

**CALIFORNIA COASTAL COMMISSION**

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# F14a

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## STAFF REPORT: PERMIT AMENDMENT

**Application No.:** 5-14-1756-A2  
**Applicant:** Ziad Ghandour  
**Agent:** DJ Moore, Latham & Watkins LLP  
**Location:** 547 Palisades Beach Road, City of Santa Monica

**Description of Original Project Approved Pursuant to Permit No. 5-14-1756:**  
Demolish existing 4,250 sq. ft. single-family residence and construct a 39 ft. high, 3 story plus basement, 7,450 sq. ft. single family residence and remodel the existing 2 car detached garage and construct a pool with a total of 1,971 cubic yards of grading on an 8,408 sq. ft. beach front lot.

**Description of Project Approved Pursuant to Permit Amendment No. 5-14-1756-A1:**  
Request for after-the-fact approval for more than 50% demolition of a non-conforming garage. The applicant also proposes minor modifications to the approved floor plans, including lowering the slab elevation below the garage by 4.5 ft. and pool by 6 ft., and eliminating a staircase and relocating a bathroom to accommodate a mechanical room and audio/video control room.

**Description of Pending Permit Amendment No. 5-14-1756-A2:** Removal of 24 approximately 7 ft. deep unpermitted piles beneath deck and request for after-the-fact approval of a 108 sq. ft. addition of internal floor area to accessory guest suite.

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## **SUMMARY OF STAFF RECOMMENDATION**

The project site is located on an 8,408 square foot beach front lot in the North Beach area of Santa Monica, immediately adjacent to a public beach and a public parking lot. In April 2015, the Commission approved the Coastal Development Permit (CDP) No. 5-14-1756 with 11 special conditions for the demolition of an existing 4,250 square foot single family residence; construction of a 39 foot high, 3 story (plus basement) 7,450 square foot single family residence; remodel of an existing detached 2-car garage; and construction of a pool with a total of 1,971 cubic yards of grading. In March 2017, an immaterial amendment (5-14-1756-A1) was approved for the demolition of more than 50 percent of a non-conforming garage (after-the-fact), minor interior modifications, lowering of the slab elevation below the garage by 4.5 feet, and lowering of the slab elevation below the pool by 6 feet.

The current CDP amendment application is for removal of 24 unpermitted piles from the rear yard (below an approved deck) and after-the-fact approval for addition of 108 square feet of interior floor area to the accessory guest suite located above the garage. The proposed addition of interior floor area to the accessory structure does not raise any Coastal Act issues. The deepened foundations under the deck that were installed without the benefit of a coastal development permit lessen or avoid the intended effect of the previously approved permit, including Special Condition 10, requires removal of the approved development if determined unsafe to occupy. The removal of these 24 piles is consistent with the underlying CDP and with the public access and hazard policies of Chapter 3 of the Coastal Act.

Violations of the Coastal Act exist on the subject property including, but not necessarily limited to, the unpermitted addition to the guest suite and installation of concrete columns beneath the rear yard deck. Installation of the concrete columns, in addition to being unpermitted, is also in violation of the conditions of the CDP No. 5-14-1756. Approval of the portion of this application to authorize the guest suite addition and removal of the 24 unpermitted piles pursuant to the staff recommendation, issuance of the permit, and the applicant's subsequent performance of the work authorized by the permit in compliance with all of the terms and conditions thereof will result in resolution of the unpermitted guest suite addition and pile installation.

Commission Staff recommends approval of the amendment request, in part, with one new special condition (Special Condition 12) in addition to the special conditions of the underlying permit that continue to apply. The special conditions of the permit, as amended, are: 1) Assumption of Risk, Waiver of Liability and Indemnity; 2) Brid Strike Prevention; 3) Storage of Construction Materials, Mechanized Equipment and Removal of Construction Debris; 4) Future Development; 5) Final Plans Conforming to Geotechnical Recommendations; 6) Construction Staging Plan; 7) Landscaping – Drought Tolerant, Non Invasive Plants; 8) Car Lifts; 9) Water Quality Standards; 10) No Future Shoreline Protective Device; 11) Deed Restriction; and 12) Revised Final Plans (CDP 5-14-1756-A2).

**PROCEDURAL NOTE:** 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.

In this case, the Executive Director has determined that the proposed amendment is a material change that affects conditions required for the purpose of protecting a coastal resource or coastal access.

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## **APPENDICES**

Appendix A – Substantive File Documents

## **EXHIBITS**

Exhibit 1 – Project Location

Exhibit 2 – Project Plans

Exhibit 3 – Conditions of CDP No. 5-14-1756

## I. MOTION AND RESOLUTION

### Motion:

I move that the Commission **approve** Coastal Development Permit Amendment No. 5-14-1756-A2, 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. 5-14-1756-A2 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 feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects 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 5-14-1756, as amended up through amendment number 5-14-1756-A1, and reflected in **Exhibit 3**, remain in effect. Language to be deleted is shown in ~~strike-out~~ and new language is shown in **bold, underlined**.

### A. Standard Conditions

- 1. Notice of Receipt and Acknowledgment.** The permit **amendment 5-14-1756-A2** is not valid and development **authorized by permit amendment 5-14-1756-A2** shall not commence until a copy of the permit **amendment**, signed by the applicant or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
- 2. Expiration.** If development has not commenced, the permit **amendment 5-14-1756-A2** will expire two years from the date on which the Commission voted on the **permit amendment** application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.

## B. Special Conditions

### 10. No Future Shoreline Protective Device

**A.** By acceptance of this permit, the applicant and landowner agrees, on behalf of himself and all other successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-14-1756, **as amended**, including, but not limited to, the residence, garage, and foundations and any future improvements, in the event that the development is threatened with damage or destruction from waves, erosion, storm conditions, liquefaction, flooding, sea level rise, or any other coastal hazards in the future. By acceptance of this permit, the applicant and landowner hereby waives, on behalf of himself and all successors and assigns, any rights to construct such devices that may exist under **applicable law** ~~Public Resources Code Section 30235~~.

**B.** By acceptance of this permit, the applicant and landowner further agree, on behalf of himself and all successors and assigns, that the landowner(s) shall remove the development authorized by this permit, **and all amendments thereto**, including the residence, garage and foundations if any government agency **with legal jurisdiction has issued a final order, not overturned through any appeal or writ proceedings, determining that the structures are currently and permanently unsafe for occupancy or use due to coastal hazards and that there are no measures that could make the structures suitable for habitation or use without the use of bluff or shoreline protective devices** ~~has ordered that the structure is not to be occupied due to any of the hazards identified above~~. In the event that portions of the development fall to the beach or are submerged before they are removed, the landowner(s) shall remove all recoverable debris associated with the development from the beach and ocean and lawfully dispose of the material in an approved disposal site and relocated any salvageable portions of the development inland. Such removal shall require a coastal development permit.

**11. Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the applicant has executed and recorded against the parcel(s) governed by this permit **amendment** a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, **as amended**, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit, **as amended**, as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit, **as amended**. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any

reason, the terms and conditions of this permit, as amended, shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property. This deed restriction shall supersede and replace the deed restriction recorded pursuant to Special Condition 11 of Coastal Development Permit Amendment 5-14-1756, approved on April 17, 2015, which deed restriction(s) is recorded as Instrument No. 20150815091 in the official records of Los Angeles County.

**12. Revised Final Plans (CDP Amendment 5-14-1756-A2).**

**A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT AMENDMENT, the applicant shall submit, for the review and written approval of the Executive Director, two full-size sets of the following revised final plans, modified as required below.**

- 1. Revised site plans that conform with the plans submitted to the Commission on October 10, 2019 and attached as Exhibit 2, except that they shall be modified to remove the 24 unpermitted piles.**
- 2. A plan to remove the unpermitted piles that includes the methods of removal, a construction timeline, construction best management practices, revised staging plan, and the location of disposal.**

**B. Within 90 days of issuance of this coastal development permit, or within such additional time as the Executive Director may grant for good cause, the permittee shall remove the 24 unpermitted piles in the rear yard at issue pursuant to the terms of the coastal development permit.**

**C. The permittee shall undertake development in conformance with the approved final plans unless the Commission amends this permit or the Executive Director provides a written determination that no amendment is legally required for any proposed minor deviations.**

### **III. FINDINGS AND DECLARATIONS**

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

In April 2015, the Commission approved the Coastal Development Permit (CDP) No. 5-14-1756 with 11 special conditions (**Exhibit 3**) for the demolition of an existing 4,250 square foot single family residence; construction of a 39 foot high, 3 story plus basement, 7,450 square foot single family residence; remodel of an existing 2 car detached garage; and construction of a pool with a total of 1,971 cubic yards of grading. The project site is located on an 8,408 square foot beach front lot in the North Beach area of Santa Monica, immediately adjacent to a public beach and a public parking lot (**Exhibit 1**).

Since the project's approval in 2015, the applicant applied for a CDP amendment for the demolition of more than 50 percent of a non-conforming garage, minor interior modifications, and lowering of the slab elevation below the garage by 4.5 feet and below the pool by 6 feet. The partial demolition of the garage was carried out without the benefit of a CDP or CDP amendment, thus, the applicant was required to pay an after-the-fact fee. The pool foundation, which was previously limited to the concrete slab at the base of the pool, was deepened so that there was an additional concrete slab six feet below the base of the pool. The space between the base of the pool and the deepened slab was filled with slurry. The CDP amendment was determined to be immaterial and was approved in March 2017.

On November 21, 2019, the applicant's representative at the time explained that the development onsite—including permitted development (construction of the residence, garage, pool, and associated approved improvements) and unpermitted development (installation of deepened foundations under the approved deck and guest suite addition)—was near completion. The deck, as approved (shown in both the original approved plans and the plans approved with the first CDP amendment), is located at natural grade and extends seaward of the residence to the inland extent of the pool and continues seaward southeast of the pool. In the approved site plans for CDP No. 5-14-1756 and the subsequent immaterial amendment, the deck is located at grade with no deepened foundations.

The current CDP amendment application is for removal of the 24 7-foot deep concrete columns beneath the existing (approved) deck that were installed without the benefit of a CDP and for after-the-fact approval for the addition of 108 square feet to the accessory guest suite located above the garage (**Exhibit 2**).

## **B. Coastal Hazards**

Section 30253 of the Coastal Act states, in part:

New development shall... (a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard. (b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

Section 30235 of the Coastal Act states, in part:

Revetments, breakwaters, groins, harbor channels, seawalls, cliff retaining walls, and other such construction that alters natural shoreline processes shall be permitted when required to serve coastal-dependent uses or to protect existing structures or public beaches in danger from erosion, and when designed to eliminate or mitigate adverse impacts on local shoreline sand supply...

Section 30253 of the Coastal Act prohibits new development from creating or contributing significantly to the destruction of the site or surrounding area or in any way requiring the construction of protective devices that would substantially alter natural

landforms along bluffs and cliffs. The project site is located on a beachfront lot, and, while the beach at this location is approximately 700 feet wide, development adjacent to the ocean is inherently hazardous and 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. In fact, since the preparation of the coastal hazards study referenced in the approval of CDP No. 5-14-1756, the best available science relating to climate change and sea level rise has evolved and indicates that the project site could become flooded during significant storm events (including 20-year and 100-year storms) within the next 40 to 80 years<sup>1</sup>.

The addition of internal floor area to the guest suite at the inland extent of the property does not raise any Coastal Act issues relating to coastal hazards. However, the piles that were installed in the rear yard without the benefit of a CDP raise concerns relating to consistency with the underlying CDP and the hazards policies of Chapter 3 of the Coastal Act.

CDP No. 5-14-1756 included conditions wherein the applicant acknowledges the risk of development and accepted that no shoreline protective devices shall ever be constructed to protect the approved development. Specifically, Special Condition 10 requires no protective devices be constructed to protect the development on-site even if threatened by coastal hazards and requires the removal of the approved development if the structures are not safe to be occupied. The property owner and future owners are notified of Special Condition 10 and the other conditions of the permit, including Special Condition 1 (Assumption of Risk, Waiver of Liability and Indemnity), through the deed restriction required through Special Condition 11. The installation of deepened foundations under the accessory deck located seaward of the new residence makes it more difficult for the applicant to remove the development if it was threatened at some point in the future, as required through Special Condition 10 of the underlying permit, and increases the degree of protection of the residence (in addition to the approved foundations under the house), and, therefore, counters the intended effect of the underlying permit.

The deck, as originally approved, did not include deepened foundations. In fact, as specifically stated in the Geotechnical Engineering Exploration by Irvine Geotechnical, Inc. on June 26, 2014, “the recommended bearing material for at-grade structures is the native beach sand deposits.” Thus, installation of the caisson system to support the deck was plainly inconsistent with Special Condition 5 of the previously approved permit, which required that all final design and construction plans shall be consistent with all recommendations contained in the June 26, 2014 geotechnical report. Therefore, the

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<sup>1</sup> In 2017 and 2018, respectively, the Rising Seas science report and Ocean Protection Council (OPC) State of California Sea Level Rise Guidance were updated to address new probabilistic projections of sea level rise. These reports are currently considered the best available science on sea level rise in California. The projected impacts to the project site are informed by the updated projections for a medium-high risk aversion scenario and the Our Coast Our Future model (Coastal Storm Modelling System data), which is a publicly available tool for modeling impacts of sea level rise.

proposed removal of the piles is consistent with the conditions and intent of the underlying permit.

To ensure the proposed removal is carried out in a manner consistent with the Chapter 3 policies of the Coastal Act, **Special Condition 12** is imposed to require revised plans that do not include the 24 rear yard piles and removal of the piles within 90 days of issuance of the subject CDP. The removal of the unpermitted piles is not anticipated to create or contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area; in any case, **Special Condition 12** also requires a Removal Plan that includes construction best management practices to be submitted, which must be reviewed and approved by the Executive Director prior to issuance of the CDP. In addition, the development continues to be conditioned to: implement construction-related erosion and runoff control techniques (**Special Condition 3**); prohibit construction of protective devices in the future (**Special Condition 10**); and to require that the landowner and any successor-in-interest assume the risk of undertaking the development (**Special Condition 1**). The proposed development does not raise any new issues relating to coastal hazards. However, to ensure that future owners have notice of all of the conditions of the permit, the permit amendment requires the applicant to record a new deed restriction that will supersede and replace the deed restriction previously recorded (**Special Condition 11**).

As conditioned, the Commission finds that the development is consistent with the underlying permit and with Section 30253 of the Coastal Act regarding the siting of development in hazardous locations.

### **C. Public Access and Visual Resources**

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.

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 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...

The proposed development is located on private beachfront property that has the potential to be impacted by flood hazards and wave action in the future. The proposed addition to the guest suite, which is located above the garage and inland of the residence approved under CDP 5-14-1756 (as amended), will not affect public views or access to the coast. The project was originally conditioned to require removal of the development if threatened by coastal hazards in the future (**Special Condition 10**), prohibit use of public areas for staging (**Special Condition 6**), and maintain four parking spaces onsite (**Special Condition 8**). These conditions apply to the proposed development, including the removal of the 24 deepened piles. Therefore, the removal of the deepened piles in the rear yard, as proposed and conditioned, and proposed addition of internal floor area to the guest suite is consistent with the visual resource and public access policies of the Coastal Act.

#### **D. Coastal Act Violations**

Violations of the Coastal Act have occurred on the property, including, but not necessarily limited to, unpermitted addition to a guest suite and installation of 24 approximately 7 ft. deep concrete columns beneath a deck. In addition to being unpermitted, the installation of the concrete columns also constitutes a violation of Special Conditions 4 and 10 of CDP No. 5-14-1756, which, respectively, require a coastal development permit for any future improvements to the residence on the property and prohibit shoreline protective devices on the property to protect approved development.

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 addition, staff visited the project site on December 26, 2018 and observed, and also found recent aerial images of the site that presented evidence, that construction staging occurred within the adjacent public beach parking lot and excluded the public from use of up to approximately 20 public parking spaces, which is a violation of the approved Staging Plan required pursuant to Special Condition 6 to specifically avoid use of public areas, including public parking lots, for staging.

Consideration of the permit application by the Commission has been based solely on the consistency of the proposed development with the policies of Chapter 3 of the Coastal Act. Upon issuance of the CDP, subsequent performance of the work authorized by the permit in compliance with all of the terms and conditions of this permit will result in resolution of the unpermitted guest suite addition and pile installation. The Commission's enforcement division will consider how to address the violation consisting of construction staging in the adjacent, public parking lot, which is non-compliant with Special Condition 6, as a separate matter.

Commission review and action on this permit does not constitute a waiver of any legal action with regard to the alleged violations (or any other violations), other than the development approved herein, nor does it constitute an implied statement of the

Commission's position regarding the legality of the development undertaken on the subject site without a coastal permit, or of any other development other than the development approved herein.

## **E. Local Coastal Program**

Coastal Act section 30604(a) states that, prior to certification of a local coastal program ("LCP"), a coastal development permit can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that is in conformity with Chapter 3. The City of Santa Monica has neither a certified LCP nor a certified Land Use Plan for the North Beach area.

Removal of the unpermitted deepened foundations in the rear yard and after-the-fact approval of the addition to the accessory guest suite, as conditioned, will not prejudice the ability of the City of Santa Monica to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3 of the Coastal Act.

## **F. 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. The City of Santa Monica determined that the proposed development was categorically exempt (Class 1, Item 15301 – Existing Facilities) from CEQA requirements on August 9, 2018.

As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

## **Appendix A: Substantive File Documents**

5-14-1756 staff report (includes permit conditions), dated 3/20/19

5-14-1756-A1 immaterial amendment

Geotechnical Engineering Investigation Exploration for 547 Palisades Beach Road, by Irvine Geotechnical, Inc. on June 26, 2014 and 2015 addendum