

**CALIFORNIA COASTAL COMMISSION**

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# W16c

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**STAFF REPORT: PERMIT AMENDMENT**

**Application No.:** 5-90-311-A3

**Applicant:** City of Santa Monica  
Attn: Elana Buegoff

**Location:** 401 Santa Monica Pier, Santa Monica, Los Angeles County

**Description of Original Project Approved Pursuant to Permit No. 5-90-311:** Replace commercial-recreation facilities destroyed in the 1983 winter storms at the west end of the Municipal Pier to include Harbor office, public restroom, café and bait shop.

**Description of Project Approved Pursuant to Permit Amendment No. 5-90-311-A1:** Fully enclose an approximately 3,067 square foot second story deck, including a public access/observation deck of an existing 6,525 square foot restaurant.

**Description of Pending Permit Amendment No. 5-90-311-A3:** Request for after-the-fact authorization of both installation of exterior doors and establishment of hours of closure of the Santa Monica Pier public access/observation room consisting of the hours between 10 PM and 6 AM daily.

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## SUMMARY OF STAFF RECOMMENDATION

The City of Santa Monica is requesting approval of a Coastal Development Permit (CDP) amendment to install doors on the existing exterior openings of a public space (observation room) at the western end of the Santa Monica Pier and to lock the doors nightly between 10 PM and 6 AM. In addition, the City is requesting after-the-fact approval for installation of two interior doors/gates between the second floor of the restaurant and the observation room, for construction of a doorway on the southern wall of the observation room and for the enclosure of the northern and southern walls of the observation room.

The Commission has generally raised concerns about the potential of limiting access to coastal locations. However, the City has provided documentation showing that there is a continuing nighttime public safety problem at the observation room (including illegal drug use, late night loitering, littering, public defecation/urination, etc.). In March 2019, the City approved a nuisance order and subsequently installed the interior doors. The observation room has been closed nightly since that time. Safety concerns have essentially been eliminated at the observation room since the nighttime closure was implemented. In this particular case, restriction of access hours to the observation room is appropriate in consideration of the demonstrated public safety concerns and because the City's proposal is limited and tailored to address the identified problems in a way that does not significantly impact bona fide nighttime public access activities (e.g., stargazing, pier walks, fishing, etc.). The observation room represents a very small portion of the overall pier area, which remains open for public access 24 hours a day.

The City has indicated that the observation room has been used on multiple occasions by the adjacent restaurant in order to expand seating area for banquets and other private events. Use of the observation room for private events is inconsistent with the Commission's approved use of the observation room as a free public access amenity. Thus, a Special Condition has been included to memorialize the hours that the observation room must remain open to the public and also to clarify that the observation room will not be used for private events, but that use of the observation room for ticketed events open to the public may be allowed with a separate CDP.

Staff recommends that the Commission approve the proposed CDP amendment, as conditioned.

**PROCEDURAL NOTES:** The Commission's regulations provide for referral of permit amendment requests to the Commission if:

- 1) The Executive Director determines that the proposed amendment is a material change, or
- 2) Objection is made to the Executive Director's determination of immateriality, and at least three Commissioners object to the executive directors' designation of immateriality at the next Commission meeting, or the Executive Director determines that the objection raises an issue of conformity with the Coastal Act or certified Local Coastal Program.

5-90-311-A3 (Santa Monica Pier Observation Room)

The Executive Director has determined that the proposed amendment is a material change that affects conditions required for the purpose of protecting coastal access.

This amendment will be reported to the Commission on November 4, 2020. PLEASE NOTE THAT THIS WILL BE A VIRTUAL MEETING. As a result of the COVID-19 emergency and the Governor's Executive Orders N-29-20 and N-33-20, this Coastal Commission meeting will occur virtually through video and teleconference. Please see the Coastal Commission's Virtual Hearing Procedures posted on the Coastal Commission's webpage at [www.coastal.ca.gov](http://www.coastal.ca.gov) for details on the procedures of this hearing. If you would like to receive a paper copy of the Coastal Commission's Virtual Hearing Procedures, please call 415-904- 5202.

## TABLE OF CONTENTS

I. MOTION AND RESOLUTION.....	5
II. CHANGES TO CONDITIONS.....	5
III. FINDINGS AND DECLARATIONS .....	7
A. Project Description and Background .....	7
B. Public Access .....	10
C. Environmental Justice .....	15
D. Visual Resources .....	19
E. Coastal Act Violations .....	20
F. Local Coastal Program.....	21
G. California Environmental Quality Act.....	21

## APPENDICES

Appendix A – Substantive File Documents

## EXHIBITS

[Exhibit 1 – Project Location](#)

[Exhibit 2 – Plan](#)

[Exhibit 3 – Aerial Photograph](#)

[Exhibit 4 – Temporary Event Guidelines](#)

[Exhibit 5 – Nuisance Order](#)

## I. MOTION AND RESOLUTION

### Motion:

I move that the Commission **approve** Coastal Development Permit Amendment No. 5-90-311-A3, pursuant to the staff recommendation.

Staff recommends a **YES** vote on the foregoing motion. Passage of this motion will result in conditional approval of the permit amendment 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 Coastal Development Permit Amendment No. 5-90-311-A3 on the grounds that the development as amended and subject to conditions, 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 amendment 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 amended development on the environment, or 2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the amended development on the environment.

## II. CHANGES TO CONDITIONS

Unless specifically altered by this amendment, all regular and special conditions attached to Coastal Development Permit 5-90-311, as amended up through amendment number 5-90-311-A3, remain in effect. Language to be deleted is shown in ~~strike-out~~ and new language is shown in underline.

### A. Standard Conditions

3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for the permit, as modified by the application for the permit amendment, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.

### B. Special Conditions

#### 1. Revised Plans

A. Prior to issuance of the permit amendment, the applicant shall submit, for review and approval of the Executive Director, revised plans that show:

- 1) that the proposed second story roof covers the entire second story deck, as proposed, including the public access/observation deck. The access/observation deck room can be enclosed ~~along the western side,~~ with clear Plexiglas or other similar see-through material; and
- 2) the doorways at the top of the northwestern stairway and at the southern entrance to the access/observation room may be enclosed with transparent glass doors; and
- 3) two interior doors or gates may be installed between the private restaurant portion of the second floor and the access/observation room for emergency use and ADA use only; and
- 4) the height of the second story enclosure shall extend no higher than 30 feet above the Pier platform, with the exception of a maximum 42-inch high parapet atop the second story roof.

B. The Permittee shall undertake development in accordance with the approved final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

## 2. Signage Plan

A. Prior to issuance of the permit amendment, the applicant shall submit, for review and approval of the Executive Director, a signage plan that includes size, wording and location of signs. The plan shall incorporate the following:

- 1) (a) The signage shall indicate that the ~~upper deck~~ access/observation room is available and open to the general public between 6 AM and 10 PM daily; and
- 2) All signage shall be, at a minimum, printed in English and Spanish; and
- 3) (b) The signage shall be located, in conspicuous locations, at the top and bottom of the northwestern stairway, and at the southern entrance to the access/observation ~~deck~~ room.

B. The Permittee shall undertake development in accordance with the approved signage plan. Any proposed changes to the approved signage plan shall be reported to the Executive Director. No changes to the approved signage plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

### 3. Operations and Management Plan

A. Prior to issuance of the permit amendment, the applicant shall submit, for review and approval of the Executive Director, an operations and management plan for the observation room that incorporate the following:

- 1) The doors at the top of the northwestern stairway and at the southern entrance to the access/observation room shall only be locked between 10 PM and 6 AM daily.
- 2) The access/observation room shall be available and open to the general public between 6 AM and 10 PM daily, at a minimum. Once unlocked the doors shall be propped open so as not to appear inaccessible to the public.
- 3) The plan shall include a narrative of how the door will be locked and unlocked and the responsible party, and information on who to contact if doors are left locked during the public hours.
- 4) A separate Coastal Development Permit shall be required prior to use of the access/observation room for events (including filming), unless the event is considered exempt pursuant to the Commission's adopted temporary event guidelines ([Exhibit 4](#)). All ticketed events shall be open to the general public.
- 5) Private events not open to the general public in the access/observation room are prohibited.
- 6) Use of the access/observation room for expanded seating associated with the restaurant within the structure is prohibited.
- 7) The City shall provide a copy of CDP 5-90-311-A3 to the current restaurant lessee within the structure and any future lessee.

B. The Permittee shall undertake development in accordance with the approved access management plan. Any proposed changes to the approved access management plan shall be reported to the Executive Director. No changes to the approved access management plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

## **III. FINDINGS AND DECLARATIONS**

### **A. Project Description and Background**

#### Project Description

The applicant is requesting after-the-fact authorization of installation of doors on the existing openings of a public space (observation room) at the western end of

the Santa Monica Pier and to lock the doors nightly between 10 PM and 6 AM ([Exhibits 1 & 3](#)).

In 1990, the Commission approved permit #5-90-311 to:

Replace commercial-recreational facilities destroyed in the 1983 winter storms at the west end of the Municipal Pier to include Harbor office, public restroom, cafe and bait shop.

According to the report the project included a 966 sq. ft. Harbor Office, 625 sq. ft. public restrooms, 344 sq. ft. bait shop, a 6,525 sq. ft. cafe (restaurant), and 1,675 sq. ft. observation deck. Of the 6,525 sq. ft. for the cafe, 3,000 sq. ft. was located outdoors on upper and lower patios. The structure approved under #5-90-311 consisted of two separate structures joined by a second story open deck. One building consisted of the Harbor Office, restrooms, and bait shop. The second building consisted of the restaurant with outdoor seating on the ground floor and second floor. Access to the second story decks were by stairs located on the two separate structures.

In 2000, the Commission approved permit #5-90-311-A1 authorizing the City the lessee of the restaurant (Pacific Faire, Inc.) to:

Fully enclose an approximately 3,067 square foot second story deck, including a public access/observation deck of an existing 6,525 square foot restaurant.

Pursuant to the Commission approval, the public portion of the building on the second floor of the restaurant was reduced in size from 1,675 sq. ft. to 1,140 sq. ft. and the second floor restaurant space and public space were both allowed to be covered by a new roof. The second floor of the restaurant building is divided between enclosed approximately 1,926 sq. ft. seating and food preparation areas on the landward side for the first floor restaurant and also includes the approximately 1,140 sq. ft. observation room on the seaward side of the building ([Exhibit 2](#)). The observation room is managed and maintained by the City.

As conditioned in the CDP amendment, only the western wall of the observation room was allowed to be fully enclosed with "...plexiglass or other similar see-through material..." However, in 2000, at the time that the roof was constructed and the second floor restaurant was enclosed, the operator of the restaurant fully enclosed the observation room, including installation of walls and windows on the north and south walls of the observation room and installation of a door on the western wall of the observation room, without a CDP.

The plans approved by the Commission included one doorway to access on the southern wall of the second floor restaurant space. However, the operator of the restaurant instead constructed a doorway and installed a door on the southern side of the observation room, without a CDP, and did not construct the approved doorway with direct access to the restaurant area, effectively privatizing the public space as restaurant patio seating. Further, construction of the wall



separating the second floor restaurant space from the observation room was done in such a way as to reduce the public space and increase the size of the restaurant by approximately 500 sq. ft., and within the separating wall the restaurant operator created two openings and installed floor to ceiling gates in the openings, without a CDP.

In 2003, the City required the restaurant to remove the unpermitted doors on the western and southern walls of the public observation room, but the City did not address the interior gates separating the restaurant from the public space. Despite the City's previous action to require removal of the doors, the proposed doors were subsequently re-installed by the City in 2019 and the City currently restricts access to the observation room between 10 PM and 6 AM nightly, pursuant to a nuisance order dated March 4, 2019 issued by the Santa Monica Police Department (Ref: Municipal Code Section 8.96.050(a)(5)) ([Exhibit 5](#)).

In addition to the request to permanently retain the doors and restrict nighttime access to the observation room, the City is also requesting after-the-fact approval for installation of two interior doors/gates between the second floor of the restaurant and the observation room and for the enclosure of the northern and southern walls of the observation room to be retained in the current configurations. The primary entry and exit route to the second floor of the restaurant is via a stairway on the western side of the structure. There is an existing elevator within the harbor guard building that can be used to access the observation room through the doorway on the southern wall. The only way to access the second floor restaurant space without climbing stairs is to take the elevator, cross through the observation room, and go through one of the two openings in the interior wall between the observation room and the restaurant space. Thus, the City has indicated that retention of the passageways between the second floor portion of the restaurant and the observation room are necessary in order to provide a second entry and exit to the restaurant area in case of emergencies and also in order to provide an ADA accessible route to the second floor dining area. As proposed, the gates will remain closed when not in use as, either during an emergency or for ADA purposes, and will therefore effectively differentiate the restaurant space from the public observation room.

The City has provided evidence that there is a continuing nighttime public safety problem at the observation room (including illegal drug use, late night loitering, littering, public defecation/urination, etc.) and contends that closure of the observation during nighttime and early morning hours is only effective option to address the illicit activities.

#### Pier Background

In 1908, the first Municipal Pier was built at the present Pier location. The Pleasure Pier (also known as the Newcomb Pier) was built adjacent to the Municipal Pier in 1916. In 1920 the Pier failed and was reconstructed in 1921. The Pleasure Pier featured the Loeff Hippodrome, which housed the famed carousel, as well as a roller coaster and other entertainment features.

Throughout the 1920's and 1930's the Pier flourished as an entertainment and recreation center for visitors and tourists.

Succeeding decades, however, saw a decline in the Pier and in 1973, the City Council ordered its demolition. A citizen's group, interested in saving the pier, successfully placed an initiative on the ballot and the citizenry voted to save the Pier. Other measures to preserve the historical integrity of the Pier included its designation as a County of Los Angeles Historical Landmark in 1975, and a City of Santa Monica Landmark in 1976. In addition, the Loeff Hippodrome (carousel building) was designated a National Historic Landmark in 1988.

In 1981, the City Council created the Pier Task force to develop guidelines for the restoration of the pier. The guidelines that were developed had a historical perspective and allowed for the restoration of the Pier in a manner reflecting former uses as well as present ones.

However, in 1983, winter storms destroyed over 100,000 square feet of the western end of the wooden pier platform, and the remaining Pier suffered serious structural damage. In 1983, the Pier Restoration Corporation (PRC) was created to orchestrate reconstruction and redevelopment of the Pier. Reconstruction of the Pleasure Pier and the Municipal Pier was completed in 1991 (Coastal Development Permits 5-86-956 and 5-89-703).

The existing pier platform consists of 413,056 square feet of area. The Pier's current uses include a number of restaurants, fast food establishments, small retail shops, an arcade and an amusement ride area (CDP #5-92-345). The western end of the pier is used for fishing. The western end is improved with the Harbor Guard office and a display area for pier history and marine related issues, bait shop and the subject restaurant and observation room.

The proposed project is located on the Santa Monica Pier in the City of Santa Monica. In 1987 the Commission certified, with modifications, a LUP for the entire coastal area of the City of Santa Monica. The City, however, did not accept the LUP as certified. Then in 1992, the City resubmitted the LUP. The Commission certified the LUP with suggested modifications. The City does not have a certified Implementation Plan (IP). Regardless, the observation room is near the seaward end of the pier in the Commission's retained jurisdiction above state tidelands. Thus, Chapter 3 of the Coastal Act is the standard of review for this application, and the City's certified LUP can be used as guidance.

## **B. Public Access**

Section 30210 of the Coastal Act 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.

5-90-311-A3 (Santa Monica Pier Observation Room)

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 30213 of the Coastal Act states in part:

Lower cost visitor and recreational facilities shall be protected, encouraged, and, where feasible, provided. Developments providing public recreational opportunities are preferred.

Section 30221 of the Coastal Act states:

Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

Section 30214 of the Coastal Act States, in part:

(a) The public access policies of this article shall be implemented in a manner that takes into account the need to regulate the time, place, and manner of public access depending on the facts and circumstances in each case including, but not limited to, the following:

(1) Topographic and geologic site characteristics.

(2) The capacity of the site to sustain use and at what level of intensity...

Policy 14 of the Santa Monica LUP states:

Pier restoration shall include improved access for the disabled and infirm

In addition, Policy 32 of the Santa Monica LUP states:

The Santa Monica Pier shall be maintained as a recreational resource including amusements, public areas for low-cost recreational uses, fishing, and strolling, visitor-serving development and public parking. Commercial uses shall be visitor-serving consistent with the character of the Pier, shall preserve the Pier's historic ambience and shall be located and designed to complement the public areas. New development on the platform of the Pier may be permitted up to a maximum of 140,000 square feet.

The Santa Monica Pier is a regional coastal visitor-serving recreational resource. The pier provides primarily low-cost public recreational opportunities. The pier's current uses include a carousel, amusement ride area, food service establishments, retail shops, and fishing. The Pier provides pedestrian access throughout its length and along its perimeter. According to the City, the Pier attracts approximately nine million visitors each year. Usage

of the pier increased significantly after opening of the Metro Rail Expo Line that connects Santa Monica to Downtown Los Angeles. The terminus of the Expo Line is located within a 10 minute walk of the foot of the pier.

As stated above, the structure approved under CDP No. 5-90-311 and modified pursuant to CDP No. 5-90-311-A1 consists of two separate structures joined by a second story deck. One building consists of the Harbor Office, restrooms, and bait shop. The second building consists of a two-story restaurant with outdoor seating on the ground floor. The second floor of the second building also includes the approximately 1,140 sq. ft. observation room on the seaward side of the structure.

The western end of the existing Pier platform provides unobstructed views out to the ocean and back along the shoreline. Access and views are available around the entire perimeter of the restaurant structure. Views from the second story observation room of the restaurant structure, because of the room's orientation, provides views mainly to the west and north. Because the floor of the observation room is 16 feet above the pier, it provides a higher vantage point for viewing for the public. In its approval of the observation room, the Commission found that the development would enhance and encourage both active and passive recreational uses. As approved, the observation room only included a roof structure and per its design would be open to the public 24 hours a day.

The City is now proposing to prohibit use of the observation room between 10 PM and 6 AM nightly. The Commission has generally raised concerns about the potential of limiting access to coastal locations (Ref: 3-20-0088/Santa Cruz Nighttime Beach Curfew). The question is really one of whether there are demonstrable problems that require such action, and whether the scope of the closure is limited and tailored to address the identified problems in a way that does not significantly impact bona fide nighttime public access activities (e.g., stargazing, pier walks, fishing, etc.).

The observation room is a unique public recreational access area. Coastal Act 30210 requires "maximum access," but also explicitly tempers this requirement with the need to be cognizant of public safety needs and to protect natural resource areas from overuse. Similarly, and although Section 30211 does not allow for interference with public beach access rights, Section 30214 requires the Coastal Act's public access provisions to be implemented in a way that considers the need to regulate the time, place, and manner of public access depending on the facts and circumstances of each case. One such consideration included in Section 30214(a)(2) requires consideration of the capacity of the site to sustain use and at what level of intensity.

In contrast to some other cases, it is important to note that the subject site concerns a public space (enclosed deck) which is not comparable to closure of a public beach. Importantly in this case, the area of the pier seaward of the enclosed room is still open to the general public during all hours and the overnight closure of the deck/observation room does not affect the public's ability to access the surrounding public beach and the surrounding areas of the public pier.

## 5-90-311-A3 (Santa Monica Pier Observation Room)

To support the proposal, the City has provided evidence that there is a continuing nighttime public safety problem at the observation room (including illegal drug use, late night loitering, littering, public defecation/urination, etc.). The City's March 4, 2019 nuisance order includes the following description of issues arising at the observation room prior to installation of the exterior doors and closure of the space during nighttime hours:

“...In the past months, the observation deck has become a significant source of criminal activity and a gathering point for individuals who set up makeshift campsites in the space with bedrolls and personal effects. The isolated and sheltered location provides an ideal setting for criminal activities, especially during nighttime hours, including but not limited to: battery/assault with deadly weapons, brandishing of deadly weapons, public intoxication, narcotics use, and public urination. Indeed, the setting has become a source of constant conflict for encamped persons threatening each other and the public with violence and weapons, in part to assert control over their self-claimed camping areas within the space. Members of the public have begun avoiding the space during the nighttime hours due to this unsafe environment.

A significant amount of police calls for service have been generated at the location, with the overwhelming majority occurring between the hours of 10:00 pm to 08:00 am, after the normal business hours of the adjacent restaurant. Since October of 2018, Santa Monica Police Officers have responded to over 25 calls for service for individuals threatening assault, assault, brandishing of weapons, robbery, public intoxication, public urination, lewd conduct, and property damage. This does not include the numerous citizen contacts or non-enforcement contacts made by the Police and Harbor Department for individuals camping and occupying that space...”

The City has indicated that since March 2019 (when the doors were installed and locked at night), there have been no police service calls to observation room and the Harbor Guards have not had to request assistance related to issues at the observation room from the police<sup>1</sup>. The City further reports that it has no evidence that the nighttime observation room access restriction has resulted in any decreased use of the remainder of the pier, and the Commission is likewise unaware of any significant impacts.

There are two key components of the proposed nighttime observation room restrictions that relate to effects on public recreational access. First, the observation room closure only applies from 10 PM to 6 AM, during which time there are very few public access users to begin with, and those public access users that are present are still allowed to use the remainder of the pier. Thus, the use limitations during this time are not expected to lead to significant public recreational access impacts because there is very little such access to begin with at this time of night, and the closure still accommodates the most

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<sup>1</sup> Since the doors were installed the Harbor Guards had three (3) accounts of incidents. In each case a transient broke the lock on Observation Room door after hours and tried to enter the space. There were no accounts of reportable incidents while the door were open to the public between the hours of 6am-10pm.

common types of night access (walks along the pier and fishing). Second, the City reports that the nighttime closure has led to a drastic reduction in criminal activity associated with nighttime use, and thus has also led to a safer pier environment for all users. Thus, the nighttime closure's limited public access impacts are minimized to almost none, and are also offset by increased safety of the pier, enhancing public recreational access more generally. Again, as indicated above, the Santa Monica Pier is a significant visitor destination not only for City and County residents but for visitors from the greater Los Angeles Bay area and beyond, magnifying the benefits of this policy.

Unrelated to the proposal for the doors to enclose the public space, the City has indicated that the observation room has been used on multiple occasions over the years by the adjacent restaurant in order to expand seating area for banquets and other private events without a permit. Use of the observation room for private events is inconsistent with the Commission's approved use of the observation room as a free public access amenity. Thus, in order to address the inconsistency, Special Condition 3, requires that prior to issuance of the CDP amendment, the applicant shall submit an operations and management plan for review and approval of the Executive Director. The operations and management plan shall include the approved hours that the observation room doors may be locked and also the hours that the observation room will be open to the public. In addition, the Condition shall include a narrative to describe who will be responsible for locking and unlocking the doors and contact information for the responsible party to contact if the observation room is not open during the approved hours. Furthermore, the access management plan shall clarify that the observation room will not be used for private events or expanded seating associated with the restaurant within the structure. The operations and management plan shall also provide that a separate Coastal Development Permit will be required prior to use of the access/observation room for events (including filming), unless the event is considered exempt pursuant to the Commission's adopted temporary event guidelines ([Exhibit 4](#)) and that all ticketed events must be open to the general public. If a question arises in the future as to whether a proposed event is exempt, the Executive Director of the Commission retains the authority to make the exemption determination.

In addition, the City is required to provide a copy of CDP 5-90-311-A3 to the current restaurant lessee within the structure and any future lessee. Special Condition 2 has also been included to update the previously required signage plan to ensure that there is adequate signage, in both English and Spanish, indicating that the observation room is open to the public between 6 AM and 10 PM daily. Special Condition 1 requires that the City submit revised final plans to memorialize the approval of the proposed relocated doorway on the southern wall of the observation room, the installation of the doors on the western and southern walls of the observation room, the installation of two doors/gates for emergency and ADA use only on the interior wall between the observation room and the second floor restaurant area, and enclosure of the northern and southern walls of the observation room.

In conclusion, the City of Santa Monica has served to provide an exceptional visitor experience for the general pier-going public, and has appropriately maximized public recreational access opportunities to date. In this same tradition, the nighttime closure of the observation room ensures protection of public recreational access opportunities as

required by Chapter 3 of the Coastal Act by managing access, including promoting public safety, and minimizing public recreational access impacts while allowing for a multitude of uses for those visiting the pier. Therefore, as conditioned proposed nighttime closure of the observation room is consistent with the above-cited public recreational access policies of the Coastal Act and the City's certified LUP.

### **C. Environmental Justice**

Coastal Act Sections 30107.3 and 30604(h) allow for the Commission to consider environmental justice when making CDP decisions. Specifically:

30107.3. "Environmental justice" means the fair treatment and meaningful involvement of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.

(b) "Environmental justice" includes, but is not limited to, all of the following:

(1) The availability of a healthy environment for all people.

(2) The deterrence, reduction, and elimination of pollution burdens for populations and communities experiencing the adverse effects of that pollution, so that the effects of the pollution are not disproportionately borne by those populations and communities.

(3) Governmental entities engaging and providing technical assistance to populations and communities most impacted by pollution to promote their meaningful participation in all phases of the environmental and land use decision making process.

(4) At a minimum, the meaningful consideration of recommendations from populations and communities most impacted by pollution into environmental and land use decisions.

30604(h). When acting on a coastal development permit, the issuing agency, or the Commission on appeal, may consider environmental justice, or the equitable distribution of environmental benefits throughout the state.

To implement its Coastal Act environmental justice authority, the Commission adopted an Environmental Justice Policy ("EJ Policy") to guide and inform its decisions and procedures in a manner that is consistent with the provisions in, and furthers the goals of, Chapter 3 of the Coastal Act and certified LCPs. The EJ Policy further articulates environmental justice concepts, including stating:

The term "environmental justice" is currently understood to include both substantive and procedural rights, meaning that in addition to the equitable distribution of environmental benefits, underserved communities also deserve equitable access to the process where significant environmental and land use decisions are made.

Thus, the Commission's EJ Policy underscores the importance of both substance (i.e., evaluating whether projects do or do not disproportionately distribute environmental benefits and burdens) and process (i.e., ensuring that those potentially affected by proposed development have an equitable opportunity to participate in a transparent public process).

While the nighttime use prohibition restrictions applies equally to all individuals who might attempt to visit the observation room at night, it may disproportionately impact unsheltered individuals who have looked to the observation room for a place to sleep. This could represent a potential environmental justice issue that the Commission may take into consideration, including whether this unsheltered community has access to the Commission's process to make their views known and to help shape the debate on a potential Commission decision, and ultimately to ensure that such a decision equitably addresses and distributes coastal resource impacts and enhancements for all, including the unsheltered community.

### Identifying Disproportionately Affected Communities

The first step in this environmental justice analysis is to determine whether the unsheltered population constitutes an "environmental justice" community to which the Coastal Act's environmental justice provisions and the Commission's EJ Policy apply. If so, the next step is to identify to what extent implementing the nighttime use prohibition may adversely and disproportionately affect that community. In answering these questions, the Commission's consideration necessarily focuses on how the proposal's coastal resource impacts may disproportionately affect the unsheltered compared to other populations affected by the proposed project.<sup>2</sup> The Commission is also tasked with ensuring that communities of concern can access the process to make their views known and to help shape the debate on potential Commission decisions.

Based on the evaluation criteria set forth above, the Commission finds that the unsheltered population is in fact an environmental justice community. The Coastal Act's definition of environmental justice as set forth in Section 30107.3 above commits the Commission to the fair treatment and meaningful involvement of people of all "races, cultures, and incomes ... with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies." Unsheltered individuals can generally be classified as a very low-income segment of the population that are acutely struggling to attain some of society's most basic needs, such as safe housing, making them particularly vulnerable to outside environmental hazards. In addition, people of color tend to make up a much higher percentage of the unsheltered population, particularly African Americans, who statewide make up nearly 40 percent of

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<sup>2</sup> As a coastal management agency charged with the protection and enhancement of the State's coastal resources, the Commission's review of environmental justice issues is rooted in its evaluation of coastal resource benefits and burdens, as opposed to broader-based issues affecting society's general welfare, which is the purview of other government agencies and entities.



the unsheltered population but represent only 6.5 percent of the general population<sup>3</sup> and in LA county account for 33.7 percent of the county's homeless population but only 7.9 percent of the County's general population.<sup>4</sup> In March 2020, the Commission determined that unsheltered population does constitute a community of concern (Ref: CDP 3-20-0088/City of Santa Cruz Beach Management Plan). Thus, the Commission here finds that the unsheltered community qualifies as an environmental justice community to which the Coastal Act's environmental justice provisions and the Commission's EJ Policy apply.

The City of Santa Monica is at the forefront of developing and implementing strategies on addressing the homelessness crisis. Results from its 2020 annual point-in-time Homeless Count revealed that 907 people were experiencing homelessness, which represented an 8 percent decrease from 2019.<sup>5</sup> The City through its staff and partners engage with people experiencing homelessness and work to connect them to services<sup>6</sup>. In addition, the City has implemented policies and programs to keep people in their homes who may be at high risk of eviction. As part of a place-based engagement strategy, the City has partnered with a nonprofit called West Coast Cares who serves people experiencing homelessness at and around the Pier. West Coast Cares outreach staff works to reunify homeless clients with their families, and where reunification is not possible, they work with their partners to find housing and other service options to transition these individuals off the streets and offer alternative shelter locations to prevent safety threats to those individuals whom previously slept overnight in observation room on the pier. West Coast Cares has indicated that they support the proposal to install doors and maintain public hours for the observation room because there are better options for people experiencing homelessness that include services geared toward long-term success.

The next question is whether implementation of the nighttime closure of the observation room would have disproportionate adverse coastal resource impacts for the identified environmental justice community. The identified coastal resource is not public access to the beach or pier, because both of those locations are not affected by this closure. The lost resource to the environmental justice community is effectively the loss of an overnight shelter, which is not a coastal resource. The nature of the proposed project impacts public recreational access as a coastal resource by prohibiting use of the observation room during specified hours, however the remaining public coastal access areas of the pier are not impacted.

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<sup>3</sup> As detailed by the U.S. Department of Housing and Urban Development in its 2019 Annual Homeless Assessment Report to Congress.

<sup>4</sup> As detailed by the Los Angeles Homeless Services Authority in its 2018 Report and Recommendations of the Ad Hoc Committee on Black People Experiencing Homelessness.

<sup>5</sup> <https://www.santamonica.gov/press/2020/06/12/santa-monica-homeless-count-data-shows-impact-of-coordinated-efforts-with-8-decrease-pre-covid-19>

<sup>6</sup> <https://www.santamonica.gov/blog/ways-santa-monica-addressed-homeless-in-2019>

As discussed previously in the “Public Recreational Access” section of this report, while the Coastal Act requires that public recreational access opportunities be maximized, it also allows for limitations on such opportunities for a variety of reasons. This includes providing for public safety, protecting against overuse and coastal resource degradation, limiting intensity of use, and providing management measures to protect against impacts from litter, among other things. In fact, both Sections 30210 and 30214 allow for the regulation of the time, place, and manner in implementing Coastal Act public recreational access policies. If the City has a reasonable basis for limiting public recreational access during certain hours, such as on the basis of public health, safety, and welfare, this can be found consistent with the Coastal Act. In this case, as described in the prior public recreational access findings above, the nighttime closure’s limited public recreational access impacts are minimized. As such, the proposed restrictions are appropriate under the Coastal Act.

As explained above, the primary environmental justice concern with prohibition on nighttime use of the observation room is that while the closure applies equally to all individuals visiting the observation room at night, it will disproportionately impact the unsheltered community who sometimes sleep in the observation room. While the curfew would effectively limit the ability of all people from sheltering and sleeping overnight in the observation room, such an impact does not affect a coastal resource, particularly with respect to the type of public recreational access described by the Coastal Act in Section 30210 and 30214. The Coastal Act’s public recreational access provisions seek to maximize public recreational access but also to protect coastal resources from potential adverse impacts that can result from uncontrolled access.

Here, the City’s proposal strikes that balance. It limits potential impacts to public recreational access by allowing public access to the vast majority of the pier 24 hours a day. The proposed nighttime closure of the observation room also enhances the general public access resources of the pier by reducing the dangers attributable to nighttime activities, including used hypodermic needles, feces/urine, and trash, while the City is implementing important programs to provide unsheltered individuals who might use the pier overnight shelter in alternative locations that provide more comfortable, safe, and sanitary conditions.

The use of a public space as an overnight shelter is a function of the homelessness crisis much of the nation is facing at the present time, but in this case, closure of the public space is not an impediment to public recreational access. Thus, the Commission believes that an action here to allow the limited access restriction is appropriate under the Coastal Act, and does not unduly nor inappropriately burden one group more than another.

The Commission is sensitive to the challenges faced by the unsheltered, but the ability to address the root causes of the homelessness crisis are outside the purview of the Commission and its Coastal Act coastal resource protection mandate. In fact, much of the crises facing this community relate to broader social services and socioeconomic conditions that are better addressed by local governments and other applicable agencies under their power to regulate for public health, safety, and welfare. Thus, the nighttime closure of the observation room seeks to enhance public recreational access for all

individuals, and the resulting disproportionate impacts from the lack of affordable housing or adequate social services are being mitigated by the City. The ability of the Commission to offset unintended consequences from non-coastal resource issues can only be addressed with solutions beyond this agency's authority.

## **Conclusion**

The Commission recognizes that a core component of its EJ Policy, and of the Coastal Act more broadly, is to maximize public recreational access to and along the beach. These issues are central in guiding the Commission's implementation of the Coastal Act, including ensuring that CDP decisions benefit all and do not unduly burden a select group. Based on a range of considerations, along with actions taken to maximize participation and outreach, the Commission finds that the project's procedural and substantive aspects are not in conflict with the Coastal Act's environmental justice objectives. Approval of this proposed project, as conditioned, both substantively and procedurally, aligns with the goals of the Commission's EJ Policy and the Coastal Commission's environmental justice authority. The fairly limited pier access restrictions do not unduly or inappropriately burden one group more than another with respect to public recreational access, and may lead to public recreational access enhancements overall to an important visitor destination, improving it for all users.

## **D. Visual Resources**

Section 30251 of the Coastal Act states, in part:

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 the surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas...

LUP Policy 46 states, in part:

The scenic and visual qualities of the Coastal Zone shall be considered and protected as an important public resource. Public views to, from, and along the ocean, the Pier, Inspiration Point and Palisades Park shall be protected. 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.

Section 30251 of the Coastal Act requires development to be sited and designed to protect views to and along the ocean and in scenic coastal areas. The proposed site is located on the west edge of the public pier. The applicant proposes to install transparent

doors and windows along the northern, western, and southern sides of the existing observation room. No change to the footprint or the height of the structure is proposed. As such, no public views be impacted by the proposed development. Therefore, the proposed development is consistent with the visual resource policies of the Coastal Act and the certified LUP.

### **E. Coastal Act Violations**

Violations of the Coastal Act have occurred on the property, including construction of a doorway on the southern wall of the observation room, installation of doors on the western and southern walls of the observation room, enclosure of the northern and southern walls of the observation room, use of the observation room for private events, and establishment of hours of operation of the observation room, without the benefit of the necessary coastal development permit.

Any non-exempt development activity conducted in the Coastal Zone without a valid coastal development permit, or which does not substantially conform to a previously issued permit, constitutes a violation of the Coastal Act.

In order to resolve the above described unpermitted installation of doors and establishment of hours or operation going forward, the applicant is seeking after-the-fact approval of construction of a doorway on the southern wall of the observation room, installation of doors on the western and southern walls of the observation room, enclosure of the northern and southern walls of the observation room, and hours of operation. In order to help avoid unpermitted use of the observation room for private events in the future, Special Condition 3 requires that the applicant prepare and submit an operations and management plan for review and approval by the Executive Director. The access management plan shall clarify that the observation room will not be used for private events, but that use of the observation room for ticketed events open to the public may be allowed with a separate CDP. The Condition requires that the City provide an annual summary of all ticketed events that occurred within the observation room during the previous calendar year to the Executive Director of the Commission.

Consideration of the permit application by the Commission has been based solely on consistency of the proposed development with the policies of Chapter 3 of the Coastal Act. Approval of this application pursuant to the staff recommendation, issuance of the permit, and the applicant's subsequent compliance with all terms and conditions of the permit will result in resolution of the above described unpermitted installation of doors and establishment of hours or operation going forward. Approval of this permit is possible only because of the conditions included herein, and the applicant's presumed subsequent compliance with said conditions, and failure to comply with these conditions in conjunction with the exercise of this permit would also constitute a violation of this permit and of the Coastal Act. Accordingly, the applicant remains subject to enforcement action just as it was prior to this permit approval for engaging in unpermitted development.

## **F. Local Coastal Program**

The Coastal Act requires that the Commission consider the effect on a local coastal program when it approves a project. Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal development permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program (LCP) which conforms with Chapter 3 policies of the Coastal Act:

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).

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). The City of Santa Monica Land Use Plan (LUP) was effectively certified in August 1992. The Commission's standard of review for the proposed development is the Chapter 3 policies of the Coastal Act. The certified Santa Monica LUP is advisory in nature and may provide guidance.

## **G. California Environmental Quality Act**

Section 13096 of the California Code of Regulations requires Commission approval of a coastal development permit application 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.

In this case, the City of Santa Monica is the lead agency and the Commission is the responsible agency for the purposes of CEQA. As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate potential 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**

CDP Nos. 5-90-311 and 5-90-311-A1