

**CALIFORNIA COASTAL COMMISSION**

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# Th16a

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## STAFF REPORT: APPEAL – SUBSTANTIAL ISSUE

**Appeal/Application Number:** A-5-DRL-18-0075

**Applicant:** Playa, LLC (c/o Ramesh Arora)

**Agent:** Austin Peters

**Local Government:** City of Los Angeles

**Local Decision:** Approval with Special Conditions

**Appellant:** Coastal Commission Executive Director

**Project Location:** 6601-6603 Ocean Front Walk, Playa Del Rey, City of Los Angeles  
(APN: 4116-002-026)

**Project Description:** Appeal of City of Los Angeles Local Coastal Development Permit ZA 2016-3514, approved with conditions for the demolition of a two-story duplex and construction of a three-story duplex with a basement and attached two-car garage.

**Staff Recommendation:** Substantial Issue

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**Important Hearing Procedure Note:** The Commission will not take testimony on this “substantial issue” recommendation unless at least three commissioners request it. The Commission may ask questions of the applicant, any aggrieved person, the Attorney General or the executive director prior to determining whether or not to take testimony regarding whether the appeal raises a substantial issue. If the Commission takes testimony regarding whether the appeal raises a substantial issue, testimony is generally and at the discretion of the Chair limited to 3 minutes total per side. Only the applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify during this phase of the hearing. Others may submit comments in writing. If the commission finds that the appeal raises a substantial issue, the de novo phase of the

hearing will follow, unless it has been postponed, during which the Commission will take public testimony.

### **SUMMARY OF STAFF RECOMMENDATION**

The Executive Director of the Coastal Commission filed an appeal of the local coastal development permit (CDP) on the grounds that the City did not adequately demonstrate that the project is consistent with public access, coastal view, and hazards policies of the Coastal Act. First, the appellant contends that the City's Letter of Determination does not adequately justify that the proposed 1-foot seaward setback is consistent with the Chapter 3 Coastal Act policies. Similarly, the appellant contends that the City's Letter of Determination does not provide sufficient evidence to demonstrate that the proposed 2-foot side yard setback is consistent with the public access policies of the Coastal Act. The appellant's third contention is that the reduced 2-foot side yard setback could impact coastal views in an area that currently has a limited number of view corridors, and that the City's Letter of Determination did not adequately analyze the potential view impacts. The appellant's fourth contention is that the City's Letter of Determination did not provide an adequate coastal hazards analysis to justify that the construction of a basement is appropriate for the project site. Finally, the appellant contends that the City did not condition or reference the required number of parking spaces for the project. According to the appellant, the City-approved project cannot be found to be consistent with the public access policies of the Coastal Act if there is no specific finding that the project meets the on-site parking requirements.

The City-approved project is not consistent with the public access and recreation policies, the scenic and visual resource policies, or the coastal hazards policies found in Chapter 3 of the Coastal Act. The City-approved project permits private development that has inadequate setbacks from public spaces along the beach and public promenade, and along the side yard, which is adjacent to a public walkway that leads to the beach. The inadequate separation between the private development and public space could result in public access conflicts and the loss of public access in this area, as well as a reduction of public view corridors to the ocean from public areas. In addition, the City's incomplete analysis did not provide sufficient evidence to demonstrate that the proposed project would be safe from coastal hazards. The City's Letter of Determination also did not clarify the number of onsite parking spaces the project would provide or whether or not the proposed on-site parking meets the City's requirements for new development, which is necessary to determine whether or not the project is consistent with the public access policies of the Coastal Act. Therefore, as approved by the City, the project raises a substantial issue with regard to the public access and recreation policies and the scenic and visual policies of Chapter 3 of the Coastal Act.

Therefore, staff recommends that the Commission determine that a **substantial issue exists** with respect to the grounds on which Appeal A-5-DRL-18-0075 has been filed for the following reasons: the project, as approved by the City of Los Angeles, is inconsistent with the public access and recreation policies, the scenic and visual policies, and coastal hazards policies found in Chapter 3 of the Coastal Act. The **motion** and resolution to carry out the staff recommendation is on **Page 4**.

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### APPENDICES

Appendix A - Substantive File Documents

### EXHIBITS

[Exhibit 1 – Vicinity Map/Project Site](#)

[Exhibit 2 – Site Photos](#)

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

[Exhibit 4 – Letter of Determination for Local CDP](#)

[Exhibit 5 – Appeal of Local CDP](#)

## I. MOTION AND RESOLUTION- SUBSTANTIAL ISSUE

### Motion:

*I move that the Commission determine that Appeal No. A-5-DRL-18-0075 raises **NO Substantial Issue** with respect to the grounds on which the appeal has been filed under § 30602 of the Coastal Act.*

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

### Resolution:

*The Commission hereby finds that Appeal No. A-5-DRL-18-0075 presents **A SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed under § 30602 of the Coastal Act regarding consistency with Chapter 3 policies of the Coastal Act.*

## II. LOCAL GOVERNMENT ACTION

On February 7, 2018, the City of Los Angeles, Department of City Planning received local CDP application ZA-2016-3514 for the demolition of a two-story, two-unit duplex and construction of a new three-story two-unit duplex with an attached garage, basement, and roof deck from Playa, LLC. A public hearing for the project was held by the Zoning Administrator on May 7, 2018. On September 11, 2018, the City of Los Angeles issued a letter of determination approving the applicant's project ([Exhibit 4](#)). At the same time, the City of Los Angeles approved CEQA exemptions ENV-2016-3515-CE and ENV-2018-1206-CE for this project.

The City's Notice of Final Action (NOFA) for the local CDP was received in the Commission's South Coast District Office on October 15, 2018; however, the NOFA was found to be deficient because the project description of the approved development was not clear regarding the size of the duplex or the number of required parking spaces. On October 17, 2018, a Notification of Deficient Notice was sent to the City of Los Angeles and the Commission's appeal period for the City-approved project was suspended. On October 29, 2018, the Commission's South Coast District Office received a revised a NOFA from the City of Los Angeles, which superseded the previous notice. The subsequent notice was also found to be deficient as the project description did not include the height of the duplex or the required number of parking spaces nor did the updated NOFA indicate that the project was located in the dual jurisdiction area. Therefore, a second Notice of Deficient Notice was sent to the City on October 31, 2017. On November 15, 2018, a third revised NOFA for the City-approved project was received by the Commission's South Coast District Office, however the third NOFA was not complete. On November 19, 2018, a Letter of Clarification containing the missing information for the third NOFA was received and the Commission's the twenty working-day appeal period for the City-approved project was established.

On December 19, 2018, one appeal was received from the Coastal Commission Executive Director. No other appeals were received prior to the end of the appeal period on December 19, 2018 ([Exhibit 5](#)).

### **III. APPELLANT’S CONTENTIONS**

The Executive Director of the Coastal Commission filed an appeal of the local CDP on the grounds that the project, as approved by the City, is not consistent with public access, public view, or the hazards policies of the Coastal Act for the following reasons: the City’s Letter of Determination does not adequately justify that the proposed one-foot seaward setback is consistent with the Chapter 3 Coastal Act policies; the City’s Letter of Determination does not provide sufficient evidence to demonstrate that the proposed two-foot side yard setback is consistent with the public access policies of the Coastal Act; the reduced two-foot side yard setback could impact coastal views in an area that currently has a limited number of view corridors and the City did not adequately analyze the potential view impacts; the City’s Letter of Determination did not provide an adequate coastal hazards analysis (i.e. wave uprush study) to justify that the construction of a basement is appropriate for the project site; and the City did not condition or reference the required number of parking spaces for the project.

### **IV. APPEAL PROCEDURES**

Section 30600(b) of the Coastal Act provides that prior to certification of its LCP, a local jurisdiction may, with respect to development within its area of jurisdiction in the coastal zone and consistent with the provisions of Sections 30604, 30620 and 30620.5, establish procedures for the filing, processing, review, modification, approval or denial of a coastal development permit. Pursuant to this provision, the City of Los Angeles developed a permit program in 1978 to exercise its option to issue local CDPs. Sections 13301-13325 of Title 14 of the California Code of Regulations provide procedures for issuance and appeals of locally issued CDPs. Section 30602 of the Coastal Act allows *any* action by a local government on a CDP application evaluated under Section 30600(b) to be appealed to the Commission. The standard of review for such an appeal is the Chapter 3 policies of the Coastal Act. [Cal. Pub. Res. Code §§ 30200 and 30604.]

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

The action currently before the Commission is to find whether there is a “substantial issue” or “no substantial issue” raised by the appeal of the local approval of the proposed project. Sections 30621

and 30625(b)(1) of the Coastal Act require a de novo hearing of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds for appeal.

Commission staff recommends a finding of **substantial issue**. If the Commission decides that the appellant's contention raises no substantial issue as to conformity with Chapter 3 of the Coastal Act, the action of the local government becomes final. Alternatively, if the Commission finds that a substantial issue exists with respect to the conformity of the action of the local government with the Chapter 3 policies of the Coastal Act, the local CDP is voided and the Commission may continue the public hearing to a later date in order to review the CDP as a de novo matter. Section 13321 of the Coastal Commission regulations specifies that de novo actions will be heard according to the procedures outlined in Sections 13114 and 13057-13096 of the Commission's regulations.

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

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

## **V. DUAL PERMIT JURISDICTION AREAS**

The proposed development is within the coastal zone of the City of Los Angeles. Section 30600(b) of the Coastal Act allows a local government to assume permit authority prior to certification of its local coastal program. Under that section, the local government must agree to issue all permits within its jurisdiction. In 1978, the City of Los Angeles elected to issue its own CDPs pursuant to this provision of the Coastal Act.

Within the areas specified in Section 30601 of the Coastal Act, which is known in the City of Los Angeles permit program as the Dual Permit Jurisdiction area, the Act requires that any development that receives a local CDP also obtain such a permit from the Coastal Commission. Section 30601 requires a second CDP from the Commission on all lands located (1) between the sea and the first public road, (2) within 300 feet of the inland extent of a beach, or the sea where there is no beach, (3) on tidelands or submerged lands, (4) on lands located within 100 feet of a wetland or stream, or (5) on lands located within 300 feet of the top of the seaward face of a coastal bluff. Outside that area, the local agency's (City of Los Angeles) CDP is the only coastal development permit required. Thus, it is known as the Single Permit Jurisdiction area, although all CDPs approved by the City of Los Angeles are appealable to the Coastal Commission.

The proposed development is located on a beach-fronting lot within the area of the City of Los Angeles that has been designated in the City’s permit program as the “Dual Permit Jurisdiction” area pursuant to Section 13307 of Title 14 of the California Code of Regulations and Section 30601 of the Coastal Act. The applicant received a local CDP (ZA 2014-1500) from the City of Los Angeles on DATE. The local CDP has been appealed to the Commission. This is the substantial hearing for the appeal.

## **VI. FINDINGS AND DECLARATIONS – SUBSTANTIAL ISSUE**

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

The applicant proposes to demolish a 2,411 sq. ft., two-story duplex and to construct a three-story, 37-ft. high, 4,529 sq. ft., duplex with an attached, 386 sq. ft., 2-car garage over a 1,471 sq. ft. habitable basement ([Exhibit 3](#)). The proposed duplex would be setback one foot from the seaward-facing property line along Ocean Front Walk. The applicant is proposing a two ft. side yard setback along the northern side of the property line adjacent to 66<sup>th</sup> Avenue, and a three ft. side yard setback along the southern side of the property line adjacent to the neighboring residence instead of the normally required four-ft. side yard setbacks.

The project site includes a beach fronting lot located at 6601 and 6603 Ocean Front Walk in the Playa del Rey community of the City of Los Angeles. The proposed project site consists of a rectangular, 2,550 sq. ft. lot that is currently developed with a 2,411 sq. ft., two-story duplex (one unit pertains to 6601 Ocean Front Walk and the second unit pertains to 6603 Ocean Front Walk). The lot has a total frontage of 30 ft. along Ocean Front Walk, a depth of 85 ft. along 66<sup>th</sup> Avenue and frontage of 30 ft. along Speedway ([Exhibit 1](#)). The lot is zoned R3-1 (Medium Residential). The property abuts the City’s 12-ft. wide concrete public walk way known as Ocean Front Walk along the seaward side of the property. The property is located north of Culver Boulevard and south of Ballona Creek. The subject lot is located within a row of beach fronting lots that are developed with single- and multi- family residences. Vertical access to the beach is available along the north side of the project site along the terminus of 66<sup>th</sup> Avenue.

The project site contains private encroachments along 66<sup>th</sup> Avenue and into the public beach that are associated with the existing duplex. The encroachments include a rope-and-post fence that extends beyond the northern property line into the 66<sup>th</sup> Avenue right-of-way and beyond the public ocean promenade into public beach, as well as patio furniture that has been placed on public beach sand seaward of the existing duplex ([Exhibit 2](#)). The Commission’s Enforcement staff issued a Notice of Violation for the above mentioned encroachments on June 9, 2015, stating that the encroachments preclude public coastal access along 66<sup>th</sup> Avenue and along Dockweiler State Beach. During subsequent conversations between Enforcement staff and the applicant, the applicant stated that he would remove the rope fence. However, the fence has not been removed as of the present. To Commission’s staff’s knowledge, the City has not required the applicant to remove the encroachments, and they remain in place.

The project site is situated in an urbanized neighborhood. The majority of the nearby residential buildings were constructed in the 1960s, with the average residential floor areas just above 2,400 sq. ft. Adjoining properties to the north, south, and east are also zoned R3-1. The properties to the

north, across 64<sup>th</sup> Avenue, are developed with three- and four-story multi-family dwellings consisting of condominiums and apartments. The multi-family buildings range in size from 8,000 to 20,000 sq. ft., while the floor area of the individual dwelling units ranges in size from 1,100 to 2,600 sq. ft.

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

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

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

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

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

## **C. SUBSTANTIAL ISSUE ANALYSIS**

As stated in Section IV of this report, the grounds for an appeal of a CDP issued by the local government prior to certification of its LCP are the project’s conformity with Chapter 3 policies of the Coastal Act. Any local government CDP issued or denied prior to certification of its LCP may be appealed to the Commission. The Commission shall hear an appeal unless it determines that no substantial issue exists as to conformity with Chapter 3 policies of the Coastal Act.

There is no certified LCP for this area of the City of Los Angeles. As such, the Coastal Act is the standard of review for this CDP. (Cal. Pub. Res. Code § 30625(b)(1); 14 C.C.R. § 13321.) Section III of this staff report outlined the appellant’s contentions regarding the project. Concerns raised by



the appellant include the City-approved project's consistency with sections 30210, 30211, 30212, 30251, and 30253 of the Coastal Act. The Commission's decision will be guided by the factors listed in the previous section of this report (B. Factors to be Considered in Substantial Issue Analysis).

A substantial issue exists with respect to the proposed project's conformance with Chapter 3 of the Coastal Act because the City-approved project is not consistent with the public access and recreation policies, the scenic and visual policies, or the hazards policies of Chapter 3 of the Coastal Act. In particular, the project permits inadequate setbacks between the private and public spaces, which could result in public access conflicts and the loss of public access in this area, and it reduces a view corridor to the ocean from public areas. Additionally, the City did not make findings that the project is designed to be safe from coastal hazards such as sea level rise.

Coastal Act Section 30210 states:

*In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

Section 30211 of the Coastal Act states:

*Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

Section 30212 of the Coastal Act states, in relevant part:

*(a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where:[...]  
(2) adequate access exists nearby, ...  
Dedicated accessways shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.*

Section 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...*

Section 30253 of the Coastal Act states, in relevant 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.*

### **Rear Yard (Seaward-Facing) Setback**

The subject property abuts Ocean Front Walk, which is a 12-ft. wide right-of-way along the beach that the City intends to improve as a boardwalk for public access. Currently, the section of Ocean Front Walk in Playa del Rey between Culver Boulevard and Ballona Creek is not complete. However, as properties along this stretch of beach redevelop, the City typically requires property owners to improve the portion of the boardwalk directly seaward of those individual properties or pay an in-lieu fee, which the City would use to construct the remaining portions of the boardwalk. Therefore, there are intermittent portions of the boardwalk that are complete along this stretch of beach. In this case, the concrete pedestrian walkway has been constructed adjacent to the seaward property line of the subject site. The homeowners with completed portions of the Ocean Front Walk boardwalk may be granted permission by the City, in the form of a Revocable Permit (R-permit), to temporarily encroach onto the walkway (i.e. it can be used as a temporary patio space with no permanent or semi-permanent structures) until such a time that the entire length of the boardwalk is complete. The R-permit grants conditional approval for encroachment on the public area designated for Ocean Front Walk by private parties not otherwise authorized to occupy the walkway area. The R-permit review process ensures that encroachments are checked for compliance with the City's specifications for design, use, materials, and inspections. The intent of the City is to complete the boardwalk upon the redevelopment of all lots. Upon completion, the homeowners will be required by the City to remove their items from the public area designated for Ocean Front Walk, which will be opened for public use. However, the City has not indicated when the walkway will be open for public use.

The existing duplex is set back from the seaward property line and Ocean Front Walk by approximately 10 ft.; however, the proposed new duplex would extend further seaward than the existing duplex on the first floor, with a structural setback of one ft. from Ocean Front Walk. The proposed residence will also extend seaward on the upper stories, with both the second and third balconies extending right up to the property line and Ocean Front Walk. No encroachment into the area designated for Ocean Front Walk is proposed as part of this project.

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

Until recently (CDP 5-16-0757, Greene), the Commission has also not required a greater setback along the seaward-facing property lines for new development in this area than the City when acting on permits in this area. However, this previous pattern of development has resulted in inadequate setbacks between private and public spaces, which can result in the appearance that the areas designated for future public access (Ocean Front Walk in this case) are actually private. Without

adequate buffers between private residential development and public spaces, conflicts arise which could potentially result in the obstruction and/or loss of public access in this area. Specifically, the provision of only a one foot setback between the private structure and the public walkway, Ocean Front Walk, would not allow adequate space on the applicants' property for painting and other normal repair and maintenance activities to occur without encroaching into the public accessway and interfering with public access. Moreover, because the public typically will not recreate directly adjacent to private residential structures, the allowance for minimal rear-yard setbacks from the property line and boundary between private and public beach area will effectively privatize the public beach and access way, contrary to Coastal Act policies to maximize public access. Furthermore, this area has been subject to flooding during storm events, and with an inadequate rear-yard (seaward) setback, the property may not have adequate room for adaptive measures addressing flooding and future sea level rise, and any adaptive measures that could be implemented may impact public access or coastal resources because they would likely need to occur on the public access way and/or on the sandy beach. Without an adequate coastal hazards and sea level rise analysis, however (as discussed below), this issue is difficult to assess based on the available evidence. The Commission recently recognized the impacts caused by inadequate setbacks in this area when it approved CDP No. 5-16-0757 in March, 2017, imposing conditions to require a rear-yard setback of five ft. rather than the proposed one ft. setbacks.

The provision of adequate setbacks between private development and areas specifically designated for public access and recreation is critical given the potential for such areas to appear to be private property, and to avoid potential conflicts between private property owners and members of the public. In the City's staff report, the City did not address the impacts of a reduced setback on public/private conflicts, how this potential conflict might be impacted by expected sea level rise, nor how flooding and sea level rise would be addressed on the property without impacting public access (**Exhibit 5**). In addition, the City did not address the current rope-and-post fence and furniture encroachments and how the encroachments could affect public access along Ocean Front Walk and Dockweiler State Beach if the encroachments are maintained. The City also did not require the removal of the encroachments as a condition of project approval. The fact that public access encroachments already exist with a 10-ft. seaward setback demonstrates that the applicant would not likely be able to maintain a one ft. seaward setback without encroaching onto the public beach even further.

Therefore, the City's approval of a duplex with a one-ft. seaward setback from the beach and Ocean Front Walk raises a substantial issue with respect to the Chapter 3 policies of the Coastal Act.

### **Side Yard Setback**

The applicant is also seeking a reduction in the side yard setback requirement along the north side of the property, without which he claims that the proposed duplex could not be constructed as designed. The City Municipal Code typically requires residential structures to be situated at least four ft. from the public right-of-way. The applicant is proposing a reduction in this setback to only two ft. from the public-right-of-way along 66<sup>th</sup> Avenue. The proximity of the 4,529 sq. ft., 37 ft.-high duplex to the property line and the public right-of-way would adversely affect the public's view of the beach from Speedway (the alleyway behind the ocean-fronting residences) by narrowing the distance between buildings along the north and south side of 66<sup>th</sup> Avenue and by reducing the visual corridor along 66<sup>th</sup> Avenue to the ocean. Although municipal setback requirements are not the standard of review on appeal, they are generally used as a guideline to

determine consistency with public access and visual policies of Chapter 3 of the Coastal Act, especially along ocean-fronting properties. As substantial redevelopment of the site, the proposed structure should conform to the current building regulations, including the four-ft. side yard setback, in order to maximize to the fullest extent possible the scenic public view corridor along 66<sup>th</sup> Avenue to the coastline. Additionally, the inadequate setback along the side yard adjacent to a public right-of-way would result in the public access issues described above, including the applicant's inability to perform normal private residential maintenance - such as painting and other repair and maintenance activities -without encroaching into the public access way and impacting the public's access to the beach. An encroachment into the public right-of-way can already be seen along the north side of the property along 66<sup>th</sup> Avenue where the homeowner has placed a rope-and-post fence north of the property line to close off a portion of the public right-of-way. The reduced size of the public access way already results in public/private space conflicts along 66<sup>th</sup> Avenue. The City's Letter of Determination did not acknowledge the existing right-of-way encroachments or how public access along 66<sup>th</sup> Avenue would be impacted if the existing encroachments are maintained. Moreover, the City did not require the existing right-of-way encroachments to be removed. Therefore, the City-approved development, with a reduced side-yard setback, raises a substantial issue with respect to the Chapter 3 public access policies of the Coastal Act.

#### **Coastal Hazards and Sea Level Rise**

Section 30253(a) of the Coastal Act requires that new development "(m)inimize risks to life and property in areas of "high geologic, flood, and fire hazard." The project site is located on an oceanfront lot, and is therefore vulnerable to erosion, flooding, wave runup, and storm hazards. These hazard risks are exacerbated by sea-level rise that is expected to occur over the coming decades. Sea-level has been rising for many years. Several different approaches have been used to analyze the global tide gauge records in order to assess the spatial and temporal variations, and these efforts have yielded sea-level rise rates ranging from about 1.2 mm/year to 1.7 mm/year (about 0.5 to 0.7 inches/decade) for the 20th century, but since 1990 the rate has more than doubled, and the rate of sea-level rise continues to accelerate. Since the advent of satellite altimetry in 1993, measurements of absolute sea-level from space indicate an average global rate of sea-level rise of 3.4 mm/year or 1.3 inches/decade – more than twice the average rate over the 20th century and greater than any time over the past one thousand years. Recent observations of sea-level along parts of the California coast have shown some anomalous trends; however, the climate is warming, and such warming is expected to cause sea-levels to rise at an accelerating rate throughout this century.

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

In addition to its location on a beachfront lot, the City-approved project includes the construction of a 1,471 sq. ft. basement that would be associated with the new duplex. The application submitted has indicated that 484 cubic yards of grading would be required for the basement with no impact on any landforms. The applicant also indicated that the basement would require retaining walls and matt-slab foundation excavated into grade due to the project's location in a liquefaction area.

The City’s Letter of Determination did not adequately analyze the proposed project in light of relevant hazards within the project site. Coastal hazards (erosion, wave uprush, etc.) were not identified as a concern in the Letter of Determination, despite the fact that the project site is a beach-fronting lot that is vulnerable to flooding, wave uprush, and erosion. The City’s analysis did not reference a wave uprush study or CoSMoS analysis<sup>1</sup> to verify that the project site would be reasonably safe from the above-mentioned coastal hazards. This determination is especially important considering that the proposed development includes a basement that is especially vulnerable to coastal flooding. If the basement is indeed subject to chronic flooding, permanent dewatering would be required for the basement, which could have water quality impacts on and around the project site. Overall, the City did not provide any information to describe how the project, including the basement, would be impacted by coastal hazards, particularly in light of expected sea level rise. Therefore, the City-approved development raises substantial issue with regard to consistency with Section 30253 of the Coastal Act.

### **Parking**

The City-approved project includes the construction of a 386 sq. ft., two-car garage. The project plans indicate that a third uncovered parking space is proposed to be located within the three-foot southern side yard setback, and a fourth uncovered parking space is to be located within on the driveway. However, the City’s Letter of Determination does not mention the third or fourth parking spaces in the City’s analysis of the project—it only mentions a two-car garage. Furthermore, the Letter of Determination does not make a finding that the parking proposed for the project meets the City’s requirements for on-site parking for residential developments.

The availability of public street parking spaces is an important criterion when evaluating the ability for the public to access the coast. In many coastal areas, public beach-goers and local residents compete for a limited number of street parking spaces. Onsite parking requirements are important in this scenario in order to open more street parking spaces for the public at large (and not within walking distance of the coast) to access the beach. If the onsite parking is not sufficient to accommodate residential uses, then residents are forced to park offsite, thereby making fewer parking spaces available to the public and hindering public access to the coast. In this case, the City did not clarify how many onsite parking spaces the project is supplying, and whether the provided parking meets the City’s onsite parking requirement. Therefore, the City does not have sufficient evidence to conclude that the project is consistent with the public access policies of the Coastal Act. Therefore, the appellant’s contention raises a substantial issue.

### **Application of Five Factors**

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

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<sup>1</sup> CoSMoS (Coastal Storm Modeling System) is an interactive modeling system developed by the U.S. Geologic Survey (USGS) to identify coastal hazard risks- such as erosion, wave uprush impacts, and coastal flooding vulnerability- in a given location.

The first factor is the degree of factual and legal support for the local government’s decision that the development is consistent or inconsistent with the relevant provisions of the Coastal Act. The City approved a beach-fronting residence with only a one-ft. rear yard (seaward-facing) setback, but it did not evaluate the proposed development’s potential impacts on public access and the effects of locating private development in close proximity to the public beach area. Such a small setback is usually insufficient for the applicant to conduct repair and maintenance activities—such as painting and other repair and maintenance activities—to the proposed structure without encroaching into public areas, including, in this case, a public access way currently being constructed along Ocean Front Walk. Although temporary encroachments into the public walkway are currently allowed by the City, those encroachments must be removed when Ocean Front Walk is completed.

Construction of the proposed residence with a one-foot rear yard setback would permanently hinder public use of the walkway and could not be removed in the future. Moreover, the lack of an adequate setback between private beachfront development and public access walkways, such as Ocean Front Walk, can result in potential conflicts between users of private property and public access ways and beach areas and create the appearance that portions of the public area are in fact private, thereby hindering public use of the public area. In addition, although the beach seaward of the subject site is currently relatively wide, the beach is expected to continue to narrow over time due to sea level rise, resulting in less beach area that will be available for public access and recreation. Thus, the importance of Ocean Front Walk for use by the public for access and recreation will become even greater over time, though, as discussed below, the City did not prepare an adequate analysis of coastal hazards and sea level rise so this issue is difficult to assess. Because the City did not analyze these issues in the record below, there is inadequate factual and legal support for its decision to approve the project with the proposed rear-yard setback.

In addition, the City granted a side-yard variance to reduce the setback required by the local building code from four feet to two feet along the northern side of the proposed building adjacent to 66<sup>th</sup> Avenue ([Exhibit 4](#)). The reduced setback along a public street that provides public beach access will narrow this view corridor and could adversely impact public access and coastal views. The City determined that the variance was needed because “the proposed 4,529 sq. ft. duplex could not be constructed as designed” without the side-yard reduction, but it failed to consider alternatives to the proposed development, including a modified project that reduces impacts to coastal resources. In addition, the City found that the reduction in the side yard setback was allowable because the surrounding residences observed similar reduced setbacks. However, the City did not analyze the impact of reduced setbacks on public access and visual impacts. Although setbacks are not a Chapter 3 standard of review, they provide a guideline to determine consistency with the public access and visual policies found in Chapter 3 of the Coastal Act. In this case, the proposed project must comply with Coastal Act Chapter 3 policies, (including protection of coastal views and public access ways).regardless of the existing footprint and current impacts to coastal access routes.

With regard to parking, the City did not clarify the total number of parking spaces that the project would provide or the number of parking spaces required for the project. Therefore, there is an inadequate level of factual support to support the City’s determination that the project is consistent with the public access and recreation policies found in Chapter 3 of the Coastal Act.

With regard to coastal hazards, the City did not undertake a comprehensive coastal hazards analysis to determine that the City-approved project (including the proposed basement) is safe from wave uprush, coastal flooding, and other coastal hazards that will be exacerbated by expected sea level

rise over the next century. Specifically, the City’s Letter of Determination did not reference a coastal hazards analysis demonstrating that the project site is reasonably safe from coastal hazard impacts. This issue is significant considering that the project proposal includes a basement that will be especially vulnerable to flooding and sea level rise.

Therefore, the Coastal Commission finds that the City provided inadequate factual or legal support for its decision to approve this project, and the first factor weighs in favor of finding substantial issue.

The second factor is the extent and scope of the development as approved or denied by the local government. The City-approved development would not allow adequate space between the proposed residential structure and Ocean Front Walk, the public access way that is directly adjacent to the inland extent of the beach. The lack of an adequate setback between private beachfront development and public access walkways can result in conflicts between users of private property and public access ways and could hinder public use of the walkway and public beach area. A reduction in the side-yard setback would reduce a public view corridor, and it also raises many of the same public access issues as the reduced seaward setback. The City’s Letter of Determination did not provide information on the number of parking spaces provided by the project or the number of spaces required for the project. Therefore, it is not clear whether the extent of development can accommodate enough onsite parking spaces to ensure the protection of public street parking. The City’s letter of Determination also did not include an analysis of coastal hazard impacts. Therefore, the City did not determine whether or not the scope of development is appropriate for an area that is vulnerable to impacts such as wave uprush and coastal flooding. Therefore, the extent and scope of the development as approved by the City weighs in favor of finding substantial issue.

The third factor is the significance of the coastal resources affected by the decision. The Coastal Act codifies a policy of maximum public access consistent with private property rights and public safety needs (section 30210), and specifically directs (in section 30211) that development “shall not interfere with the public’s right of access to the sea.” Thus, protecting public access to the coast is of primary importance under the Coastal Act. As approved by the City, the proposed development would hinder public access by providing almost no buffer between the private residence and adjacent public access ways, including Ocean Front Walk and an adjacent access way along the property’s side yard, thereby creating the appearance that public areas are actually private. Public coastal access is also enhanced through the availability of on-street parking for the public. The City did not determine whether or not the proposed new duplex would have sufficient onsite parking. If there is not enough onsite parking for residents, residents would be forced to use public street parking, thereby reducing parking available to the public and adversely impacting public coastal access for non-local beach visitors. Additionally, the City-approved reduction in the side-yard setback would diminish a public view corridor, an important resource protected under Section 30251 of the Coastal Act. The City’s failure to adequately assess the role of sea level rise through a coastal hazards analysis further compounds the threats to these important coastal resources.

Therefore, the Commission finds that the coastal resources affected by the development are significant, and the third factor weighs in favor of finding substantial issue.

The fourth factor is the precedential value of the local government’s decision for future interpretations of its LCP. The City does not currently have a certified LCP for the Playa Del Rey area. The coastal

resources affected by the City-approved development are significant in that future public access along this stretch of Playa Del Rey could be lost or impaired as the buffer between the private residences and the public walkway is reduced as homes are developed up to, or nearly up to, the public walkway. Previous patterns of development in this area have resulted in inadequate setbacks between private and public spaces, which can create the appearance that public access areas (Ocean Front Walk in this case) are actually private. In addition, the reduction of view corridors through improper side-yard setbacks will diminish coastal views protected by the Coastal Act. The City's failure to assess necessary parking in its Letter of Determination sets a precedent for similar projects in the future to not adhere to the City's onsite parking requirements, thus potentially prejudicing its ability to prepare a legally adequate LCP. This would have a long-term effect on public access by reducing the availability of public street parking available for visitors to access the coast. Similarly, the City's failure to include a coastal hazards analysis in its Letter of Determination could set a precedent for future development in the area to not account for a project site's vulnerability to coastal hazards, which would be inconsistent with Section 30253's requirement for new development to minimize risks to life and property in areas of high flood hazard. Therefore, the Commission finds that the City's action does prejudice the ability of the City to prepare an LCP that is in conformity with Chapter 3 of the Coastal Act, and the fourth factor weighs in favor of finding substantial issue.

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

In conclusion, the Commission finds that the appeal raises a substantial issue as to conformity with Chapter 3 policies of the Coastal Act.

## **APPENDICES**

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

Los Angeles Department of City Planning: Director's Determination for Coastal Development  
Permit no. DIR-2016-3514-CDP-MEL, September 11, 2018