

CALIFORNIA COASTAL COMMISSION

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STAFF REPORT: REGULAR CALENDAR

Application No.: 5-20-0397

Applicant: SVBSM LLC

Agent: Harding Larmore Kutcher and Kozal LLP

Location: 1401 Ocean Avenue, Santa Monica, Los Angeles County (APN: 4291-015-030)

Project Description: Change in use of 12,170 sq. ft. of office space on third floor and a 3,530 sq. ft. rooftop area to a 15,700 sq. ft. membership restaurant/club facility. In addition, the project includes the offer to make portions of the facility available for use by local non-profit organizations free of charge for 7 days per month.

Staff Recommendation: Approval with conditions.

SUMMARY OF STAFF RECOMMENDATION

The proposed project is the change in use of 12,170 sq. ft. of existing third-floor private office space and 3,530 sq. ft. of unused rooftop area in an existing 47,171 sq. ft. commercial building to a 15,700 sq. ft. membership restaurant/club facility, which consists of dining rooms and areas, a library meeting room and a screening room. The project site is located at 1401 Ocean Avenue, 300, Santa Monica in Los Angeles County.

The subject site is currently developed with a three-story, 47,171 sq. ft. commercial building. The proposed development involves converting the current third floor office space and rooftop area to a membership restaurant/club facility. The membership restaurant/club facility will consist of various rooms that members will be able to access and food and beverages will be available in all areas of the facility throughout the day and evening. The proposed facility will not function as a traditional restaurant, but instead will offer a mix of shared workspace, informal social gathering areas and food service. Members and guests will be able to use the various meeting and dining spaces for an unlimited period of time, without requiring them to purchase a meal. The applicant intends for the facility to be a place for guests to use as a periodic workspace/virtual office, in addition to dining and socializing.

The applicant contends that the membership aspect of the membership restaurant/club facility is an essential part of the business model for the proposed development. The applicant asserts that the membership fee for access to the facility will be approximately \$150-\$350 per month. The applicant has committed to providing an inclusive and non-discriminatory environment by establishing a committee of member-peers who will focus on creating a diverse membership base including an outreach and advertisement effort to reach a broad group of individuals, including persons from minority groups. The applicant has stated that there will be an informal option for individuals to provide “in-kind” payments such as contributing a skill (i.e., singing monthly at the restaurant) instead of paying the membership fee.

The proposed project will change the current private office use of the third-floor space and rooftop area into a restaurant/club facility use. The Santa Monica LUP designates the site for visitor serving commercial and residential development. Although a membership-only restaurant does not clearly constitute a visitor-serving commercial use, Policy 64 of the City’s certified LUP clarifies that non-visitor-serving commercial development may be allowed on the upper floors of structures within the areas designated for visitor-serving commercial and residential development, such as the project site. In the case, the project is located on the third floor and roof of the existing structure, consistent with intent of Policy 64.

The Commission continued this application during the hearing on February 11, 2021. At the hearing, Commissioners raised concerns regarding the membership component of the proposed restaurant and the lack of visitor serving amenities and general access. Since that time, the applicant has amended the project description to clarify that the membership restaurant is a “membership restaurant/club facility” and the applicant maintains that it is not consistent with the business model to offer access to portions of the development to the general public for free. In response to the concerns raised at the hearing, the applicant has proposed to expand the free access to the library meeting room and the screening room to local non-profits to use for 7 days per month, (previously proposed as 5 days per month) every Sunday and an additional 3 days throughout the month without a membership. Preference will be given to non-profit organizations representing marginalized groups. Non-profit groups will be able to use the library meeting room and screening room free of charge for a variety of purposes,

including but not limited to: board meetings, smaller group meetings, fundraising events, hosting speakers or educational presentations, and film screenings.

The Commission may consider environmental justice concerns in the subject application. The proposed project would convert existing third floor office space and existing unused rooftop space to a membership restaurant/club facility, which increases coastal recreation and access benefits for: a). primarily higher-income individuals that can afford membership dues; b). those that can provide some sort of “in-kind” payment instead of paying membership dues; or c). those who belong to a nonprofit organization that can use the library meeting room or the screening room free of charge on selected days of the month for nonprofit organization events. The proposed restaurant/club will not prevent or interfere with the public’s use of, or access directly to the coast and it will provide some limited recreational use. The applicant’s proposal to allow non-profit organizations specifically representing or serving marginalized groups to use the facility will expand access opportunities to the facility to otherwise largely excluded populations, in an attempt to reduce perpetuating barriers to coastal areas for marginalized groups consistent with environmental justice principals.

Special Condition 2 requires the applicant to submit a Management Plan for Non-Profit Use (MPNU), prior to issuance of this coastal development permit, which includes a marketing, outreach and engagement strategy for non-profit access, as well as monitoring and reporting requirements for the donation of this space. The MPNU will implement a marketing and engagement plan which will promote and publicize availability of the donated facility space to underserved communities, such as low-income communities, communities of color, and other communities that have been historically marginalized and face greater barriers to coastal access. The marketing and engagement plan will also identify strategies for both online advertising and offline marketing efforts and will be written in plain language to prevent educational and cultural barriers from discouraging access to this unique opportunity for free event space for nonprofit groups. In addition, to ensure that the applicant does not discriminate in its outreach efforts, membership activities or operations, **Special Condition 1** requires the applicant to submit to the Executive Director proof that its bylaws, or other type of governing document if no bylaws exist, prohibit discrimination in the application of the club’s membership policies.

The proposed development is located approximately 500 feet from the inland extent of Santa Monica Beach. Due to its location and the large seaward facing glass windows and deck railings, there is a substantial risk of bird strikes; therefore, **Special Condition 4** is imposed to assure protection of avian species, a marine resource, requiring the applicant to use bird-safe glass for all structural elements.

The applicant has proposed to not use Styrofoam, follow proper recycling practices, use reusable tableware for onsite dining, only provide disposable utensils for takeout upon request, only provide paper straws or straws made from naturally occurring materials/reusables upon request (no plastic straws), and to eliminate the use of single-

use plastic bags onsite and for takeout. To ensure that the proposed development maintains these measures, **Special Condition 3** requires the applicant to participate in a marine debris reduction program to reduce waste and single-use plastic foodware and packaging.

Because the property is being leased, the Commission imposes **Special Condition 6** requiring the applicants to record a Deed and Lease Restriction acknowledging that, pursuant to this permit (CDP No. 5-20-0397), 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 imposing the Special Conditions of this permit as covenants, conditions and restrictions on the use and enjoyment of the Property. In addition, **Special Condition 5** informs the applicant that this permit is only for the described development and any future improvements shall require an amendment to this permit or shall require a new CDP.

The building has an existing subterranean parking garage with 209 parking spaces. The proposed change from office to restaurant use will increase parking demand by 29 spaces. The parking study submitted by the applicant demonstrates that there is available parking in the subterranean parking structure to accommodate the increase of 29 parking spaces projected by the proposed development. As conditioned, the proposed project will not adversely impact coastal access or the availability of on-street parking near the proposed development.

The Commission's standard of review for the proposed development is Chapter 3 of the Coastal Act and the certified Land Use Plan (LUP) for Santa Monica provides guidance.

Commission staff recommends that the Commission **APPROVE** coastal development permit application **5-20-0397**, as conditioned. Only as conditioned is the project consistent with Chapter 3 of the Coastal Act. The motion to carry out the staff recommendation is on **page 6** of the staff report.

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EXHIBITS

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

[Exhibit 2 – Project Plans](#)

[Exhibit 3 – Non-Profit Use Plan, Submitted By the Applicant](#)

[Exhibit 4 – Brochure for Sublease Available](#)

[Exhibit 5 – Survey for the Donation of Meeting Space to Non-Profit Organizations,
Submitted By the Applicant](#)

I. MOTION AND RESOLUTION

Motion:

I move that the Commission approve Coastal Development Permit No. 5-20-0397 pursuant to the staff recommendation.

Staff Recommendation of Approval:

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

Resolution to Approve the Permit:

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

- 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 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 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 applicant to bind all future owners and possessors of the subject property to the terms and conditions.

III. SPECIAL CONDITIONS

1. **Statement of Non-Discrimination.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director proof that its bylaws, or other type of governing document if no bylaws exist, include the following prohibition of discrimination in the applicant's determination of membership eligibility: "The membership restaurant/club facility shall not discriminate on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, sexual orientation, socioeconomic group or place of residence in its outreach efforts, membership, activities or operations."

No changes to the language required under this condition shall be made in the permittee's governing document unless such changes are authorized through an amendment to this coastal development permit or through a new coastal development permit, if legally required. The requirement for this non-discrimination policy shall remain in effect during the life of this project.

2. **Management Plan for Non-Profit Use.** PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, a detailed management plan for use of the restaurant/club facility by non-profit organizations.

A. The plan shall include or address the following:

- i. **Marketing, Outreach and Engagement Strategy.** To create and increase awareness to local non-profits in the greater Los Angeles region of the available facility space (either the library meeting room or the screening room) that will be available free of charge for a minimum of 7 days a month, the applicant shall create a robust and comprehensive marketing, outreach and engagement strategy for public outreach which includes:
 - (a) A list of groups that shall be included in the targeted outreach to underserved communities, including groups listed on the Coastal Commission's Los Angeles Area Environmental Justice List.

- (b) Methods of outreach, including online advertisement, e-mail and digital marketing campaigns.
- (c) And ongoing outreach that will take place, at a minimum, at least once a year to all the parties listed in **Special Condition 2.A.i.(a)**.

ii. Operations Plan

- (a) The management plan will detail how the non-profit bookings will take place and how far in advance the organizations are required to book the space.
- (b) The management plan will detail the hours the space is available to non-profit organizations (for example, every Sunday between the hours of 9am and 9pm, and an additional 3 days throughout the month from open until close).
- (c) Additionally, the plan shall specify the number of bookings that can be made by non-profit organizations at any one time in each room (for example, one non-profit group in the screening room at the same time as one non-profit group in the library) and the number of non-profit bookings per day (for example, one non-profit group in the library for 4 hours in the morning on a Sunday, and another group in the library that evening.)
- (d) What, if any, limitations will be placed on the non-profit while using the space, for example: limitations on outside food, limitations on the hours of the bookings, limitations on the use of certain equipment in the space, or noise limitations, etc.
- (e) Any coordination or assistance that will be provided to the non-profits from staff members at the restaurant/club facility.
- (f) Any limitations on the frequency that a non-profit will be able to use the space, or any limitations on the types of events that a non-profit can use the space for.
- (g) The possibility of coordination of a waiting list if the space is highly desirable.

- (h) Any limitations on use by non-profits associated with members of the club.
- (i) The submitted management plan will also include information on how the nonprofits will be selected to give preference to nonprofits representing marginalized groups.

iii. Program Evaluation. The program shall include a robust program evaluation component, including, but not limited to, definitions of program success, key performance indicators (or metrics), methods to measure metrics, the days that nonprofits used the donated space and how they used it, and overall goals to assess program effectiveness. The program evaluation may be used to inform the initial program design, as well as future iterations of the program at the proposed development.

B. Reporting – The applicant shall provide an annual report to the Executive Director of the Coastal Commission, clearly detailing **A. i-iii** above. The report shall be provided annually, no later than January 30th, for the preceding calendar year and shall be provided for the lifetime of the development. Not providing the space for a minimum of 7 days a month would be a violation of this coastal development permit. Should the space be underutilized by non-profit organizations, the applicant shall apply for an amendment to the CDP in order to revise the management plan by revisiting the program evaluation criteria and expanding the marketing, outreach, and engagement strategy to increase the effectiveness of the program and increase utilization of the space.

No changes to the approved development shall occur without a Commission amendment to this coastal development permit or a new coastal development permit, unless the Executive Director determines that no amendment or new permit is required.

- 3. Marine Debris Reduction Program.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, a robust and comprehensive plan to reduce waste and single-use plastic foodware and packaging. The plan shall include at a minimum, all of the following, and the applicant shall implement the approved version of the plan:
- A.** The applicant shall install and maintain smoke-free signage in all rooms of the proposed development.
 - B.** The applicant shall install and maintain educational signage that promotes and encourages the use of reusable items (instead of single-use items).

- C.** Participate in a Marine Debris Reduction Program such as the ReThink Disposable Program (RTDP) or Surfrider's Ocean Friendly Restaurants (OFR) or a substantially similar program. Within 6 months of the completion of the proposed development, the applicant shall participate in an established program to reduce waste and single-use plastic foodware and packaging on-site and for takeout orders. The applicant shall be responsible for the fees needed to participate in the program.
- D.** The applicant shall provide an annual report for the review and approval of the Executive Director of the Coastal Commission, program scope and metrics, and total impact of the program. The report shall be provided annually, no later than January 30th, for the preceding calendar year and shall be provided for the lifetime of the development.
- E.** No changes to the approved development shall occur without a Commission amendment to this coastal development permit or a new coastal development permit, unless the Executive Director determines that no amendment or new permit is required.

4. Bird Strike Prevention.

- A.** Ocean-front deck railing systems, fences, screen walls and gates subject to this permit shall use materials designed to minimize bird-strikes with the deck railing, fence, or gate. Such materials may consist, all or in part, of wood; wrought iron; frosted or partially-frosted glass, Plexiglas or other visually permeable barriers that are designed to prevent creation of a bird strike hazard. Clear glass or Plexiglas shall not be installed unless they contain UV-reflective glazing that is visible to birds or appliqués (e.g. stickers/decals) designed to reduce bird-strikes by reducing reflectivity and transparency are also used. Any appliqués used shall be installed to provide coverage consistent with manufacturer specifications (e.g. one appliqué for every 3 ft. by 3 ft. area) and the recommendations of the Executive Director. Use of opaque or partially opaque materials is preferred to clean glass or Plexiglas and appliqués. All materials and appliqués shall be maintained throughout the life of the development to ensure continued effectiveness at addressing bird strikes and shall be maintained at a minimum in accordance with manufacturer specifications and as recommended by the Executive Director.
- B.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit final revised plans showing the location, design, height and materials of railings, fences, screen walls and gates for the review and approval of the Executive Director. Said plans shall reflect the requirements of this special condition.
- C.** The permittee shall undertake development in accordance with the approval final plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal

development permit unless the Executive Director determines that no amendment is legally required.

- 5. Future Development.** This permit is only for the development described in CDP No. 5-20-0397, which converts office space and rooftop area to a membership restaurant with all rooms of the proposed development used for restaurant purposes. Pursuant to Title 14 of the California Code of Regulations Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code Section 30610(b) shall not apply to the development governed by CDP No. 5-20-0397. Accordingly, any future improvements to the membership restaurant on the third floor and rooftop, and any other future improvements including but not limited to repair and maintenance identified as requiring a permit in Public Resources Code Section 30610(d) and Title 14 of the California Code of Regulations Sections 13252(a)-(b), shall require an amendment to CDP No. 5-20-0397 from the Commission or shall require an additional CDP from the Commission or from the applicable certified local government.
- 6. Deed and Lease Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit to the Executive Director for review and approval documentation demonstrating that the landowner(s) and lessor have executed and recorded against the parcel(s) governed by this permit a deed and lease 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 and lease restriction shall include a legal description of the entire parcel or parcels governed by this permit. The deed and lease restriction shall also indicate that, in the event of an extinguishment or termination of the lease 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.

IV. FINDINGS AND DECLARATIONS

A. Project Location and Description

The project site is located at 1401 Ocean Avenue in the City of Santa Monica ([Exhibit 1](#)). The lot is zoned as Residential – Visitor Commercial in the certified Land Use Plan. Public access to a sandy beach is located approximately 500 feet southwest of the project site, via one of the pedestrian bridges that traverses Pacific Coast Highway. The project site is not located between the first public road and the sea.

The subject site is currently developed with a three-story, 47,171 sq. ft. commercial building. The proposed development will take place on the third floor and on the unused rooftop area of the commercial building where the applicant proposes to convert approximately 12,170 sq. ft. of third floor office space and 3,530 sq. ft. of rooftop area into a membership restaurant/club facility ([Exhibit 2](#)). The third floor will not increase in floor area and will receive a new interior build-out for the restaurant and club facility use, including reconfiguration of the interior walls, but there will be no impact to the exterior walls. There are two existing patios on the third floor (one 235 sq. ft. patio and one 635 sq. ft. patio) that will not increase in square footage and will provide outdoor dining. An elevator will connect the third floor to the rooftop dining area. The rooftop deck will convert approximately 3,530 sq. ft. of existing roof space into a rooftop terrace. Non-invasive, drought tolerant landscaping is proposed in planter boxes (a minimum of 3 feet high) around the perimeter of the rooftop and a glass guardrail will surround the rooftop deck, along the outside perimeter. The proposed development on the rooftop deck will not exceed the height of the existing rooftop mechanical equipment, so it will not expand any existing view obstruction and public views will not be impacted by the proposed development.

The majority of the third-floor space includes typical dining and bar seating ([Exhibit 2](#)) as well as a kitchen/storage room. The applicant proposes to construct three interior rooms which will provide full food and beverage service: a lounge dining room, a library meeting room, and a screening room.

The lounge dining room will possibly support live music, but will not represent a traditional restaurant dining area. The library meeting room will accommodate non-profit meetings, member gatherings, board meetings, committee meetings, employee meetings, etc. The screening room will have a projector, screen and built-in equipment. The applicant states that the screening room will accommodate larger board meetings, restaurant committee meetings and employee meetings. The rooftop terrace will accommodate rooftop dining tables and a snack bar.

The applicant will provide interior space to local non-profit organizations, with a preference for non-profit groups representing marginalized groups¹, without requiring any of the non-profit's staff or members to be members of the restaurant. The applicant will donate the library meeting room and the screening room to local non-profits to use for 7 days per month (every Sunday and an additional 3 days throughout the month). Non-profits will be able to use the library meeting room and screening room free of charge for a variety of purposes, including but not limited to, board meetings, smaller group meetings, fundraising events, speaker or educational presentations, and film screenings ([Exhibit 3](#)).

¹ The applicant's proposal states that marginalized or underserved communities include low-income communities, communities of color, and other communities that have been historically marginalized and face greater barriers to coastal access.

The applicant is proposing to participate in a marine debris reduction program for the proposed development, and at a minimum, eliminate expanded polystyrene use (a.k.a. Styrofoam), follow proper recycling practices, only use reusable tableware for onsite dining, only provide disposable utensils for takeout food upon request, prohibit the use of plastic bags, and only provide straws (paper straws or straws made from naturally occurring materials/reusables) upon request.

B. Public Access and Recreation

The Coastal Act requires that high priority be given to public access to and recreational uses and activities along the coast. In addition, the Coastal Act requires that oceanfront land suitable for recreational use be protected for recreational use and development. Coastal Act Sections 30210-30223 protect public access and recreation. In particular:

Section 30210 states:

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

Section 30211 states:

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

Section 30212 states (in part):

Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or, (3) agriculture would be adversely affected...

Section 30213 states (in part):

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

Section 30221 states:

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

Section 30222 states:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

Section 30223 states:

Upland areas necessary to support coastal recreational uses shall be reserved for such uses, where feasible.

Section 30604(h) states:

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

The Santa Monica LUP, which is used as guidance for determining consistency with the Coastal Act, includes policies to maximize public access and recreation, including parking. In particular:

Policy 20 of the LUP states, in pertinent part:

New development shall provide adequate parking to meet all demands created by the development. With the exception of development within 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...

Policy 31 of the LUP states:

Visitor-serving commercial, recreational facilities designed to enhance public opportunities for coastal recreation and Coastal Dependent development and uses shall have priority over residential or general commercial development. Land in upland subareas necessary to support coastal recreational uses shall be reserved for such uses.

Policy 64 of the LUP states:

Ocean Avenue, south of California Avenue to Colorado Avenue shall accommodate new visitor-serving uses including hotels, restaurants, commercial recreational uses, visitor serving retail uses. Residential uses and office development may be permitted except at the ground floor street frontage.

Residential development shall provide adequate on-site support and guest parking to prevent adverse impact on public access to Palisades Park.

Visitor Serving Uses

The proposed project will change the current private office use of the third-floor space and rooftop area into a restaurant/club facility use. The Santa Monica LUP designates the site for visitor serving commercial and residential development. Although a membership-only restaurant does not clearly constitute a visitor-serving commercial use, Policy 64 of the City's certified LUP clarifies that non-visitor-serving commercial development may be allowed on the upper floors of structures within the areas designated for visitor-serving commercial and residential development, such as the project site. In the case, the project is located on the third floor and roof of the existing structure, consistent with intent of Policy 64.

Additionally, Sections 30222 and 30213 require visitor-serving commercial recreational facilities to have priority over private general commercial development and require lower cost visitor serving facilities be provided where feasible. In this case, the project site is currently a vacant office and Commission staff is not aware of any other business having an interest in the space that would provide for visitor serving commercial. The applicant proposes to offer the space to non-profit organizations for free seven days each month, and to allow some individuals to provide "in-kind" services in lieu of membership fees. A point of discussion at the public hearing on 2/11/21 was the suggestion that portion of the rooftop deck or a portion of the restaurant be open to the public one day per week or for a limited number of hours. The applicant contends that "a separate public portion of the roof is not functionally feasible and does not work with the membership restaurant/social club business concept. The rooftop deck of the proposed facility will not function as a traditional restaurant, but will instead offer a mix of shared workspace, informal social gathering areas and food service, not the typical table arrangement and dining experience of a conventional restaurant. It would pose functional and operational challenges if opened to the general public."

The applicant has estimated that the membership fees (although the fees have not been confirmed yet) are approximately \$150-\$350 per month. The applicant proposes to provide inclusive and non-discriminatory membership criteria. The applicant will do this by establishing a committee of member-peers who will focus on creating a diverse membership base including an outreach and advertisement effort to reach a broad group of persons, including persons from minority groups. The applicant has stated that there will be an informal option for individuals to provide "in-kind" payments such as contributing a skill (i.e., singing monthly at the restaurant) instead of paying the membership fee, or a portion of the fee, to be offered at their discretion. Non-member employees will be permitted to dine at the restaurant, subject to availability.

The applicant has stated that the proposed club will be similar to others in the area. There are three membership beach clubs in the area (along Santa Monica Beach and in

Pacific Palisades) similar to the proposed development; however, they were all developed prior to the passage of the Coastal Act. At the public hearing on 2/11/21, there was mention of another membership club in Santa Monica, 41 Ocean, which was unpermitted development and has since closed. Additionally, Soho's Little Beach Club at 22716 Pacific Coast Highway in Malibu was issued a Coastal Development Permit by the City of Malibu, and the permit was not appealed to the Commission. The City of Malibu's certified LUP Designation for Soho's Little Beach Club is Commercial Visitor Serving.² The applicant states that there are several other affordable restaurants in the area which provide dining options for a wide range of members of the public. **Exhibit 4** shows a number of other affordable restaurants around the proposed development, as well as the existing building and the sublease space available for the premises.

In-lieu of making a portion of the restaurant/club open to the general public, the applicant is proposing to offer two rooms for free to non-profit organizations each month. In order to provide some lower-cost amenities at the restaurant, the applicant will donate the library meeting room and the screening room to local non-profits to use for 7 days per month (every Sunday and an additional 3 days throughout the month) with a preference for marginalized groups, without requiring any of the non-profit's staff or members to be members of the restaurant. The applicant estimates that the library meeting room can accommodate approximately 175 people for receptions and approximately 120 people for seated dinners and the screening room can accommodate approximately 43 people in an auditorium format for projecting films or hosting a speaker. The applicant proposes to implement a marketing and engagement plan which will promote and publicize availability of the donated facility space to underserved communities, such as low-income communities, communities of color, and other communities that have been historically marginalized and face greater barriers to coastal access. The marketing and engagement plan will identify strategies for both online advertising and offline marketing efforts, which will include targeted outreach to community organizations focused on underserved communities such as local non-profits, environmental justice groups, or recipients of public benefits programs by coordinating with local program administrators. Marketing and media materials will be distributed beyond the City of Santa Monica to neighboring underserved communities in the greater Los Angeles County area. The marketing and engagement plan will be written in plain language to prevent educational and cultural barriers from discouraging access to this unique opportunity for free event space for nonprofit groups. **Special Condition 2** requires the applicant to submit a Management Plan for Non-Profit Use (MPNU), prior to issuance of this coastal development permit, which includes a marketing, outreach and engagement strategy for non-profit access, as well as monitoring and reporting requirements for the donation of this space.

To ensure that the membership restaurant/club does not implement discriminatory membership policies, **Special Condition 1** requires the applicant to submit its bylaws, or an amendment to its bylaws if necessary, that expressly provides that it will not

² City of Malibu Certified LUP <https://www.malibucity.org/DocumentCenter/View/4420/LCP-Maps?bidId=>

discriminate on the basis sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, sexual orientation, place of residence or socioeconomic group in its outreach efforts, membership, activities or operations. As conditioned, the project is consistent with the public access policies of the Coastal Act.

Public Access and Environmental Justice

Section 30210 of the Coastal Act requires that maximum access to the coast and coastal recreational opportunities be provided for all people. The Commission has the authority under Section 30604(h) of the Coastal Act to consider environmental justice, or the equitable distribution of environmental benefits throughout the state, when acting on a coastal development permit. The Commission adopted an environmental justice policy in March 2019, recognizing that equitable coastal access and recreational opportunities for all populations is encompassed in, and protected by, the public access policies of Chapter 3 of the Coastal Act.

The proposed project raises environmental justice concerns because the proposed membership restaurant is unlikely to serve many members of the public who visit the Santa Monica coastal zone and cannot afford or do not wish to pay monthly membership dues. Throughout California's history, low-income communities, communities of color, and other marginalized populations have faced disproportionate social and physical barriers that disconnect them from coastal access and recreational opportunities. Equitable coastal access and recreation opportunities for all populations has not been realized due to historic and social factors, such as discriminatory land use and economic policies and practices.³ The proposed project would convert existing third floor office space and existing unused rooftop space to a membership restaurant/club facility, which increases coastal recreation and access benefits for: a). primarily higher-income individuals that can afford membership dues; b). those that can provide some sort of "in-kind" payment instead of paying membership dues; or c). those who belong to a nonprofit organization that can use the library meeting room or the screening room free of charge on selected days of the month for nonprofit organization events.

The project is located on Ocean Avenue, inland of Pacific Coast Highway, and approximately 500 feet from the inland extent of Santa Monica Beach, and the proposed restaurant will not prevent or interfere with the public's use of, or access to, the coast. In addition, as mentioned above, the proposed project will convert office space on the third floor of a commercial building to a private membership restaurant/club facility, which is more conforming to the land use designation for this area than an office space and will provide some limited recreational use, given the applicant's proposal to allow

³ Robert Garcia & Erica Flores Baltodano, Free the Beach! Public Access, Equal Justice, and the California Coast, Stanford Journal of Civil Rights and Civil Liberties. Pages 143 (2005)

non-profit organizations to use the facility and to allow some individuals to provide “in-kind” services in lieu of membership fees.

Although Section 30610 states that maximum public access and recreational opportunities shall be provided for all the people, Section 30610’s strong public access mandate is tempered by the requirement to do so in a manner that is consistent with the rights of property owners. As previously mentioned, the applicant asserts that opening a portion of the restaurant/club to the general public is economically infeasible, and that its business model requires membership fees. The applicant contends that the conversion of the subject site to a private facility is an opportunity to encourage and enrich access to the coastal zone at a site where none currently exists, while fostering a diverse community, that seeks members from all backgrounds, races, ages, orientations, and those with diverse talents, perspectives and ideologies. The applicant is committed to providing an inclusive and non-discriminatory environment by establishing a committee of member-peers who will focus on creating a diverse membership base including an outreach and advertisement effort to reach a broad group of individuals, including persons from minority groups, consistent with past Commission action.⁴

As discussed above, the applicant is proposing to make the restaurant/club more accessible to individuals who cannot afford the membership fees by providing free access to the library meeting room and the screening room to local non-profit organizations seven days per month (every Sunday and an additional 3 days throughout the month) without a membership, as required by **Special Condition 2** (as detailed in the **Visitor-Serving Uses** Subsection above). Since the 2/11/21 public hearing, the applicant conducted an online and telephone survey to nonprofit organizations in the greater Los Angeles Area to gauge interest in the use of the spaces being offered for free and to see how each group could benefit from the applicant’s proposal. The organizations that responded stated that they were interested in the space for group meetings, speaker presentations, and fundraising events. In addition, the applicant has committed to providing employment opportunities to local non-profit organizations assisting underserved communities ([Exhibit 5](#)). Letters in support of the proposed project from seven non-profit organizations were received and are published under the “Correspondence” tab for this item on the Commission’s website. In addition, the applicant will provide an informal option for individuals to provide “in-kind” payments

⁴ In the 1980s, the Jonathan Club applied for a CDP to expand its private, white, men-only clubhouse on Santa Monica State Beach on leased state tidelands. The Coastal Commission found that the discriminatory membership practice was inconsistent with the use of public tidelands and inconsistent with Chapter 3 public access policies and imposed a condition of approval which required the Club to revise its membership criteria to be more inclusive. The Jonathan Club now accepts members of all races, genders, and faiths. Here, the applicant has committed to membership practices that will not discriminate on the basis of sex, race, color, religion, ancestry, national origin, ethnic group identification, age, mental disability, physical disability, medical condition, genetic information, marital status, sexual orientation, socioeconomic group or place of residence in its outreach efforts, membership, activities or operations..

such as contributing a skill (i.e., singing monthly at the restaurant) instead of paying the membership fee. To ensure that the non-profit use plan is implemented in an equitable and consistent way, the Commission imposes **Special Condition 2** which requires the applicant to provide details for the management of the plan (an operations plan) and also requires submission of annual monitoring reports to ensure that the project is maintains the obligations of condition compliance for the life of the development.

The applicant also proposes to create a community where all people are treated equally regardless of sexual orientation, gender, race, age or other affiliation, and to minimize financial barriers to entry. To ensure that the membership restaurant/club facility does not implement discriminatory membership policies, **Special Condition 1** requires the applicant to implement non-discriminatory membership policies (as detailed in the **Visitor-Serving Uses** Subsection above).

Parking

The proposed development would convert existing office space to restaurant space (12,170 sq. ft.) and convert an existing rooftop area (3,530 sq. ft.) to restaurant space. In total, the project will provide 12,350 sq. ft. of restaurant dining area. The City of Santa Monica's Certified Land Use Plan does not have parking requirements for the proposed development. The applicant used the City of Santa Monica's parking standards to determine parking demand as a result of the proposed development. Under the City's parking standards, one parking space is required for each 1,000 square feet of office floor area and one space for each 300 sq. ft. of restaurant floor area. Thus, the standards would require 12 parking spaces for the existing office use and 41 parking spaces for the proposed restaurant use. Since the proposed development will eliminate the office use, the 12 parking spaces will no longer be required, thus requiring only 29 parking spaces. Therefore, the City's parking standards predicts that the proposed project would generate the need for 29 additional parking spaces.

The applicants provided a parking demand study from Linscott, Law & Greenspan, Engineers which concluded that the projected parking demand increase from the proposed project could be fully accommodated for in the existing 209 parking space subterranean parking garage on-site. The subterranean parking garage is a mix of valet and self-parking. According to the study, there are 47 – 99 parking spaces available on any given day, even at peak periods. According to the parking study, the subject site has adequate parking availability to accommodate any incremental increase in parking demand that may be generated by the proposed development (29 parking spaces), consistent with Policy 20 of the certified LUP. The applicant submitted two letters with the application: one from the building owner and one from the parking company owner which based on anecdotal observations, they suggest that the subterranean parking garage on-site will be able to fully accommodate the projected project's parking demand increase of 29 spaces.

In addition, there is a bus stop immediately adjacent to the project site. The Metro Rapid Lines 704 and 733 connect the project site to Downtown Los Angeles and Line 534 connects the project site to West Malibu. The Santa Monica Big Blue Bus Route 8 connects the project site to Westwood and Route 9 connects the project site to the Pacific Palisades. Lastly, the site is not far from the Expo line which delivers thousands of passengers to the Santa Monica pier regionally from the greater LA area.

In summary, the proposed development will not interfere with the public's ability to access and/or use the coast and nearby recreational facilities, will provide adequate parking facilities onsite, and, as conditioned, the Commission finds that the development conforms with public access and recreational policies of the Coastal Act.

C. Marine Resources

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.

The proposed development is located approximately 500 feet from the inland extent of Santa Monica Beach. Due to its location and the large glass windows and railings on the seaward side, there is a substantial risk of bird strikes; therefore, **Special Condition 4** is imposed to assure protection of avian species, a marine resource, requiring the applicant to use bird-safe glass for all structural elements.

The conversion of the office and rooftop area to a membership restaurant/club facility may result in an increased demand, relative to the current office use, for food packaging, tableware, and other materials generally used at a restaurant facility. Plastic pollution is a persistent and growing problem worldwide that significantly impacts the health of our oceans and coasts. Roughly 8 million metric tons of plastics are estimated

to enter the ocean each year, and the United States is one of the top 20 contributors to plastic pollution.⁵ Plastic has been found in a wide range of marine environments including the seafloor, surface water, the water column, and on beaches and shorelines. California communities are estimated to spend more than \$428 million annually to clean up and control plastic pollution. Plastic never truly degrades into its chemical components; instead it physically breaks down into smaller and smaller pieces. Plastics under 5 millimeters in size are called microplastics, and are found worldwide, even in places considered pristine. Plastics have been found in the digestive tracts of marine organisms ranging from zooplankton to whales, and microplastics have been found in drinking water and food, including shellfish, salt, beer, and honey.⁶ In particular, the use of single-use plastics, Styrofoam or other single-use materials that often are used at restaurants could result in adverse effects to marine wildlife, since these materials can make their way to the ocean, causing fish, seabirds, sea turtles, and marine mammals to become entangled in or ingest plastic debris, causing suffocation, starvation, and drowning. The elimination of non-reusable, non-recyclable, and non-compostable products and the reduction of packaging is an effective way to protect the health of wildlife and the environment.

The applicant is proposing to participate in Surfrider's Ocean Friendly Restaurants program, and at a minimum, eliminate expanded polystyrene use (a.k.a. Styrofoam), follow proper recycling practices, only use reusable tableware for onsite dining, only provide disposable utensils for takeout food upon request, prohibit the use of plastic bags, and only provide paper straws or straws made from naturally occurring materials/reusables upon request. Therefore, to ensure that the applicant protects marine resources and water quality, **Special Condition 3** requires the applicant to participate in a marine debris reduction program to reduce waste and single-use plastic foodware and packaging on-site and for takeout orders.

The Commission finds that the proposed development, as conditioned, conforms to Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to promote the biological productivity of coastal waters.

D. Local Coastal Program (LCP)

Coastal Act section 30604(a) states that, prior to certification of an LCP, a coastal development permit can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that is in conformity with

⁵ Ocean Protection Council <https://www.opc.ca.gov/programs-summary/marine-pollution/plastics/>

⁶ Ocean Protection Council <https://www.opc.ca.gov/programs-summary/marine-pollution/plastics/>

Chapter 3. The Land Use Plan (“LUP”) for Santa Monica was effectively certified on September 15, 1992 upon the City’s adoption of the Commission’s suggested modifications. The City does not yet have a certified Implementation Plan. Therefore, the Chapter 3 policies of the Coastal Act are the standard of review and the certified LUP is used as guidance. The proposed development is consistent with Chapter 3 of the Coastal Act. Approval of the project, as conditioned, will not prejudice the ability of the local government to prepare an LCP that is in conformity with the provisions of Chapter 3 of the Coastal Act.

E. California Environmental Quality Act

Section 13096 of the Commission’s regulations requires Commission approval of coastal development permit applications to be supported by a finding showing the application, as modified 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 approval of a proposed development if there are feasible alternatives or feasible mitigation measures available that would substantially lessen any significant impacts that the activity may have on the environment. The Commission’s regulatory program for reviewing and granting CDPs has been certified by the Resources Secretary to be the functional equivalent of CEQA. (14 CCR § 15251(c).)

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

Santa Monica Land Use Plan (1992)