

CALIFORNIA COASTAL COMMISSION

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Th15b

Filed: 08/12/21
270th Day: 05/09/22
Staff: C. Seifert -LB
Staff Report: 02/24/22
Hearing Date: 03/10/22

STAFF REPORT: REGULAR CALENDAR

Application No.: 5-21-0139

Applicant: Ocean Avenue, LLC (Attn: Alan Epstein, Ellis O'Connor)

Agents: The Athens Group (Attn: Dustin Peterson), Gaines and Stacey LLP (Attn: Sherman Stacey), McCabe & Co. (Attn: Susan McCabe, Anne Blemker), Harding Larmore Kutcher and Kozal LLP (Attn: Ken Kutcher, Paula Larmore)

Project Location: 1133 Ocean Avenue, Santa Monica, Los Angeles County (APN: 429-202-8001)

Project Description: Redevelopment of an existing, up to 105-ft. tall, 262,284 sq. ft., luxury hotel with 301 hotel rooms and 103 onsite parking spaces, resulting in a new, up to 130-ft. tall, 502,157 sq. ft., mixed-use development with 312 hotel rooms, 60 condominium units, 6,600 sq. ft. of retail space, three café/restaurants, and 428 onsite parking spaces on a 4.5 acre lot. Grading includes 131,075 cy. of cut and 3,375 cy. of fill. The applicant also requests approval of a development agreement.

Staff Recommendation: Approval of the CDP with conditions and approval of the Development Agreement

SUMMARY OF STAFF RECOMMENDATION

The applicant proposes redevelopment of an existing, multi-structure, luxury hotel on a 4.5 acre lot in downtown Santa Monica. The project will consist of three primary

components: 1) remodel of the historic Palisades Building with no change in density or intensity of use with regard to the 111 existing, high-cost hotel rooms within the structure; 2) demolition of the remaining maximum 10-story, 105-ft. tall, 200,284 sq. ft. cumulative area onsite, which contains 190 hotel rooms and 1,235 sq. ft. of retail area, for construction of a new, 10-story, 130-ft. tall, 440,157 sq. ft. cumulative area containing 201 hotel rooms, 60 condominium units, and 6,600 sq. ft. of retail area; and 3) approval of a development agreement. The new hotel will provide 312 high-cost hotel rooms; only 201 of the 312 hotel rooms are new. Three subterranean parking levels are proposed, requiring 131,075 cy. of cut and 3,375 cy. of fill.

The most seaward boundary of the project site is located 480 ft. inland of the beach on a parcel designated Downtown Commercial by the Santa Monica certified Land Use Plan (LUP) ([Exhibit 3](#)). The proposed, visitor-serving hotel and retail uses are consistent with public access and recreation policies of the Coastal Act and the certified LUP. The project does exceed the height limit of the LUP; there is a related, project-specific LUP amendment also on the current agenda, which, if certified, would increase the height limit for this use and allow project consistency with the amended LUP.

While the Commission certified the City's LUP in 1992, the City does not yet have a certified Local Coastal Program (LCP). Therefore, the standard of review are the Chapter 3 policies of the Coastal Act, with the certified LUP providing guidance. The primary issues raised by the project relate to public access, visual resources, and cultural resources.

Section 30213 of the Coastal Act requires protection and provision of lower-cost visitor facilities. The subject hotel has not provided lower- or moderate-cost hotel rooms onsite since hotel construction prior to passage of the Coastal Act. In past actions, the Commission has required applicants to provide at least 25% of new overnight accommodations at lower-cost to ensure conformance with Section 30213. This approach would equate to at least 51 of the proposed 201 new, high-cost hotel rooms being required to be provided at lower-cost. The applicant's submitted cost feasibility studies determine that providing 51 lower-cost rooms onsite would be economically infeasible. The applicant's consultant estimates the applicant's already low profit margin, even with all hotel rooms provided at high-cost, is due in part to the significant community benefits package proposed by the applicant. This includes construction of a residential development with 42 affordable housing units on the existing hotel's offsite parking lot, located immediately east of the hotel parcel (Coastal Development Permit (CDP) Application No. 5-21-0875), and payment of approximately \$2.31 million to the City of Santa Monica in fees for community improvement projects and programs.

To mitigate the lack of provision of affordable overnight accommodations, the applicant initially proposed construction of a "pod hostel" with 102 lower-cost beds in Downtown Santa Monica (outside the coastal zone) as a means of providing at least 51 lower-cost overnight accommodations. This option was also deemed infeasible, due to the applicant's inability to ensure the hostel beds would remain lower-cost or would be provided for the full life of the proposed luxury hotel. The applicant now proposes to pay a \$5,100,000 mitigation fee in-lieu of providing 51 lower-cost rooms onsite, estimated

from a report published in 2015 by the Commission's previous consultant which determined an in-lieu fee of \$100,000 per lower-cost room was adequate to mitigate the lack of affordable overnight accommodations onsite. The Commission has accepted an in-lieu mitigation fee of \$100,000 per lower-cost room in past recent actions—however, this requirement was based on data provided in 2015. When considering the approximate 27% increase in the Turner Building Cost Index in the last seven years (likely related to inflation and other factors), the estimated cost of constructing a lower-cost hotel or motel room has increased from \$100,000 per room to \$127,000 per room. The mitigation fee of \$127,000 per lower-cost hotel unit will facilitate provision of new lower-cost accommodations in the coastal zone. **Special Condition 1** thus requires the applicant to submit a total \$6,477,000 in-lieu mitigation fee into an account reserved for the construction of affordable overnight accommodations prior to the issuance of the subject Certificate of Occupancy.

The applicant's parking demand consultant indicates that the existing development struggles to provide parking for hotel guests and employees, with only 167 parking spaces available for 301 hotel rooms and a far greater number of employees; the applicant proposes to significantly increase parking onsite. Based on past Commission action, the proposed development would require approximately 692 parking spaces. The applicant proposes provision of a maximum 537 total vehicle parking spaces, consisting of 428 parking spaces in the subterranean parking lot, 49 parking spaces in the valet aisles adjacent to the main entrance, and 60 offsite parking spaces available at 120 Wilshire Boulevard during weekday evenings and weekends.

The proposed 537 parking spaces exceeds the uncertified Santa Monica Municipal Code (SMMC) maximum of 357 parking spaces, as the SMMC specifies a maximum number of parking spaces, rather than a minimum. It also does not meet the Commission's required 692 parking spaces. However, the City has approved the proposed number of spaces, and the applicant's transportation demand consultant, Linscott Law & Greenspan Engineers, published a study and analysis demonstrating that the proposed parking is necessary and adequate to satisfy demand and has been appropriately allocated for each proposed use. Additionally, 43 parking spaces will be provided as electrical vehicle (EV) charging stations, 342 total bicycle parking spaces will be installed onsite, and a cash incentive program will be available for employees who commute via methods of transportation other than single-occupancy vehicles. **Special Condition 5** requires the applicant to submit a final Transportation Demand Management Plan, which includes the cash incentive program and location of bicycle parking stations in areas available to the public, for Executive Director approval prior to CDP issuance.

The project site is located in an LUP-designated scenic view corridor. While the project does not impact any existing coastal views, the proposed 10-story, 130-ft. height, and

2.6 Floor/Area Ratio (FAR)¹ will exceed the maximum three-story, 45 feet, and 2.0 FAR allowed by the LUP. The City has approved the project and applied for an LUP amendment to allow a project-specific exception to these limits (Application No. LCP-5-SNM-21-0020-1). The project site is surrounded by several legally-nonconforming structures of taller height and greater FAR than the proposed development; the project is thus consistent with the existing visual character of Downtown Santa Monica. The project additionally provides new public recreation opportunities through removal of the existing site perimeter wall and construction of a new, 14,400 sq. ft., ocean-facing open space reserved for free public use, resulting in new and improved public coastal viewing locations. Overall, the proposed size, massing, and scale will not adversely impact visual resources.

The project site is located on the inland side of Ocean Avenue and approximately 300 ft. inland of bluffs that may pose the threat of geologic instability. The project also proposes a significant amount of grading for construction of three new subterranean levels. The applicant's geotechnical consultant has confirmed that the project will not impact bluff stability, nor will the excavation require dewatering measures. The consultant's published study confirms that even with the potential for up to 6.8 ft of sea level rise in the project vicinity, the proposed development will maintain at least an eight-foot buffer between the potential future groundwater elevation and the lowest proposed subterranean level. No wave impacts, erosion, or inundation related to sea level rise is anticipated onsite in the development lifespan due to the site's high elevation and location one street-width inland of the bluffs. However, to ensure the risks inherent in development in an area subject to such potential coastal hazards are acknowledged and borne by the applicant, **Special Conditions 7 and 8** require the applicant to assume all such risks and waive any future right to shoreline protection for the new buildings and/or subterranean parking levels with construction of the proposed new development.

The proposed hotel has the potential to introduce a significant amount of untreated runoff and plastic marine debris into the water column without implementation of sufficient water quality management measures. Furthermore, the project site is located adjacent to an LUP-designated major storm drain on Wilshire Boulevard which ultimately drains into the Santa Monica Bay. The applicant's hydrology consultant estimates that the project will increase the amount of landscaping onsite and establish garden areas on the roof, resulting in a composition of approximately 69.2% impervious and 30.8% pervious area onsite. The applicant also proposes installation of stormwater retention devices to recycle water for onsite landscaping irrigation. To ensure the proposed development will minimize marine debris via plastic reduction, **Special Condition 9** requires the applicant to submit a Marine Debris Reduction Plan for the Executive Director's review and approval prior to CDP issuance. The final plan shall include limits on single-use plastic and must be followed by the applicant. **Special**

¹ FAR is defined as the ratio of floor area of all principal and accessory buildings onsite (excluding uninhabitable area, such as decks) to the site area, calculated by dividing the proposed development area by the lot area. Section 9.04.090 of the uncertified SMMC excludes basements from the FAR.

Condition 10 also requires submittal of a Water Quality Management Plan that outlines specific runoff minimization and treatment measures, specifies the location of all proposed stormwater retention devices, and demonstrates that these measures can retain at least the 85th percentile storm runoff volume.

The project site is located in an area that may contain sensitive cultural and/or archaeological resources. Two Native American Tribal chairmen have requested a tribal representative be present to monitor all proposed excavation and ensure respectful treatment of any discovered cultural deposits. Thus, to ensure any potential impacts to cultural resources are avoided, **Special Condition 14** requires the applicant to submit a Cultural Resource Treatment and Monitoring Plan for Executive Director approval which requires monitoring of all grading activities on site by both a qualified archeologist and appropriate Native American monitors.

As indicated above, there are two additional separate but related items also scheduled for action at the subject Commission meeting: the applicant's proposed "100% Affordable Housing Project" for construction of 42 new, affordable housing units at 1127-1129 Second Street landward of the hotel parcel (CDP App. 5-21-0785) and the City's LUP amendment application for proposed, project-specific exceptions to the subject land use designation height and building size limitations (App. LCP-5-SNM-21-0020-1). The applicant also seeks approval of a development agreement included in the subject CDP application.

Staff has reviewed the project proposal and recommends that the Commission find the project, as conditioned herein, consistent with Chapter 3 policies of the Coastal Act relating to public access, visual resources, and cultural resources, using the City's certified LUP as guidance. Commission staff, therefore, recommends the Commission approve the Development Agreement and the CDP application with sixteen (16) special conditions: **1)** Lower-Cost Overnight Accommodations Mitigation Fee; **2)** hotel occupancy agreement; **3)** local government approval; **4)** indemnification by permittee; **5)** Transportation Demand Management Plan; **6)** parking restrictions; **7)** assumption of risk; **8)** no future shoreline protection; **9)** Marine Debris Reduction Program; **10)** Water Quality Management Plan; **11)** Landscaping Plan; **12)** construction and water quality best management practices (BMPs); **13)** bird-strike prevention; **14)** cultural resource treatment and monitoring plan; **15)** deed restriction; and **16)** final tract map.

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EXHIBITS

[Exhibit 1 – Vicinity Map](#)

[Exhibit 2 – Project Plans](#)

[Exhibit 3 – Santa Monica Certified LUP Map](#)

[Exhibit 4 – Low-Cost Lodging Feasibility Memorandum](#)

[Exhibit 5 – 2021 Turner Building Cost Index](#)

[Exhibit 6 – Vesting Tentative Tract Map](#)

I. MOTION AND RESOLUTION FOR COASTAL DEVELOPMENT PERMIT

Motion:

I move that the Commission **approve** Coastal Development Permit No. 5-21-0139 pursuant to the staff recommendation.

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:

The Commission hereby approves the Coastal Development Permit for the proposed project 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. 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. MOTION AND RESOLUTION FOR DEVELOPMENT AGREEMENT

Motion:

I move that the Commission **approve** Development Agreement No. 5-21-0139 pursuant to the staff recommendation.

Staff recommends a **YES** vote on the motion. Passage of this motion will result in approval of the development agreement as submitted 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 the development agreement on the grounds that the development would be in conformity with the provisions of Chapter 3 of the California Coastal Act of 1976, including the public access and recreation policies of Chapter 3, would 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 of the Coastal Act, and would not have any significant adverse impacts on the environment within the meaning of the California Environmental Quality Act.

III. 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 applicants 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 applicants to bind all future owners and possessors of the subject property to the terms and conditions.

IV. SPECIAL CONDITIONS

- 1. Lower-Cost Overnight Accommodations Mitigation Fee.** PRIOR TO ISSUANCE OF THE CERTIFICATE OF OCCUPANCY FOR THE SUBJECT DEVELOPMENT , the applicant, and all other successors and assigns, shall pay the mitigation fee for 25% of the number of high-cost rooms developed on-site, totaling \$6,477,000, including any increases due to inflation based on the Turner Building Index from the date of Commission action until the fee is deposited by the applicant into an interest bearing account(s) consistent with the provisions of Subpart 1.A of this condition below.
 - A. The required total in-lieu fee shall be deposited into one or more interest-bearing account(s), to be established and managed by one or more of the following entities approved by the Executive Director of the Coastal Commission: the California Department of Parks and Recreation (State Parks), the Mountains Recreation and Conservation Authority (MRCA), a governmental agency or related non-profit organization, or a similar entity approved by the Executive Director. The purpose of the account shall be to establish lower-cost overnight visitor accommodations, such as lower cost hotel and motel rooms, hostel beds, tent campsites, cabins or campground units, at appropriate locations within the coastal area of Santa Monica or the greater Los Angeles County coastal area, or a similar project to promote access to the coast.

- B. The entire fee and accrued interest shall be used for the above stated purpose, in consultation with the Executive Director, within ten years of the fee being deposited into the account. All development funded by this account will require review and approval by the Executive Director of the Coastal Commission and a coastal development permit if in the coastal zone. If any portion of the fee remains ten years after it is deposited, it shall be donated to one or more of the State Park units or other governmental or non-profit entities providing lower-cost visitor-serving amenities in a Southern California coastal zone jurisdiction or other organization acceptable to the Executive Director. The Executive Director may extend the aforementioned deadline to expend the funds for good cause if the recipient of the funds requests an extension of the deadline in writing prior to expiration of the deadline.
- C. Prior to expenditure of any funds contained in this account, the Executive Director shall review and approve, in writing, the proposed use of the funds as being consistent with the intent and purpose of this condition. In addition, prior to the Executive Director's approval of expenditure, the entity accepting the in-lieu fee funds required by this condition shall enter into a memorandum of understanding (MOU) with the Commission (except for the MRCA, State Coastal Conservancy and State Parks, which are already party to existing MOUs (see subsections D and E, below)), which shall include, but not be limited to, the following: 1) a description of how the funds will be used to create lower-cost accommodations in the coastal zone; 2) a requirement that the entity accepting the funds must maintain operations of the accommodations at a lower-cost rate; 3) the terms provided in subsections A and B of this condition; and 4) an agreement that the entity accepting the funds will obtain all necessary regulatory permits and approvals, including but not limited to, a coastal development permit for development of the lower-cost accommodations required by this condition.
- D. If the in-lieu fee is transferred to the State Coastal Conservancy, the funds shall be used pursuant to the existing MOU between the Coastal Commission and the Conservancy, dated August 2018, and for the purposes described in subsection A, above. In addition, at least thirty days prior to the transfer of the funds, the Permittee shall provide the Conservancy with any documentation necessary to the Conservancy, including information needed to effectuate transfer of the Funds to the Conservancy, unless the Permittee receives a waiver of this requirement in writing from the Conservancy's Executive Officer. The terms in subsection B shall not apply to the State Coastal Conservancy.
- E. If the in-lieu fee is transferred to State Parks, the funds shall be used pursuant to the existing MOU between the Coastal Commission and State Parks, dated December 2017, and for the purposes described in subsection A, above. As required by the existing MOU, a Project Specific Agreement shall be developed and executed by both agencies prior to the use of any funds.

- 2. General Occupancy Agreement.** BY ACCEPTANCE OF THIS PERMIT, the applicant agrees that all hotel food, beverage, and retail facilities shall be open to the general public consistent with typical hotel operations. No timeshare or other fractional ownership or long-term occupancy of hotel rooms is permitted without an amendment to this permit. No hotel rooms shall be rented for more than 30 consecutive days. Hotel rooms shall be rented in accordance with any local government limitations on length of hotel stay. Hotel rooms shall be available to the general public consistent with typical hotel operations and local, state, and federal law.
- 3. Conditions Imposed by Local Government.** This action has no effect on conditions imposed by the City of Santa Monica pursuant to an authority other than the Coastal Act, including but not limited to the Development Agreement between the City and Applicant dated November 12, 2020, except as provided in the last sentence of this condition. The permittee is responsible for compliance with all terms and conditions of this coastal development permit in addition to any other requirements imposed by other local government permit conditions pursuant to the local government's non-Coastal Act authority. In the event of conflicts between terms and conditions imposed by the local government and those of this coastal development permit, such terms and conditions of this coastal development permit shall prevail.
- 4. Liability for Costs and Attorneys' Fees.** The applicant/permittee agrees to reimburse the Coastal Commission in full for all Coastal Commission costs and attorneys' fees (including: (1) those charged by the Office of the Attorney General, and (2) any court costs and attorneys' fees that the Coastal Commission may be required by a court to pay) that the Coastal Commission incurs in connection with the defense of any action brought by a party other than the applicant/permittee against the Coastal Commission, its officers, employees, agents, successors and assigns challenging the approval or issuance of this permit. The Coastal Commission retains complete authority to conduct and direct the defense of any such action against the Coastal Commission.
- 5. Transportation Demand Management Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the review and written approval of the Executive Director, two (2) sets of a Transportation Demand Management Plan. The plan shall be prepared by a qualified professional and shall include, at a minimum, the following components:

 - A. The permittee or any successor-in-interest or tenant of the permittee shall actively encourage employee participation in a Ride Sharing/Carpooling program, schedule shifts to benefit this program, and shall offer coordination services free of charge. A commuter information area shall be provided that offers employees appropriate information on available transportation alternatives to the single-occupancy vehicle (i.e., current maps, routes and schedules for public transit; ridesharing match lists; available employee incentives; ridesharing promotional material supplied by commuter-oriented

organizations, etc.). This area shall be centrally located and accessible to all employees.

- B. A public transit fare reimbursement program shall be offered to all employees onsite by the permittee or any successor-in-interest or tenant of the permittee, including provision of a "Daily Transportation Allowance" or "Parking Cash Out" to employees of the development who use a non-single occupancy vehicle to access work (such as the bus or train). The Daily Transportation Allowance shall be a daily, direct cash subsidy equal to 100% of the value of the applicable monthly regional transit pass divided by 20, to account for a 40-hour maximum work week (resulting in a maximum of 20 work days per month). The "Parking Cash Out" shall be an at least quarterly, direct cash subsidy available solely for employees of a commercial tenant of the subject development who do not use a single-occupancy vehicle and do not park in the City at least 51% of their yearly work hours. If an employee is eligible to receive both a Parking Cash Out and a Daily Transportation Allowance, the permittee or any successor-in-interest or tenant of the permittee shall offer the employee the greater of the two incentives, but is not required to provide both. Onsite parking shall be free of charge for all employees of the subject development. Posters, brochures and registration materials of the program shall be available to employees at all times. Employees shall be informed of the program upon orientation and annually thereafter.
- C. Provision of a short-term bicycle parking area for the public on the property outside of the public right-of-way. Short-term bicycle parking may be located outside or inside the building with direct access to a public street, no farther than 50 ft. of walking distance from a main pedestrian entrance. For buildings with more than one main pedestrian entrance, short term bicycle parking shall be split evenly among all main pedestrian entrances. Adequate lighting shall be provided to ensure safe access to bicycle parking facilities.
- D. Provision of employee long-term bicycle parking and facilities for employee showers and lockers, free of charge, on the property and encouragement, to the extent possible, to walk or ride bicycles to and from work. Long-term bicycle parking shall be secured from the general public and enclosed on all sides and protect bicycles from inclement weather. Acceptable examples of long-term bicycle parking include bicycle lockers, bicycle rooms, or bicycle cages.
- E. The permittee or any successor-in-interest or tenant of the permittee shall provide, to the maximum extent possible, communal bicycles or non-motorized vehicles for employee use for work related activities that may be accomplished without a motorized vehicle.

The permittee shall undertake development in conformance with the approved Transportation Demand Management Plan unless the Commission amends this

permit or the Executive Director provides a written determination that no amendment is legally required for any proposed minor deviations.

- 6. Parking Restrictions.** With the acceptance of this permit, the applicant and all future assigns, owners, and successors acknowledge that any change in the number of parking spaces proposed under this permit, including, but not limited to, the provision of the leasing or selling of parking spaces to third parties other than on-site commercial tenants and condominium owners, any proposed offsite parking leases that expire, or reserving parking spaces for other uses not approved under this permit, or change in the number of parking spaces, shall be submitted to the Executive Director to determine if an amendment to the permit is legally required.
- 7. Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the applicant(s) acknowledges and agrees (i) that the site may be subject to hazards from storm conditions, liquefaction, geologic hazards and/or sea level rise; (ii) to assume the risks to the applicant(s) and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development; (iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards; (v) that storm flooding or sea level rise could render it difficult or impossible to provide services to the site (e.g., maintenance of roadways, utilities, sewage or water systems), thereby constraining allowed uses of the site or rendering it uninhabitable; and (vi) that the structure may be required to be removed or relocated and the site restored if it becomes unsafe or if removal is required pursuant to the Coastal Act.
- 8. No Future Shoreline Protective Device.**

 - A. By acceptance of this permit, the permittees agree, on behalf of themselves and any successors and assigns, that no shoreline protective device(s) shall ever be constructed to protect the development approved pursuant to Coastal Development Permit No. 5-21-0139, including, but not limited to, the proposed new California Building, Ocean Building, and subterranean parking levels, in the event that the development is threatened with damage or destruction from erosion, storm conditions, liquefaction, flooding, or any other natural hazards in the future.
 - B. By acceptance of this permit, the permittees hereby waive, on behalf of themselves and all successors and assigns, any rights to construct such devices that may exist under Public Resources Code Section 30235, any similar provision of a certified LCP, or any applicable law.

- C. In the event that portions of the development fall to the public right of way before they are removed, the landowner(s) shall remove all recoverable debris associated with the development from the public right of way and lawfully dispose of the material in an approved disposal site. Such removal shall require a coastal development permit. Prior to removal, the permittee shall submit two copies of a Removal Plan to the Executive Director for review and written approval. The Removal Plan shall clearly describe the manner in which such development is to be removed and the affected area restored so as to best protect coastal resources.

9. 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 plan, including a comprehensive monitoring and evaluation framework, to reduce waste and single-use items (including litter, plastic and Styrofoam foodware, containers, 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 and/or areas of the proposed hotel.
- B. The applicant shall install and maintain educational signage for staff and patrons that promotes and encourages the use of reusable items (instead of single-use items).
- C. The applicant shall install and maintain precautionary signage to prohibit litter and debris as well as provide a Service Plan for recycling, trash bins, and compost. The plan shall specify the amount of trash and recycling bins in the proposed development and weekend maximum usage statistics to ensure that an adequate number of bins are being deployed and that the trash and recycling management program is robust and avoids over-filled bins that might result in adverse impacts to nearby natural resources.
- D. Adhere to the following criteria:
 - i. Only use reusable foodware (including dinnerware, drinkware, silverware, and ramekins/containers) for onsite dining, specifically prohibiting the use of plastic cups, utensils or any other serveware.
 - ii. Prohibit the use of plastic straws and only provide reusable straws, paper straws, or straws made from naturally occurring materials, upon request.
 - iii. Prohibit the use of expanded polystyrene (aka Styrofoam).
 - iv. Prohibit the use of plastic bags on-site or for takeout/to-go orders.

- v. Only provide single-use (biodegradable or compostable) utensils, straws, condiments, containers, and other accessory items upon request for takeout/to-go orders.
 - vi. Prohibit the sale of beverages in plastic bottles.
 - vii. Prohibit the use of plastic, single-use shampoo, conditioner, soap and lotion bottles.
 - viii. Follow proper recycling practices.
- E. Install a microfiber filtration system for all hotel laundry to capture and remove microfibers from the water during the laundering process.
- F. All waste resulting from restaurant activities should be exported outside the Coastal Zone.
- G. 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.
- H. Commencing the first full calendar year after issuance of the project's final certificate of occupancy, the applicant shall provide an annual report for the review and approval of the Executive Director of the Coastal Commission which includes the Marine Debris and Reduction 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.
- I. The applicant shall undertake development in accordance with the approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plan shall occur without a Commission amendment to this coastal development permit, unless the Executive Director determines that no amendment is legally required.

10. Revised Water Quality and Hydrology Plan PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and written approval of the Executive Director, a final Water Quality and Hydrology Plan, prepared by a qualified licensed professional, that conforms with the plan submitted to the Commission titled "Hydrology and Urban Runoff Report" dated June 2019. The final Water Quality and Hydrology Plan shall demonstrate that the project complies with the following requirements:

- A. Documentation of a polluted runoff and hydrologic characterization of the existing site (e.g., potential pollutants in runoff, soil properties, infiltration

rates, depth to groundwater, and the location and extent of hardpan and confining layers) as necessary to design the proposed BMPs. Include a map showing the site's Drainage Management Areas, and calculations of the runoff volumes from these areas.

- B. A description of the BMPs that will be implemented, including documentation of the expected effectiveness of the BMPs. Include a schedule for installation or implementation of all post-development BMPs
- C. A characterization of post-development pollutant loads, and calculations, per applicable standards, of changes in the stormwater runoff flow regime (i.e., volume, flow rate, timing, and duration of flows) resulting from the proposed development when implementing the proposed BMPs.
- D. Supporting calculations demonstrating that required BMPs have been sized and designed to infiltrate, retain, or treat, at a minimum, the runoff produced by the 85th percentile 24-hour storm event for volume-based BMPs, or two times the 85th percentile one-hour storm event for flow-based BMPs.
- E. A description and calculations demonstrating that the 85th percentile design storm runoff volume will be retained on-site, giving precedence to an LID approach. If the 85th percentile runoff volume cannot be retained on site using LID, an alternatives analysis shall demonstrate that no feasible alternative project design will substantially improve runoff retention.
- F. A description and schedule for the ongoing management of all post-development BMPs (including operation, maintenance, inspection, and training) that will be performed for the life of the development, if required for the BMPs to function properly.

The permittee shall undertake development in accordance with the Water Quality and Hydrology Plan approved by the Executive Director, unless the Commission amends this permit or the Executive Director issues a written determination that no amendment is legally required for any proposed minor deviations.

11. Revised Landscaping Plan.

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, in a form and content acceptable to the Executive Director, two (2) full size sets of Revised Landscape Plans prepared by an appropriately licensed professional that comply with the following:
 - i. All landscaping shall consist of native, or non-native drought tolerant non-invasive plant species, appropriate to the habitat type. No plant species listed as problematic and/or invasive by the California Native Plant Society (<https://www.cnps.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<https://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 (<https://ucanr.edu/sites/WUCOLS/files/183488.pdf>); and

- ii. Use of reclaimed water for irrigation is encouraged. If using potable water for irrigation, only drip or micro-spray irrigation systems may be used. Other water conservation measures shall be considered, such as weather-based irrigation controllers.

The permittee shall undertake development in accordance with the approved plan. Any proposed changes to the approved final plan 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.

12. Construction Best Management Practices.

A. Construction Responsibilities and Debris Removal. By acceptance of this permit, the applicant agrees that:

- 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 regularly 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 is 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 into any canal or street that drains into a canal, 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 enter the canals;
- iii. A French drain, underground cistern, or other similar drainage systems that collect and reduce the amount of runoff that leaves the site shall be installed and maintained on the project site;
- iv. All runoff leaving the site shall be directed away from the nearby bluff and beach and into the City storm drain system.

13. Bird Strike Prevention. Ocean-facing deck railing systems, fences, screen walls, gates, and windows subject to this permit shall use materials designed to minimize bird-strikes. Such materials may consist, all or in part, of frosted or partially-frosted glass, or other visually permeable barriers that are designed to prevent creation of a bird strike hazard. Clear glass or Plexiglass shall not be installed unless they contain UV-reflective glazing that is visible to birds, or unless the materials are provided by Ornilux glass or equivalent. All materials 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.

14. Cultural Resource Treatment and Monitoring Plan. PRIOR TO THE ISSUANCE OF THE PERMIT, the applicant shall provide an Archaeological Monitoring and Cultural Resource Treatment plan that complies with the following:

A. Incorporate the following into the archaeological monitoring plan:

- i. Archaeological monitor(s) qualified by the California Office of Historic Preservation (OHP) standards, and a minimum of one (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 archaeological and Native American monitor of the requirements and procedures, and shall provide a copy of this special condition, any archaeological monitoring or research plans, past archaeological 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 archaeological 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 sterile soils have been reached.
- iv. The monitoring and treatment plan must be developed in coordination with the affected Native American Tribes.

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; The monitor(s) or MLDs may make recommendations during the course of the project when a cultural area has been impacted. The monitor's access to the site of discovery shall not be contingent upon permission from the landowner, or their authorized representative. The monitor will be authorized to halt or redirect excavation activities to another area as an assessment is made;
- ii. The permittee shall report all discovered resources as soon as possible, by phone or by email to the Executive Director;
- iii. The professional archaeological monitor on-site must contact all affected groups of the Native American Tribe(s) that are not present for on-site 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(s), 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 an 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. Should excavation and recovery be acceptable to the affected Native American Tribe(s), the landowner and applicant will be responsible for all costs related to the proper storage and reburial of remains excavated on their property to

include all burial materials. The applicant and landowner will be financially responsible for providing reburial plots that are acceptable to the MLD.

- vi. Any and all information about the location of any tribal, cultural, or sacred site shall be kept confidential and shall not be disclosed to the general public.

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.

15. Deed Restriction. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant(s) shall submit to the Executive Director for review and approval documentation demonstrating that the landowner(s) have 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.

16. Final Tract Map. PRIOR TO ISSUANCE OF THE PERMIT, AND PRIOR TO RECORDATION OF THE FINAL TRACT MAP, the applicant shall submit to the Executive Director for review and approval, the final version of Tract Map No. 82906. The tract map shall reference that the Property is restricted pursuant to the recorded Deed Restriction, required pursuant to Special Condition 15. The Executive Director's review shall be for the purpose of ensuring compliance with the standard and special conditions of this Coastal Development Permit. In addition, after recordation of the final map, the applicant shall submit a copy of the recorded Final Tract Map No. 82906 to the Executive Director no later than 30 days after recordation.

17. Consistency with the Land Use Plan. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, certification of the City of Santa Monica Land Use Plan Amendment No. LCP-5-SNM-21-0020-1 by the Coastal

Commission must be final and effective in accordance with the procedures identified in the California Code of Regulations, Title 14, Division 5.5, Section 13544.

V. FINDINGS AND DECLARATIONS

Project Location and Description

The project site is located at 1133 Ocean Avenue in the City of Santa Monica, Los Angeles County ([Exhibit 1](#)). The subject lot is a 4.5 acre (192,063 sq. ft.) lot located across the street from the popular Palisades Park blufftop path, and approximately 480 ft. east of the inland extent of Santa Monica State Beach. The project site is zoned Ocean Transition by the City's uncertified Downtown Community Plan and designated Downtown Commercial by the certified LUP. Both designations allow for a broad range of uses, including pedestrian-oriented retail, visitor-serving overnight accommodation, and residential uses.

The subject 4.5-acre project site currently includes four primary components that constitute the Miramar Hotel: the Ocean Tower, Administrative Building, Bungalows, and Palisades Building ([Exhibit 2](#)). All subject structures were constructed prior to adoption of the Coastal Act in 1972. The site perimeter is surrounded by an at least five-foot tall, brick perimeter wall which blocks pedestrian views into or through the site. Vehicle access is taken solely through a gated entrance on Wilshire Boulevard (the southern side of the lot) with the exception of a loading dock entrance limited to use by vendor vehicles on Second Street. An onsite parking lot located adjacent to the entrance provides 103 vehicle parking spaces, and an additional 64 offsite parking spaces are available via valet service to 1127-1129 Second Street immediately adjacent the site (at the proposed location of 42 new affordable housing units, as discussed further below).

The Administrative Building, Ocean Tower, and a portion of the Bungalows currently form a semi-circle around the historic Moreton Bay Fig Tree² located in the center of the lot. North of these structures stands the historic Palisades Building (in the farthest north corner) and the majority of the Bungalows (in the west corner). The structures are characterized by a mix of hotel and retail use, with no residential units existing onsite. No lower-cost hotel rooms exist onsite. On June 2, 2015, Commission staff issued the applicant (Ocean Avenue, LLC) an exemption from permit requirements for construction of a 1,485 sq. ft. addition to the existing development—however, the applicant has indicated the approved addition was never constructed.³ No other permit history exists for the subject parcel in the Commission or City record.

Proposed Development

² The Moreton Bay Fig Tree was planted in the late 1800's and declared a historic landmark by the Santa Monica Landmarks Commission in 1976. (Ref. <https://www.smconservancy.org/property/miramar-moreton-bay-fig-tree/>)

³ Ref. Exemption 5-15-0196-X

The applicant proposes to demolish all structures onsite except the Palisades Building and the historic Fig Tree. The existing Palisades Building is a six-story, 78-ft. tall, 62,000 sq. ft. structure containing 111 high-cost hotel rooms.⁴ The applicant proposes to renovate the building with cosmetic repairs and seismic retrofitting, resulting in structural alteration to approximately 20% of the existing exterior walls, 20% of the existing foundation structure, and less than 5% of the existing roof. No additions to the existing habitable area, or changes to the number of rooms, are proposed for the Palisades Building.

Additionally, the applicant proposes to demolish the 10-story, 105-ft. tall, 86,500 sq. ft. Ocean Tower; the two-story, 30-ft. tall, 93,500 sq. ft. Administrative Building; and the Bungalows, which consist of multiple one- and two-story buildings extending up to 30-ft. tall with a cumulative 13,480 sq. ft. area. Upon demolition, the applicant proposes construction of a 10-story, 130-ft. tall, 370,157 sq. ft. "Ocean Building" and seven-story, 79-ft. tall, 70,000 sq. ft., "California Building". The new Ocean Building will span most of the lot and form a half-circle around the Fig Tree; it will serve residential, hotel, and retail uses. The new California Building will be located in the west corner of the parcel and serve solely hotel use. These new buildings will include 201 high-cost hotel rooms, 60 condominium units, and 6,600 sq. ft. of retail floor area. The applicant has not proposed specific commercial businesses to be included in the 6,600 sq. ft. of retail floor area; however, the City's local approval limited any onsite commercial use to "small-scale" retail establishments, such as "department stores, clothing stores, furniture stores, pet supply stores, small hardware and garden supply/nurseries stores". Multiple rooftop deck pools will be available for hotel guests on the third floor and condominium residents on the eighth, ninth, and tenth floors.

The perimeter wall will be demolished, allowing pedestrians on Ocean Avenue and Wilshire Boulevard to access a new public seating area/garden under the Fig Tree. A ground-level café adjacent to Ocean Avenue will be constructed adjacent to the Fig Tree, accessible for both hotel guests and the general public. The proposed project also includes construction of a restaurant and concession stand on the second floor, both open to the public, and a pool café accessible solely to hotel guests on the third floor. A 3,185 sq. ft. lounge and bar with food service ("The Bungalow") will be available to the public on the first and second floors.

The applicant proposes to construct three subterranean levels extending between the Palisades and California buildings to provide 428 onsite parking spaces. Of these 428 parking spaces, 43 EV charging stations will be provided, and 209 parking spaces will be outfitted for compatibility with future EV charging station use. Three separate entrances on California Avenue, Ocean Avenue, and Second Street will serve as designated vehicle accessways for employees, residents, and hotel/retail patrons, respectively. During weekday evenings and weekends, an additional 60 new parking spaces will be available at 120 Wilshire Boulevard via valet service. The proposed

⁴ The Palisades Building was constructed in 1924 and declared a historic landmark by the Santa Monica Landmarks Commission in 2013 (Ref. https://samomap.santamonica.gov/docs/landmarks/101_wilshire_blvd.pdf)

offsite parking location, located across the street and approximately 272 ft. from the project site, currently serves as a retail center and partially-subterranean parking garage. The development at 120 Wilshire Boulevard provides five subterranean parking levels reserved for companies with a monthly lease and an upper three levels reserved for retail patrons. The applicant will obtain a lease for the use of 64 parking spaces reserved for hotel valet service at 120 Wilshire Boulevard.

In summary, the project includes renovation of the historic, 111-room Palisades Building; demolition of an existing, 200,484 sq. ft. development containing 190 high-cost hotel rooms and 1,235 sq. ft. of retail area; construction of a new, 440,157 sq. ft. development containing 201 high-cost hotel rooms, 6,600 sq. ft. of retail area, and 60 condominium units; and approval of a development agreement. The net number of overnight accommodations will increase by 11 rooms. The net development size will increase by 239,673 sq. ft. and the height will increase by 25-ft.⁵

Development Agreement

Sections 65864 through 65869.5 of Title 7 of the California Government Code authorize any city to enter into a development agreement with any person having a legal or equitable interest in real property for the development of property owned by that entity. A development agreement specifies the permitted uses of the property, the density or intensity of use, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes. Section 65869 further specifies that development agreements shall not be applicable to any development project located in an area for which a certified LCP is required, unless the LCP has not yet been certified for the subject city. The City of Santa Monica does not have a certified LCP—therefore, any development agreement that pertains to property within the City's coastal zone must be approved by the Commission.

The subject application also includes a Development Agreement (DA) between the applicant (Ocean Avenue, LLC) and the City of Santa Monica, adopted by the City as DA 11DEV003 on November 12, 2020. The DA outlines specific limits of the City's approval, including regulations on alcohol-serving use, timing of construction, and indemnity for the City against all project-associated legal costs. The DA requires the applicant to submit a final Transportation Demand Management Plan and Water Quality Management Plan, discussed further in the subsections below. Additionally, the DA requires the applicant to meet uncertified local requirements regarding provision of affordable housing and mitigate the 60 new, high-cost condominium units included in the Miramar Hotel Redevelopment Project. The applicant accomplishes this requirement by proposing construction of 42 new, affordable dwelling units at 1137 and 1139 Second Street (the 100% Affordable Housing Project, detailed further below). The DA requires the applicant to record a deed restriction ensuring the 42 proposed residential units shall remain affordable for at least 99 years. Additionally, the DA requires the

⁵ The existing Ocean Tower is 105-ft. tall, but includes a 135-ft. elevator tower; when considering the existing elevator tower, the proposed, new, 130-ft. Ocean Building will technically be five feet shorter than the existing building.

applicant to provide community benefits (such as City-sponsored childcare programs, sidewalk and street repairs, landscaping) through payment of approximately \$2.3 million in fees to the City.

Lastly, the DA specifies limitations on local approval of the applicant's proposed Vesting Tentative Tract Map (VTTM), which will separate the subject parcel into two distinct lots. "Lot 1" will consist of all nonresidential components of the proposed development, including the ground-level outdoor spaces, the hotel and retail spaces at the ground level and the hotel spaces in the Palisades Building, the California Building and the Ocean Building, as well as the driveways and the entire underground parking structure demarcated in purple in [Exhibit 6](#). "Lot 2" will consist of an "airspace" area (i.e. the upper levels of a multi-level development, with no area on the ground-floor) reserved for residential condominium use, demarcated in blue in [Exhibit 6](#). The VTTM will create a subdivision allowing the applicant to separately lease, finance, and/or sell the residential and commercial components of the project, in addition to allowing each individual residential condominium to be sold separately. The VTTM will allow the City to issue a new, independent assessor parcel number (APN) for each of the 60 proposed residential condominium units and the two lots (summarized above as "Lot 1" and "Lot 2"). On June 9, 2020, the applicant filed VTTM No. 82906 consistent with the description included in the DA, and on September 29, 2020, the Santa Monica City Council approved VTTM No. 82906; both actions occurred prior to formal local approval of the DA. The DA states that the tract map may not be recorded until the applicant has obtained project approval from all City departments.

On October 8, 2021, the applicant submitted the DA for inclusion in the subject CDP application. Although the DA requires certain plans and project features that would be otherwise required by the Commission, it does not restrict what may or may not be approved under the subject CDP. Furthermore, for any project that has not yet received Coastal Act authorization, the DA does not bind the Commission (or local agency with a certified LCP and delegated authority) from conducting a full analysis pursuant to the Coastal Act and any applicable LCP in assessing whether to approve such projects.

All project components included in the DA shall be considered by the Commission as features proposed by the applicant. However, any plans required by the DA would be submitted solely to the local government and would not be enforceable by the Commission. As such, the conditions of the subject CDP must specify requirements and submittal procedures independent of the DA in order to ensure the Commission may enforce Coastal Act and CDP compliance. Additionally, the DA requires the applicant to pay fees intended to fund future community improvement projects, as listed above. Any future projects located in the coastal zone that may result in impacts to coastal resources or constitute new development will require Commission review for Coastal Act consistency; any Commission action on the subject CDP and DA does not constitute de facto approval of any future projects described in the DA.

100% Affordable Housing Project

As indicated above, the applicant also proposes to construct a 100% Affordable Housing Development (CDP App. No. 5-21-0785) in the current location of Miramar

Hotel's offsite parking. This is a separate but related project that is also scheduled for the subject Commission meeting.⁶ The applicant proposes demolition of the existing parking lot at 1127-1129 Second Street, which currently provides 64 offsite spaces for the Miramar Hotel, and construction of a new multi-family residence with 42 low-income restricted housing units. This project was proposed by the applicant in 2011 during the local review process, based on feedback from the City Council and outreach from community-members. The City's DA requires submittal of a Certificate of Occupancy for the 100% Affordable Housing project prior to issuance of a Certificate of Occupancy for the new Miramar Hotel.

Standard of Review

The LUP for Santa Monica was effectively certified on September 15, 1992, upon the City's adoption of the Commission's suggested modifications, excluding the area west of Ocean Avenue and Neilson Way (Beach Overlay District). 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.

Lower-Cost Overnight Accommodations

Section 30213 of the Coastal Act states:

Lower-cost visitor and recreational facilities shall be protected, encouraged, and where feasible, provided. Developments providing public recreational opportunities are preferred. The commission shall not: (1) require that overnight room rentals be fixed at an amount certain for any privately owned and operated hotel, hotel, or other similar visitor-serving facility located on either public or private lands; or (2) establish or approve any method for the identification of low or moderate income persons for the purpose of determining eligibility for overnight room rentals in any such facilities.

Section 30222 of the Coastal Act 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.

LUP Policy 35 states, in relevant part:

Lower cost visitor and recreational facilities shall be protected, encouraged, and where feasible, provided...The City shall identify sites suitable for lower-cost overnight lodging. If these alternatives are not feasible, then an in-lieu fee payment shall be made and placed in a fund established by the City for the provision of lower-cost

⁶ Ref. [Item Th15c](#) scheduled for Commission hearing on March 10, 2022.

lodging facilities within the Coastal Zone, including land acquisition, construction, and replacement...

Sections 30213 and 30222 of the Coastal Act prioritize visitor-serving and recreational uses over residential, industrial, or general commercial uses within the coastal zone. Section 30213 additionally requires permitted development to protect, encourage and, where feasible, provide lower-cost visitor and recreational facilities. In numerous past actions, the Commission has applied this policy to protect, and require provision of, lower-cost overnight accommodations in relevant development projects.

Trends in Coastal Overnight Accommodations

The Commission has approved new hotel developments along the coastline as high-priority visitor-serving facilities—however, high room rates can render these visitor-serving hotels exclusive.⁷ The Commission has required mitigation for the use of land that would have otherwise been available for lower-cost and visitor-serving facilities.⁸ The Commission has also approved projects and LCP amendments requiring development of overnight accommodations with facilities that serve a range of incomes.⁹ In past actions where the development proposed has not provided for a range of affordability onsite, the Commission has required offsite mitigation in the form of payment of an in-lieu mitigation fee to fund construction of lower-cost overnight accommodations, including hostels, recreational vehicle (RV) parks, and campgrounds.¹⁰

In November 2016, Commission staff presented a comprehensive study of lower-cost visitor accommodations eliminated from the coastal zone since 1989.¹¹ The study found that, out of six “cost” categories ranging from “economy” to “luxury,” a total of 24,720 economy rooms were lost, compared to 11,247 rooms of the remaining five classes. These survey results indicate that nearly 70% of all hotel rooms eliminated from the coastal zone from 1989 to 2016 were economy rooms, whereas less than 10% of the rooms lost were in the upscale and luxury categories.

Although statewide demand for lower-cost accommodations in the coastal zone is difficult to quantify, lower-cost hotels, camping, and hostel opportunities are in high demand in coastal areas and there is an ongoing need to provide more lower-cost

⁷ [Explore the Coast Overnight- An Assessment of Lower Cost Accommodations](#), published by State Coastal Conservancy on January 8, 2019.

⁸ [NPB-MAJ-1-06, Part A](#) (Marriott Hotel VSC)

⁹ [HNB-MAJ-2-06](#) (Huntington Beach-Timeshares); [A-6-PSD-8-04/101](#) (San Diego-Lane Field); [A-5-RPV-2-324](#) (Rancho Palos Verdes-Long Point); [RDB-MAJ-2-08](#) (Redondo Beach); [SBV-MAJ-2-08](#) (Ventura); [5-98-156- A17](#) (Long Beach-Pike Hotel); [LOB-MAJ-1-10](#) (Long Beach-Golden Shore).

¹⁰ [5-18-0872](#) (Shore Hotel); [6-13-0407](#) (McMillin-NTC, LLC); [5-14-1785](#) (Olson Real Estate Group, Inc.)

¹¹ Ref. [Public Workshop: Lower Cost Visitor Serving Accommodations](#), published by Commission staff on October 26, 2016.

opportunities along California's coast. Furthermore, the supply of affordable overnight accommodations in the coastal zone is an environmental justice issue. Section 30604(h) of the Coastal Act provides that when acting on a coastal development permit, the issuing agency "may consider environmental justice, or the equitable distribution of environmental benefits." The Commission's Environmental Justice Policy, adopted in March 2019, indicates that the Commission shall "strive for a no-net-loss of lower-cost facilities in the coastal zone, while implementing a longer term strategy to increase the number and variety of new lower-cost opportunities". In California, 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, with greater barriers to access experienced by low-income communities, communities of color, and underserved communities.¹² Spatial analysis of 2010 Census data shows a majority of Californians (70.9%) live within 62 miles of the coast, but populations closest to the coast are disproportionately white, affluent, and older than those who live farther inland.¹³

Additionally, a State Coastal Conservancy-commissioned survey in 2017 identified that "low and middle-income households, people of color, and young people are less likely than higher-income, white, or older Californians to stay overnight at the California coast" and states: "Respondents cited financial concerns as the primary reason they do not stay overnight at the coast. Over 45% of Californians said that overnight accommodations at the coast were inconvenient or unaffordable."¹⁴ The limited supply of low-cost accommodations further exacerbates coastal access inequalities by socioeconomic status and disproportionately restricts the ability of individuals from low-income communities to stay overnight on the coast. The majority of new hotels being developed in the coastal zone constitute high-cost hotels, while the remaining moderate and lower-cost hotels in the coastal zone may constitute older structures that become less economically viable as time passes. It is often more lucrative for developers to replace these older structures with higher-cost accommodations. Such trends have thus made it difficult for visitors with limited means to access the coast; many of these visitors are traveling from inland locations and cannot easily make the trip to the coast and back home again in a single day. Therefore, by protecting and providing low-cost lodging for the price-sensitive visitor, a broader segment of the population will have the opportunity to visit the coast.

To facilitate provision or retention of lower-cost accommodations in proposed visitor-accommodating development, in previous actions, the Commission has required that applicants either: A) ensure a percentage of the proposed onsite overnight

¹² ["Free the Beach! Public Access, Equal Justice, and the California Coast"](#), Robert Garcia & Erica Flores Baltodano, 2 Stanford Journal of Civil Rights and Civil Liberties. 143 (2005)

¹³ [Coastal Access Equity and the Implementation of the California Coastal Act](#), Reineman, et al., (2016) Stanford Environmental Law Review Journal, v. 36. Pages 96-98.

¹⁴ [Explore the Coast Overnight- An Assessment of Lower Cost Accommodations](#), published by State Coastal Conservancy on January 8, 2019.

accommodations are provided at lower-cost; B) establish an equivalent number of lower-cost accommodations offsite or nearby; and/or C) ensure an adequate “in-lieu” fee is paid to a fund designated for creation of new lower-cost overnight accommodations. To implement any of these options, the Commission has first defined what constitutes a lower-cost accommodation (or “lower-cost unit”). The Commission has then determined how many lower-cost units are required per a given development project and, if necessary, whether an in-lieu fee is appropriate to facilitate provision of these units offsite.

Defining Lower-Cost Accommodations

In a market subject to constant change, it can be difficult to define what price points correspond to low-, moderate-, and high-cost accommodations for a given area. The Commission has utilized varying approaches to define such terms, including considering the unique circumstances for each project and applying a quantitative methodology for determining what is considered “lower-cost.” The latter methodology relies on a formula based on California hotel and motel accommodations (single up to double occupancy) and does not account for hostels, RV parks, campgrounds or other alternative accommodations into the equation, as these facilities do not typically provide the same level of accommodation as hotels and motels. Rather, hostels and campgrounds are generally inherently lower-cost and are the type of facilities that might be required as a mitigation measure for the loss of lower-cost overnight accommodations.

The formula calculates the average daily peak rate (generally July and August) of lower-cost hotels and motels based on the average daily rates of hotels and motels across the entire State of California. Under this formula, “lower-cost” is defined as hotel or motel rooms with a rate that is 75% less than the statewide average daily room rate. To obtain data inputs for the formula, statewide average daily room rates (ADRs) are collected monthly by Smith Travel Research and are available on the “Visit California” webpage. To be most useful, peak season (summer) rates for standard, double occupancy rooms are utilized for the formula, and to ensure that the lower-cost hotels and motels surveyed meet a minimally acceptable level of quality, including safety and cleanliness, standard use of the formula only includes AAA Auto Club-rated properties, that are rated one- and two-diamond rated hotels. Following this formula, the Commission has determined that the high-cost rates are generally prices 125% higher than the statewide average daily room rate. By definition, the hotel rooms that are more expensive than lower-cost rooms, but less expensive than high-cost rooms, qualify as moderate-cost rooms. For example: if \$100 was the daily statewide average room rate, low-cost rooms would be 25% less (or \$75) and high cost would be defined as those rooms 125% above the statewide average and include rooms more than \$125 per night. The moderate-cost rooms would range between \$75 to \$125 per night.

Required Number of Lower-Cost Rooms

After defining the project as low-, moderate-, or high-cost, the Commission must next determine how many, if any, lower-cost rooms/units should be provided for a given project to mitigate impacts to existing (or potential) lower-cost visitor accommodations caused by the proposed development. In past projects, the Commission has found that one method of protecting lower-cost accommodations, as required by Section 30213, is

to ensure at least 25% of the total proposed hotel rooms are provided at lower-cost rates.¹⁵ The Commission has estimated that a range of room rates in the coastal zone improving equitable coastal access would include approximately 25% lower-cost rooms, 25% high-cost rooms, and more than 50% moderate-cost rooms.

While the provision of lower-cost accommodations onsite is the preferred method as stated in section 30212, in previous actions, where onsite provision is determined infeasible, the Commission has alternatively required “in-lieu” mitigation payments for the construction of an equivalent number of lower-cost rooms/units (such as hostel beds) offsite.¹⁶ The funds are paid into an account managed by an appropriate entity, including the local government, State Coastal Conservancy, California State Parks, Hostelling International, or a similar agency familiar with lower-cost accommodations management, to ensure that such funds are spent on new lower-cost units, including new campground and hostel facilities.

Proposed Project

First, using the Commission’s methodology described above to define the lower-cost room price threshold, Commission staff obtained statewide peak season (July 2019 and August 2019) ADRs collected monthly by Smith Travel Research and available on the “Visit California” webpage, which were \$172.66 for July 2019 and \$173.85 for August 2019. Staff relied on data from 2019 to avoid including the lesser ADRs associated with the COVID-19 pandemic in 2020 and 2021, which may not be an accurate representation of typical conditions. Averaging July and August 2019 ADRs provides the following statewide rates: the 2019 ADR is \$173.26, the low-cost rate is \$129.95, the high-cost rate is \$216.57, and the moderate-cost rate is between \$129.95 and \$216.57.

The applicant’s consultant, Maurice Robinson & Associates, published a memorandum dated May 12, 2021, which discusses City-specific ADRs ([Exhibit 4](#)). The report identifies eight economy motels existing in Santa Monica in 2019, yielding a City-specific, lower-cost, 2019 ADR of \$148: approximately 14% higher than the \$129.95 statewide 2019 ADR estimated above. This higher, City-specific ADR is consistent with the composition of hotels in Santa Monica, as there are several luxury hotels with standard room rates in excess of \$400 per night; even the lower-cost hotels in Santa Monica are not as affordable compared with those in most other areas. The Commission may consider both the statewide lower-cost room rate of \$129.95 and the City lower-cost rate of \$148 from 2019.

Next, as set forth above, the Commission must determine how many lower-cost rooms would be required for the proposed project for consistency with Section 30213. The

¹⁵ Ref. [5-20-0181](#) (B&J Capital Group Investments); [A-5-LGB-21-0060](#) (Highgate Hotels); [5-18-0872](#) (Sunshine Enterprises, LP); [A-5-DPT-18-0046](#) (Lancor); [5-20-0597](#) (Franco); [Public Workshop: Lower Cost Visitor Serving Accommodations](#), published by Commission staff on October 26, 2016.

¹⁶ Ref. [5-20-0181](#) (B&J Capital Group Investments); [5-20-0597](#) (Franco).

existing Miramar Hotel is a luxury development with no low- or moderate-cost rooms onsite. The project consultant estimates the hotel's 2019 ADR was approximately \$448, nearly double the statewide high-cost rate. No lower-cost rooms exist at the hotel, and none are proposed for removal. The project will result in demolition of 190 existing, high-cost hotel rooms and construction of 201 new, high-cost hotel rooms. The existing 111 high-cost rooms in the Palisades Building will not be significantly redeveloped or significantly altered and are thus not included in the estimated number of new rooms.

The applicant has indicated disagreement with staff's determination of 201 new high-cost hotel rooms, arguing instead that the project will only result in 11 new rooms (i.e. an increase from 301 total high-cost rooms to 312 total high-cost rooms onsite). However, demolition and reconstruction of a structure has been determined in past Commission actions as resulting in new development, which requires correction of non-conformities.¹⁷ New development must adhere to all applicable standards, including the Coastal Act, regardless of when the existing hotel rooms proposed for demolition were constructed.

The existing 111 rooms in the Palisades Building, proposed for renovation, are not subject to the lower-cost rate requirement because the proposed work does not constitute redevelopment. The proposed renovation of the existing Palisades Building would result in alteration of approximately 20% of the existing exterior walls, 20% of the existing foundation structure, and less than 5% of the existing roof ([Exhibit 2](#)). However, the existing structures housing 190 hotel rooms are proposed for complete demolition; new structures are proposed to contain the new 201 hotel rooms. Consistent with the Commission's past actions, the proposal for 201 new hotel rooms is considered new development, subject to review for consistency with the Chapter 3 policies, including those summarized above. The proposed 201 new rooms would be offered at high cost rates.

Therefore, based upon past Commission actions and the Commission's environmental justice efforts discussed above, at least 51 of the new rooms should be offered at lower-cost rates onsite, if feasible, for consistency with Section 30213.

Feasibility of Onsite Lower-Cost Rooms

The applicant's consultant, Maurice Robinson & Associates, provided a feasibility memo addressing whether 51 lower-cost rooms could be provided onsite. The memo indicates that inclusion of any lower-cost rooms onsite would result in a negative profit margin that would make the hotel financially infeasible. The memo states:

¹⁷ Examples include [A-5-LGB-20-0050](#) (Coast Inn) and [A-5-LGB-21-0060](#) (Highgate Hotels): both Commission actions make a clear distinction between existing, remodeled hotel rooms which do not meet the threshold for new development and newly constructed hotel rooms or structurally altered hotel rooms, which do meet the threshold for new development. The former example was not required to provide any of the remodeled hotel rooms at lower-cost rates or mitigate high-cost rates, while the latter example included new construction and was required to mitigate for the lack of lower cost rooms. In some cases, existing hotel rooms that are remodeled with a proposed change of overnight rates (or a loss of lower cost rooms) would be inconsistent with 30213.

“...the Owner’s financial feasibility analysis forecasts below market-rate returns and modest profit margins for a project of this scale and complexity, even with aggressive assumptions on performance levels. In some cases (e.g., hotel average daily rates, hotel exit prices and condo sales prices per square foot), these levels have never before been achieved in the City of Santa Monica, particularly when one considers the substantial uncertainty and tempered expectations of the hospitality sector’s recovery in the post-COVID environment.”

Local approval of the subject project was contingent on a substantial community benefits package, including payment of an estimated \$2.31 million for City affordable housing programs, childcare programs, and transit and road improvement programs. The 100% Affordable Housing Project also presents a substantial cost for the applicant. While these expenses do not negate the need for adequate mitigation for lower-cost overnight accommodations, they are relevant to understanding why the applicant’s consultant concluded that the development of a new, luxury, mixed-use compound would struggle to maintain a profit margin if additional land onsite were required to serve lower-cost overnight accommodations (e.g. a stand-alone lower-cost building or hostel).

In response to staff questions, an additional memo, published by Maurice Robinson & Associates on November 1, 2021, considers the feasibility of A) increasing rates for the high-cost rooms to subsidize the 51 lower-cost rooms, and/or B) determining a number of lower-cost rooms, less than the required 51 lower-cost rooms, that may be feasibly provided onsite. The memo indicates the new hotel rooms proposed will likely be offered at \$713 per night (\$831 with anticipated 2026 inflation). Previous and current hotel record suggest it costs approximately \$341 per night to operate an occupied hotel room, and will cost \$471 to operate the newly constructed, occupied hotel rooms (\$551 with anticipated 2026 inflation). The memo indicates \$713 per night to be the optimal room rate for balance with a comprehensive set of factors, including the cost of employing staff with union benefits and transportation incentives, fluctuating occupancy rates related to the pandemic, and market competitors. The memo states:

“Ultimately, the Project cannot simply raise its room rates to generate more income. If it could, it would, as would every hotel. Instead, it must carefully balance its ADR positioning with putting people into its rooms (generating occupancy) to optimize total revenues. The projections of the Project’s future room revenues reflect this tradeoff and have already been pushed to an extremely aggressive level, in my opinion. So, it is not simply a matter of assuming that the hotel’s room rates could be pushed higher in the future to generate more income to help offset the cost of below-market rooms. Higher room rates would invariably lead to lower occupancy, and thus, the same or even lower projected room revenue generation, further reducing the Project’s below-market rate of return on investment.”

The consultant also addresses the infeasibility of providing some number of lower-cost rooms onsite less than the required 51. In practice, this option would result in rooms provided at no more than \$148 per night alongside rooms provided at \$731 per night, with no legal ability for the hotel to verify the income levels of guests. The memo states:

“These low-cost room[s]...would go to those that have the resources and on-line capability to monopolize the purchase of the rooms for their clients/customers because of the deep discount on room rates at a full-service, fully amenitized resort hotel. Without the ability to ask or verify income levels, the availability of low-cost rooms would be exploited by the most sophisticated on-line users, and would not benefit the intended guests.”

In addition to the practical dilemma of how lower-cost rooms would be reserved for visitors who couldn't otherwise afford to visit the coast, the memo summarizes the financial infeasibility of providing even a single lower-cost room onsite:

“Regarding the question about the number of lower-cost rooms onsite that can be economically feasibly provided, it is my professional opinion that any further reduction in the Project economics would put the Project and its substantial community benefits in jeopardy. HR&A's independent financial analysis confirmed the forecast of a 2.2% rate of return, which is far below the typical industry standard rate of return of 12%-18% for a project of this scale, complexity and risk. In fact, as noted above, the Project's financial pro forma and business plan make very aggressive operating projections on Average Daily Rate (\$852 in 2026 dollars) and occupancy (81.5%). Even with these aspirational assumptions, given the extremely high project development costs, the substantial community benefits package and the very high costs of service described above, the forecasted profit (2.2%) is far below industry standards.”

In summary, the applicant's consultant has demonstrated that provision of anywhere from one to 51 of the proposed hotel rooms at lower-cost rates would render the proposed project economically infeasible, and would not effectively benefit visitors with low incomes or impaired access to the coast.

Feasibility of Offsite Lower-Cost Rooms

To satisfy the requirement for provision of lower-cost accommodations, the applicant explored funding and operating offsite lower-cost accommodations, and initially proposed signing a lease with a separate “pod hostel” developer for construction of a new hostel with at least 102 beds provided at lower-cost ADRs at a site to be determined in the future.¹⁸ The proposed new hostel was to be generally located in Downtown Santa Monica—at a site just outside the coastal zone—with at least eight family beds and an approximate \$75.50 rate per individual bed; however, a specific site was not identified.

This proposal posed significant planning challenges. Neither the applicant nor the separate “pod hostel” developer actually owned or held a lease for an off-site property and the applicant expressed concerns with the possibility of a third-party landlord negotiation impacting the proposed lower-cost model, as well as the market risk associated with the pod hostel business model (still relatively new in the United States).

¹⁸ The “pod hostel” offers beds arranged in bunk-bed fashion with additional amenities, such as partitions, separate ventilation, and device charging stations. (Ref. <https://stayopen.com/faq/>)

The applicant was not able to confirm that all 102 proposed beds would be provided at lower-cost rates in perpetuity, or that the hostel itself would remain open and operating for the entire lifespan of the proposed Miramar Hotel. Thus, the applicant was only willing to propose provision of the lower-cost hostel for a minimum of 10 years premised on the agreement that they would be willing to pay an amortized in-lieu mitigation fee if the hostel no longer existed after that time, and that the fee should be reduced for each year of hostel operation, if financial or pandemic-related issues required closure of the hostel.

It would be inconsistent with Commission precedent, and difficult in practice, to amortize or re-calculate the mitigation fee based on years of successful offsite hostel operation. This method would require too great a degree of subjective analysis in determining what cost should correspond to the hostel bed occupancy rates in the time they remained open. Most importantly, it would only ensure temporary mitigation for the permanent impacts associated with the project. In addition, the lack of a formal lease agreement over an acceptable timetable was another problem, since it would be unlikely that the pod hostel would not be ready for operation in the same timeframe as the proposed luxury hotel. After further discussion with Commission staff, the applicant withdrew the offsite mitigation proposal.

In-Lieu Mitigation Fee

As stated above, the preferred method to ensure consistency with Coastal Act sections 30213 and 30222 is provision of new lower-cost rooms on or near the project site. However, the applicant has adequately demonstrated that these options are neither economically nor practically feasible for the Miramar Hotel. The Commission has found in past actions that, under most circumstances, for high-cost overnight visitor accommodations where low-cost alternatives are not included onsite, a fee may be used to compensate for the fact that at least 25% of the rooms onsite are not being provided as lower-cost rooms.¹⁹

In 2014, following Commissioner questions regarding the adequacy of the in-lieu fee for lower-cost accommodations at Commission hearings, Hostelling International provided an updated report representing the true construction costs of a new hostel, which stated that new construction costs approximately \$42,120 per hostel bed without the cost of land acquisition. In order to verify this information, the Commission consulted Maurice Robinson & Associates. The consultant concurred with the figures and stated:

“This lends itself to a two-tiered Index for a representative cost to develop low-cost lodging statewide. The \$42,120 per bed estimate for the structure can be indexed on an annual basis, either by CPI [(Consumer Price Index)] or, alternatively, with a more construction industry-specific index such as the Turner Building Cost Index.”

The Turner Building Cost Index is used widely by federal and state governments to measure costs in the non-residential building construction market in the United States

¹⁹ [5-20-0597](#) (Franco), [5-20-0181](#) (B&J Capital Group Investments), [5-14-1785](#) (Olson Real Estate Group, Inc); [6-13-0407](#) (McMillin-NTC, LLC).

(Exhibit 5).²⁰ The consultant further expanded on the cost of providing motel or hotel rooms, rather than hostel beds, and estimated:

“These new motel rooms would likely cost nearly \$100,000 per room to develop (excluding land), which is more than twice the cost of a hostel bed, mostly due to the fact that motels require approximately twice the gross square footage per person than hostels.”

A hotel or motel room (250 sq. ft. average) represents a much larger space than a single hostel bed (120 sq. ft. average). The cost of constructing new, lower-cost hotel/motel rooms is significantly higher than that of constructing new hostel beds. Following this information and suggestion, the Commission required new high-cost hotel projects, and projects that eliminated existing lower-cost overnight accommodations, to pay an in-lieu mitigation fee of \$100,000 per required lower-cost room not provided onsite.²¹ This requirement was based on information provided in 2015. However, when considering the approximate 27% increase in the Turner Building Cost Index in the last seven years (likely related to inflation and other factors), the estimated cost of constructing a lower-cost hotel or motel room has increased from \$100,000 per room to \$127,000 per room.²²

Maurice Robinson & Associates also recommended that land cost be calculated separately from construction costs when estimating the in-lieu mitigation fee. It is important to note that in-lieu mitigation fees are often accepted and used by many public and non-profit organizations. The in-lieu fees provide funding to public agencies and non-profit organizations, including California State Parks and Hostelling International, for the provision of lower-cost overnight visitor accommodations within or near the coastal zone. These lower-cost overnight visitor accommodations include, but are not limited to, RV park sites, hostel accommodations, campgrounds, cabins, and lower-cost hotel or motel accommodations. The public agencies and non-profit organizations often already own land and require solely construction costs. As such, the mitigation fee of \$127,000 per lower-cost hotel room does not include land costs. Maurice Robinson & Associates addresses the widely varying cost of land acquisition:

“The range in land costs might be as great as from \$100/sf to \$600/sf in Los Angeles County’s Coastal Zone. For a 10,000 sf parcel of land, the total land costs could be anywhere from \$1 million to \$6 million—a huge range. This variability in the price of land dwarfs the cost of providing the hostel improvements[.] ... This illustrates the need for the Commission to find alternative, lower-cost ways to acquire the land r replacement low-cost lodging. As examples, the proposed

²⁰ Ref. <http://www.turnerconstruction.com/cost-index>

²¹ Ref. [CDP 5-18-0872](#) (Sunshine Enterprises, LP), [CDP 5-20-0181](#) (B&J Capital Group Investments)

²² The Turner Building Cost Index was 943 for 2015 and 1199 for 2021.
 $1199 - 943 = 256 / 943 = 0.27 * 100\% = 27\%$ increase

hostels could be built on land owned by the following non-private-sector types of entities:

- Public agencies, such as State Parks, which have similar social goals;
- Non-profit organizations, which may not require a market-level rate of return; or
- Quasi-public agencies, such as Port Districts, but leased at a below-market rate. Indeed, while the cost to construct the hostel building would be expected to remain fairly constant throughout the State, the land costs could vary dramatically in each case.”

Here, a mitigation fee that includes the cost of land acquisition is unnecessary because the mitigation funds proposed by the applicant would, as set forth in **Special Condition 1**, be directed to either State Parks for improvement of Topanga Cabins, or the MRCA for creation of a Camping area in Malibu, or other non-profit entities that have land available for provision of lower-cost visitor amenities in the Southern California coastal zone, with the intention that such projects would not require the purchase of land.

As indicated above, the applicant proposes construction of 201 new, high-cost hotel rooms. If 25% of all new rooms were required to be provided as lower-cost onsite, the applicant would have to provide at least 51 lower-cost rooms. As the consultant has determined this infeasible, the applicant has proposed payment of a \$5.1 million (\$5,100,000) mitigation fee to be used for development of lower-cost accommodations in the coastal zone.²³ In early conversations between staff and the applicant, staff encouraged the applicant’s mitigation fee amount to match the previously Commission-approved \$100,000 per room mitigation amount. However, considering the seven year time-span since that estimation was provided and the consultant’s recommendation to tie the \$100,000 figure to the Turner Building Cost Index or Consumer Price Index, staff is recommending that \$127,000 per hotel room be required for the in-lieu fee.

Special Condition 1 therefore requires the applicant to deposit \$6,477,000 into one or more interest-bearing accounts established and managed by one or more of the following entities approved by the Executive Director of the Coastal Commission: State Parks, MRCA, a governmental agency or related non-profit organization, or a similar entity approved by the Executive Director. This fee will mitigate the lack of new lower-cost accommodations. As conditioned, the proposed project is consistent with Section 30213 of the Coastal Act.

Conclusion

As indicated above, **Special Condition 1** requires the applicant to deposit the approximately \$6.4 million in-lieu mitigation fee into an interest-bearing account prior to issuance of the subject CDP for the proposed new development. The in-lieu fee shall be used to provide funding to public agencies or non-profit organizations for the provision

²³ 201 rooms * 0.25 = 51 rooms
51 rooms * \$100,000 per room = \$5,100,000

of lower-cost overnight visitor accommodations within, or in close proximity to, the coastal zone. The preferred use of the in-lieu fee is for the provision of low-cost rooms; however, the condition is written broadly to allow for any form of lower-cost visitor accommodation.

Additionally, **Special Condition 2** is required to ensure that all hotel rooms shall be available to the general public as visitor-serving accommodations and not privatized by long-term occupancy or otherwise restricted from public use. (This condition excludes the 60 condominium units proposed onsite.) To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes **Special Condition 15**, requiring that the property owners record a deed restriction against the property, referencing all of the Special Conditions of this permit. To ensure compliance with all proposed conditions of the subject permit, including those specified above, **Special Condition 16** requires the applicant to submit the final version of VTTM No. 82906 for Executive Director approval prior to issuance of the subject CDP and recordation of the final tract map. The condition also requires the applicant to submit a copy of the recorded Final Tract Map No. 82906 to the Executive Director no later than 30 days after recordation.

Only as conditioned can the proposed development be found to be consistent with sections 30213 and 30222 of the Coastal Act and certified LUP Policy 35.

Public Access

Section 30210 of the Coastal Act states:

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

Section 30250(a) of the Coastal Act states, in relevant 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. ...

Section 30252 of the Coastal Act 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 non-

automobile 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 on-site recreational facilities to serve the new development.

Section 30253(d) of the Coastal Act states, in relevant part:

New development shall do all of the following:

(d) Minimize energy consumption and vehicle miles traveled.

LUP Policy 20 states, in relevant 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...

Section 30210 of the Coastal Act requires that new development be designed to avoid interference with the public's ability to access the coast. Sections 30250(a) and 30252 specifies design methods that serve this goal, including siting new development contiguous with already-developed areas and provision of adequate parking facilities and public transit. These methods also ensure consistency with Section 30253(d), which requires new development to minimize energy consumption and vehicle miles traveled (VMT). Certified LUP Policy 20 mirrors the requirements summarized above.

The Downtown Santa Monica area surrounding the proposed development is a major visitor destination for recreational purposes. Public access to Santa Monica State Beach is available less than 200 ft. west of the project site on California Avenue, which leads to the California Incline Foot Path and a public beach parking lot at the foot of the bluffs. The blufftop Palisades Park is approximately 200 ft. west of the project site, and the popular Third Street Promenade is approximately 500 ft. east of the project site. The project does not include any existing or proposed encroachments that would interfere with the public's ability to access the coast by foot or bicycle—however, for those traveling by car, public access to the coast is largely limited by the amount of on-street parking. There is already significant competition for parking in the downtown area surrounding the project site, as residents and visitors must rely on a limited pool of metered, on-street parking and public parking lots. Preservation of existing public beach lots and metered street parking is especially important when considering that these spaces are intended to serve all coastal visitors, including those who may not have the means to afford overnight accommodations in the coastal zone.

Vehicle and Bicycle Parking

The existing Miramar Hotel provides 103 onsite and 64 offsite vehicle parking spaces available for the 301 existing hotel rooms. The applicant's parking consultant, Linscott

Law & Greenspan Engineers, provided a memo dated February 7, 2019, which cites several issues with the current parking and valet system. The memo indicates 167 total parking spaces has been insufficient to serve guests and staff in times of peak occupancy. Most hotel employees currently park on neighboring streets in Downtown, occupying spaces that could otherwise serve the public and improve coastal access. Additionally, access to the existing offsite parking lot requires valets to exit the parcel from Wilshire Boulevard and make a full lap to reach 1137-1139 Second Street, despite the offsite parking lot's location immediately east of the hotel parcel. This increases VMT and contributes to traffic congestion on Ocean Avenue.

The proposed project will reduce duplicative vehicle trips and project-related congestion by constructing three new entrances/exits in place of the existing single entrance/exit. The new vehicle access-points will include a primary hotel entrance on Second Street, an employee-only entrance on California Avenue, and a resident-only entrance on Ocean Avenue. The new offsite parking lot will provide 60 parking spaces at 120 Wilshire Boulevard: this location will require valets to drive the length of the parcel spanning Second Street, rather than a lap of the entire parcel as is currently required, and reduce development-related VMT. The applicant also proposes construction of three subterranean parking levels to accommodate 428 vehicle parking spaces. Of the 428 total spaces, 102 spaces will be reserved for hotel employees, 192 spaces will be reserved for hotel guests, and 134 spaces will be reserved for condominium residents and their guests. All parking spaces will be valet only to improve circulation and avoid delays for employees, residents, and hotel guests; the valet service will be free for employees. During peak periods an additional 49 vehicles may be accommodated in the valet aisle parking located adjacent to the new hotel entrance.

The certified LUP does not specify parking requirements for LUP designations, but the City's uncertified SMMC does provide specific requirements based on square footage and use. Although not part of the Commission's standard of review, the SMMC is a reasonable way to assess the amount of parking typically required for the proposed development. In order to discourage driving and reduce CO2 emissions, the City recently enacted an ordinance with parking maximums for commercial development. In the downtown area, SMMC Section 9.28.060 limits projects to 0.5 parking spaces per hotel room, plus one space for each 250 sq. ft. of meeting/banquet area in the hotel. Under the SMMC, retail, bar, and restaurant uses that are associated with the hotel but open to the general public must provide half the parking required for the individual use; this means 0.5 spaces per 500 sq. ft. of retail area, 0.5 spaces per 500 sq. ft. for bar area, and 0.5 spaces per 300 sq. ft. for restaurant area. The SMMC would thus allow a maximum of approximately 357 parking spaces onsite (determined by the City based on nuances specified in some of the relevant codes).

In the past few years, the City has adopted revised parking standards for new development where all off-street private parking spaces are "unbundled" (offered separately) from the dwelling units, in order to provide more flexibility for those who do not require parking. This supports the City's recently enacted ordinance to require parking maximums, rather than minimums, for development with the intent of discouraging driving and reducing CO2 emissions.

The proposed 428 onsite parking spaces (not including the 49 parking spaces available in the valet area as needed) exceed the City's uncertified maximum by 71 spaces. However, the project provides all commercial and residential tenants with the option of bundled parking or a discount and no parking consistent with the City's requirement. The City approved the project with the currently proposed parking configuration, as it also includes measures to facilitate resident transportation with lesser CO2 emissions (specifically, bicycles and EVs). The City's action was also based on the applicant's submitted parking demand study, referenced above, which estimated the proposed number of parking spaces to be optimal for balancing the City's intended limits with the parking demand of each proposed use.

In past actions, the Commission has required provision of parking spaces based on calculations for each proposed use: up to one space per hotel room, two spaces per residential unit, one space per 200 sq. ft. of retail, and one space per 50 sq. ft. of restaurant service floor area.

For the subject project, this would result in a requirement of approximately 692 parking spaces.²⁴ The proposed 537 parking spaces (including the 49 valet area spaces and 60 offsite spaces available as needed) fails to meet this requirement based on Commission precedent by an approximate 155 space-deficit. However, the calculation based on past Commission precedent does not consider the overlap between hotel patrons and restaurant/bar patrons, as the proposed restaurants and cafes are likely to serve primarily guests staying overnight at the hotel and residents of the 60 proposed condominium units. It also does not account for the siting of the first-floor café in a manner intended specifically to draw pedestrians and bicyclists on Ocean Avenue. Regarding the proposed 6,600 sq. ft. of retail area (limited to "small-scale" commercial businesses by the DA), the project site is within 500 ft. of the Third Street Promenade, a popular street of visitor-serving, pedestrian-oriented retail development. The project location and building design is intended to draw Third Street Promenade pedestrians as a primary clientele. As such, the proposed retail use is unlikely to result in additional parking demand beyond the parking already proposed by the applicant. The proposed VTTM subdivision also will not impact the applicant's ability to satisfy the parking demand associated with each proposed use, as both "Lot 1" (the hotel/retail use) and "Lot 2" (the residential airspace use) of the subdivision have been accounted for in the consultant's parking study. The consultant's parking study confirms that the proposed vehicle parking plan, in combination with the measures discussed further below, will be sufficient to accommodate all proposed uses.

The project will provide 43 EV charging stations, install the conduit and underground infrastructure for immediate use of 26 additional, future EV charging stations, and install a lesser degree of conduits and underground infrastructure for 182 potential, future EV charging stations. (This means the 182 spaces are also suited for future EV use, but will require additional installation steps; the 26 spaces require no additional steps for use

²⁴ (312 hotel rooms * 1 space) + (60 dwelling units * 2 spaces) + (6,600 sq. ft. retail area / 200 sq. ft. * 1 space) + (11,335 restaurant/bar area / 50 sq. ft. * 1 space) = 691.7 parking spaces

and will be provided based on demonstrated need.) There is no established standard for the minimum ratio of EV charging spaces per standard vehicle spaces in public parking lots, but the California Green Building Code requires four EV charging spaces for parking lots with greater than 201 parking spaces. The City also requires 10% of parking spaces for new development to be provided as EV charging stations. The project satisfies both requirements.

In addition to vehicle parking spaces, the project will provide 342 bicycle parking spaces onsite: 42 short-term spaces (i.e. for hotel guests) and 300 long-term spaces (i.e. for employees, residents, and hotel guests). The 300 long-term spaces will be accessible via a bike valet program—free for all users—and located in the subterranean levels. The 42 short-term spaces located on the ground-floor level will not require bike valet. In Los Angeles County, where bicycle theft is fairly common, the siting of long-term bicycle parking in the below-ground parking lot may help reduce bicycle theft, as well as weather damage. The applicant proposes to establish a free bikeshare program onsite if a free local program is not already available within a two-block radius of the project site. Employee facilities with showers and lockers for those who commute via bicycle (or any other employees) is also proposed in the subterranean parking levels.

Transit Incentive Program

Among several other requirements, the City's DA requires the applicant to monitor average vehicle ridership, estimated by dividing the number of employees by the number of employee cars entering the project site.²⁵ The DA specifies a target of at least 2.2 average daily ridership (i.e. more employees than vehicles), with a penalty fee for failing to achieve the target within three years of the issuance of a Certificate of Occupancy. The 2.2 average daily ridership must be maintained thereafter in annual reports submitted by the applicant to the City.

To meet this target ratio, employees would have to commute via some method other than a single-occupancy vehicle (such as walking, biking, carpooling, or public transit). The project includes two primary incentives: issuance of a Daily Transportation Allowance or a Parking Cash-Out for employees. The Daily Transportation Allowance is a direct, daily cash subsidy for the entire cost of a monthly regional transit pass divided by 20 (to account for the maximum 20 work-days in a calendar month), available for all employees using a method of transit other than a single-occupancy vehicle. The Parking Cash-Out is a yearly subsidy for employees who do not use single-occupancy vehicles and do not use on-street City parking at least 51% of the year. The employees will self-report their method of transportation and any dates on which they used on-street City parking in order to qualify for this subsidy. The applicant has not specified the proposed amount of the Parking Cash-Out subsidy but has specified that employees eligible for both will receive whichever subsidy is the greater amount. The City's DA also requires the applicant to pay into a City fund reserved for multi-modal street

²⁵ For example, 10 employees and five cars with employee authorization would produce an average daily ridership of 2 for the hotel, while 10 employees and 10 employee cars would produce an average daily ridership of 1. A higher average daily ridership corresponds to lesser VMT and related greenhouse gas emissions.

improvements, such as bike lanes, curb improvements, and lane markings for improved access and safety.

The proposed incentive program summarized above outlines overall requirements, but fails to specify the subsidy amount associated with the Parking Cash-Out and does not constitute a formal Transportation Demand Management Plan. Therefore, the Commission imposes **Special Condition 5** requiring submittal of two sets of a Transportation Demand Management Plan that includes a ridesharing/carpooling program, the Daily Transportation Allowance, and further information of the Daily Cash-Out. The Transportation Demand Management Plan shall also require the permittee and any successor-in-interest to provide the short-term and long-term bicycle parking spaces required. **Special Condition 6** ensures that, with acceptance of the subject CDP, the applicant acknowledges that no future changes to the proposed parking are authorized under the subject CDP. This shall include leasing parking spaces to third parties, which would impact the applicant's ability to provide adequate parking for hotel guests, employees, and residents. The applicant proposes to submit final parking plans prior to commencement of construction, as changes to the configuration of parking may or may not be necessary (given the placement of columns, installation of electrical infrastructure, and appropriate spacing) through the final design plans. The overall number of parking spaces shall remain the same.

As previously stated, the DA does not restrict the Commission's ability to condition the project for protection of coastal resources. To ensure the above conditions are adhered to, the Commission imposes **Special Condition 3** stating that this CDP does not negate any conditions imposed by the City, but stipulates that the conditions of the subject CDP shall prevail in the event of conflicts between terms and conditions imposed by the local government and the Commission. In consideration of the significant impact this project will have on the community, **Special Condition 4** requires the applicant to reimburse the Commission in full for any attorney fees incurred as a result of the subject CDP. To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes **Special Condition 15**, requiring that the property owners record a deed restriction against the property, referencing the Special Conditions of this permit.

Conclusion

The project's re-designed entryways/exits and EV charging stations, as well as the incentive program to achieve the target average vehicle ridership, allow the new development to reduce the VMT and energy consumption consistent with Section 30253(d) of the Coastal Act. By reducing project-related congestion on Ocean Avenue through re-designed entrances and exits, the project also provides maximum access consistent with public safety needs. The proposed project also provides more than the minimum number of vehicle and bicycle parking spaces, ensuring the new development will not put added strain on the surrounding stock of coastal zone parking consistent with sections 30210 and 30252 of the Coastal Act, as well as Policy 20 of the certified LUP. The project's transportation demand management measures summarized above are required by the City's DA. The DA is consistent with the relevant coastal access and recreation policies of the Coastal Act and would not in any way interfere with the

Commission's ability to modify the project to assure consistency, if such revision were deemed necessary.

The DA prohibits vacation rentals, corporate housing, and home-sharing on the project site; however, the proposed 60 residential condominium units onsite may be rented by the hotel operator on a transient basis as hotel guest rooms at any time, at the request of the condominium owner. This option provides for additional visitor serving opportunity in a visitor-serving area in a city where traditional short-term rentals are ordinarily prohibited because of their impact on housing supply. The City of Santa Monica has several visitor serving hotels in the Coastal Zone and allows home-sharing options, but does not allow short-term rentals. The City also prohibits timeshare options within the 60 condominium units, thereby avoiding any permanent impact on the subject housing supply.

Therefore, the Commission finds that, as proposed and conditioned, the project and DA conforms with the Chapter 3 coastal access and recreation policies (30210, 30211, 30220, 30252, and 30253) of the Coastal Act and the relevant certified LUP policy.

Visual Resources and Recreation

Section 30251 of the Coastal Act states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Certified LUP Policy 46 states:

The scenic and visual qualities of the Coastal Zone shall be considered and protected as an important public resource. Public views to, from, and along the ocean, the Pier, Inspiration Point and Palisades Park shall be protected. Permitted development including public works of art shall be sited and designed to:

- a. protect views to and along the ocean and scenic coastal areas;
- b. minimize the alteration of natural landforms; and
- c. be visually compatible with the character of surrounding areas and restore and enhance visual quality in visually degraded areas.

Certified LUP Policy 49 states:

The City shall develop standards to assure that new development along Adelaide Drive and all other scenic corridors and designated viewing areas, as identified in the Scenic and Visual Resources Map #13, is designed and sited to be visually compatible with the character of the surrounding area, restores and enhances visual quality in visually degraded areas, and protects public views to the coast and scenic coastal areas. Public views shall mean views to the ocean from the public right of way of streets and designated public viewing areas.

Certified LUP Policy 67 states:

Development standards shall not exceed 3 stories 45 feet, 2.0 F.A.R. on Ocean Avenue.

Section 30251 of the Coastal Act characterizes the visual character of new development as a resource protected by the Coastal Act and requires preservation of public views, minimization of landform alteration, and maintenance of overall visual compatibility. Policy 46 of the Santa Monica certified LUP also requires these methods of visual resource preservation, emphasizing the importance of views from Palisades Park among other scenic locations. Policy 49 requires local design standards be developed to regulate the visual resource impacts of new development located in the scenic corridors identified in the certified Scenic and Visual Resources Map No. 13. One such standard is Policy 67, which limits height and FAR for new development sited on Ocean Avenue to a maximum 45 ft. and 2.0 FAR.

The project site is located in a scenic view corridor as designated by LUP Scenic and Visual Resources Map No. 13, as well as immediately east of Palisades Park. The bluffs supporting Palisades Park provide a distinct horizontal corridor separating the beach from commercial development in Downtown Santa Monica—this separation supports the preservation of public views, as the major concentration of buildings is located behind Ocean Avenue and set back from this view corridor. Regardless, LUP height and massing limitations are still necessary to protect views from vertical accessways, such as California Avenue and Wilshire Boulevard ([Exhibit 1](#)).

The existing Miramar Hotel includes buildings ranging from one-story and 30-ft. tall, to 10-stories and 105-ft. tall (135 ft. tall including the existing elevator tower). The existing FAR is approximately 1.37, estimated by dividing the 262,284 sq. ft. total area by the 192,063 sq. ft. parcel area. The existing development is legally nonconforming with regard to LUP's maximum height and number of stories. As previously described, the project includes demolition of all existing structures onsite, except the Palisades Building and historic Fig Tree, and construction of two new primary buildings. The maximum height will increase from 105-ft. to 130-ft.²⁶ The maximum number of above-

²⁶ The existing Ocean Tower includes a 135-ft. elevator tower that is proposed for demolition; when including this structure, the proposed, new, 130-ft. Ocean Building will technically be five feet shorter than the existing building.

ground floors will remain ten stories. The FAR will increase from 1.37 to 2.6 through addition of 239,873 sq. ft. onsite.

The proposed height, number of stories, and FAR are inconsistent with certified LUP Policy 67. In the 10-year local review process, the applicant has worked with the City to reduce the initially proposed 135-ft. height and 2.9 FAR to the current proposal. The applicant proposed the City of Santa Monica submit a project-specific LUP amendment application revising Policy 67 to allow a maximum 130-ft. height and 2.6 FAR for the subject parcel. The City submitted Application No. LCP-5-SNM-21-0020-1 on February 17, 2021, which proposes this revision and other policy revisions related to the 100% Affordable Housing Project (CDP App. No. 5-21-0785).

To consider whether the proposed height and scale will adversely impact visual resources, the Commission must first consider the surrounding area. FAR may be a more effective measure of mass and scale compared to simply considering building area, since FAR divides the number of floors by the subject lot area. For example, the existing Miramar Hotel may have a larger development area than the adjacent development at 100 Wilshire Boulevard, but the Miramar Hotel is also located on a larger parcel with more space for development concentration. Development with a significant number of floors concentrated in a small lot area will produce a larger FAR, while development with the same number of floors distributed throughout a larger lot area will produce a smaller FAR. The former development would likely result in a more significant mass and scale than the latter development.

Buildings with significantly higher heights and FARs may be found on each street surrounding the subject site, including a 300-ft. tall, 12.89 FAR building at 100 Wilshire Boulevard; a 150-ft. tall, 6.24 FAR, building at 101 California Avenue; and a 160-ft. tall, 8.13 FAR, building at 1111 Second Street. These developments are not unique in the surrounding area—Downtown Santa Monica is characterized by a mix of high-rises and development of lesser scale, with most lots maximizing FAR to the greatest extent possible to accommodate multiple businesses and visitor-serving uses. The proposed project is visually compatible with the surrounding neighborhood with regard to height, mass, and scale.

Additionally, the project will not impact any existing coastal views: the site is currently developed with multi-story buildings spanning almost the entire parcel side flanking Second Street and is enclosed by an at least five-foot tall perimeter wall that effectively blocks any remaining ocean views from Second Street. Public coastal views from Ocean Boulevard, the California Incline, and Pacific Coast Highway will be unaffected by the subject project, and views from those streets looking towards the project will be improved.

The proposed project has incorporated design elements intended to open the site to the public. The perimeter wall will be removed and the sidewalks on Second Street, Ocean Avenue, and Wilshire Boulevard adjacent to the project site will be widened, pursuant to the applicant's DA with the City. The current semi-circle of buildings will be demolished for construction of the new Ocean Building. The new building design will curve in an

ellipse around a public seating area under the Moreton Bay Fig Tree, adjacent to a public-serving café on the ground floor accessible to pedestrians and bicyclists on Ocean Avenue and Wilshire Boulevard ([Exhibit 2](#)). The 14,000 sq. ft. of open space faces Palisades Park and the beach, providing a new, public ocean viewpoint that will remain publicly-accessible from 8:00 am to 9:00 pm daily. The applicant proposes to install a prominent art piece adjacent to the Fig Tree, provide programming twice a month (such as showcase events for local artists, history/educational events/classes, fitness classes, etc.) and facilitate two major annual community events in the open space area.

The applicant has also incorporated community and City feedback in selecting an architectural style for the new buildings. During the local review process, the applicant responded to comments from the City Council in 2013 and eschewed the original traditionalist design for a more modern style created by an acclaimed, international architectural firm. The proposed project incorporates glass windows, curved lines, and an increase in landscaped, open area to avoid the oppressive effect potentially associated with large FARs and heights ([Exhibit 2](#)). Overall, the project has been designed to restore and enhance onsite visual quality, which may be currently degraded by the existing perimeter wall and aging buildings.

Considering the scale of development in the surrounding downtown area, as well as the proposed design and use of open-space, the proposed development with an increased height and FAR will not impact the visual character of the surrounding community. The proposed development will also be consistent with the LUP should the Commission approve the City's proposed LUP Amendment scheduled for a public hearing at the same meeting. The proposed project does not impact existing view corridors in the two adjacent rights-of-way, nor does it adversely impact views at Palisades Park. Rather, the DA requires the applicant to contribute \$50,000 to a local fund designated for restoration of character-defining features in Palisades Park, such as the art installations and pedestrian pathways. The project provides publicly-accessible open space and architectural design. It will provide new, visitor-serving retail and hotel development with a positive impact on visual resources and recreation. The proposed residential condominium units will not impact the proposed visitor-serving uses, as the condominium units will be confined to "airspace"—specifically, the third through eighth floors of the Ocean Building—independent of the proposed hotel and retail uses in the California Building and lower floors of the Ocean Building ([Exhibit 6](#)).

Therefore, as proposed, the project and DA are consistent with Section 30251 of the Coastal Act and the certified LUP.

Coastal Hazards

Section 30253 of the Coastal Act states, in pertinent 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.

(b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

Certified LUP “Bluff Stability” on Page 53 states, in relevant part:

Potential hazards in the Santa Monica Coastal Zone are created by a fault zone that crosses the Coastal Zone roughly from Montana Avenue north, by erosion and instability in the Palisades Bluffs and by the possibility of liquefaction in the sandy beach area. ...No further development except small park-related projects will be permitted closer to the bluff edge than the inland side of Ocean Avenue. The inland side of Ocean Avenue is about 200 feet to 300 feet from the bluff edge, so new private development on Ocean Avenue will be limited to 320 feet from the bluff edge due to the required front yard setback.

Section 30253 of the Coastal Act requires that new development minimize risks to life and property in hazardous areas, including areas subject to flooding. New development must also not significantly contribute to erosion or destruction of the site or surrounding area or require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. The certified LUP describes “erosion and instability in the Palisades Bluffs” and requires a minimum 320-ft. bluff edge setback for all development located on Ocean Avenue. The proposed project raises potential hazards concerns associated with the site proximity to the bluffs, as well as the proposed subterranean levels.

The proposed development is setback approximately 223.8 ft. from the bluffs and 23.8 ft. from Ocean Avenue ([Exhibit 2](#)). While this is a lesser setback than the LUP-required 320-ft., this is a result of the lesser width of Ocean Avenue in the project area: Ocean Avenue is 200 ft. wide in the immediate vicinity of the project site, rather than 300 ft. wide. The project still provides the minimum 20-ft. setback from Ocean Avenue and is thus consistent with the intent of the LUP policy.

The applicant’s coastal hazards consultant, Geotechnologies Inc., provided a report dated January 6, 2021 addressing the project safety. The report states:

“When the slope stability analyses for the current hotel conditions are compared to the analyses for the proposed Project conditions, there is either no change or an increase to the FOS [or Factor of Safety] (all well above the minimum allowable FOS). This finding is due to the relatively large distance that the proposed Project’s structures are set back from the slope and the unweighting of the site due to the proposed basement excavations. In summary, the excavation and shoring for the proposed structures associated with the Project will not decrease the stability of the Palisades Bluffs or contribute to existing geological instability.”

The report also addresses the proposed subterranean levels in relation to existing groundwater levels. The parking levels will extend up to 28.6 ft. below the site grade, and the foundation footings will extend up to 35-ft. below grade. The project will require 131,075 cy. of cut and 3,375 cy. of fill. The report indicates a historic, highest groundwater elevation of approximately 40-ft. below grade and a current, highest groundwater elevation of approximately 74-ft. below grade. As such, the project will maintain an approximate 15-ft. buffer and 39-ft. buffer between the historically highest groundwater elevation and current groundwater elevation, respectively.

The project must also be evaluated for changes to groundwater associated with sea level rise. On November 7, 2018, the Commission adopted a scientific update to its Sea Level Rise Policy Guidance. The guidance document serves as interpretive guidelines to help ensure projects are designed and built in a way that minimizes risks to the development associated with sea level rise and avoids related impacts to coastal resources. The document indicates that sea level rise may cause an associated rise in the groundwater table and encourages planners to “use the identified sea level rise scenarios to establish the zone of likely changes to groundwater.” The guidance suggests using the Medium-High Risk Aversion scenario to best reflect current greenhouse gas emissions and the current best available science. According to the Our Coast Our Future (OCOF) model, which uses Coastal Storm Modeling System (CoSMoS) data, sea level in Santa Monica may rise by 2.5 ft. in the next 40 years and 6.8 ft. in the next 75 years under the Medium-High Risk Aversion scenario. This risk aversion scenario does not account for ice sheet loss and may be exceeded within the anticipated 75-year lifespan of the proposed development but serves as a reasonable metric when considering design safety.

The 15-ft. buffer between the lowest proposed development elevation and the highest historically-recorded groundwater elevation may reduce to 8.2-ft. within the new development’s 75 year lifespan. However, this is a sufficient buffer to minimize the risk of emergent groundwater or parking lot inundation. No temporary or long-term dewatering measures are proposed for the project. Regarding other sea level rise associated hazards, CoSMoS does not predict any wave impacts or inundation affecting the project site in the event of 6.6 ft. of sea level rise (the closest projection available to 6.8 ft.) and a 100-year storm event. This is due to the substantial width of Santa Monica State Beach and the elevation of the site atop the bluffs. The engineering report indicates that, if all building recommendations are followed, the development will be structurally sound for the life of the development.

In summary, the project has been designed to minimize risks to life and property in an area associated with some geologic instability (i.e. the Palisades bluffs) and historically high groundwater levels. The applicant does not propose any shoreline protection, as the new development is setback at least 200 ft. from the bluffs and 480 ft. from the sandy beach. However, future tectonic movement and bluff erosion could reduce the distance between the development and the bluff. Thus, the Commission imposes **Special Condition 7** requiring the applicant to assume the risk of development. Additionally, **Special Condition 8** requires the applicant to acknowledge that the new development approved by this permit is not entitled to shoreline protection and to waive

rights to future shoreline protection. To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes **Special Condition 15**, requiring that the property owners record a deed restriction against the property, referencing all of the Special Conditions of this permit.

Therefore, as proposed and conditioned, the Commission finds the project consistent with Section 30253, and relevant portions of the certified LUP, with regard to coastal hazards.

Marine Resources and 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, in relevant part:

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...

Certified LUP Policy 37 states, in relevant part:

Marine resources shall be maintained, enhanced, and where feasible, restored. Special protection shall be given to areas and species of special biological, archaeological or economic significance.

Sections 30230 and 30231 of the Coastal Act, echoed by LUP Policy 37, require protection of marine resources for both terrestrial and marine development. Much of the pollutants entering the ocean come from land-based development. Environmental Resources and Hazards Map No. 12 of the certified LUP shows a major storm drain located on Wilshire Boulevard immediately south of the project site, which ultimately drains into the Santa Monica Bay. The proposed development's proximity to a major storm drain renders it especially important for the applicant to incorporate design measures for reduction of production of polluted runoff and plastic debris. This will minimize the potential impacts of such pollutants leaving the subject site and entering the Bay through the storm drain.

The applicant's hydrology consultant, Fuscoe Engineering, has submitted a hydrology and urban runoff report dated June 1, 2019. The report estimates that the existing site consists of approximately 83.4% impervious (i.e. hardscape that doesn't allow water infiltration) and 16.6% pervious area (i.e. landscaping and permeable materials that do allow infiltration) onsite.²⁷ The proposed project will increase the amount of landscaping onsite and establish garden areas on the roof. These features will result in composition of approximately 69.2% impervious and 30.8% pervious area onsite.²⁸ Providing opportunities for onsite infiltration will help reduce the amount of development-related runoff entering the storm drains. The project will also include rainwater cisterns installed onsite for capture of stormwater and re-use in landscaping irrigation.

While these are effective measures to avoid water quality impacts, there are additional potential steps to further minimize the proposed development's impact on water quality of surrounding waters. Hotels and any associated bars and restaurants can be a major source for single-use plastics, such as to-go containers, plastic utensils, and Styrofoam containers that pollute storm drains and end up in open waters.

To minimize the risk of marine debris, the Commission imposes **Special Condition 9** which requires the applicant to submit a Marine Debris Reduction Plan for Executive Director approval prior to CDP issuance. The plan shall prohibit the applicant from providing development patrons with single-use foodware (unless specifically requested for take-out orders), plastic straws, plastic bags, and other specified plastic products. The applicant must install a microfiber filtration system for all hotel laundry to remove microfibers from the water; install smoke-free and educational recycling signage; provide specific estimations of how much trash and recycling will be produced onsite to ensure an adequate number of receptacles are employed; and participate in an existing Marine Debris Reduction Program, such as the ReThink Disposable Program or Surfrider's Ocean Friendly Restaurants. The applicant shall provide an annual report summarizing actions taken under the Marine Debris Reduction Program, for the review and approval of the Executive Director.

Special Condition 10 requires the applicant to submit a Water Quality Management Plan for Executive Director approval prior to CDP issuance. The Water Quality Management Plan will include a description of all proposed BMPs, including the increase in onsite permeable area described above, and calculations demonstrating that required BMPs have been sized and designed to infiltrate, retain, or treat, at a minimum, the runoff produced by the 85th percentile 24-hour storm event for volume-based BMPs, or two times the 85th percentile one-hour storm event for flow-based BMPs. The applicant will also provide a map showing all Drainage Management Areas onsite, including the proposed rainwater retention tanks.

²⁷ 160,270 sq. ft. impervious / 192,063 sq. ft lot = 83.4% impervious area (existing)
31,793 sq. ft. pervious / 192,063 sq. ft lot = 16.6% pervious area (existing)

²⁸ 132,915 sq. ft. impervious / 192,063 sq. ft. lot = 69.2% impervious area (proposed)
59,148 sq. ft. pervious / 192,063 sq. ft. lot = 30.8% pervious area (proposed)

To ensure all landscaping onsite uses reclaimed water, **Special Condition 11** requires submittal of revised Landscaping Plans for Executive Director approval prior to CDP issuance. The Landscaping Plans shall include a plant palette limited to native—or non-native, drought tolerant, non-invasive—plant species native to coastal Southern California. No plant species listed as problematic and/or invasive by the State of California shall be planted or allowed to persist onsite.

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 inhibit light penetration and reduce habitat quality and foraging success for avian and marine species. **Special Condition 12** thus requires the applicant to adhere to construction BMPs.

As previously described, the proposed development includes a substantial amount of glass in the architectural design. The proximity of the site to Palisades Park and the beach may make Ocean Avenue a form of wildlife corridor, despite the traffic and concentrated development. Section 30230 of the Coastal Act requires the maintenance of healthy marine species populations, which includes shorebirds, in addition to preservation of water quality. Thus, the Commission imposes **Special Condition 13** requiring the applicant to use materials designed to minimize bird-strikes (such as opaque glass or UV-reflective glazing) for all ocean-facing structures.

Thus, as proposed and conditioned, the project will adhere to construction best practices, minimize the use of single-use plastics, utilize drought-tolerant, non-invasive landscaping, and treat/manage stormwater runoff onsite in a manner consistent with sections 30230 and 30231 of the Coastal Act, as well as relevant portions of the certified LUP.

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 131,075 cy. of cut and 3,375 cy. of fill for the construction of three subterranean levels. It is unclear whether the subject site has undergone prior grading.

The California Native American Heritage Commission (NAHC) maintains a confidential Sacred Lands File (SLF) that contains records of sites of traditional, cultural, or religious value to the Native American community. On March 27, 2019, the City of Santa Monica contacted the NAHC to request a SLF search. On April 15, 2019, the City received an

affirmative response from the NAHC. The City submitted letters requesting consultation to all Tribal representatives on the City's Tribal Consultation List and received a response via email Chair Andrew Salas of the Gabrieleno Band of Mission Indians – Kizh Nation. On July 18, 2019, the City held a consultation meeting and Chairman Andrew Salas indicated that a representative of the Gabrieleno Band of Mission Indians – Kizh Nation should be present to monitor excavation for tribal cultural resources. On April 19, 2019, the City also received a response from the Fernandeno Tataviam Band of Mission Indians, who indicated that the Project Site is situated outside their ancestral Tribal boundaries and declined consultation.

Commission staff also requested a SLF search from the NAHC and contacted all representatives and chairpersons listed on the NAHC's provided Tribal Consultation Contact List. On June 11, 2021, Representative Jairo Avila of the Fernandeno Tataviam Band of Mission Indians responded to Commission staff, indicating that the Project Site is situated outside their ancestral Tribal boundaries. On June 11, 2021, Commission staff also received response from Chair Robert Dorame of the Gabrielino Tongva Indians of California requesting a member of their tribe be present during all soil disturbances associated with the project. On June 17, 2021, Cultural Resource Administrator Christina Conley of the Gabrielino Tongva Indians of California subsequently provided Commission staff with preferred cultural resource monitoring and treatment protocol.

In past permit actions on projects located near potential heritage sites, 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 proposed project is consistent with the protection of any found cultural deposits, the Commission imposes **Special Condition 14** requiring the applicant to submit plans for 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 from each tribal entity with documented ancestral ties to the project area shall be present along with an archaeological monitor at the site during excavation activities to monitor the work. If a discovery is made, the professional archaeologist must inform each tribal group and discuss treatment options. The monitor's access to the site of discovery shall not be contingent upon permission from the landowner, or their authorized representative and the monitor will be authorized to halt or redirect excavation activities to another area as an assessment is made

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.

Local Coastal Program (LCP)

Section 30604(a) of the Coastal Act states:

Prior to certification of the Local Coastal Program, a Coastal Development Permit shall be issued if the issuing agency, or the Commission on appeal, finds that the

proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a local coastal program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200).

Coastal Act Section 30604(a) states that, prior to certification of an LCP, a CDP can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that is in conformity with Chapter 3. In August 1992, the Commission certified, with suggested modifications, the LUP portion of the City of Santa Monica's LCP, 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.

The proposed project, as conditioned, will adequately mitigate the lack of lower-cost accommodations included in the proposed, new overnight accommodations; provide sufficient vehicle and bicycle parking onsite to ensure the project will not impact public access with regard to beach parking; establish a new coastal viewpoint accessible to the public and improve visual resources onsite without impacting any existing coastal views; and incorporate design measures to avoid and minimize any coastal hazards posed by the site location. As discussed above, the LUP amendment associated with the subject project will not impact the visual compatibility of Downtown Santa Monica or adversely impact visual resources. The project, as proposed and conditioned, is consistent with the intent of all relevant coastal resource protection policies of the LUP.

Therefore, 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.

California Environmental Quality Act (CEQA)

Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by findings showing the approval, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

In this case, the City of Santa Monica is the lead agency, and the Commission is a responsible agency for the purposes of CEQA. The project was determined by the City to require an Environmental Impact Report (EIR) in 2013. In 2018, prior to formal local permit issuance, the Title 14, Section 15182 (Projects Pursuant to a Specific Plan) of the California Code of Regulations was amended by the State Legislature to include mixed-use and commercial development, rather than solely residential development. Section 15182 states that residential and/or mixed-use projects are exempt from CEQA

if the project is: A) located within a transit priority area as defined by Public Resources Code Section 21099(a)(7); B) consistent with a specific plan for which an environmental impact report was certified; and C) consistent with the overall policies of a planning strategy accepted by the State Air Resources Board as adequate to reduce greenhouse gas emissions. The project meets all the criteria above. The City determined the project to be legally exempt per Section 15182 in the local approval findings but approved the EIR that had already been drafted for the project via Resolution No. 11290 on September 29, 2020.

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 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; and potential impacts to cultural resources. The EIR determined that the project avoided and minimized all adverse impacts to the greatest extent feasible.

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).) Additionally, the CDP findings in this staff report, incorporated herein by reference, have analyzed the relevant coastal resources issues raised by the subject proposal. The Commission has also determined that the project, as proposed and conditioned, has avoided and/or lessened the potential for adverse impacts to said resources to the greatest extent feasible. As conditioned, there are no additional, feasible alternatives or mitigation measures available which would substantially lessen any significant adverse impact, individual or cumulative, which the proposed project would have on the environment. Therefore, the Commission finds that the proposed project can be found consistent with the requirements of the Coastal Act to conform to CEQA.

APPENDIX A – Substantive File Documents

City of Santa Monica Land Use Plan, certified on September 15, 1992.

Chattel Architecture Planning & Preservation, Inc., “Historic Resource Assessment” dated June 10, 2010.

Geotechnologies, Inc., “Preliminary Geotechnical Evaluation for an Environmental Impact Report” dated January 14, 2020.

Fusco Engineering, “Hydrology & Urban Runoff Report” dated June 1, 2019.

Maurice Robinson & Associates, LLC, “On-Site Low-Cost Lodging Feasibility Analysis for the Proposed Miramar Redevelopment Project” dated May 12, 2021.

Maurice Robinson & Associates, LLC, “Addendum to 5/12/21 On-Site Lower-Cost Lodging Feasibility Analysis for the Proposed Miramar Redevelopment Project” dated November 1, 2021.

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 archaeologist's recommendation as to whether the findings are significant. The project archaeologist'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 Archaeological 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 Archaeological Plan for the review and approval of the

Executive Director. The supplementary Archaeological 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 Archaeological 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 archaeologists 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.