designed, with smaller rooms and limited amenities, the hotel will not be easily converted to a luxury or high end hotel without major modifications, which will need to be reviewed and approved by the City and Coastal Commission. At that time, the City and Commission can then consider mitigation for the loss of low-cost over-night accommodations."

The two hotels demolished were considered lower-cost overnight facilities. In 2009, the Travelodge had an average room rate of approximately \$159 and the Pacific Sands had an average room rate of approximately \$143. Because the new hotel had proposed room rates of \$164 per night, the City did not impose a mitigation fee for the loss of lower-cost overnight accommodations at the time of approval. The applicant submitted a feasibility study¹ that indicated the hotel would be most economically

¹ *Feasibility Analysis of Four Development Scenarios for the Travelodge site in Santa Monica*, by PKF Consulting, February 2007.

feasible as a new “budget” hotel. The hotel was intended to increase the number of available lower to moderate-priced rooms in the oceanfront area of Santa Monica from 87 rooms to 164 rooms. It was based on this information that the Commission approved the project as consistent with Section 30213 and 30222 of the Coastal Act. Since the initial approval in 2009, the City has determined that 72 of the 87 rooms demolished were lower-cost and required that a mitigation fee be paid due to the applicant’s decision to charge high-cost overnight rates at the current Shore Hotel instead of the originally proposed new lower- to moderately-priced rooms.

The constructed hotel differs from the project description of 2009. Today, the constructed hotel, called the “Shore Hotel,” is a self-described “boutique” hotel with 164 rooms. Overnight rates for rooms currently range from \$309 to \$812 per night, plus a mandatory \$25 resort fee.² The underground parking garage was constructed with less spaces than originally proposed, with 284 spaces which costs hotel guests \$45 per day, per car. Additionally, in 2013 the applicant applied to the City of Santa Monica for an amendment to eliminate the “limited amenities” and to pursue a Conditional Use Permit for new bar/lounge and other services of the hotel (amend DR 05-007). The City of Santa Monica approved this Conditional Use Permit and the associated retail space fronting Ocean Ave. now contains a restaurant.

On January 15, 2014, Commission enforcement staff sent a notice of violation (V-5-13-029) to the hotel owner. In order to address the unpermitted development, the letter indicated that the applicant should submit an “after the fact” permit application before February 14, 2014. The applicant and its agent met with enforcement staff on or before February 6, 2014. On August 28, 2014, the applicant submitted an application to amend CDP No. 5-09-040 (CDP 5-09-040-A1). Staff informed the applicant in a letter dated September 26, 2014 that CDP No. 5-09-040 was never issued and had expired and, therefore, there was no permit to amend. The letter reminded the applicant that the notice of violation recommended that the applicant submit a new after-the-fact Coastal Development Permit (CDP) application to resolve the issues regarding unpermitted development.

Previous Application CDP 5-15-0030

On or about October 28, 2014, the applicant sent a letter to the Commission’s Executive Director and Senior Deputy Director requesting to appeal staff’s decision not to accept an amendment application for CDP No. 5-09-040. Nevertheless, on January 7, 2015 (one year after receiving a notice of violation), the applicant submitted a new CDP application for after-the-fact approval of the subject unpermitted development (CDP 5-15-0030). Shortly thereafter, on January 29, 2015, Commission staff responded to the applicant’s appeal request for CDP No. 5-09-040, affirming the Executive Director’s concurrence with the decision not to accept an amendment. Thereafter, Commission staff closed 5-09-040-A1, transferring the applicant’s submitted materials to CDP application 5-15-0030.

On September 9, 2015, the Commission held a public hearing for CDP No. 5-15-0030 for after-the-fact approval of the demolition of the two low-cost motels and construction of the Shore Hotel. Staff again recommended approval with conditions that were largely consistent with those the Commission approved in CDP No. 5-09-040, but with the addition of new conditions relating to the after-the-fact nature of the new application. One of the new conditions that staff recommended would have required payment of \$4,140,885 in mitigation for the loss of low-cost overnight accommodations with credit for the \$1,211,688 already paid to the City of Santa Monica, for a total of \$2,929,197. The applicant was not proposing any additional mitigation, above what it had paid the city, and specifically opposed

² Rates as of February 2019 and vary by package and room type per the Shore Hotel website: www.shorehotel.com.

staff's recommendation for payment of additional in-lieu mitigation fees. The Commission denied the permit with a vote of 8-0, in part due to the applicant's opposition to paying any mitigation. The Commission adopted revised findings on February 12, 2016 stating that the project, as proposed, was not in conformity with policies of the Coastal Act to encourage, protect, and provide lower-cost visitor accommodations because it did not provide any of its rooms at low-cost even though past studies submitted by the applicant had demonstrated that lower and moderately priced rooms were feasible to provide onsite, the in-lieu mitigation fee paid to the City of Santa Monica was insufficient, and that even the Commission staff's recommended additional mitigation fee would have been insufficient to provide for new lower-cost overnight accommodations. The applicant had, by virtue of its 2009 application to build a lower-cost hotel, demonstrated that it is feasible for the applicant to protect, encourage, and provide lower-cost accommodations on-site.

Following the Commission's denial of CDP application 5-15-0030, the Commission's enforcement staff continued to correspond with the applicant regarding the outstanding violation. Discussions were, ultimately, decidedly productive and culminated in issuance of Consent Agreement No. CCC-19-CD-01/AP-02. Pursuant to the terms of the Consent Agreement, the applicant agreed, among other things, to pay a monetary penalty, and to stop all unpermitted development, in part by obtaining and complying with a coastal development permit for the Shore Hotel or ceasing operations if it fails to secure such a permit. In order to facilitate implementation of this requirement of the Consent Agreement, on August 29, 2018, the applicant filed the current permit application (5-18-0872) seeking after-the-fact approval for demolition of the two low-cost motels and construction of the Shore Hotel, and approval to use the currently vacant 3,306 square foot retail space fronting Second Street as a restaurant. The applicant secured a Conditional Use Permit (CUP) from the City of Santa Monica (16ENT-00128) on April 18, 2017, which was valid until April 18, 2019 per an extension granted on November 7, 2018. On April 17, 2019, the applicant applied to the City for a second extension of the CUP. The CUP prohibited the proposed restaurant from being operated by the Shore Hotel, and also prohibited direct room service or other direct public access to the restaurant from the hotel. Parking would be accommodated in the Shore Hotel's subterranean structure to be accessed by a valet service. As currently proposed, the vacant 3,306 sq. ft. space would become an onsite 14 room hostel (not a restaurant) and would require additional approvals from the City of Santa Monica.

Litigation

The Commission's prior actions related to the Shore Hotel property have been the subject of two lawsuits. On March 27, 2015, the applicant filed a lawsuit in the Los Angeles County Superior Court seeking to compel the issuance of the expired CDP 5-09-040, and acceptance of the applicant's application to amend CDP 5-09-0040 (Case BS 154440). While its first lawsuit was pending, the Commission denied CDP application 5-15-0030 and the applicant filed a second lawsuit in the Los Angeles County Superior Court on November 5, 2015, this time challenging that denial (Case BS 158638). The first lawsuit (BS 154440) was voluntarily dismissed by the applicant its case just prior to the commencement of trial. The trial (a writ hearing) in the second case challenging the Commission's denial of the applicant's CDP application occurred on June 1, 2017, and the court ruled in the Commission's favor that same day, finding, among other things, that the Commission's decision to deny CDP application 5-15-0030 was supported by substantial evidence and notably upholding the Commission's imposition of a mitigation fee, noting:

"This conclusion about the proper scope of the mitigation fee is bolstered by the present circumstance where Petitioner conducted a bait and switch, obtaining a permit for a moderately priced Travelodge and then constructing a boutique luxury hotel. Petitioner cannot now be heard to complain that the mitigation fee includes

the loss of existing low cost hotel rooms simply because the Commission made no feasibility finding that the two hotels Petitioner already has demolished were feasible for continued operation. Equity permits the Commission to look at all permissible mitigation fee bases for the lost low cost units that Petitioner failed to deliver.”

The applicant subsequently appealed the trial court’s ruling; however, on March 22, 2019, the Court of Appeals affirmed the lower court’s decision in favor of the Commission. Thus, the Commission’s denial of CDP 5-15-0030 stands, and as a result, the applicant currently does not have a valid CDP authorizing the demolition and construction of the Shore Hotel.

B. LOWER-COST VISITOR-SERVING FACILITIES

Section 30213 of the Coastal Act states:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred. The commission shall not: (1) require that overnight room rentals be fixed at an amount certain for any privately owned and operated hotel, motel, or other similar visitor-serving facility located on either public or private lands; or (2) establish or approve any method for the identification of low or moderate income persons for the purpose of determining eligibility for overnight room rentals in any such facilities.

LUP Policy 35 states:

Lower cost visitor and recreational facilities shall be protected, encouraged, and where feasible, provided. New development shall not remove lower cost lodging facilities unless a finding of infeasibility is made. Where new development removes lower-cost lodging facilities, the feasibility of replacing the units on-site shall be considered. If on-site replacement is not feasible, then one-to-one replacement within the Coastal Zone shall be considered. The City shall identify sites suitable for lower-cost over-night lodging. If these alternatives are not feasible, then an in-lieu fee payment shall be made and placed in a fund established by the City for the provision of lower-cost lodging facilities within the Coastal Zone, including land acquisition, construction, and replacement.

The City has estimated the 502 lower-cost over-night lodging facilities existed in the City’s coastal zone as of May 1990. Notwithstanding the above, no more than 25% of these facilities may be removed from the coastal zone until or unless an equivalent number of such lodging facilities have been replaced within the City. Removal of lower-cost over-night lodging facilities shall not occur until after construction begins on replacement facilities.

Historically, the Commission has approved new hotel developments along the coastline because they are visitor-serving facilities. These hotels, however, are often exclusive because of their high room rates, particularly in recent years. Often, the Commission has required mitigation for the use of land that would have been available for lower-cost and visitor-serving facilities (e.g. 5-13-0717, Hermosa Beach; 5-14-1785, Newport Beach; NPB-MAJ-1-06A). The Commission has approved projects and LCP amendments that require that development of overnight accommodations provide facilities which serve the public with a range of incomes (A-5-DPT-17-0063, Dana Point); (5-18-0642, Sunset Beach); [LCP-5-SCL-16-0012-1 (San Clemente-2018 LUP update) HNB-MAJ-2-06 (Huntington

Beach- Timeshares); A-6-PSD-8-04/101 (San Diego-Lane Field); A-5-RPV-2-324 (Rancho Palos Verdes-Long Point); RDB-MAJ-2-08 (Redondo Beach); SBV-MAJ-2-08 (Ventura); 5-98-156- A17 (Long Beach-Pike Hotel); LOB-MAJ-1-10 (Long Beach-Golden Shore)]. If the development does not provide for a range of affordability on-site, the Commission has required off-site mitigation, such as payment of an in-lieu mitigation fee, to fund construction of lower-cost overnight accommodations such as hostels, RV parks, and campgrounds. As of October 2016, \$10,426,871 of in-lieu fees paid to the Commission had been spent on lower-cost accommodation projects and another \$13,715,887 was available.

As more high-cost hotels are developed, the remaining lower-cost to moderate-cost hotel accommodations in the coastal zone tend to be older structures that become less economically viable as time passes. Further, as more redevelopment occurs, the stock of lower-cost overnight accommodations tends to be reduced, since it is more lucrative for developers to replace these structures with higher-cost accommodations. Commission staff prepared a 2016 study of Low Cost Visitor Accommodations, which reviewed statewide data about overnight accommodations lost in the coastal zone since 1989. In its report to the Commission in November 2016, staff found that out of six “cost” categories ranging from “economy” to “luxury,” a total of 24,720 economy rooms were lost, compared to 11,247 rooms of the remaining five classes. Economy rooms have been lost over the same time period at over twice the rate of all other cost categories combined. Thus, all told, nearly 70% of all rooms that have been lost since 1989 have been economy rooms, whereas less than 10% of the rooms lost have been in the upscale and luxury categories, and less than 0.2% have been lost in the luxury category. Such trends have made it that much more difficult for lower-cost visitors to access the coast.

The statewide trend of losing lower cost accommodations extends into the Santa Monica Coastal Zone. In 1990, the City estimated that there were approximately 502 lower-cost overnight accommodations. In 2018, the City estimated that there were only 297 lower-cost overnight accommodations remaining. Policy 35 of the certified LUP states (in part):

New development shall not remove lower cost lodging facilities unless a finding of infeasibility is made. Where new development removes lower cost lodging facilities the feasibility of replacing the lower cost units on site shall be considered. If on site replacement is not feasible, then one-to-one replacement within the coastal zone shall be considered... The City has estimated that 502 lower cost overnight lodging facilities existed in the City’s Coastal Zone as of May 1990. Notwithstanding the above, no more than 25% of these facilities may be removed from the coastal zone until or unless an equivalent number of such lodging facilities have been replaced within the City. Removal of the lower cost overnight lodging facilities shall not occur until after construction begins on replacement facilities.

When the applicant demolished two lower-cost overnight facilities, of which the City of Santa Monica determined had provided 72 lower-cost rooms, and failed to replace the lower-cost rooms onsite, it had a significant impact on the availability of lower-cost visitor accommodations in Santa Monica, and single-handedly represents 35% of the lost low/moderate cost visitor accommodations between 1990 and 2018 (in excess of the 25% allowed to be lost without replacement pursuant to the LUP policy).

Although statewide demand for lower-cost accommodations in the coastal zone is difficult to quantify, there is no question that low-cost motels, camping, and hostel opportunities are in high demand in coastal areas, and that there is an on-going need to provide more lower-cost opportunities along California's coast. For example, the Santa Monica hostel peak season occupancy rate rose from 92% in 2013 to 97% in 2015, despite the yearly average overall occupancy of 85% remaining roughly even.

The reduction in low- and moderate cost overnight accommodations in the coastal zone is an environmental justice issue. The Commission's Environmental Justice Policy, adopted in March 2019, states "the conversion of lower-cost visitor-serving facilities to high-cost facilities is also a barrier to access for those with limited income, and contributes to increased coastal inequality." In light of the trend in the market to provide luxury hotels, as well as the demolition of existing lower-cost hotels and motels along the coast, it is becoming increasingly important to protect and provide lower-cost overnight accommodations in the coastal zone as required by Section 30213 of the Coastal Act. With far fewer low-cost lodging facilities, a large segment of the population will be effectively excluded from overnight stays at the coast. "Financial reasons" was listed as the number one barrier to staying overnight at the coast, as identified by respondents to a State Coastal Conservancy-commissioned survey in 2017. By forcing this economic group to lodge elsewhere (or to stay at home), there would be an adverse impact on the public's ability to access the beach and coastal recreational areas. Therefore, by protecting and providing low-cost lodging for the price-sensitive visitor, a broader segment of the population will have the opportunity to visit the coast.

In order to protect and provide for lower-cost visitor-serving facilities, the Commission has imposed in-lieu mitigation fees on development projects that remove existing facilities and/or propose only new high cost overnight accommodations, or change the land use to something other than overnight accommodations. By requiring such mitigation a method is provided to assure that at least some lower-cost overnight accommodations will be protected and/or provided.

Defining Lower-cost

In a constantly changing market, it sometimes can be difficult to define what price point constitutes low-cost and high-cost accommodations for a given area. In its previous actions, the Commission has addressed the issue of defining lower-cost and higher-cost hotels (Coastal Development Permit Nos. 5-04-291, 5-88-062, 5-84-866, 5-81-554, 5-94-172, 5-06-328, 5 A-253-80, and A-69-76, A-6-IMB-07-131, 3-07-002, 3-07-003). More recent Commission actions have found that on a case-by-case basis, it has been appropriate to apply a formula to understand lower- and higher-cost overnight accommodations for a specific part of the coast (3-17-0581, A-5-DPT-17-0063, 3-16-0287; 5-13-0717). The formula is based on California hotel and motel accommodations (single room, up to double occupancy), and does not incorporate hostels, RV parks, campgrounds or other alternative accommodations into the equation, as these facilities do not provide the same level of accommodation as hotels and motels. Hostels, RV parks and campgrounds tend to be inherently lower-cost, and are the type of facilities that a mitigation fee for the loss of existing lower-cost over-night accommodations or the failure to provide new lower-cost facilities would support.

The formula compares the average daily rate of lower-cost hotels in a specific coastal zone area (e.g., city or bay) with the average daily rates of hotels and motels across the entire State of

California. Under this formula, lower-cost is defined as the average room rate for all hotels within a specific area that have a room rate no higher than 25% less than the statewide average room rate.

To determine the statewide average daily room rate, the statewide average daily room rates collected monthly by Smith Travel Research were used, and are available on the California Travel and Tourism Commission's website: <http://www.industry.visitcalifornia.com>, under the heading "California Lodging Reports." Smith Travel Research data is widely used by public and private organizations.

The 2018 annual California statewide average daily room rate reported was \$168.04, and for the Los Angeles area the average daily room rate was \$180.16.³ The Commission's formula defines lower-cost accommodations as those charging approximately 25% less than the statewide average daily room rate, in this case \$127 and less ($\$168.04 - 25\%$), and higher-cost accommodations are defined as those hotels with daily room rates 25% higher than the statewide average, in this case \$210 and up per night ($\$168.04 + 25\%$), while values in-between are considered moderate cost.

The City of Santa Monica has average daily room rates and growth rates that are much higher than the statewide average and has exhibited higher occupancy levels than the Los Angeles and Orange County market areas.⁴ The City contains several luxury hotels with standard room rates in excess of \$400 a night. The report submitted by the applicant prepared by PKF Consulting states:

Although several notable luxury hotels have opened in Santa Monica, the supply of affordable lodging, especially in the Coastal Zone, has been limited. In addition to development of luxury hotels, other properties previously considered affordable have increased their rates significantly.

Because overnight rates are significantly higher in the Santa Monica beach area, average hotel rooms cost much more than the statewide average. A survey of 20 hotels and motels in the Santa Monica Coastal Zone showed that the average daily room rate is \$317 per night (it should be noted that this analysis did not include the rates of the popular Santa Monica Hostel). Rates of 25% more than the average in the area, or high cost, are over \$396 per night and rates 25% less than the average, or low cost, are less than \$238 per night.

The lowest overnight rates based on the survey of hotels in the Coastal Zone are between \$212 and \$228 per night (Bayside Hotel, Ocean Lodge Santa Monica Beach, Carmel by the Sea, Ocean Luxury Lofts, and Car Mar), which are not considered low to moderate cost compared to the statewide average of \$168.04. All of the hotels charge more than the statewide average with a mid-range of \$249 to \$319 per night (Sea Blue, Courtyard Santa Monica, Wyndham Santa Monica, Ocean View, DoubleTree, Hampton Inn, and Le Meridien Delfina). The higher end hotels charge between \$350 and \$640 per night (The Georgian, Fairmount Miramar, Huntley Santa Monica Beach, Shangri-La, Pailhouse, Loews, and Shutters).⁵

³ Source: 2019 STR Inc. <https://industry.visitcalifornia.com/Research/Lodging-Report?region=Los Angeles County>

⁴ Source: *Analysis of Options for the Travelodge and Pacific Sands Motels* prepared by PKF Consulting, June 2005.

⁵ AAA website: www.calif.aaa.com/home/travel.html

The City of Santa Monica in 1990 recognized the problem of the loss of affordable overnight accommodations and the need to provide overnight accommodations for all economic sectors and adopted ordinance No. 1516 to establish a mitigation fee for the removal of low-cost lodging accommodations in the Santa Monica Coastal Zone (see [Exhibit 3](#)). The City found that:

(a)... there has been a significant shift in the development of visitor accommodations within the Santa Monica Coastal Zone from low cost lodging accommodations to luxury lodging accommodations...

(b) The City of Santa Monica has experienced a significant reduction in the number of low cost lodging accommodations due to demolition and conversion of existing units and construction of office development and luxury lodging accommodations...

(d) The demolition of low cost lodging accommodations in combination with the replacement by, and new construction of, luxury lodging accommodations has altered the balance and has contributed to the scarcity of affordable visitor accommodations in the City.

(h) New commercial and new hostel and motel development which requires demolition of existing low cost lodging accommodations is generating a reduction in the City's affordable visitor accommodations, and increases the imbalance between coastal activities and affordable visitor accommodations in the City.

The City's finding further state that the purpose of the ordinance is to:

(g)...reduce the negative impact on affordable visitor accommodations caused by new commercial and new hotel and motel development which requires demolition of existing visitor accommodations.

The amount of the fee is based on the reasonable costs of constructing replacement units within the City of Santa Monica. As set out in the ordinance the required fee is as follows:

(b) The amount of fee required pursuant to this Section shall be based on the number of units to be removed. For each low cost-lodging unit removed, a fee of Eight Thousand Dollars (\$8,000.00) shall be required.

(c) Any fee payment required pursuant to this Section shall be adjusted for inflation by the percentage change in the Consumer Price Index ("CPI") multiplied by .65 plus the percentage change in land cost multiplied by .35 between the date of adoption of this Ordinance through the month in which payment is made.

Before the adoption of the above ordinance, the Commission approved a number of Coastal Development Permits for projects that included the removal of lower-cost lodging facilities. Mitigation fees required through Commission approval of A-49-79 (Interstate Marina), A-207-79 (Marina Plaza), and CDP No. 5-83-560 (City Equities Corp.) were used to construct the Santa Monica Hostel. Shortly after, CDP Nos. 5-88-062 (CWD Taiyo), 5-89-941 (Maguire Thomas Partners Dev.), 5-89-240 (Michael Const. Ent.), and 5-99-169 (Maguire) required mitigation fees that were used to fund the 60-

bed expansion of the Santa Monica Hostel (CDP No. 5-86-175). Some remaining funds are held by the City of Santa Monica for future lower-cost accommodations and possible expansions to the hostel.

In 1990, the City of Santa Monica passed Ordinance 1516 in an effort to establish an in-lieu fee program for the removal of lower-cost overnight accommodations and establish a formula for the amount per unit required. Although the Ordinance was not certified by the Commission as part of the LUP, it is consistent with LUP policy #35, which allowed the City to adopt a program to accept in-lieu fees that would be used to provide new lower-cost overnight accommodations in the Coastal Zone. The formula in the ordinance was used in the approval of CDP No. 5-90-928 (Maguire Thomas Partners). The formula and program has only been used for three hotel projects since 1990 (CDP Nos. 5-89-941; 5-89-240; 5-99-169); mitigation amounts ranged from \$8,000 to approximately \$8,515 per unit. These amounts were accepted by the Commission at the time because no other information had been presented that represented the true cost of overnight accommodation development in the coastal zone. Since then, the Commission has received reports with detailed information concerning the cost of development of overnight accommodations, specifically, low-cost overnight accommodations.

Since 2007, the Commission has acted upon several permits and plans using a similar approach to mitigation fees for loss of lower-cost accommodations (6-92-203-A4/KSL, A-6-ENC-07-51, Oceanside LCPA 1-07, Redondo Beach LCPA 2-08, A-6- PSD-08-004, 5-13-0717, Newport Beach LCPA 1-07, San Buenaventura LCPA 1-08 and 2-08), requiring the payment of an in-lieu fee of \$30,000 per unit (adjusted for inflation) to mitigate for the loss of lower-cost overnight accommodations.

Following questions regarding the adequacy of the in-lieu fee at Commission hearings, Hostelling International (HI) provided a report in 2014 representing the true construction costs of a new hostel ([Exhibit 5](#)). The 2014 report stated that new construction costs \$42,120 per bed without the cost of land acquisition. The report assumed that at \$100/square foot of land purchased (at 120 sq. ft. per bed), the total cost per bed would be \$54,120.

While this information was reported by HI, it is important to note that in-lieu mitigation fees are accepted and used by many public and non-profit organizations. The in-lieu fees provide funding to public agencies and non-profit organizations including California Department of Parks and Recreation (State Parks) and non-profit concessionaires, various counties and cities across California, as well as HI, for the provision of lower-cost overnight visitor accommodations within or in close proximity to the coastal zone, including but not limited to lower-cost motels, hostel accommodations, campgrounds, cabins, or lower-cost hotel or motel accommodations. An independent consultant was hired by the Commission to verify the report's figures. In 2015, the Commission's consultant concluded that \$42,120 per bed for new construction of hostels is an accurate figure and can be applied statewide, but concluded that assuming \$100/square foot of land is unrealistic and inadequate ([Exhibit 6](#)). The recommendation was to separate the two figures, based on the specifics of the project. The land costs should be factored into the equation based on the average land cost per square foot in the area of the impact and added to the construction cost of \$42,120 per bed.

Although the Commission has previously mitigated the loss of lower-cost existing hotel rooms with construction of new hostel beds at a rate of one-to-one, this approach may not adequately offset the project's impacts. A hotel or motel room (250 sq. ft. average) represents a much larger space than a single hostel bed (120 sq. ft. average). Therefore, the capacity of the mitigation is significantly less than the project's impact. In addition, while some visitors may be willing to stay in the type of shared

accommodations provided by hostels, some may choose not to stay in such an environment. The replacement of lower-cost hotel or motel rooms with hostel beds polarizes the overnight visitor-serving accommodation types remaining into two options: high-cost hotel rooms or hostels beds in shared rooms, which may inhibit some members of the public to overnight access to the coast. The mid-range affordable overnight options are effectively eliminated by this replacement method. The same principal is true for mitigating the loss of lower-cost hotel rooms with RV parks or campgrounds.

The City of Santa Monica approved the subject project locally in 2008. At that time the proposed overnight rate was \$164 per night, which the City determined to be lower to moderately priced, and the project was conditioned to provide mitigation for the lost lower-cost rooms in the event that overnight rates increased in the future, in order to provide affordable lodging opportunities elsewhere in the City. In 2013, the City informed the hotel operator that the rates were in excess of the low to moderately priced rates and that mitigation would be required for the 72 lower-cost rooms of the 87 that were demolished, according to the conditions of approval (local condition No. 8).⁶

While the ordinance formula may suffice for local conditions of approval, the proposed project's impacts on existing lower-cost overnight accommodations in the coastal zone is subject to Commission review to ensure that the applicant provides proper mitigation for those impacts. Based on subsequent estimates by HI and a report by an independent consultant, staff concludes that the mitigation paid to the City of Santa Monica was grossly insufficient. The City did not use the most recent data for determining the actual cost to mitigate for the loss of lower-cost rooms at the project site. Instead, it accepted \$16,829 per room (for 72 rooms totaling \$1,211,688) based on the existing mitigation program, and informed the applicant that the in-lieu mitigation fee will be subject to review and approval by the Coastal Commission ([Exhibit 4](#)). Not only is the formula of Ordinance 1516 outdated, but the City of Santa Monica does not have a Certified LCP, therefore the in-lieu mitigation fee or program assessed for the project is not certified and does not represent compliance with Chapter 3 policies of the Coastal Act.

In 2013 the applicant provided a study *Analysis of Mitigation Fees* to the City of Santa Monica evaluating the mitigation rate based on the formula described in Ordinance 1516.⁷ While staff does not concur with the calculations provided by the study, staff does recommend that the \$16,829 per low-cost room removed (for 72 rooms) paid to the City may be considered as part of the total in-lieu mitigation fee paid in association with this project. The City's original staff report stated:

In the event that any of these rooms cease to be low cost lodging, including if the room has become higher cost lodging or converted to another use, the applicant shall pay a mitigation fee for that room(s) in accordance with Ordinance 1516 or any successor ordinance, based on the fee in effect at the time of payment.

The applicant paid an in-lieu fee for 72 rooms directly to the City, in accordance with a condition of the City's local permit. Therefore, staff recommends that the Commission accept the in-lieu fees already paid to the City as partial mitigation for the impacts to low cost accommodations.

Mitigation

⁶ City of Santa Monica Planning Commission Report: Item 10 A, March 19, 2008

⁷ *Analysis of Mitigation Fees* by Buss-Shelger Associates, September 2013.

The applicant has proposed a mitigation package that includes a 14 room lower-cost hostel onsite, and payment of an in-lieu fee, and a program to offer groups of disadvantaged youths an opportunity to visit the coast for free up to 12 nights per year. In addition, the applicant has chosen to provide 14 rooms within the existing hotel at lower cost rates to groups of public servants and, while not part of the proposed mitigation package, does provide for lower-cost accommodations to some targeted groups until such a time as the hostel is constructed and open to the public at lower-cost rates. The proposal for the 14 interim reduced room rates does benefit the strained supply of lower-cost hotel rooms in the Coastal Zone of Santa Monica temporarily.

Mitigation Fee

The cost of replacing lower-cost hotel rooms with new lower-cost hotel/motel rooms is significantly higher than replacing them with hostel beds. In 2015, the Commission's consultant estimated a construction cost of \$100,000 per motel room, with each motel room requiring 250 square feet of land area ([Exhibit 6](#)). The consultant reported that the average cost per square foot of land in the Coastal zone of Santa Monica was \$293 in 2013, and was much higher in 2015, at \$578. As of February 2019, the average listing cost per square foot of vacant parcels listed on a local real estate listing aggregator was \$374.47; notably no vacant land was on the market in the coastal zone.⁸ The Commission's consultant recommended that land costs be considered separately when determining mitigation costs. A mitigation fee including the cost of land is unnecessary because the mitigation funds proposed by the applicant would be directed to State Parks, State Coastal Conservancy, or non-profit entities which have land available for providing lower-cost visitor amenities in the Southern California coastal zone, with the intention that such projects do not require the purchase of land. Over the past several years, State Parks has engaged with the Parks Forward Initiative, which was created to "develop a new vision and long-term plan for a financially sustainable State Park System that meets the needs of California's growing population and changing population." A large part of the Parks Forward Initiative ultimately focused on providing alternative camping, such as cabins and tent cabins, as a way to reach a broader segment of the population, including those who are not interested in or able to camp in tents or RVs. Therefore, State Parks, with the Parks Forward Initiative, and the Coastal Commission, with the lower-cost overnight accommodations program, are well aligned to partner on providing lower-cost overnight accommodations. In December 2017, the Commission signed a Memorandum of Understanding with the State Parks to streamline use of in-lieu funds to develop lower-cost overnight accommodations on State Parks property.

Based on the consultant's recommendation that the Commission separate construction costs from land costs, and the Commission's adopted finding in denying 5-15-0030 that \$42,120 was severely insufficient mitigation to provide adequate replacement accommodations, the Commission requires that the lost low-cost motel rooms be mitigated with an amount that would reflect the cost of their replacement, which the most recent evidence indicates is \$100,000 per room.

The \$100,000 per room in lieu-fee is appropriate based on the consultant's report. The consultant states that "motels require approximately twice the gross square footage per person than hostels" and recommends that that the HI estimate for construction costs of a hostel bed, which was \$42,120 per bed (or \$350/sq. ft.) in 2015 dollars, be used as a guide for construction costs. HI's study estimates that each hostel bed requires 120 sq. ft. Since HI's cost estimate is based on cost per square footage, and the consultant also provides the relationship between a hostel bed and hotel or

⁸ Based on listings posted on [realtor.com](https://www.realtor.com) as of February 19, 2019.

motel room in square footage (ie. twice the amount), the guidance for estimating the cost of construction for a hotel or motel room can be calculated as 2 x \$42,120 or \$84,240 per room. In order to account for inflation, the consultant noted that the Consumer Price Index, which the Commission has used in the past, is adequate, but that the Turner Building Cost Index was more specific to the construction industry. Using the Turner Building Cost Index ([Exhibit 7](#)) for the Fourth Quarter of 2018, \$84,240 worth of construction costs in 2015 would be \$100,052 today. Therefore, the consultant's recommendation that the cost of replacement is \$100,000 per room is well formed and validated by methodology recommended in the report.

In its November 2016 report on Low Cost Visitor Accommodations, Commission staff's recommendation was to "require new high cost hotels to provide at least 25% of new units as lower-cost accommodations (i.e., if there are 100 high cost units in a new hotel, the developer needs to provide for at least 25 lower-cost units on or off-site and/or a fee equivalent to providing 25 such units) and 100% replacement for each lost lower-cost unit." Past Commission action has been consistent with this recommendation, and has found in past actions that the loss of existing, lower-cost hotel/motel units should be mitigated at a 1:1 ratio lost to new units provided. For higher cost overnight visitor accommodations where lower-cost alternatives are not existing onsite, a mitigation fee is required for 25% of the new high cost rooms constructed. For higher cost overnight visitor accommodation where lower-cost alternatives were lost, the Commission has required mitigation for 25% of new rooms created and 100% of existing rooms lost. For example, in 2009, the Commission approved an amendment for the City of Newport Beach requiring in-lieu fees to provide for 100% of the number of lower-cost units that are lost, and 25% of the number of new high cost units that are constructed. This approach was also used in CDP A-5-LGB-14-0034 for the remodel of a hotel in Laguna Beach and in CDP 5-13-0717 for the construction of a new hotel in Hermosa Beach.

Requiring at least 25% of new high-cost overnight accommodations, to be offered at lower-cost rates, or in this case an in-lieu fee, helps provide a range of opportunities for visitors of all incomes. Although the Commission could, and sometimes has, used a different percentage it has most often used the 25% figure, which is similar to requirements related to affordable housing that the Commission used when the Coastal Act required it to protect and provide for affordable housing. Aiming to ensure that 25% of new overnight accommodations in the coastal zone are lower-cost is also logical from a policy perspective. Data from STR demonstrates that 25% of hotel rooms in the inland and coastal areas of coastal counties are lower-cost, "economy" rooms. Seeking to ensure that new hotels in the coastal zone provide at least a similar percentage of lower-cost accommodations would help maximize public access and recreational opportunities as required by the Coastal Act. This approach is consistent with the manner in which many jurisdictions require new development to pay for or provide sufficient services to maintain existing levels of those services – e.g., new development must maintain existing levels of park acreage per resident.

The requirement for 25% of the number in excess of rooms being lost is also consistent with past Commission actions (Redondo Beach LCPA 2-08, Newport Beach LCPA 1-07, San Buenaventura LCPA 1-08 and 2-08), where mitigation for both the loss of low cost units and their replacement with high cost units has been imposed:

*If the proposed demolition of existing lower cost overnight visitor accommodations also includes redevelopment of the site with high-cost overnight visitor accommodations or limited use overnight visitor accommodations, **the fee shall also apply to 25% of the number of high cost rooms/units in excess of the***

number of rooms/units being lost. The in-lieu fee shall be required as a condition of approval of a coastal development permit, in order to provide significant funding to support the establishment of lower cost overnight visitor accommodations within the coastal zone.

*An in-lieu fee shall be required for new development of overnight visitor accommodations in the coastal zone that are not low or moderate cost facilities. These in-lieu fee(s) shall be required as a condition of approval of a coastal development permit, in order to provide significant funding to support the establishment of lower cost overnight visitor accommodations within the coastal area of Los Angeles County, and preferably within the City of Redondo Beach's coastal zone. **The fee shall apply to 25% of the total number of proposed units that are high-cost overnight visitor accommodations or limited use overnight visitor accommodations.***

*Where a proposed development includes both demolition of existing low cost overnight visitor accommodations and their replacement with high cost overnight visitor accommodations, **the fee shall also apply to the 25% of the number of high cost rooms/units in excess of the number being lost.***

The City of Santa Monica determined that 72 of the 87 rooms demolished were low-cost. Therefore, 100% of the 72 rooms demolished require mitigation at a rate of 1:1. The lower-cost rooms were demolished without a Coastal Development Permit and were not replaced elsewhere in the Coastal Zone. The in-lieu mitigation fee allows for these low-cost rooms to be replaced. Thus, the project is conditioned to require the applicant to pay mitigation for 72 lower-cost hotel rooms demolished at \$100,000 per room for a total of: \$7,200,000.

As discussed above, an in-lieu fee requirement shall apply to 25% of the 164 high-cost rooms constructed, in excess of the rooms lost, totaling 23 rooms ($164 - 72 = 92 \times 25\% = 23$ rooms). Thus, the project is conditioned to require mitigation for 25% of the high-cost rooms in excess of the rooms lost, which is 23 rooms at \$100,000 per room, for a total of \$2,300,000. Together, the project requires in-lieu mitigation fees for a total of 95 rooms, totaling \$9,500,000 ($\$7,200,000 + \$2,300,000 = \$9,500,000$). The applicant has already paid \$1,211,688 directly to the City of Santa Monica in 2013 for the in-lieu mitigation required under the City's special conditions of approval. While the City of Santa Monica required that mitigation independently of the Commission's permit conditions, the Commission accepts these funds as an "offset" to the total balance of the mitigation required only because the use of the funds under the City's ordinance is consistent with the use intent and purpose of the funds to provide for lower-cost overnight visitor accommodations elsewhere in the City. The remaining in-lieu fee required to offset the impacts to lower-cost overnight visitor-serving facilities caused by the development, minus the amount paid according to the City's condition is: \$8,288,312 ($\$9,500,000 - \$1,211,688$).

Lower-cost Hostel

On May 9, 2019 Commissioners voted to continue the permit item to a later hearing, directing the applicant to work with staff to identify ways to provide mitigation through the provision of on-site accommodations. Commission staff met with the applicants on multiple occasions, and suggested that the applicant consider providing the 72 (lower cost rooms lost) or the 95 (72 lower cost rooms lost plus 25% of the new high cost rooms constructed) required lower-cost rooms on-site in the existing hotel and suggested providing the rooms within the rear tower of the hotel. The applicant asserted that it would not be economically feasible to provide 72 or 95 lower-cost rooms onsite, and

instead chose to pursue the current proposal of an on-site hostel and mitigation fee. The applicant has proposed to construct a 14 room hostel, with 34 beds total to be offered to the general public at lower-cost rates within the vacant retail space on the ground floor.

Section 30213 states that lower-cost visitor and recreational facilities shall be protected, encouraged, and where feasible, provided. After the Commission continued the hearing, staff requested that the applicant submit a feasibility analysis to determine what, if any, number of rooms within the existing hotel could be offered at lower-cost rates. The applicant's feasibility analysis was an accounting sheet that summarized the financial constraints of reducing room rates, and was not a feasibility analysis. The accounting sheet indicated there were several constraints⁹ on the possibility of reducing the room rates and that the hotel is already operating at a break-even point. Notably, the accounting sheet did not include any other sources of revenue the hotel may have such as the car rental service leasing a portion of the parking garage, or the sales or rental income from the onsite restaurant. Moreover, the applicant's decision to unlawfully construct a luxury hotel that requires high-cost rates in order to be economically profitable is not a justification for failing to provide lower-cost accommodations as required by the Coastal Act. It is not clear from the submitted information if it is actually infeasible to provide the 72 rooms (lower cost rooms lost) or the 95 (72 lower cost rooms lost plus 25% of the new high cost rooms constructed) rooms onsite within the existing hotel. The information that staff was able to ascertain from the accounting sheet is that the applicant would likely be able to provide approximately 10 rooms within the existing hotel at lower-cost rates without suffering any loss of revenue.

Subsequently, the applicant proposed to construct a 14-room hostel as permanent onsite lower-cost accommodations to further mitigate the loss of lower-cost accommodations, in addition to the full in lieu fee discussed above. The proposed lower-cost hostel would be operated in conjunction with the hotel and located at 1530 2nd Street along with a street-front public café. The hostel and café are consistent with the zoning of 2nd Street-fronting parcel, which is C3-Downtown Commercial, which allows general retail, office, residential, hotel, and visitor-serving uses. As noted earlier, the Commission previously denied a CDP application for this project that included construction of an *off-site* hostel, finding the hostel to be insufficient mitigation for the loss of on-site hotel/motel rooms. In the coastal zone, where proximity to the ocean is correlated with prices (for land, services, etc.), an off-site replacement project would almost certainly be located further from the beach. However, the proposed project avoids that problem by providing lower-cost accommodations on-site. Even on-site, however, the proposed hostel will not provide true 1:1 replacement for the lost motel rooms, for the reasons discussed above. However, together with the larger mitigation package proposed by the applicant that also includes a mitigation fee for all of the lost lower-cost units, the addition of an onsite hostel providing 14 hostel rooms containing 34 beds is an improvement over the mitigation provided in the prior proposal reviewed by the Commission in May 2019, and supports a finding that the project is consistent with Section 30213.

In terms of cost, the per-night rates for the hostel are proposed to be charged by bed, a standard practice in hostel operations, and to charge \$52 per *bed*. When the Commission approved a similar development (the Wave Resort, Dana Point) that combined high cost accommodations and a lower-cost hostel onsite, the Commission found that the rate of \$51 per bed in 2018 was a lower-cost rate, which was based on Coastal Commission guidance (CCC public workshop staff report dated October 26, 2016) and utilizing the methodology outlined in the workshop. The proposed hostel bed

⁹ Constraints were primarily shown to be the payment of a monthly rent from Sunshine Enterprises to Sea and Sand LLC, a sister company in the amount of \$650,000 per month pursuant to a lease agreement. The applicant refused to provide any additional information regarding the lease arrangement when requested by staff.

rate of \$52 per night is also consistent with that methodology and is considered a lower-cost rate. The applicant has proposed to adjust the rate according to CPI once every three years.

Overnight Youth Lodging Program

In order to support the effort to provide lower-cost overnight accommodations on-site, the applicant proposes to organize an overnight program for underserved youths. The applicant has proposed an overnight youth lodging program which would provide overnight stays in the hostel for small youth groups from underserved communities, subject to the review and approval of the Executive Director, including but not limited to the Bay Foundation, Community Nature Connection, boys and girls clubs, and the like, for approximately 40 youths and chaperones in the onsite hostel at least 12 times annually. The program would provide all the rooms in the onsite hostel to groups for use by children or students and their chaperones free of charge. The program could serve as many as 400 or 500 underserved youths per year.

In recent action (CDP 5-14-1785) the Commission has accepted an educational program (Fostering interest in Nature (FiiN) Program, City of Newport Beach) for underserved youth with an overnight accommodation component as an appropriate extension to lower-cost overnight accommodations, which provides for free overnight accommodations to inland and underserved students and youth that are otherwise unable to access overnight accommodations along the coast. The program is offered at no cost to the students and usually offers 2 or 3 night stays with some coastal-related outdoor education programming during the day.

Also in recent action (CDP 5-16-0552) the Commission approved an overnight program proposed by the Crystal Cove Alliance, “Coastal Dynamics Education Program” which was modeled after the City of Newport Beach’s program. It targets students from inland areas and Title 1 schools (high schools and junior highs) and youth served by non-profit organizations for disadvantaged and low income families and will provide free overnight accommodations in the onsite Dorm, once renovations are complete, offering 11 beds up to 36 nights per year, throughout the year. Approximately 350 students will be served by the program each year, but no less than 125 students per year.

While the proposed Youth Lodging Program would remove lower-cost hostel rooms available to the general public for 12 nights a year, it would provide a valuable program for disadvantaged students who may have limited opportunities for coastal access and overnight stays. In order to ensure the program is utilized by disadvantaged groups most in need, **Special Condition 10** requires a Marketing and Engagement Program that would target disadvantaged communities and groups. The lower-cost hostel and Youth Lodging Program, together with the Marketing and Engagement Program, will facilitate compliance with the Coastal Act’s lower-cost accommodations and public access policies while also advancing important environmental justice goals embodied in the Commission’s recently adopted Environmental Justice Policy. These aspects of the applicant’s proposed mitigation further support a finding that the project is consistent with Section 30213 of the Coastal Act.

Lower-cost Interim Rooms

While the above components of the applicant’s mitigation package, including an in lieu fee, permanent onsite lower-cost accommodations in the form of a 14 room hostel, as well as a Youth Lodging Program, are intended to mitigate the impacts to lower-cost accommodations resulting from the applicant’s proposal to replace 72 lower-cost rooms with a high-cost, luxury hotel, the implementation of the applicant’s proposed mitigation will take time and will not immediately be available to the public. Therefore, the applicant has proposed to provide 14 existing hotel rooms

at lower-cost rates in the interim period between issuance of the CDP and the opening of the 14 bed hostel. The lower-cost rooms would be offered to all public servants, including (but not limited to) military, police, fire fighters, teachers, government employees and their families at \$127 per night. If the rooms have not been booked at least 30 days prior, the general public may also have the option to book the rooms, but at a moderate-rate of approximately \$200 per night (moderate rates range from \$128-\$210 per night in Santa Monica, with a mid-point of \$189). The moderate rate provided to the general public is significantly less than rates currently charged for rooms at this hotel (between \$309 and \$812 per night).

The interim room aspect of the applicant's proposal, while not a perfect or long-term solution to the failure to provide lower-cost accommodations, furthers the purposes of Section 30213 more generally by providing some lower-cost accommodations in the period of time until the applicant's proposed lower-cost hostel is constructed and operational and made available to the general public. The proposal is consistent with 30213 because it does not appear the public servants category was intended as a method to determine low or moderate income groups per se, although some members of the groups may qualify; in any event, the lower-cost rooms will benefit the supply of lower-cost rooms in Santa Monica more generally.

Conclusion

Section 30213 states that lower cost visitor and recreational facilities shall be protected, encouraged, and where feasible, provided. For the reasons discussed above, demolition of the two lower-cost motels that previously existed at this site, and construction of the proposed high-cost Shore Hotel, could not be found consistent with Section 30213. However, after working with Commission staff over the past several months, the applicant has proposed a mitigation package to offset the loss of the lower-cost motel rooms that includes several important components, including payment of an in-lieu mitigation fee equivalent to replacing 95 lower-cost motel rooms, 14 new lower-cost hostel rooms to be constructed and operated onsite in perpetuity, and development of a youth lodging program to provide lower cost accommodations to disadvantaged youths that might not otherwise have the ability to access the coast due to the high costs of available accommodations. As stated previously, the Commission has accepted mitigation for lower cost overnight accommodations in past Commission actions as consistent with Section 30213. In terms of consistency with the LUP, the standard of review is Chapter 3 of the Coastal Act, and the LUP may be used as guidance.

In order to be consistent with Section 30213, the Commission imposes **Special Condition 7** which requires the applicant to deposit the remaining in-lieu mitigation fee (totaling \$8,288,312) into an interest-bearing account within 60 days of Commission action. The in-lieu fee shall be used to provide funding to public agencies or non-profit organizations for the provision of lower-cost overnight visitor accommodations within or in close proximity to the coastal zone, including but not limited to low cost hotel or motel accommodations, hostel accommodations, campground accommodations, or cabins, with priority given to the development of lower-cost hotel/motels. The purpose of this condition is to ensure the provision of lower-cost overnight visitor-serving accommodations, ideally ones similar to those lost (here, motel rooms), as in-kind replacement is the best way to ensure that "lower cost visitor and recreational facilities" are protected, as required by Section 30213 of the Coastal Act. As such, motels, hotels, hostels or cabins, which can be forms of lower-cost overnight visitor-serving accommodations that may be provided pursuant to Special Condition 7, are the preferred use for the mitigation funds. The in-lieu fee is necessary to mitigate adverse impacts on lower-cost overnight accommodations in the Santa Monica shoreline area. Potential projects to accept the mitigation fees would include lower-cost

motel/hotel accommodations, such as the Topanga Hotel (owned by the California Department of Recreation) near Malibu, or other potential projects in partnership with the Mountains Recreation and Conservation Authority (MRCA) in the Malibu area. The California Coastal Conservancy recently published a list of priority projects to be developed with lower-cost overnight accommodations that include a number of potential projects in the region of the area of impact in Santa Monica.

Special Condition 8 memorializes the applicant's proposal to construct a 14-room lower-cost hostel onsite, within 2 years of Commission action, as well as implementation of the Youth Lodging Program for disadvantaged youth. **Special Condition 10** requires a robust marketing and outreach program to be implemented to ensure that underserved communities are made aware of the resource and utilize the lower-cost rooms to the maximum extent feasible. **Special Condition 9** memorializes the applicant's proposal to provide 14 lower-cost rooms within the existing hotel in the interim period until the hostel can begin operations, and lays out additional steps to help ensure that the interim measure is effective such as advertising its availability to targeted groups and requires that the rooms be offered indefinitely until the hostel is completed and open to the public.

As conditioned, the project is consistent with Section 30213 of the Coastal Act.

C. UNPERMITTED DEVELOPMENT

The demolition of two lower cost motels and the construction of a self-described "luxury boutique hotel" in their place constitute development and the development occurred without a coastal development permit. Any non-exempt development activity, which is the case here, conducted in the Coastal Zone without a valid coastal development permit constitutes a violation of the Coastal Act.

When Commission staff learned that the demolition and replacement project described above had gone forward without a coastal development permit, Commission staff sent the applicant a Notice of Violation letter in January 2014. In an attempt to address the unpermitted development and to avoid additional potential penalties going forward, staff directed the applicant to seek after-the-fact authorization of the development from the Commission, which would include provision of all legally required mitigation for loss of affordable accommodation. Subsequent to the 2014 Notice of Violation letter, in January 2015, the applicant applied to the Commission for a coastal development permit to obtain after-the-fact approval of the demolition and the creation of the luxury boutique hotel that it had constructed on the site. On September 9, 2015, the Commission denied the application due, in part, to the Commission finding that the project as proposed would be inconsistent with Section 30213, as it did not protect or provide for lower cost visitor accommodation and did not provide sufficient mitigation for loss of affordable accommodations resulting from the demolition of the two pre-existing motels.

The applicant then challenged the Commission's denial of the project by suing the Commission. The Los Angeles County Superior Court found in favor of the Commission, noting that the Commission had properly denied the project due to the project's failure to protect or to provide lower cost visitor accommodations or to provide an adequate mitigation fee, in other words, due to its inconsistency with Section 30213. The applicant appealed the superior court's decision, and in March 2019, the Court of Appeal affirmed the trial court's decision upholding the Commission's decision to deny the coastal development permit as inconsistent with the Coastal Act.

Discussions among the applicant and Commission staff culminated in the Commission's issuance of Consent Agreement No. CCC-19-CD-01/AP-02. Pursuant to the terms of the Consent Agreement, the applicant agreed to stop all unpermitted development, in part by obtaining and complying with a coastal development permit for the Shore Hotel or ceasing operations if it fails to secure such a permit. In order to facilitate implementation of this requirement of the Consent Agreement, in August of 2018, the applicant submitted CDP application No. 5-18-0872, which requests after-the-fact authorization of the existing Shore Hotel. Through the Consent Agreement, the applicant has agreed to abide by CDP No. 5-18-0872, if it is approved as recommended by Commission staff. Nothing in the Consent Agreement limits the discretion of the Commission in acting on CDP No. 5-18-0872. Neither is the Consent Agreement intended to provide any assurance of the Commission's approval of any future or pending application(s) by the applicant for coastal development permits or coastal development permit amendments, or any other type of permit. If the applicant does not obtain a coastal development permit for the Shore Hotel by a deadline established by Consent Agreement, they will cease operating the Shore Hotel per the terms of the Consent Agreement, though they do retain the right to challenge any denial of this new application.

In addition to agreeing to refrain from any unpermitted development in the future per the terms of the Consent Agreement and, as described above, to obtain the necessary coastal development permit for the Shore Hotel, through the Consent Agreement, the applicant agreed to resolve its liability for the past Coastal Act violation matters addressed herein, including resolving civil liability under Coastal Act Sections 30820, 30821 and 30822, by paying a \$15,581,000 penalty to the Violation Remediation Account of the California State Coastal Conservancy Fund. The applicant paid the full amount of the penalty into the Violation Remediation Account in August 2019.

Although unpermitted development has taken place prior to the submission of this permit application, consideration of this application by the Commission has been based solely upon the Chapter Three policies of the Coastal Act. Review of this permit application does not constitute a waiver of any legal action with regard to the violations (or any other violations) nor does it constitute an implied statement of the Commission's position regarding the legality of development, other than the development addressed herein, undertaken on the site without a coastal development permit. Approval of this CDP 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 CDP, the Coastal Act, and the Consent Agreement, and may result in institution of enforcement action under the provisions of Chapter 9 of the Coastal Act and the Consent Agreement.

D. PARKING AND TRANSPORTATION

Section 30252(4) of the Coastal Act states, in relevant part:

The location and amount of new development should maintain and enhance public access to the coast by ... (1) facilitating the provision or extension of transit service (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation.

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

New development shall do all of the following:

(d) Minimize energy consumption and vehicle miles traveled.

The Commission has consistently found that a direct relationship exists between the provision of adequate parking and the availability of public access to the coast. Section 30252 of the Coastal Act requires that new development should maintain and enhance public access to the coast by facilitating the provision of transit service and providing adequate parking facilities. Further, section 30253(d) of the Coastal Act requires that new development minimize energy consumption and vehicle miles traveled. Therefore, in order to conform to the requirements of the Coastal Act, the proposed project must provide adequate parking in order not to negatively impact parking and coastal access and provide measures to minimize energy consumption and vehicle miles traveled and facilitate the provision of transit service.

The proposed project will provide a total of 284 parking spaces within a subterranean parking garage. In the findings for CDP 5-15-0030, the total parking requirement for the 164-room hotel, with 750 square foot breakfast/meeting room, and approximately 1,470 square feet of restaurant space, under the Commission parking standards that have been applied to similar hotel projects and restaurant uses, was 138 spaces. The current application also includes a proposed 14-room hostel and 562 square foot café, which would require 15 spaces based on prior Commission action on parking standards. In addition, the current application proposed the conversion of 860 square feet of breakfast space on the ground floor of the hotel to a restaurant with bar, a 20-car car rental facility retail space, and monthly contract parkers. The new restaurant fronting Second Street has 1,960 square feet of service area. The ground floor hotel restaurant with bar has 600 square feet of service area. Based on parking standards the Commission has applied to similar restaurant uses in the past, the new restaurant uses together require approximately 12 spaces. The car rental facility is proposed to occupy 20 spaces. Therefore, the total number of parking spaces required for the entire development, as proposed, is 224 parking spaces. The proposed project, based on Commission parking standards, provides the required parking plus a surplus of 60 parking spaces. The amount of monthly parking should not be greater than the surplus, so as to avoid impacts to public parking elsewhere in the area. Any surplus should be offered to the general public, so as to increase visitor-serving opportunities in the area and decrease the constraints of public parking opportunities in the area.

In 2015, the onsite restaurant directed restaurant visitors to park in the City of Santa Monica's Municipal Structure #8 located on Second St. before 5 pm, and after 5pm to valet their cars for a \$7 flat-rate at the Shore Hotel. Visitors had not been directed to park in the Shore Hotel parking structure before 5pm due to the high cost. Today, restaurant-goers are not informed of the onsite parking at all, and are simply directed to park at Municipal Structure #8.¹⁰ The restaurant and retail tenants of the site do not contribute to the City's downtown parking assessment district, so hotel guests and associated retail and restaurant visitors should not be directed to park in public parking structures provided by the assessment district.

Special Condition 6 requires that 284 parking spaces be provided and maintained on the site to serve the hotel, 4,776 square feet of combined restaurant space, and accessory uses. A Parking Implementation Plan outlining how the hotel's 284 parking spaces shall be provided and maintained onsite to serve the hotel, commercial, restaurant, car rental facility, ADA requirements and electric vehicle charging as described in this permit must be submitted within 90 days of Commission approval of this permit. The Parking Implementation Plan must indicate how

¹⁰ As of February 6, 2019. <https://www.blueplatetaco.com/contact>

conditions of this permit will be met onsite. Any proposed changes, including but not limited to, change in the number of parking spaces, hotel rooms or operation of the hotel, or change in use shall be submitted to the Executive Director for a determination as to whether an amendment to this permit is legally required.

Further, to minimize energy consumption and vehicle miles traveled (VMTs) and to facilitate the provision of transit service, **Special Condition 6** also requires the applicant to submit within 90 days of Commission approval a Transportation Demand Management (TDM) program. The Shore Hotel's TDM program must incorporate the City of Santa Monica's TDM as items 6(A)i – vi. The TDM program imposed by the City of Santa Monica is focused on alternative transportation options for hotel guests. However, it does not require the applicant to implement any programs to reduce energy consumption or VMTs for other types of users of onsite parking such as restaurant patrons, employees, or the general public. Given the many other types of users of onsite parking, reliance on the City's TDM program alone is not sufficient to minimize energy consumption and VMTs as required by Section 30253. Therefore, in order to find that the development minimizes VMTs from all user types, items 6(A)vii-xiii require that the applicant include non-vehicular and public transit incentives for the public, guests, and employees, who visit, use and work at the hotel and associated commercial space. The conditions imposed by the Commission in **Special Condition 6** also include requirements to ensure that there are no impacts to access by imposing parking and alternative transportation provisions such as electric vehicle charging stations for visitors to the restaurant and retail space, as well as employees of both the retail spaces and the hotel in an attempt to reduce total vehicle miles traveled associated with the development, as consistent with Section 30253(d) of the Coastal Act. As conditioned, the proposed project provides adequate parking for the visitor-serving uses, will enhance parking in the area by providing additional parking for the public, and will minimize energy consumption and vehicle miles traveled.

The Commission also imposes **Special Condition 1**, which limits the uses and development for the proposed project and requires an amendment to this permit or a new coastal development permit for any changes to the development, including changes that may normally qualify for an exemption, to ensure that the applicant does not incrementally change the development in a manner inconsistent with this permit without the review of the Executive Director or Commission.

E. SCENIC AND VISUAL RESOURCES

The following policies of the Coastal Act and the certified Land Use Plan (LUP) are applicable to the issue of public views. Section 30251 of the Coastal Act states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

In addition, the Santa Monica LUP, certified with suggest modifications, has a number of policies to ensure that the visual resources of the Santa Monica coastal zone are protected. The policies are as follows:

Policy 66 states in part that:

Permitted development including public works of art shall be sited and designed to:

- a. protect views to and along the ocean and scenic coastal areas;*
- b. minimize the alteration of natural landforms; and*
- c. be visually compatible with the character of surrounding areas and restore and enhance visual quality in visually degraded areas.*

Policy 71 states:

The City shall develop standards to assure that new development along Adelaide Drive and all other scenic corridors and designed viewing areas, as identified in the Scenic and Visual Resources Map#13, is designed and sited to be visually compatible with the character of the surrounding area, restores and enhances visual quality in visually degraded areas, and protects public views to the coast and scenic coastal areas. Public views shall mean views to the ocean from the public right of way of streets and designated public viewing areas.

As stated, the project is located in the City's Downtown area. The certified LUP, certified in 1992, allows development in the Downtown core to a height of 6 stories, 84 feet. In 1992, the height allowed under the LUP was consistent with the City's zoning; however, since 1992, the City has reduced the height limit in the C-3 zone to four stories and 45 feet (mechanical equipment is permitted by code to exceed the height limit) and allows development in the RVC zone up to 45 feet.

The subject development is four stories, 45 feet high above existing grade, consistent with the City's zoning. The proposed project site is located between 2nd Street on the east and Ocean Avenue on the west. The project site is directly west of the Santa Monica Place shopping center and Municipal Parking Structure #8. Santa Monica Place is a downtown shopping center, which along with the outdoor Third Street Promenade, forms the City's downtown retail core. The proposed project has impact on public views, in particular, the views from the public viewing areas identified in the Scenic and Visual Resources Map #13 that designates the Third Street Promenade between Wilshire and Santa Monica Place as a Scenic Corridor. The development of viewing decks at Santa Monica Place was a specific requirement of the South Coast Regional Commission in Appeal No. A-69-76. In 1977, the Commission approved the shopping center (Appeal 69-76) with a number of conditions. One of the conditions required viewing decks along the western portion (Second Street) of the shopping center. The view corridor extends from the viewing deck located on the west side of Santa Monica Place shopping center along Second Street, and ranges between Colorado Avenue to the south and Broadway Avenue to the North.

During the remodel of Santa Monica Place (CDP No. 5-07-343A1) in 2007, the second floor viewing platform was found to be underutilized and was removed, but the third floor viewing platform was retained as an open public deck and was elevated an additional 3 feet to maximize public views of the ocean. The Commission found that the remaining views to the ocean from the Santa Monica Place

viewing decks were not significant and the decks offered very little ocean viewing opportunities for the public due to the location of the mall, existing development and other obstructions along Second Street and Ocean Avenue. The Commission suggested that the City amend the Land Use Plan Scenic and Visual Resources map to remove the decks as public viewing decks. Some views to the ocean will be maintained from the Santa Monica Place third floor deck, but the proposed development does obstruct ocean views. A finding of the 2009 City staff report approving the Shore Hotel building indicated: *the proposed project's benefit of providing moderately priced visitor-serving lodging near the coast outweighs the loss of this diminished view.*

The applicant, in conjunction with this development, proposed the City of Santa Monica submit an LUP amendment that would revise the Scenic and Visual Resources map #13, removing the identified scenic corridors and viewing platforms from the map. The LUP amendment to alter Map #13 was not pursued by the City at that time, however the City has since undertaken an effort to comprehensively update its LUP. The draft update contains a Scenic Corridors and Vantage Points map that removes the Third Street Promenade scenic corridor and Santa Monica Place viewing platforms. Even without the guidance of the update, the 2009 CCC staff report (5-09-040) concluded that the existing views were already degraded by other development in the area and the project was therefore consistent with the Scenic and Visual resources protection policies of the Coastal Act:

Although the City has not amended the LUP policies and map to remove the area as a viewing corridor, the standard of review is the Coastal Act and as proposed, the development will not significantly impact any scenic resources and will be visually compatible with the character of surrounding areas. Furthermore, the proposed project is designed with a public courtyard along the Ocean Avenue frontage which will provide public opportunities for coastal viewing. Therefore, the project as proposed, is consistent with Section 30251 of the Coastal Act.

Because the City is currently in the process of developing an LCP, an LUP amendment to update Map #13 is underway. The standard of review for this development continues to be Chapter 3 of the Coastal Act. As proposed, the development will not significantly impact existing scenic resources and can be found consistent with Section 30251 of the Coastal Act.

F. WATER QUALITY AND MARINE RESOURCES

Section 30230 states:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological or economic significance. Uses of the marine environment shall be carried out in a manner that will sustain the biological productivity of coastal waters and that will maintain healthy populations of all species of marine organisms adequate for long-term commercial, recreational, scientific, and educational purposes.

Section 30231 states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine

organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

The proposed project poses a potential source of pollution due to contaminated runoff from the proposed parking lot and other hardscape. The City, to mitigate potential impacts of development, has adopted an Urban Runoff Ordinance. The ordinance requires projects to incorporate best management practices with extensive recommendations and measures to reduce or prevent contaminants from running off the site. The City requires all new development to achieve twenty-percent reduction of the projected runoff for the site and the use of oil and water separators or clarifiers to remove petroleum-based contaminants and other pollutants. Furthermore, the City has a state-of-the-art stormwater treatment facility that treats all dry weather storm runoff. Runoff from all new development is directed to existing stormdrains, which direct stormwater to the treatment facility. In addition, the applicant has proposed to install a microfiber filtration system within its on-site laundry to filter out microfibers that are dislodged from textiles during the laundering process and normally enter the wastewater system or drain directly into the ocean.

Coastal Commission water quality staff has previously reviewed the City of Santa Monica's water quality standards for similar projects and have determined that the City's standards are consistent with standards imposed by the Commission. However, unlike previous Commission approved projects, this proposed project involved a significant amount of excavation. A potential water quality problem can result from excavation for the underground parking garage. Based on test borings, groundwater was found at depths of approximately 55-1/2 to 57 feet below grade. The proposed subterranean structure is at a depth of approximately 36-39 feet below grade. The Geotechnical Engineering Investigation, prepared by Geotechnologies, Inc. states that groundwater would unlikely be encountered during excavation. If groundwater is to be pumped during construction, a National Pollution Discharge Elimination System (NPDES) permit or a sanitary sewer discharge permit will be obtained from the Regional Water Quality Control Board or the Sanitary District.

To ensure that the dewatering did not adversely impact water quality by introducing sediments or other contaminants into coastal waters, via the storm drain, the applicant submitted a letter from the Contracted Engineer during excavation of the site dated October 28, 2014 confirming that during construction and post-construction, filters were installed on all dewatering pumps and sump pumps and complied with the State of California Regional Water Quality Control Board requirements and the City of Santa Monica Water Resources Program. The Commission, therefore, finds that, as proposed the development will be consistent with Section 30230 and 30231 of the Coastal Act.

G. HAZARDS

Section 30253 of the Coastal Act states in part:

New development shall do all of the following:

(a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

According to the EIR and Environmental Assessment Report prepared by the applicant's consulting Geotechnical engineer, the project site is located over the Lakewood Formation. The Lakewood formation consists of terraces and old dune deposits made up of gravel, sand, silty sand, silt, and clay and have a uniform thickness of approximately 200-300 feet throughout the City.

The report states that there are no known faults in the immediate area. The closest fault, the south branch of the Santa Monica fault is approximately 7,000 feet to the north. According to the report the potential of ground rupture from fault displacement is considered very low due the distance of the fault from the project site. Furthermore, the site is located outside of the liquefaction zone, based on the "Seismic Hazard Zones" map issued by the State of California. According to the EIR, the project site is considered as having medium susceptibility to liquefaction, due to a combination of underlying alluvial soils, ground water levels, and the potential for strong ground shaking.

The report concludes that development of the site is feasible from a geotechnical engineering viewpoint provided its recommendations are incorporated into the design. Recommendations include foundation design and construction. To ensure that the recommendations made by the consultants were implemented during construction, the applicant submitted a letter from the Geotechnical Engineer dated January 13, 2010 confirming all recommendations were incorporated into the final building. The Commission, therefore, finds that as proposed the development is consistent with Section 30253 of the Coastal Act.

H. CULTURAL RESOURCES

Section 30244 of the Coastal Act states:

Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required.

The proposed site had been disturbed in the past with the development of the Pacific Sands and Santa Monica Beach Travelodge Motels in the 1950s. A cultural resources records search through the California Historic Resources Information System (CHRIS), South Central Coastal Information Center (SCCIC) at California State University, Fullerton, and a Sacred Lands Search through the Native American Heritage Commission (NAHC) in Sacramento was conducted as part of the Initial Scope for the proposed project. This search revealed one site within a half-mile radius containing only refuse including domestic items and structural debris from the 1920s-1930s. The Initial Scope noted that six additional cultural resource studies had been conducted within a half-mile radius and all failed to identify any archeological resources. The Final Environmental Impact Report (FEIR) concluded that cultural resources were not found to be significant. The applicant retained expert consultants LSA Associates, Inc. to analyze the project's potential for impacts to cultural resources. In prefacing its March 2010 Cultural and Paleontological Resources Monitoring Plan, LSA writes,

“based on the results of the records search, there are no known prehistoric or buried historic resources within or immediately adjacent to the project area. There are several historic resources in the vicinity of the project area, but the Ocean Avenue Hotel project will have no impact on these resources.” In addition, the trial court that upheld the Commission’s decision denying the applicant’s second permit application (5-15-0030) found that the Commission’s conclusion in its revised finding that it could not determine the project’s consistency with Section 30244 “is not supported by substantial evidence.” Thus, although for the prior CDP (5-15-0030), staff had recommended a “prior to issuance” special condition requiring an archeological mitigation report and the presence of archeological and Native American monitors during ground disturbance, given the evidence described above including the number of cultural resource studies that have been completed for this project, as well as findings of the applicant’s consultant, in this particular case such a condition is not necessary for the Commission to find that the project complies with Section 30244 and no reasonable mitigation measures are required. Therefore, the project, as proposed, can be found consistent with Section 30244 of the Coastal Act.

I. DEED RESTRICTION

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes **Special Condition 3**, which requires 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 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.

J. INDEMNIFICATION

Coastal Act section 30620(c)(1) authorizes the Commission to require applicants to reimburse the Commission for expenses incurred in processing CDP applications. *See also* 14 C.C.R. § 13055(g). Thus, the Commission is authorized to require reimbursement for expenses incurred in defending its action on the pending CDP application. Therefore, consistent with Section 30620(c), the Commission imposes **Special Condition 2**, requiring reimbursement of any costs and attorney fees the Commission incurs “in connection with the defense of any action brought by a party other than the Applicant/Permittee challenging the approval or issuance of this permit.”

K. LOCAL COASTAL PROGRAM

Section 30604 (a) of the Coastal Act states:

Prior to certification of the Local Coastal Program, a Coastal Development Permit shall be issued if the issuing agency, or the Commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development 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 (commencing with Section 30200).

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. In August 1992, the Commission certified, with suggested modifications, the land use plan portion of the City of Santa Monica's Local Coastal Program, excluding the area west of Ocean Avenue and Neilson way (Beach Overlay District). On September 15, 1992, the City of Santa Monica accepted the LUP with suggested modifications.

As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare an LCP that is in conformity with the provisions of Chapter 3 of the Coastal Act.

L. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 of the Commission's regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available, which would substantially lessen any significant adverse effect which the activity may have on the environment.

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. CDP File 5-09-040
2. CDP File 5-15-0030
2. *Feasibility Analysis of Four Development Scenarios for the Travelodge site in Santa Monica*, by PKF Consulting, February 2007.
3. The Shore Hotel website: www.shorehotel.com as of February 14, 2019.
4. *Cultural Resources Monitoring and Accidental Discovery Plan and Paleontological Resources Impact Mitigation Program*, by LSA consulting, March 2010.
5. *Analysis of Options for the Travelodge and Pacific Sands Motels* prepared by PKF Consulting, June 2005.
6. *Analysis of Mitigation Fees* by Buss-Shelger Associates, September 2013.
7. 2014-18 Smith Travel Research, Inc.
8. City of Santa Monica Ordinance 1516, adopted 1990
9. Santa Monica LUP
11. Notice of Violation, V-5-13-029