

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
301 E. Ocean Blvd., Suite 300
Long Beach, CA 90802-4830
(562) 590-5071



F17a

Filed: 11/21/19
180th Day: 5/19/20
Staff: JD-LB
Staff Report: 06/18/20
Hearing Date: 07/10/20

STAFF REPORT: REGULAR CALENDAR

Application No: 5-19-0983

Applicant: NXT2 Shutters, LLC

Agent: Sherman Stacey and Hank Koning

Location: 1828 Ocean Ave., Santa Monica, Los Angeles County

Project Description: To construct a 81,630 sq. ft., 5-story mixed-use building with 83 apartment units including 16 affordable units for very-low income households, a corner cafe and a 105,995 sq. ft. 2 level 273 parking space subterranean garage on an existing parking lot.

Staff Recommendation: Approval with Conditions

SUMMARY OF STAFF RECOMMENDATION

The project site consists of a 45,120 sq. ft. surface parking lot on Ocean Ave in Santa Monica that provides parking for the guests and employees of Hotel Casa Del Mar located at 1910 Ocean Way. The applicant proposes to demolish the existing parking lot and construct a 81,360 sq. ft. 5-story mixed-use building with 83 apartment units including 16 affordable units for very-low income households, a corner café and a 105,995 sq. ft. 2-level 273 parking space subterranean garage. Of the 273 parking spaces, 127 parking spaces will be retained for use by Hotel Casa Del Mar.

Issues before the Commission concern potential impacts to public access as a result of the proposed parking plan and ensuring the protection of cultural resources.

Commission Staff recommends approval of the project with 8 Special Conditions for: 1) a deed restriction, 2) parking restrictions, 3) provisions for affordable units, 4) requirements

5-19-0983 (NXT2 Shutters, LLC)

for a landscaping plan, 5) submittal of a construction staging plan, 6) adherence to a transportation demand management program, 7) construction BMPs, and 8) submittal of a cultural resource monitoring plan.

In addition, under the Permit Streamlining Act, the time-frame for Commission action on this application was on or before May 19, 2020, 180 days from filing of this permit application. On April 16, 2020, the Governor of the State of California issued Executive Order N-52-20 tolling the Permit Streamlining Act's timeframe for action on permit applications for 60 days. Accordingly, the deadline for Commission action on this permit application is July 18, 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 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	4
III. SPECIAL CONDITIONS.....	5
IV. FINDINGS AND DECLARATIONS.....	11
A. PROJECT LOCATION & DESCRIPTION	11
B. PUBLIC ACCESS.....	12
C. DEVELOPMENT.....	17
D. COASTAL VIEWS/COMMUNITY CHARACTER	20
E. WATER QUALITY	21
F. CULTURAL RESOURCES	24
G. LOCAL COASTAL PROGRAM (LCP)	27
H. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA).....	27

APPENDICES

Appendix A – Substantive File Documents

Appendix B – Cultural Resources Significance Testing Plan Procedures

EXHIBITS

Exhibit 1 – Vicinity Map/Project Site

Exhibit 2 – Project Plans

Exhibit 3 – Subterranean Parking Garage

Exhibit 4 – Commercial Floor Plan

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission **approve** Coastal Development Permit Application No. 5-19-0983 pursuant to the staff recommendation.*

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

Resolution:

The Commission hereby approves a coastal development permit for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the policies of Chapter 3 of the Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a Local Coastal Program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternatives that would substantially lessen any significant adverse impacts of the development on the environment.

II. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Deed Restriction.** PRIOR TO ISSUANCE OF THIS 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 a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this permit, the California Coastal Commission has authorized development on the subject property, subject to terms and conditions that restrict the use and enjoyment of that property; and (2) imposing the Special Conditions of this permit, as covenants, conditions and restrictions on the use and enjoyment of the Property. The deed restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed restriction shall also indicate that, in the event of an extinguishment or termination of the deed restriction for any reason, the terms and conditions of this permit, shall continue to restrict the use and enjoyment of the subject property so long as either this permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

The recorded document shall include a legal description and corresponding graphic depiction of the legal parcel(s) subject to this permit amendment. The deed restriction shall be recorded free of prior liens and any other encumbrances that the Executive Director determines may affect the interest being conveyed. The deed restriction shall run with the land in favor of the People of the State of California, binding successors and assigns of the applicant or landowner in perpetuity.

This deed restriction shall supersede and replace the deed restriction recorded pursuant to Special Condition No. 1 of Coastal Development Permit 5-95-188, approved on December 15, 1995, which deed restriction was recorded as Instrument No. 99-1357063 in the official records of Los Angeles County.

2. **Parking Restrictions.** With the acceptance of this permit, the applicant and all future assigns acknowledge that any change in the parking proposed under this permit, including, but not limited to, the provision of the leasing or selling of parking spaces to third parties, or reserving parking spaces for other uses not approved under this permit, or change in the number of shared parking spaces between residential and commercial uses, shall be submitted to the Executive Director to determine if an amendment to the permit is legally required.

A. **The following requirements shall apply:**

- (i) 127 on-site parking spaces, if unoccupied, shall continue to be open to the public on weekends and holidays and between 5:00 P.M. and 10:00 A.M. on all weekdays. If a fee is charged, rates for public parking shall not exceed those charged at the City operated public beach parking lots.
- (ii) A total of 273 parking spaces will be maintained onsite at all times.
- (iii) The applicant shall maintain a minimum of 6 EV charging stations for the life of the development.

3. Affordable Units.

- A. By acceptance of this permit, and as proposed by the permittee, the permittee agrees that the 16 affordable units onsite shall be maintained as affordable units for the life of the development approved by CDP No. 5-19-0983.
- B. PRIOR TO COMMENCEMENT OF CONSTRUCTION, the applicant shall provide to the Executive Director evidence that the applicant has recorded the deed restriction required by the City for the creation of affordable rental units, and evidence that such deed restriction has been recorded.

- 4. Landscaping – Drought Tolerant, Non-Invasive Plants.** By acceptance of this permit, the applicant agrees that vegetated landscaped areas and planters shall only consist of native plants or non-native drought tolerant plants, which are non-invasive. The use of pesticides and herbicides shall be prohibited. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.cal-ipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a “noxious weed” by the State of California or the U.S. Federal Government shall be utilized within the property. All plants shall be low water use plants as identified by California Department of Water Resources (See: <http://www.water.ca.gov/wateruseefficiency/docs/wucols00.pdf>).

- 5. Construction Staging and Corridor Plan.** PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit for review and approval of the Executive Director a construction staging and construction corridor plan that has no impacts to public access. The construction staging shall not take place on any sandy areas or beach, and not in beach parking lots.

6. Transportation Demand Management Program

- A. By acceptance of this permit, the permittee agrees to maintain the Transportation Demand Management program at all times which includes, but is not limited to, the following:

- (i) The applicant and its successors and assigns shall actively encourage employee and residents and customers participation in a Transportation Ride Sharing program.
- (ii) A public transit fare reimbursement program shall be implemented by the applicant or its successors and assigns. All commercial tenants shall offer full (100 percent) reimbursement of public transit fare to and from work to all employees of the development, provided that the employee purchases a monthly regional public transit pass of the employee's choice (e.g. Big Blue Bus 30-day Pass, Metro EX Pass, Metro TAP or equivalent). An employee accepting the transportation allowance shall be required to sign a statement agreeing said employee will not utilize a single occupancy vehicle for the majority (at least 51%) of their daily commute distance more often than: (a) five working days per month or (b) 25% of their days of work per month, whichever is less. The employee's statement shall also specify the employee's alternative commute mode (e.g. transit, bike, walk). The employee must demonstrate compliance as reasonably required by the employer.
- (iii) The applicant and its successors and assigns shall provide secure bicycle parking, free of charge, on the property for the public, including residents, employees and visitors consistent with the project plans.
- (iv) The applicant and its successors and assigns shall implement a publicity program, the contents of which is subject to the review and approval of the Executive Director, that indicates how the future occupants of the development will be made aware of the provisions of this special condition. The publicity program shall be implemented during the first month of occupancy of the new development and shall be distributed to residents and employees annually thereafter for the life of the development.
- (v) Consistent with the City's requirement for unbundled parking, residents of the affordable units who do not own a car will be eligible for a rent discount.

B. Any proposed changes to the measures shall be submitted to the Executive Director to determine if an amendment to the permit is legally required.

1. Construction BMPs and Water Quality. By acceptance of this permit, the permittee shall comply with the following construction-related requirements:

A. Construction Responsibilities and Debris Removal

- (i) No demolition or construction materials, equipment, debris, or waste shall be placed or stored where it may enter sensitive habitat,

receiving waters or a storm drain, or be subject to wave, wind, rain or tidal erosion and dispersion;

- (ii) No demolition or construction equipment, materials, or activity shall be placed in or occur in any location that would result in impacts to environmentally sensitive habitat areas, streams, wetlands or their buffers;
- (iii) Any and all debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project;
- (iv) Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters;
- (v) All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day;
- (vi) The applicant(s) shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction;
- (vii) Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required;
- (viii) All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil;
- (ix) Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems;
- (x) The discharge of any hazardous materials into any receiving waters shall be prohibited;
- (xi) Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible;

- (xii) Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity;
- (xiii) All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

B. Drainage and Water Quality

- (i) During construction of the proposed project, no runoff, site drainage or dewatering shall be directed from the site to the beach or street that drains toward the beach, unless specifically authorized by the California Regional Water Quality Control Board;
- (ii) All equipment and materials shall be stored and managed in a manner to minimize the potential of pollutants to coastal waters;
- (iii) All runoff leaving the site shall be directed away from the beach and into the City storm drain system;
- (iv) No water from any pool or spa shall be discharged toward the beach or street that drains to coastal waters.

7. Cultural Resource Treatment and Monitoring Plan. By acceptance of this permit the applicant agrees to comply with the following:

A. Incorporate the following into the archeological monitoring plan:

- (i) Archaeological monitor(s) qualified by the California Office of Historic Preservation (OHP) standards, and a minimum of 1 Native American monitor from each tribal entity with documented ancestral ties to the area appointed consistent with the standards of the Native American Heritage Commission (NAHC), and the Native American most likely descendent (MLD) when State Law mandates identification of a MLD, shall monitor all project grading, excavation work, site preparation or landscaping activities associated with the approved development. Prior to the commencement and/or re-commencement of any monitoring, the permittee shall notify each archeological and Native American monitor of the requirements and procedures, and shall provide a copy of this special condition, any archeological monitoring or research plans, past archeological reports, and any other plans required pursuant to this condition and which have been approved by the Executive Director, to each monitor;
- (ii) The permittee shall provide sufficient archeological and Native American monitors to assure that all project grading and any other

subsurface activity that has any potential to uncover or otherwise disturb cultural deposits is monitored at all times;

- (iii) The Native American Monitor(s) shall be required until native soils have been reached.

B. If an area of tribal cultural deposits is discovered during the course of the project:

- (i) All construction and subsurface activities that have the potential to uncover or otherwise disturb tribal cultural deposits in the area of the discovery shall cease within 50 feet of the deposit immediately;
- (ii) The permittee shall report all discovered resources as soon as possible, by phone for by email to the Executive Director;
- (iii) The professional archeological monitor onsite must contact all affected groups of the Native American Tribe that are not present for onsite monitoring and notify them of the discovery in order to determine the results of (iv) and (v) below;
- (iv) Significance testing may be carried out only if acceptable to the affected Native American Tribe, in accordance with the attached "Cultural Resources Significance Testing Plan Procedures" (Appendix B) and in consultation with the Tribe. The Executive Director shall, in writing, determine the adequacy of the Significance Testing Plan and if it can be implemented without further Commission action, provide written authorization to proceed. The Significance Testing Plan results, if applicable, along with the project archaeologist's recommendation as to whether the discovery should be considered significant, and the comments of the Native American monitors and MLD when State Law mandates the identification of a MLD, shall be submitted to the Executive Director for a determination. If the Executive Director determines that the discovery is significant, development shall not recommence and the permittee shall submit to the Executive Director a Supplementary Archaeological Plan consistent with Appendix B.
- (v) The treatment method or mitigation measure for the discovery shall be prepared in consultation with the Native American monitor(s), and the MLD when State Law mandates the identification of a MLD. The permittee shall inform the Executive Director of the treatment method in writing. In-situ preservation is the preferred treatment and can be achieved through such methods such as, but not limited to, project redesign, capping, and deeding the cultural resource areas in open space. The range of treatment and mitigation measures considered shall not be constrained by the approved development plan.

- C. If the Executive Director determines that the discovery is significant or that the treatment method preferred by the affected Native American tribe is in conflict with the approved development plan, the permittee shall seek an amendment from the Commission to determine how to respond to the discovery and to protect both those and any further cultural deposits that are encountered. Development within at least 50 feet of the discovery shall not recommence until an amendment is approved, and then only in compliance with the provisions of such amendment.

IV. FINDINGS AND DECLARATIONS

A. PROJECT LOCATION & DESCRIPTION

The applicant, NXT2 Shutters, LLC proposes to demolish the existing parking lot and construct a 5-story, 47-foot high, 81,630 square foot residential/commercial mixed-use development consisting of 83 residential units, 2,000 square feet of ground floor commercial space, 5,897 square feet of residential common space, 147 (short-term and long-term) bicycle parking spaces (8 for commercial employees, 139 for residents) (Exhibit 2) and a 105,995 square foot two-level subterranean parking garage with 273 parking spaces (Exhibit 3). The 273 parking spaces will be divided among residential, commercial and replacement parking for Hotel Casa Del Mar. The applicant proposes to provide 7 commercial parking spaces, 126 residential parking spaces, 13 residential guest parking spaces and 127 replacement hotel parking spaces.

Past permit history for this site includes CDP 5-95-188. The staff report explains that prior to 1989, the site supported a restaurant, a small hotel and a parking lot. The restaurant suffered a fire and was demolished. The demolition of the hotel in 1989 was done without a coastal development permit after the structure was determined to be uninhabitable. After the demolition occurred, the landowner for a nearby beach-front structure (what is now the Casa Del Mar Hotel) purchased the vacant lot and constructed the parking lot. The Casa Del Mar Hotel is a pre-coastal structure (previously called the Pritikin Longevity Center) that was constructed without any parking and wanted to secure parking for its visitors. For reference, the Casa Del Mar Hotel is immediately next door to the site at 1921 Ocean Front Walk (the subject site of CDP application 5-19-0984).

In 1995, when the landowner proposed construction of the 127 space parking lot, the Commission approved the project and required that the 127 spaces be available to the general public on weekends, at a rate not to exceed the nearby City lots, and anticipated that approximately 50-60 spaces would be available to serve the public for coastal access. The Commission found that development of “an exclusive private parking lot is not a priority use [according to the Coastal Act] and developing this lot with a low priority use will have adverse individual and cumulative impacts on coastal access and public opportunities for coastal recreation. Due to the site’s close proximity to the Santa Monica Pier, pedestrian promenade and beach and site is suitable for visitor-serving uses...[but] by providing parking for an existing use that has no support parking, parking in the area, such as on-street and public beach lots, will be made available to the public for beach and recreational access.” The report further explained that development of the private parking

5-19-0983 (NXT2 Shutters, LLC)

lot would not preclude development of future higher priority uses, such as visitor serving uses. Because of this permit history, the applicant has proposed to ensure that 127 spaces currently provided for the Casa Del Mar Hotel are preserved on the site, and the condition to offer the 127 spaces to the general public on weekends remains in place.

Of the 83 proposed residential units, the applicant proposes 52 one-bedroom apartments, 19 two-bedroom apartments and 12 three-bedroom apartments. Of the 83 residential units, 16 are proposed to be deed restricted (per City of Santa Monica requirements) affordable apartments for very-low income households (i.e., 50% of median area income). Four of the sixteen affordable units are intended to meet the City of Santa Monica's affordable housing offsite location requirements for proposed project at 1921 Ocean Front Walk (Ref: CDP Application No. 5-19-0984). The 16 affordable units located at 1828 Ocean Avenue will consist of 8 one-bedroom apartments, 6 two-bedroom apartments and 2 three-bedroom apartments. The average sizes of the proposed market-rate residential units are: 744 square feet for the one-bedroom apartments, 1,076 square feet for the two-bedroom apartments and 1,400 square feet for the three-bedroom apartments. The average sizes of the proposed affordable residential units are: 678 square feet for the one-bedroom apartments, 895 square feet for the two-bedroom apartments and 1,156 square feet for the three-bedroom apartments.

The 45,120 square foot site located at 1828 Ocean Avenue consists of an existing parking lot used by Hotel Casa Del Mar with 127 parking spaces. The subject site slopes upward from west to east. The lowest floor level will be approximately 33 feet below the street level at Ocean Avenue on the northeast and approximately 19 feet below the existing ground adjacent to the existing Shutters Hotel on the southwest. The site is located on the inland border of the Oceanfront District. This area is generally mixed with hotel accommodations, restaurants, medium to high density residential buildings, parks, public beaches and public parking. The site is bounded by Ocean Avenue to the east, Pico Blvd. to the south, Shutters on the Beach hotel to the west and Vicente Terrace to the north (Exhibit 1).

The proposed ground floor commercial is accessible from Ocean Avenue and would consist of a total of 2,000 square feet of visitor-serving and pedestrian-orientated commercial area to be used as a café (Exhibit 4). The project proposes 800 square feet of service area for the café. The proposed subterranean parking garage will be accessible from Pico Blvd with an ingress and egress driveway. The applicant proposes to "unbundle" all parking spaces, thereby leasing parking to the residential and the commercial tenants separately from their respective units and tenant spaces. The commercial spaces will be available for use by employees and customers of the corner café.

B. PUBLIC ACCESS

Coastal Act Section 30210 states:

In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum public 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 resources areas from overuse.

Coastal Act Section 30211 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 development.

Coastal Act Section 30252 states:

The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development.

LUP Policy 20 states, in part:

New development shall provide adequate parking to meet all demands created by the development. With the exception of development with the Third Street Assessment District and at the Santa Monica Pier, required off-street parking spaces shall be located on the parcel or building site...

The Coastal Act prioritizes the protection of public access to the coast and, in Section 30252, specifically identifies adequate parking as an important component of new development. Providing sufficient on-site parking with proposed development is necessary to protect public beach parking for members of the public who wish to access the coast. Past Commission action has required new multi-family residential developments to provide two spaces per residential unit, plus in some cases, one additional guest parking space for every three units.

The property currently contains a parking lot provide 127 parking spaces, which are primarily used by a nearby hotel but are also available to the public during the evening and on weekends. The applicant proposes to demolish the existing parking lot and construct a new parking structure that will include a total of 273 parking spaces. The applicant proposes to allow the nearby hotel (Casa Del Mar) to continue to use 127 parking spaces in the new development, and those spaces will be made available to the public during evenings and on the weekend, as previously conditioned by CDP No. 5-95-188. As such, a total of 146 spaces will serve the proposed new residential and commercial uses.

The 83 residential units require 2 spaces per unit. However, in past Commission action, the Commission has accepted reduced parking for projects that include affordable accommodations (Ref: CDP No. 5-19-0181). In fact, in 2019 the Commission approved a 100% affordable housing project in the City of Santa Monica with a reduced parking rate of 0.5 space per affordable unit. Past parking studies for this area have concluded that parking usage for affordable units is typically only 0.5 spaces per unit (for 1 and 2 bedroom units), but that family units (3 bedroom units) typically require closer to 0.85 spaces per unit.

The City of Santa Monica in the past few years adopted revised parking standards for new development where all off-street private parking spaces are “unbundled” (offered separately) from the dwelling units and commercial tenant spaces, in order to provide more flexibility for those who do not want or need parking.

The City’s code provides an exception for residential units of 3 or more bedrooms and requires those units have 1 parking space bundled with the lease or ownership of the unit for the life of the development. The code also requires that for deed-restricted affordable units, the tenant may choose to either receive 1 parking space, which shall be included within the unit’s affordable rent level, or receive a rent discount equivalent to half the amount charged for monthly lease of a parking space, in exchange for not receiving a parking space. Here, the applicant has proposed 16 affordable units, which will consist of 8 one-bedroom apartments, 6 two-bedroom apartments and 2 three-bedroom apartments, as such, according to reduced parking standards approved by the Commission in the past for affordable projects, 14 of the affordable units onsite would require 0.5 spaces per unit, and 2 units would require 0.85 spaces per unit and according to the City’s code- the (3) three bedroom units would be granted 1 space per unit. As such, the proposed affordable units onsite will require a total of 8.7 spaces or 9 spaces. The remaining number of units (not affordable) require 2 spaces per unit for a total of 134 spaces. In sum, 143 spaces are needed onsite to meet the demand for the residential units.

Compared to past Commission actions addressing parking for commercial uses, the total required number of spaces for the 2,000 square feet commercial space consisting of 800 square feet of service area would be require 16 spaces to meet the demand. The project proposes only 7 spaces for the commercial use. However, given that the residential uses require 143 spaces total, there are only 3 spaces remaining for the commercial uses. As such, the project does not include on-site parking typically required for comparable developments. It should be noted however, that because the City requires the residential units be offered “unbundled” from the parking spaces, once the building is occupied it is possible that not all 143 spaces will be used by the residents. Spaces that are not occupied by the residents can and should be able to serve the commercial uses onsite. That is a unique advantage of mixed use buildings and having shared parking arrangements.

Data provided by the City of Santa Monica in past studies indicates that the average unit in this area only needs about 1.15 vehicles per unit, indicating that most residents do not own 2 vehicles¹. As such, if each of the residential units only used one parking space, there

¹ January 2013 Parking Zoning Ordinance Update Draft Report by Nelson Nygaard

would be a surplus of as many as 83 spaces onsite that could serve the commercial uses on the ground floor. It is possible that the parking demand for the residential units may not be as high as past Commission action has anticipated and required (2 spaces per residential unit), and Commission staff understands that there may not be a demand for 2 parking spaces per unit at this time, but also cannot predict what type of residential parking may be needed in the future.

In contrast to past Commission actions addressing needed onsite parking for commercial uses (which, if followed here, indicates the project could need 16 spaces), the applicants have provided a parking study by Linscott, Law & Greenspan, Engineers (LLG) that evaluated likely parking demand associated with the proposed project. The study indicates that “there have been significant changes with respect to services, infrastructure, as well as local government policies and mandates which have substantially reduced the need for a personal automobile, and thus, the number of parking spaces required for development projects.” According to the Nelson Nygaard recommended parking rates for restaurants (1 space per 300 sq. ft.), the parking demand of the commercial space requires 7 parking spaces. Due to the requirements outlined above for the residential component of the project, there is a shortage of parking for the commercial space of 4 spaces.

In order to offset potential impacts to public access due to the reduced parking proposed as part of this project, the applicant proposes a robust Transportation Demand Management (TDM) Plan. The proposed TDM includes providing a public transit fare reimbursement for employees of the commercial space, providing free and secure bike parking, and a potential rent discount for residents without a car. The TDM includes annual plan monitoring to be submitted to the City. Additionally, the applicant proposes to provide 147 bicycle parking spaces of which 139 will be for residential use and 8 for commercial use.

Impacts to public access are mitigated by available public transportation options this area. The project site is located 0.7 miles (or a 15-minute walk) to the Downtown Santa Monica station on the Metro Expo light rail line. This rapid transit line connects Downtown Santa Monica to job centers in Culver City and Downtown Los Angeles. The project site is also located 0.3 miles (or a 6-minute walk) away from the Pico/4th St. Big Blue Bus transit stop. This stop houses two rapid bus routes and two local bus routes such as Route 3 and Rapid 3 that runs to job centers in Downtown Santa Monica, LAX and the Santa Monica Civic Center. Residents can also easily bike or take ride-sharing services (i.e. Uber, Lyft) to the Third Street Promenade, which is only one mile away from the project site. Overall, the project is sited in an area where alternate forms of transportation are readily available for residents to access Downtown Santa Monica and other destinations in the greater Los Angeles Area.

Specifically, Section 30252 (1) of the Coastal Act requires that the location and amount of new development should maintain and enhance public access to the coast by facilitating the provision or extension of transit service. The development itself cannot control the surrounding transit services, however the TDMs proposed do provide incentives for the residents and visitors of the development to use the existing public transit systems nearby. Similarly, Section 30252 (2) requires that commercial facilities are provided within or

adjoining residential development or in other areas that will minimize the use of coastal access roads. The proposed development conforms to that standard as a mixed-use development with residential and commercial components. Lastly, Section 30252 (4) of the Coastal Act requires new development to provide adequate parking facilities **or** provide substitute means of serving the development with public transportation. The City of Santa Monica has a uniquely robust public transit system used by both residents and visitors alike. The proposed development, as explained above, is adequately served by existing public transit infrastructure of the area and therefore, even though the project does not provide sufficient onsite parking for the commercial uses, the proposed project is consistent with Section 30252 of the Coastal Act.

The subject site is located approximately 0.05 miles inland of the public beach and is not proposing to provide any public parking opportunities for beach visitors. If the proposed project does not include sufficient onsite parking, there is a possibility that the residents and commercial visitors could park on public streets and displace public parking spaces for beach visitors. The City of Santa Monica has several beach parking lots that provide public parking for coastal visitors, one of the largest of which is near the subject site. Additionally, visitors to the area that patronize the downtown businesses of Santa Monica park in the municipal parking structures and do not usually occupy public spaces on the streets. The proposed parking, according to the submitted parking analysis, is sufficient for the proposed project and will not impact public parking surrounding the project site or interfere with public access to the coast. Additionally, parking studies show affordable units require a lower parking demand and therefore **Special Condition 3** requires the 16 affordable units be deed-restricted for the life of the development to continue to offset parking demand at this location. To maintain adequate commercial and residential parking and ensure that public parking would not be adversely impacted, **Special Condition 2** ensures parking will remain available to the public and the individual users of the development. To ensure that the development will continue to incorporate the TDM program to reduce parking and traffic so that parking generated by the development will not adversely impact public parking in the surrounding area, **Special Condition 6**, requiring the implementation and monitoring of the TDM program, is necessary. **Special Condition 1** requires a deed restriction to supercede and replace the deed restriction pursuant to Special Condition 1 of Coastal Development Permit 5-95-188 which required parking be made available to the public during weeknights and weekends. Lastly, **Special Condition 5** imposes that construction staging and the construction corridor protect and maximize public access.

There are two other mixed-use Santa Monica projects (Application Nos. 5-19-094 and 5-94-172-A1) on the Commission's July 2020 agenda in addition to the proposed mixed-use development. All three projects have a parking analysis that recommend a reduced parking amount, when compared to past Commission action. The Commission can and should consider if there is a potential cumulative impact to public access in Santa Monica. Based on the parking studies provided by the applicants and based on data provided by the City of Santa Monica, the three projects will be adequately supported by parking resources available onsite and will include other measures and provisions to satisfy parking demand, including providing incentives for visitors and residents to rely on the existing unique robust public transit system already operating in the City of Santa Monica (including bus and rail) and the alternative transit options in which the City has invested over the years including the bike share program, the electric scooter stations, and

the general walkability of the City's Coastal Zone complete with pedestrian-oriented uses on the ground floor, wide sidewalks, a complete segment of the Coastal Trail, and pedestrian overpasses leading from Ocean Blvd down to the shoreline. The proposed projects have been designed with this City-scape in mind and based on those factors which reduce overall demand, provide sufficient parking onsite to meet the expected demand. Overall, considering the cumulative impacts, the proposed projects are not anticipated to impair public access to the coast. As such, the project as proposed and as conditioned will not have any negative impacts to public access to the coast, including impacts on the ability of the public to access public parking options while visiting the coast. Therefore, the proposed project, as conditioned, is consistent with Sections 30210, 30211, and 30252 of the Coastal Act.

C. DEVELOPMENT

Coastal Act Section 30250(a) states, in part:

(a) New residential, commercial, or industrial development, except as otherwise provided in this division, shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources.

Coastal Act Section 30253 states, in part:

New development shall do all of the following:

- (a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (d) Minimize energy consumption and vehicle miles traveled.
- (e) Where appropriate, protect special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational use.

Coastal Act Section 30604 states, in relevant part:

(f) The commission shall encourage housing opportunities for persons of low and moderate income. In reviewing residential development applications for low- and moderate-income housing, as defined in paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code, the issuing agency or the commission, on appeal, may not require measures that reduce residential densities below the density sought by an applicant if the density sought is within the permitted density or range of density established by local zoning plus the additional density permitted under Section 65915 of the Government Code, unless the issuing agency or the commission on appeal makes a finding, based on substantial evidence in the record, that the density sought by the applicant cannot feasibly be accommodated on the site in a manner that is in conformity with Chapter 3 (commencing with Section 30200) or the certified local coastal program.

(g) The Legislature finds and declares that it is important for the commission to encourage the protection of existing and the provision of new affordable housing opportunities for persons of low and moderate income in the coastal zone.

Policy 4 of the LUP states:

The City of Santa Monica LUP shall encourage the preservation of low and moderate income housing within the Coastal Zone consistent with the Coastal Act policies, contained herein.

Concentrating residential development in appropriate areas also has cumulative benefits for hazard avoidance policies in Section 30253 of the Coastal Act, which states that new development shall minimize risks to life and property in flood hazard areas, and assure stability and structural integrity and not require the construction of protective devices that substantially alter natural landforms. Maintaining housing density in safe areas assures the stability and structural integrity of such development. On a broader scale, the overall practice of maintaining density in locations at reduced risks from sea level rise will have the net effect of helping to maintain housing stock that is safe from hazards and relieve development pressure in unsafe areas in the long-term, thus carrying out Section 30253's hazards policies on a community-scale.

Additionally, maintaining development in areas that are less likely to be affected by coastal hazards facilitates the protection of coastal resources. As sea levels rise, beaches trapped between the rising seas and the first line of development could be threatened. Often, the first line of development impedes the ability of the beach to naturally migrate inland over time and reduces the sources of sand supply created by erosion that contribute to beach accretion. This process is commonly referred to as "coastal squeeze," and leads to the narrowing and eventual loss of beaches and other shoreline habitats. The City of Santa Monica recognizes this trend in its locally adopted draft LUP (October 2018), stating "by late this century, and assuming the high SLR scenario of 1.67 m, provided by NRC 2012, beach retreat will be obvious everywhere. Without strategic planning, this may lead to economic losses due to reduced recreational visitors, and also to occasional flooding of public coastal facilities and related damages." Though not yet certified by the Coastal Commission, Santa Monica's 2018 draft LUP Update expresses the overall goal of limiting or removing development in hazardous areas and maintaining and protecting beaches for public access. Using Our Coast, Our Future flood modeling tool, CoSMoS, the project's inland location is not expected to experience flooding when adjusted for 6.6 ft. of sea level rise and a 100-year storm scenario. As such, the modeling tool demonstrates that the inland location is safe from such coastal hazards.

The loss of beach area from coastal squeeze represents a loss of many coastal resources protected by the Coastal Act, including public access, recreational opportunities and associated economic benefits, habitats and marine resources, scenic and visual qualities of coastal communities. Coastal squeeze also presents challenges for carrying out the public trust doctrine, and presents a significant environmental justice issue if the general public loses its ability to access the shore. By maintaining density in safe, inland locations, development pressure along the shoreline could be lessened, making the implementation

of solutions to coastal squeeze (i.e., adaptation planning to relocate development to less vulnerable locations inland) more feasible in the long term. It would also increase the likelihood of successful preservation of the coastal resources associated with the beach, consistent with Sections 30210, 30220, 30240(b), 30251 of the Coastal Act, and uphold statewide and local goals relating to environmental justice, consistent with Section 30013 of the Coastal Act. Therefore, in sum, housing development at an inland location could help prevent land use pressures that could exacerbate sea level rise impacts and the loss of coastal resources.

The Coastal Act requires that new development be located within existing developed areas that can accommodate development. The subject site is located at 1828 Ocean Ave., which is located on the inland border of the Oceanfront District. This area is generally mixed with hotel accommodations, restaurants, medium to high density residential buildings, parks, public beaches and public parking of Santa Monica's coastal zone. The proposed affordable housing project's proximity to major job centers such as Downtown Santa Monica and the existing community character, which is primarily multifamily residential with commercial corridors makes it suitable for accommodating new development in accordance with Section 30250.

Affordable Housing

It is important to note that the Coastal Act does not authorize the Commission to require low-cost housing in the Coastal Zone. That authority was removed by the Legislature, and a separate statute, the Mello Act (Government Code Section 65590), establishes requirements for affordable housing in the Coastal Zone that apply to local governments, not the Commission. The Coastal Act makes clear that the Commission "is not authorized to review a local government's application" of the requirements of the Mello Act. (Pub. Resources Code § 30011). Instead, Sections 30604(f) and (g) of the Coastal Act direct the Commission to *encourage* housing opportunities for persons of low and moderate income in the Coastal Zone.

The project site is serviced by multiple nearby transit options. The project site is located approximately 0.7 miles from the Downtown Santa Monica Expo Line station, which connects Santa Monica to inland neighborhoods and Downtown Los Angeles. The property is also located approximately 0.10 miles to the Metro Rapid bus, providing direct and rapid transportation to major destinations and job centers. Approximately 0.3 miles away, Rapid 7 (and non-rapid Route 7) connects the project site to inland destinations including Santa Monica College and the Wilshire Center. Rapid 3 (and non-rapid Route 3) connects the project site to Downtown Santa Monica, the Santa Monica Civic Center, Playa del Rey, and LAX. The location of the proposed affordable housing project near transit and job centers helps reduce dependence on single occupancy vehicles and is consistent with the Section 30253 requirements to minimize energy consumption and vehicle miles traveled.

According to the Planning Commission Statement of Official Action, "the project is subject to the City's Affordable Housing Production Program which requires the proposed 83-unit housing project to provide one of the following: 1) five percent of the total units of the

project for 30% income households, 2) ten percent of the total units of the project for 50% income households, or 3) twenty percent of the total units of the project for 80% income households. Pursuant to SMMC Section 9.23.030(A)(1), the applicant is required to provide at least 50% more affordable housing units than would be required pursuant to Section 9.64.050. The applicant has elected to provide ten percent of the total units of the project for 50% income households. Additionally, in a Tier 2 project, the applicant will be providing a community benefit for 50% over the amount required”.

As a result, the applicant proposes twelve (12) deed-restricted affordable units onsite in addition to (4) deed-restricted affordable units onsite that are needed for the project located at 1921 Ocean Front Walk (see CDP Application No. 5-19-0984) to satisfy the affordable housing requirements for offsite locations set by the City of Santa Monica. The project proposed a total of 16 deed-restricted affordable units to meet Santa Monica’s Affordable Housing Production requirements for very-low income (50% Area Median Income) households for both this project as well as a related mixed-use project located at 1921 Ocean Front Walk. For reasons explained in the Public Access section of this staff report, **Special Condition 3** requires that the 16 affordable units be deed-restricted for the life of the development in order to protect public access and therefore cannot be reduced at any time in the future. Sections 30604(f) and (g) of the Coastal Act direct the Commission to *encourage* the protection of existing and the provision of new affordable housing “opportunities,” but does not require it and does not dictate the form of affordable housing (e.g., rentals vs. for-sale). As the project includes construction of sixteen designated “affordable” units pursuant to the City’s regulations, approval of the project appears to be consistent with Section 30604(f) and (g).

In sum, approval of the project as conditioned is consistent with Section 30604(f) and (g) because it includes the provision of at least 16 affordable housing units, between the two structures, pursuant to the City’s regulations.

D. COASTAL VIEWS/COMMUNITY CHARACTER

Coastal Act Section 30251 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.

The project site is located along the LUP designated Ocean Avenue scenic corridor. The site is a paved surface parking lot that is currently used by Hotel Casa Del Mar and is shielded from public view along Ocean Avenue by trees and hedges along the perimeter. According to the Final EIR:

the new 47 foot building would be consistent with existing development along Ocean Avenue and would be architecturally compatible with other developed uses along the corridor. The roof of the building would

roughly align with that of the Shutters on the Beach Hotel to the west and would be lower in height than the Viceroy Hotel across Ocean Avenue on the east. The Ocean Avenue Project would maintain existing street trees and add new landscaping along the Ocean Avenue frontage. The Ocean Avenue Project would not damage scenic vistas or resources, or have a substantial adverse effect on the overall scenic quality of the corridor.

The most notable views in the vicinity of the Ocean Avenue Project Site are public scenic views of the beach and ocean to the west. These scenic features are located approximately 1,000 feet to the west of the Ocean Avenue Project Site. There are no public views of these scenic resources across the Ocean Avenue Project Site since views are blocked by the six-story Shutters on the Beach Hotel being located immediately to the west. Westerly views of these scenic resources from public vantage points are limited to west looking views down Pico Boulevard and Vicente Terrace. Except for the views down these streets, westerly scenic views of the ocean, Santa Monica Beach and the Santa Monica Pier are not available from Ocean Avenue in the immediate vicinity of the Ocean Avenue Project Site. Westerly scenic views of the ocean and beach from Pico Boulevard and Vicente Terrace would remain similar to existing conditions.

Existing buildings in the Vicente Terrace District add variation and interest to the visual character of the area. However, views of these buildings are limited due to existing development and the existing high hedges around the perimeter of the Ocean Avenue Site. The Ocean Avenue Project would include a landscaped recessed corner at Vicente Terrace and Ocean Avenue to limit impacts to views of the Vicente Terrace buildings.

Overall, the project as proposed by the applicant does not adversely impact community character or coastal views. Therefore, the proposed project is consistent with Section 30251 of the Coastal Act.

E. WATER QUALITY

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

Section 30232 of the Coastal Act states:

Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.

Construction Impacts to Water Quality

The above policies of the Coastal Act require protection of marine resources, including the protection of coastal waters, by controlling runoff and preventing spillage of hazardous materials. Storage or placement of construction materials, debris, or waste in a location subject to erosion and dispersion or which may be discharged into coastal water via rain or wind would result in adverse impacts upon the marine environment that would reduce the biological productivity of coastal waters. For instance, construction debris entering coastal waters may cover and displace soft bottom habitat. Sediment discharged into coastal waters may cause turbidity, which can shade and reduce the productivity of foraging avian and marine species' ability to see food in the water column. In order to avoid adverse construction-related impacts upon marine resources, the Commission imposes **Special Condition 8**, which outlines construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris. This condition requires the applicant to remove any and all debris resulting from construction activities within 24 hours of completion of the project. In addition, all construction materials, excluding lumber, shall be covered and enclosed on all sides, and as far away from a storm drain inlet and receiving waters as possible.

The proposed project includes construction of a subterranean parking garage. The applicant has submitted a Geotechnical Investigation report in conjunction with the proposed excavation activities for the subterranean parking garage. The report indicates that the groundwater level occurs 30-39 feet below grade. However, historical high groundwater was found at 20 feet below surface or shallower. Therefore, the geotechnical report recommends design considerations for groundwater at 20 feet below grade. The project plans show that the finished floor of the proposed subterranean garage in the northeast portion is located near the

current water table. The applicant's engineering report states that "the subterranean levels should be water-proofed and designed to resist the hydrostatic pressures imposed on the floor slab and walls by rising groundwater." The applicant has indicated that the lowest floor level and walls of the subterranean levels will be waterproof.

Additionally, it is anticipated that dewatering during construction will be required. The Geotechnical Investigation report suggests that passive dewatering systems can be used such as filter fabric or permeable base filter materials. Improper treatment and disposal of such water could have adverse impacts on coastal resources. Therefore, dewatering, treatment, and disposal of groundwater should be implemented in conformance with the recommendations in the Geotechnical Investigation report and with RWQCB's Waste Discharge Requirements for Discharges of Groundwater from Construction and Project Dewatering to Surface Waters in Coastal Watersheds of Los Angeles and Ventura Counties. As such, groundwater quality impacts can be avoided, and therefore a final dewatering plan should be prepared in advance of the intended construction to ensure proper handling of water encountered during construction, and thus, the Commission imposes **Special Condition 7**, which requires best management practices for water quality and drainage.

Post-Construction Impacts to Water Quality

The proposed project has the potential to adversely impact the water quality of the nearby Pacific Ocean. Much of the pollutants entering the ocean come from land-based development. The Commission finds that it is necessary to minimize to the extent feasible within its jurisdiction the cumulative adverse impacts on water quality resulting from incremental increases in impervious surface associated with additional development.

Santa Monica Bay is considered an impaired water body. The City of Santa Monica is required to implement storm water runoff controls for new development, to minimize the footprint of impervious areas, and to use Low Impact Development strategies. Projects should be designed to capture and retain, infiltrate, or treat runoff. The City's Public Works Dept. advises against infiltration on sites west of 4th street, which limits the treatment options for this site.

In order to deal with these post construction water quality impacts, the proposed project will mitigate storm water and surface runoff from the project site by paying an in-lieu fee to the city of Santa Monica. By complying with applicable regulations, the project would improve existing hydrology and water quality conditions at the site. Specifically, the fees would be used for off-setting drainage effects at other locations.

The City of Santa Monica has made significant improvements to the collection and treatment of storm water by developing the SMURRF (Santa Monica Urban Runoff Recycling Facility). When storm water is collected, treated and recycled on a municipal level, it can be more effective than the individual site treatment methods of infiltration, retention, or treatment.

The applicant has stated that landscaping will consist of California native and drought-tolerant landscaping. While the proposed landscaping consists of succulents and other desert-adapted plants, future landscaping may not consist of such plants. For water conservation, any plants in the landscape plan should only be drought-tolerant to minimize the use of water (and preferably native to coastal Los Angeles County).

In order to make sure that any onsite landscaping minimizes the use of water and the spread of invasive vegetation, the Commission imposes **Special Condition 4**, which imposes landscape controls that require that all vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants, which are non-invasive. Thus, as conditioned, the Commission finds that the proposed project is consistent with Sections 30230, 30231 and 30232 of the Coastal Act.

F. CULTURAL RESOURCES

Section 30244 of the Coastal Act states:

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

As described above, the project involves a significant amount of excavation and construction of a 2 level subterranean parking garage. The existing surface parking lot was constructed on top of artificial fill, so previously undisturbed soils do exist on the site.

The Final EIR evaluates project impacts to archaeological, paleontological and tribal cultural resources. Due to intensive historic period use at the project site, buried archaeological resources may be discovered. Additionally, project grading and excavation may directly or indirectly destroy unique paleontological resources or sites. Although unlikely, project grading and excavation may encounter buried human remains.

At the subject Ocean Ave site the potential to encounter unknown archeological resources beneath the existing paved parking lot is moderate. The EIR indicates there would be no impact to tribal resources, but at the same time acknowledges there could be currently unknown archeological resources underground. Were the developers during ground disturbance to discover an archeological resource that was tribally affiliated, it could have a negative impact to tribal resources. Tribal resources can be identified as Sacred Lands (whether documented with the NAHC or not) or tribal resources can be identified as archeological deposits that are prehistoric from the tribe.

According to the Final EIR, section 4.5.2.4, the City of Santa Monica sent letters to 12 Native American individuals and organizations on the AB 52 Notification list. The City received a letter from Andrew Salas, Chairman of the Gabrieleno Band of Mission Indians – Kizh Nation in January 2017. Mr. Salas indicated concern for cultural resources due to the high sensitivity of the area location and requested a certified Native American monitor be present during ground disturbance at the project sites and requested to engage in consultation with the City. The City responded in March 2017 requesting Mr. Salas to

demonstrate that the sites are located in a high-sensitivity area for tribal cultural resources. The City did not receive another response from Mr. Salas or any other tribal group. As a result, no tribal cultural resources have been identified within the project site or vicinity.

It appears that the tribal consultation conducted for the EIR did not result in an actual consultation or a meeting between the tribal government and the City government, but rather that there was some preliminary communication via email. Mr. Andy Salas, chairman of the Kitz Nation, sent a letter indicating that the location of the projects are sensitive to tribal resources and offered to share written and oral history concerning the location of the prehistoric villages, trade routes, and religious and ceremonial sites within the project area, and requested a consultation via phone or in person. The City's response asked the tribal government to disclose the presence of sensitive cultural resources via email and indicated that the disclosure would assist the City in determining if Native American monitors are necessary onsite, which is generally not consistent with the requirement to develop appropriate measures in coordination with tribal governments.

In response to the lack of consultation documented in the EIR, the NAHC responded to the City noting that appropriate government-to-government consultation had not occurred as required by statute AB-52 (despite it being requested in the letter from Mr. Andy Salas in person or via phone) and noted that there appeared to be no appropriate mitigation measures developed in consultation with the tribe. The NAHC critiqued the EIR for the lack of appropriate mitigation measures for tribal resources as separate and distinct from archeological resources (which may or may not be tribally affiliated) and provided sample mitigation measures. Lastly, the NAHC responded that a lack of identified tribal cultural resources onsite does not mean there will be no impacts.

The proposed site has been disturbed in the past. The EIR did not identify any prehistoric resources within ½ mile, however past Commission applications for this area contain information regarding the presence of cultural resources near the project site and past Commission findings indicate that there could be a potential for resources in this area (applications for nearby sites include CDP No. 5-01-196 (Rand Corporation), CDP No. 5-09-040 (Ocean Avenue Management LLC), and various projects at the Civic Center (e.g. CDP No. 5-19-0017)). The Commission has consistently conditioned projects with ground excavation and significant grading in Santa Monica to include Native American monitors during ground disturbance. The EIR states that the potential for prehistoric archaeological resources may be small due past development of the site. However, there is the possibility of a deeply buried site being uncovered during excavation.

In order to better understand the cultural significance of the project site and the surrounding project area, Commission staff underwent tribal consultation, consistent with the Coastal Commission's Tribal Consultation Policy. First, Commission staff wrote to the Native American Heritage Commission (NAHC) to request a Sacred Lands File Check for the project site. The NAHC indicated that no known cultural records were available for the project site in the Sacred Lands File but encouraged staff to reach out to local Native American tribes who would have a more detailed understanding of the cultural resources in the area. Staff reached out to the tribal organizations to request consultation.

5-19-0983 (NXT2 Shutters, LLC)

On May 11, Commission staff underwent tribal consultation with Jario Avila, the Tribal Historic and Cultural Preservation Officer of the Fernandeno Tataviam Band of Mission Indians for the subject application and for the 5-19-0984 application. Mr. Avila indicated that the project site is not within the ancestral territory of his tribe, however he indicated that there were concerns with the EIR and the mitigation measures proposed in the EIR were not adequate. He recommended that in the event of a discovery, the developers should retain a representative from the Gabrieleno tribe and that a Native American monitor should be present during grading. Mr. Avila also mentioned that the mitigation measures in the EIR which allow for the resources found on site to be recovered and donated to a museum or a school is not appropriate for tribal cultural resources, and the treatment decision should be left to the tribe. Mr. Avila also noted that there were and are resources in the area that were not properly documented in the past due to a lack of regulation for identification and protection of cultural resources during construction and grading prior to the 1970s. Countless resources that were found in the past during development were destroyed and discarded.

On June 2, Commission staff consulted with Chairman Anthony Morales of the the Gabrieleno/Tongva San Gabriel Band of Mission Indians for the subject application and for the 5-19-0984 application, who indicated that the project site is located within a sensitive cultural area. Many of the tribe's villages were sited on a seasonal and permanent basis throughout the area of the project site. The Gabrieleno Tongva tribe was a maritime society that relied heavily on fish for food. Due to proximity to the ocean, the village community would often travel to the nearby islands for their catch. The project is not far from other sacred sites and the entire the Santa Monica basin is a sensitive area. Due to the project site's location and adjacent to sacred water sources, there is a potential of ground disturbance activities to impact tribal cultural resources.

The project site also has ancestral ties to the Kizh Nation, a Gabrieleno tribe. A consultation is scheduled with the Kizh Nation, to occur after publication of this staff report, and additional findings and any changes to the project as a result of that consultation will be published in an addendum to the staff report prior to the Commission hearing.

In past consultation for projects in the vicinity of the subject site, the Kizh Nation has indicated that the area is a known culturally sensitive area located near the prehistoric Sa'angna Village, one of the known mainland trading villages in the region and its surrounding trade routes, and that Tribal Cultural Resources may be present in the soil layers from the thousands of years of human activity within that landscape. On past projects in the vicinity, the Kizh Nation has requested Native American monitors be present during all grading operations.

Because there are different Gabrieleno groups that had common ancestors, it was recommended during the consultation that both groups of the tribe have input on the treatment of any resources that may be discovered on site, even if both groups are not monitors on the day of discovery.

In past permit actions, the Commission has required applicants to monitor all grading and construction activities and required appropriate recovery and mitigation measures, regarding excavation, reporting and curation. To ensure that the project is consistent with

the protection of any found cultural deposits, the Commission imposes **Special Condition 8** requiring cultural and archaeological monitoring. To assure that the proposed project remains sensitive to the concerns of the affected Native American groups, a Native American monitor shall be present along with an archaeological monitor at the site during excavation activities to monitor the work, if artifacts or remains are discovered. If a discovery is made, the professional archeologist must inform each tribal group and discuss treatment options. Commission staff does not recommend the mitigation measures as outlined in the EIR, and instead conditions the project to have the affected Native American tribes in consultation with the applicant determine how to address the discovery of a tribal cultural resource, and the preferred treatment option is preservation in-situ. Therefore, as conditioned, the proposed project is consistent with Section 30244 of the Coastal Act which requires reasonable mitigation measures be provided to offset impacts to archaeological resources.

G. LOCAL COASTAL PROGRAM (LCP)

Section 30604(a) also requires that a coastal development permit shall be issued only if the Commission finds that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program (LCP) in conformity with the provisions of Chapter 3 of the Coastal Act. In this case, such a finding can be made. In August 1992, the Commission certified, with suggested modifications, the land use plan portion of the City of Santa Monica's Local Coastal Program, excluding the area west of Ocean Avenue and Neilson way (Beach Overlay District). On September 15, 1992, the City of Santa Monica accepted the LUP with suggested modifications. conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act. Approval of the project 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 of the Coastal Act.

H. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permits to be supported by a finding showing the permit, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA).

The City of Santa Monica is the lead agency for California Environmental Quality Act (CEQA) purposes. The project was determined by the City to require an Environmental Impact Report (EIR). A Draft EIR was subsequently prepared in April of 2018. The EIR examined the potential impacts of the Ocean Avenue Project and Ocean Front Walk Project (Projects) in the City of Santa Monica, which was the construction of two new mixed-use housing developments on separate sites providing 105 residential units and 16 affordable units. Both Projects would include construction of multifamily housing units above ground-floor commercial uses with subterranean parking.

The following key environmental issues were evaluated in the EIR: increased traffic congestion, parking, and impacts to circulation; massing of the buildings: size, density, height and setback compatibility; neighborhood compatibility and preservation of

5-19-0983 (NXT2 Shutters, LLC)

community character; calculation of FAR with regard to the public right-of-way at the Ocean Front Walk Site; relationship of the Projects to historic resources adjacent to their respective Project Sites (Hotel Casa Del Mar and Seaview and potential Seaview and Vicente Terrace District); construction effects (construction traffic, noise and vibration, and air quality).

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

- Certified Santa Monica Land Use Plan (August 1992)
- City of Santa Monica Planning Commission Approval, December 5, 2018
- Geotechnical Professionals Inc., January 22, 2018. Geotechnical Investigations Report. Project No. 2732.2I
- Prepared by ESA for the City of Santa Monica, August 2018. 1828 Ocean Avenue and 1921 Ocean Front Walk Projects Final EIR. SCH No. 2016021033
- CDP Nos. 5-19-0181; 5-95-188; CDP application 5-19-0984; 5-01-196 (Cultural Resources Reference); 5-09-040 (Cultural Resources Reference); 5-19-0017 (Cultural Resources Reference)
- Nelson Nygaard, January 2013. Parking Zoning Ordinance Update Draft Report.
- Linscott, Law & Greenspan, Engineers (LLG), October 16, 2019. Parking Demand Study for the Proposed Mixed-Use Projects at 1828 Ocean Avenue and 1921 Ocean Front Walk. LLG Ref 5-16-0273-1.

APPENDIX B – CULTURAL RESOURCES SIGNIFICANCE TESTING PLAN PROCEDURES

- A. An applicant seeking to recommence construction following discovery of the cultural deposits shall submit a Significance Testing Plan for the review and approval of the Executive Director. The Significance Testing Plan shall identify the testing measures that will be undertaken to determine whether the cultural deposits are significant. The Significance Testing Plan shall be prepared by the project archaeologist(s), in consultation with the Native American monitor(s), and the Most Likely Descendent (MLD) when State Law mandates identification of a MLD. The Executive Director shall make a determination regarding the adequacy of the Significance Testing Plan within 10 working days of receipt. If the Executive Director does not make such a determination within the prescribed time, the plan shall be deemed approved and implementation may proceed.
1. If the Executive Director approves the Significance Testing Plan and determines that the Significance Testing Plan's recommended testing measures are de minimis in nature and scope, the significance testing may commence after the Executive Director informs the permittee of that determination.
 2. If the Executive Director approves the Significance Testing Plan but determines that the changes therein are not de minimis, significance testing may not recommence until after an amendment to this permit is approved by the Commission.
 3. Once the measures identified in the significance testing plan are undertaken, the permittee shall submit the results of the testing to the Executive Director for review and approval. The results shall be accompanied by the project archeologist's recommendation as to whether the findings are significant. The project archeologist's recommendation shall be made in consultation with the Native American monitors and the MLD when State Law mandates identification of a MLD. The Executive Director shall make the determination as to whether the deposits are significant based on the information available to the Executive Director. If the deposits are found to be significant, the permittee shall prepare and submit to the Executive Director a supplementary Archeological Plan in accordance with subsection B of this appendix and all other relevant subsections. If the deposits are found to be not significant, then the permittee may recommence grading in accordance with any measures outlined in the significance testing program.
- B. An applicant seeking to recommence construction following a determination by the Executive Director that the cultural deposits discovered are significant shall submit a supplementary Archeological Plan for the review and approval of the Executive Director. The supplementary Archeological Plan shall be prepared by the project archaeologist(s), in consultation with the Native American monitor(s), the Most Likely Descendent (MLD) when State Law mandates identification of a MLD, as well as others identified in the special condition. The supplementary Archeological Plan shall identify proposed investigation and mitigation measures. The range of investigation and mitigation measures considered shall not be constrained by the approved development plan. Mitigation measures considered may range from in-situ preservation to recovery and/or relocation. A good faith effort shall be made to avoid impacts to cultural

resources through methods such as, but not limited to, project redesign, capping, and placing cultural resource areas in open space. In order to protect cultural resources, any further development may only be undertaken consistent with the provisions of the Supplementary Archaeological Plan.

1. If the Executive Director approves the Supplementary Archaeological Plan and determines that the Supplementary Archaeological Plan's recommended changes to the proposed development or mitigation measures are de minimis in nature and scope, construction may recommence after the Executive Director informs the permittee of that determination.
 2. If the Executive Director approves the Supplementary Archaeological Plan but determines that the changes therein are not de minimis, construction may not recommence until after an amendment to this permit is approved by the Commission.
- C. Prior to submittal to the Executive Director, all plans required to be submitted pursuant to this special condition, except the Significance Testing Plan, shall have received review and written comment by a peer review committee convened in accordance with current professional practice that shall include qualified archeologists and representatives of Native American groups with documented ancestral ties to the area. Names and qualifications of selected peer reviewers shall be submitted for review and approval by the Executive Director. The plans submitted to the Executive Director shall incorporate the recommendations of the peer review committee. Furthermore, upon completion of the peer review process, all plans shall be submitted to the California Office of Historic Preservation (OHP) and the NAHC for their review and an opportunity to comment. The plans submitted to the Executive Director shall incorporate the recommendations of the OHP and NAHC. If the OHP and/or NAHC do not respond within 30 days of their receipt of the plan, the requirement under this permit for that entities' review and comment shall expire, unless the Executive Director extends said deadline for good cause. All plans shall be submitted for the review and approval of the Executive Director.