

**CALIFORNIA COASTAL COMMISSION**

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



# Th15c

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## STAFF REPORT: REGULAR CALENDAR

**Application No:** 5-21-0785

**Applicants:** Ocean Avenue, LLC (Attn: Alan Epstein, Ellis O'Connor); Community Corporation of Santa Monica (Attn: Jesus Hernandez, Tara Barauskas)

**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:** 1127 and 1129 Second St., Santa Monica, LA County (APNs: 429-202-1009, 429-202-1010)

**Project Description:** Demolition of an existing 14,984 sq. ft., 64-space parking lot and construction of a five-story, 55-ft. tall, 40,583 sq. ft. multi-family residential building with 42 affordable rental units for low-income households and 38 parking spaces reserved for tenants, on two lots with a cumulative 14,984 sq. ft. area. Grading includes 7,344 cy. of cut and no fill.

**Staff Recommendation:** Approval with Conditions

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## SUMMARY OF STAFF RECOMMENDATION

The project site consists of two 7,492 sq. ft. (cumulative 14,984 sq. ft.) lots in Downtown Santa Monica, approximately 0.16 miles (two blocks) east of the inland extent of Santa Monica State Beach and less than 200 ft. west of the visitor-serving Third Street

Promenade. The subject site currently serves as a surface parking lot with 64 parking spaces reserved for guests of the Miramar Hotel, located adjacent to the project site at 1137 Ocean Avenue. The applicants propose demolition of the existing parking lot and construction of a five-story, 55-ft. tall, 40,583 sq. ft. multi-family residence with 42 affordable rental units restricted for low-income households. The new development will provide one parking space available for guests or tenants at grade, and a subterranean parking level with 37 spaces reserved for tenants. Four electrical vehicle (EV) charging stations and eight potential EV charging stations available for immediate use will be included in the subterranean parking lot; a lesser degree of infrastructure will be installed to allow the remaining 25 parking spaces to serve as EV charging stations in the future. The primary issues raised by the project relate to development standards, public access, visual resources, and cultural resources.

The project site is designated North Side Residential—Medium Density, Multiple Family by the Santa Monica certified Land Use Plan (LUP). This designation allows for multi-family residential development, but limits the maximum height to three-stories and 35 ft. (with a flat roof), and the maximum density to one dwelling unit per 1,250 sq. ft. of parcel area. This would limit the subject project to a maximum of 11.9 dwelling units. The project exceeds the height and density limit of the LUP, and there is a related, project-specific LUP amendment also on the Commission's meeting agenda.

The project site is surrounded by several legally-nonconforming structures of taller height and greater floor/area ratio than the proposed development—the proposed height of the building will not adversely impact the existing visual character of Downtown Santa Monica. Additionally, the applicants have provided sufficient parking and open-space for the proposed number of units. The City has approved the project and applied for an LUP amendment to allow a project-specific exception to the height and density limits described above (App. No. LCP-5-SNM-21-0020-1). The LUP amendment application also requests revisions associated with the development standards for the Miramar Hotel project site, to allow one of the co-applicants to redevelop the existing luxury hotel (CDP App. No. 5-21-0139). The co-applicant has recorded an Development Agreement (DA) with the City requiring provision of a Certificate of Occupancy for the subject affordable housing development (referenced by the City as the "100% Affordable Housing Project") prior to obtaining a Certificate of Occupancy for the new Miramar Hotel.

Commission staff recommends **approval** of the project with 8 (eight) special conditions: **1)** provision of affordable units; **2)** adherence to conditions imposed by local government; **3)** indemnification by permittees; **4)** parking restrictions; **5)** Landscaping Plan; **6)** construction and water quality best management practices (BMPs); **7)** Cultural Resources Monitoring Plan; and **8)** deed restriction. As proposed and conditioned, the project is consistent with Chapter 3 policies of the Coastal Act.

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### EXHIBITS

[Exhibit 1 – Vicinity Map](#)

[Exhibit 2 – Project Plans](#)

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

## I. MOTION AND RESOLUTION

### Motion:

I move that the Commission **approve** Coastal Development Permit No. 5-21-0785 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. STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

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

### III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

**1. Provision of Affordable Units.**

- A. By acceptance of this permit, and as proposed by the permittees, the permittees agree that the 42 affordable units onsite shall be maintained as affordable units for the life of the development approved by CDP No. 5-21-0785.
- B. PRIOR TO COMMENCEMENT OF CONSTRUCTION, the applicants shall provide to the Executive Director evidence that the applicants have recorded the deed restriction required by the City for the creation of affordable rental units.

**2. 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, except as provided in the last sentence of this condition. The permittees are 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.

**3. 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.

**4. Parking Restrictions.** With the acceptance of this permit, the applicants and all future assigns 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, 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.

**5. Landscaping – Drought Tolerant, Non-Invasive Plants.**

- A. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittees 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 permittees 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.

## **6. Construction Best Management Practices.**

- A. Construction Responsibilities and Debris Removal. By acceptance of this permit, the applicants agree 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;

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- 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 or site drainage shall be directed from the site to the beach or street that drains toward the beach, unless specifically authorized by the California Regional Water Quality Control Board;
- ii. All equipment and materials shall be stored and managed in a manner to minimize the potential of pollutants to coastal waters;

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- 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 into the City storm drain system.

**7. Cultural Resource Treatment and Monitoring Plan.** PRIOR TO THE ISSUANCE OF THE PERMIT, the applicants shall provide an Archeological Monitoring and Cultural Resource Treatment plan that complies with the following:

A. Incorporate the following into the archeological monitoring plan:

- i. Archaeological monitor(s) qualified by the California Office of Historic Preservation (OHP) standards, and a minimum of 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 archeological 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 archeological reports, and any other plans required pursuant to this condition and which have been approved by the Executive Director, to each monitor;
- ii. The permittee shall provide sufficient archeological and Native American monitors to assure that all project grading and any other subsurface activity that has any potential to uncover or otherwise disturb cultural deposits is monitored at all times;
- iii. The Native American Monitor(s) shall be required until 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 archeological 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 a MLD. The permittee shall inform the Executive Director of the treatment method in writing. In-situ preservation is the preferred treatment and can be achieved through such methods such as, but not limited to, project redesign, capping, and deeding the cultural resource areas in open space. The range of treatment and mitigation measures considered shall not be constrained by the approved development plan. Should excavation and recovery be acceptable to the affected Native American Tribe(s), the landowner(s) and applicants 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 applicants and landowner(s) will be financially responsible for providing reburial plots that are acceptable to the MLD.
  - vi. Any and all information about the location of an 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.

- 8. Deed Restriction.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicants shall submit to the Executive Director for review and approval documentation demonstrating that the landowner(s) have executed and recorded against the parcels 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.
- 9. 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.

## IV. FINDINGS AND DECLARATIONS

### A. PROJECT LOCATION & DESCRIPTION

The project site consists of two, 7,500 sq. ft. rectangular lots, each 50-ft. wide by 150-ft. long, that provide a cumulative 14,984 sq. ft. area<sup>1</sup> located at 1127 and 1129 Second Street in the City of Santa Monica, Los Angeles County ([Exhibit 1](#)). The applicants propose to record a lot-tie agreement with the City to allow construction of a single development spanning the two lots, allowed pursuant to Section 9.21.030(E)(2) of the uncertified Santa Monica Municipal Code (SMMC). This action will not result in a formal lot merger. The project site is located approximately 0.16 miles (two blocks) east of the inland extent of Santa Monica State Beach and less than 200 ft. west of the visitor-serving Third Street Promenade.

The subject lots are zoned Wilshire Transition by the City's uncertified Downtown Community Plan and designated North Side Residential—Medium Density, Multiple Family Residential by the certified LUP ([Exhibit 3](#)). Both designations allow for the proposed

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<sup>1</sup> The six-ft. deficit in the cumulative area is due to slight inward angles of the northern and southern perimeters of the two lots, as shown by the Assessor Parcel Map provided by a certified surveyor.

residential use. The surrounding area is characterized by a mix of visitor-serving overnight accommodations, pedestrian-oriented retail, and residential development.

The two subject lots currently provide 64 offsite vehicle parking spaces for the existing Miramar Hotel located at 1137 Ocean Avenue across the street. In a separate but related project, one of the subject project’s co-applicants (Ocean Avenue, LLC) proposes to redevelop the hotel and provide additional parking at the hotel parcel (CDP App. No. 5-21-0139). By eliminating the need for offsite parking at Second Street, the hotel redevelopment project will allow the subject project site to serve a new residential use. There is no permit history in the Commission or City record for the project site. Google Earth aerial images suggest the subject lots have served as a parking lot since at least 1989, the furthest extent of historic images available.

The applicants propose to demolish the existing 14,984 sq. ft., 64-parking space, surface parking lot and construct a new, five-story, 55-ft. tall, 40,583 sq. ft. multi-family residential structure with 42 affordable rental units restricted to households with incomes between 30-80% of the Area Median Income (AMI).<sup>2</sup> The U.S. Department of Housing and Urban Development defines 30% AMI as “Extremely Low Income”, 50% AMI as “Very Low Income”, and 80% AMI as “Low Income”. The project will include the following composition of bedrooms and affordability ranges.

**Table 1. Proposed number of units per affordability and number of bedrooms.**

	<b>30% AMI Units</b>	<b>40% AMI Units</b>	<b>50% AMI Units</b>	<b>60% AMI Units</b>	<b>80% AMI Units</b>	<b>Total Units</b>
<b>1-Bedroom</b>	2	3	6	5	0	16 one-bedroom units
<b>2-Bedrooms</b>	2	3	3	3	4	15 two-bedroom units
<b>3-Bedrooms</b>	2	2	4	3	0	11 three-bedroom units
	6 units at 30% AMI	8 units at 40% AMI	13 units at 50% AMI	11 units at 60% AMI	4 units at 80% AMI	<b>42 total units</b>

<sup>2</sup> The Area Median Income (AMI) is the midpoint of a region’s income distribution – half of families in a region (such as Santa Monica) earn more than the median and half earn less than the median. (Ref. <https://metrocouncil.org/Handbook/Files/Resources/Fact-Sheet/HOUSING/Area-Median-Income-and-Housing-Affordability.aspx>)

The proposed development will provide a 1,000 sq. ft. communal space for residents to hold meetings or events, a 600 sq. ft. play area for children, onsite laundry facilities, and an open-air courtyard in the center of the development ([Exhibit 2](#)). A single subterranean parking level will provide 37 vehicle parking spaces and 79 long-term bicycle parking spaces, in addition to two vehicle spaces and eight short-term bicycle spaces provided above grade. The applicants propose 7,344 cy. of cut for construction of the sub-surface parking garage and no fill.

The proposed affordable housing project was required by the City of Santa Monica as mitigation for the co-applicant's (Ocean Avenue, LLC's) separate but related Miramar Hotel Redevelopment Project (CDP App. No. 5-21-0139). The Miramar Hotel Redevelopment Project includes redevelopment of the existing luxury hotel at 1137 Ocean Avenue to include new high-cost hotel rooms and 60 new market-rate condominium units. The hotel project constitutes a development not located in a multi-family residential zone that proposes more than 16 residential units. As such, Section 9.64.050 of the uncertified Santa Monica Municipal Code (SMMC) requires the applicants to agree to provide at least one of the following:

- A) 5% of the proposed units as affordable for 30% AMI households;
- B) 10% of the proposed units as affordable for 50% AMI households;
- C) 20% of the total dwelling units as affordable for 80% AMI households; or
- D) 100% of the total dwelling units as affordable for "moderate income" households.

In addition to this requirement, SMMC Section 9.23.030 requires projects proposing to exceed the City's height, FAR, or density limits (characterized as "Tier 2 projects") to provide the following:

- 1) at least 50% more affordable dwelling units than would be required by Section 9.64.050;
- 2) housing units available for 30% AMI, 50% AMI, or 80% AMI households, depending on the percentage of affordable units provided, with no inclusion of Moderate Income units;

Section 9.23.030 also allows these requirements to be met through provision of offsite affordable units only if the affordable housing is owned, in whole or in part, and operated by a non-profit housing provider for the life of the project, and if the Certificate of Occupancy for the affordable units is issued prior to or concurrently with the "Tier 2 project".

The City approved an Development Agreement (DA) between the co-applicant (Ocean Avenue, LLC) and the City of Santa Monica, adopted by the City as DA 11DEV003 on November 12, 2020. The DA waived the requirements specified above in favor of more stringent requirements outlined by the California Tax Credit Allocation Committee

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(CTCAC).<sup>3</sup> The DA requires the co-applicants to provide the composition of affordable units and bedrooms summarized in Table 1 above and refers to the subject project as the 100% Affordable Housing Project. The DA also requires the co-applicant, Ocean Avenue, LLC, to offer the development for sole ownership and operation of the other co-applicant, Community Corporation of Santa Monica (CCSM). CCSM is a Santa Monica-based non-profit organization which restores, builds, and manages multi-family affordable housing.<sup>4</sup> The co-applicants will enter into an affordability covenant ensuring the 42 proposed units remain affordable for at least 99 years. Upon providing the completed development for CCSM's ownership, Ocean Avenue, LLC will pay an annual \$10,000 fee to CCSM into a fund reserved for services supporting the residents of the affordable housing. Such services shall include recreational programming, adult day care (i.e. support services for adults who require daily assistance), transportation, substance abuse aid, mental health services, and facilitation of the application process for government/public benefits. The annual \$10,000 fee shall increase annually by the Consumer Price Index for Los Angeles County and be required for 55 years from issuance of the Certificate of Occupancy for the proposed housing development.

On February 24, 2021, the applicants originally applied for the subject project via CDP Application No. 5-21-0140. The application was filed as complete on June 8, 2021, while the associated Miramar Hotel Redevelopment Project (CDP App. No. 5-21-0139) could not be filed as complete until August 12, 2021. In order to enable both applications to be scheduled for the same Commission meeting, the applicants withdrew CDP Application No. 5-21-0140 and resubmitted the application on November 5, 2021. The application was filed as complete on the date of submittal as CDP Application No. 5-21-0785.

The City passed a single resolution for approval of both the subject project and the hotel redevelopment project on September 9, 2020. The City adopted a DA with one of the co-applicants (Ocean Avenue, LLC), DA 11DEV003, on November 12, 2020. The DA specifies limitations of the local approval primarily related to the hotel/condominium redevelopment project, such as construction and operational requirements, but also additionally requires the applicants to record a 99-year affordability covenant for the subject project. The DA also requires one of the co-applicants (Ocean Avenue, LLC) to obtain a Certificate of Occupancy for the affordable housing development at 1127-1129 Second Street prior to obtaining a Certificate of Occupancy for the Miramar Hotel at 1137 Ocean Avenue. The DA has been submitted for Commission review with the Miramar Hotel project under CDP Application No. 5-21-0139 and is discussed further in the findings for that item.<sup>5</sup>

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

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<sup>3</sup> The California Tax Credit Allocation Committee administers federal and state Low-Income Housing Tax Credit Programs, created by the State Legislature to encourage private investment in affordable housing for low-income Californians. (Ref. <https://www.treasurer.ca.gov/newsletter/2019/apr/abcs-of-the-bcas.html>)

<sup>4</sup> Ref. <https://www.communitycorp.org/>

<sup>5</sup> Ref. [Item Th15b](#) scheduled for Commission hearing on March 10, 2022.

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.

## **B. DEVELOPMENT**

Section 30250 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 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.

Section 30253 of the Coastal Act states, in relevant 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. ...
- (d) Minimize energy consumption and vehicle miles traveled.
- (e) Where appropriate, protect special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational use.

Section 30604 of the Coastal Act states, in relevant part:

(f) The commission shall encourage housing opportunities for persons of low and moderate income. In reviewing residential development applications for low- and moderate-income housing, as defined in paragraph (3) of subdivision (h) of Section

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65589.5 of the Government Code, the issuing agency or the commission, on appeal, may not require measures that reduce residential densities below the density sought by an applicant if the density sought is within the permitted density or range of density established by local zoning plus the additional density permitted under Section 65915 of the Government Code, unless the issuing agency or the commission on appeal makes a finding, based on substantial evidence in the record, that the density sought by the applicant cannot feasibly be accommodated on the site in a manner that is in conformity with Chapter 3 (commencing with Section 30200) or the certified local coastal program.

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

Section 30620(c) of the Coastal Act states, in relevant part:

(1) The commission may require a reasonable filing fee and the reimbursement of expenses for the processing by the commission of an application for a coastal development permit under this division and, except for local coastal program submittals, for any other filing, including, but not limited to, a request for revocation, categorical exclusion, or boundary adjustment, that is submitted for review by the commission.

Certified LUP Policy 4 states:

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

Certified LUP Policy 68 states, in relevant part:

The residential area north of Wilshire Boulevard to the north side of Montana Avenue shall contain medium density residential. ...

Certified LUP Policy 69 states, in relevant part:

...Development in the medium-density multiple-family residential areas shall not exceed three stories, 35 feet with a flat roof, 40 feet with a pitched roof and a unit density of one dwelling unit per 1,250 square feet of parcel area. ...

### **Residential Density**

Coastal Act Section 30250(a) requires new residential development be located near existing developed areas able to accommodate it and where it will not have significant, cumulative adverse impacts to coastal resources. Section 30253 of the Coastal Act requires new development be compatible with the character of the neighborhood, minimize risks to life and property in high flood hazard areas, and minimize vehicle miles traveled. Together, these policies encourage the concentration of development in existing developed areas (i.e. infill) that will minimize impacts to coastal resources.

Section 30604 additionally encourages the provision of new housing opportunities for persons of low and moderate income in the coastal zone. This is another important measure in minimizing VMT, as people of all income levels are employed in the coastal zone and benefit from living in closer proximity to their places of work. Perhaps more significantly, providing affordable housing in coastal communities ensures these neighborhoods remain inclusive and accessible to a broad range of residents. Policy 4 of the certified LUP also encourages preservation of affordable housing in the Santa Monica coastal zone.

The Coastal Act does not authorize the Commission to require low-income housing in the coastal zone. That authority was removed by the Legislature, and a separate statute, the Mello Act (Government Code Section 65590), establishes requirements for affordable housing in the coastal zone that apply to local governments, not the Commission. The Coastal Act makes clear that the Commission “is not authorized to review a local government’s application” of the requirements of the Mello Act. (Pub. Resources Code § 30011). Instead, the Coastal Act and LUP policies referenced above direct the Commission to encourage housing opportunities for persons of low and moderate income in the coastal zone.

As summarized in Table 1 above, the project proposes construction of 42 affordable dwelling units: six units provided for 30% AMI households, eight units provided for 40% AMI households, 13 units provided for 50% AMI households, 11 units provided for 60% AMI households, and four units provided for 80% AMI households. The applicants propose to record a deed restriction ensuring the 42 units will remain affordable for at least 99 years.

Policy 68 and Map No. 14 of the certified LUP designate the project site as North Side Residential—Medium Density, Multiple Family. This designation allows for the construction of a multi-family structure with one dwelling unit per 1,250 sq. ft. of lot area, per LUP Policy 69. Each of the subject 7,500 sq. ft. lots would thus be limited to a maximum density of six units, resulting in a 12-unit limit for the project site. The proposed 42 dwelling units exceed the LUP maximum density by 30 units. However, the subject project was required to satisfy uncertified SMMC requirements for the residential component of the Miramar Hotel Redevelopment Project (CDP App. No. 5-21-0139), and the City has issued local approval. The City has submitted a project-specific LUP amendment application revising policies 68 and 69 to allow the subject parcels to exceed the Medium Density development standards, including density limitations. 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 Miramar Redevelopment Project (CDP App. No. 5-21-0139).

The LUP’s area-dependent limitations on housing density were intended to avoid the adverse impacts resulting from concentrating too many units in a limited area. Potential impacts of overdeveloping small lots include insufficient living space for tenants, a lack of open space onsite, and increased strain on surrounding public transit and on-street parking. However, the proposed project will be constructed on two combined lots with five levels of housing over a subterranean level of parking. The project provides an average 552 sq. ft. for each one-bedroom unit, an average 787 sq. ft. for each two-bedroom unit, and an average 1,000 sq. ft. for each three-bedrooms unit ([Exhibit 2](#)). The proposed



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design centers the units around a 2,350 sq. ft. open-air courtyard, which will improve natural ventilation and light for the units. The project provides additional open space via a 400 sq. ft. rooftop deck on the second floor and two additional, 100 sq. ft. rooftop decks on the third and fourth floors. The project will provide onsite laundry facilities, a 1,000 sq. ft. communal space for residents to hold meetings or events, and a 600 sq. ft. play area for children. The project site is also located within one mile of several methods of public transportation, including the Downtown Santa Monica Expo Line station (0.8 miles away) and a Metro bus stop (0.3 miles away), and provides adequate onsite vehicle and bicycle parking for tenants, as detailed in the subsection below.

In summary, the project maximizes affordable housing density onsite while still providing adequate space, amenities, and transportation options for tenants. Developing such housing within suitable existing developed areas with public transit and other supporting amenities conforms to the intent of the section 30250 of the Coastal Act, protection of coastal open space and other coastal resources. The proposed development will be consistent with the LUP should the Commission approve the City's proposed LUP Amendment scheduled for a public hearing at the same meeting.

If the proposed development were to cease provision of affordable units, this could potentially impact the onsite parking needs discussed in the below subsection. It may also impact the consistency findings summarized above. Furthermore, any change from the proposed low-income rental units to higher income rentals, or to a market rate residential project, would constitute "development", as defined in Section 30106, and may have an impact on the parking demand generated by the project. However, to ensure that these units remain as low-income rental units as approved by this permit, the Commission imposes **Special Condition 1** requiring that the applicants, through acceptance of the subject CDP, agree that the 42 units will remain affordable for the life of the subject development.

As noted above, the DA requires the applicants to record a deed restriction ensuring that the 42 proposed rental units will remain available for low-income households for at least 99 years. **Special Condition 2** states that this CDP shall not negate any conditions imposed by the City. This condition also 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, such as, but not limited to, **Special Condition 1** which requires that all 42 units will remain affordable for the life of the subject development.

Section 30620(c)(1) of the Coastal Act and Title 14, Section 13055(g) of the California Code of Regulations authorizes the Commission to require applicants to reimburse the Commission for expenses incurred in processing CDP applications. The Commission is therefore authorized to require reimbursement for expenses incurred in defending its actions on the pending CDP applications in the event that the Commission's action is challenged by a party other than the Applicant. Thus, the Commission is authorized to require reimbursement for expenses incurred in defending its action on the pending CDP application in the event that the Commission's action is challenged by a party other than the Applicant. Therefore, consistent with Section 30620(c), the Commission imposes **Special Condition 3** requiring reimbursement for any costs and attorneys' fees that the

Commission incurs in connection with the defense of any action brought by a party other than the Applicant challenging the approval or issuance of these permits.

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 8**, requiring that the property owners record a deed restriction against the property, referencing all of the Special Conditions of this permit.

### **Mass and Scale**

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 overall visual compatibility. LUP Policy limits development in the subject land use designation to a maximum of three stories and a 35-ft. height with a flat roof. The applicants propose to record a lot-tie agreement with the City to allow construction of a single development spanning the two lots, allowed pursuant to Section 9.21.030(E)(2) of the uncertified SMMC. (This action will not result in a formal lot merger.)

The applicants propose construction of a five-story, up to 60-ft. tall (with a flat roof) development which does not conform with certified LUP Policy 69. As previously indicated, the City issued local approval for the project as proposed and submitted to the Commission a project-specific LUP amendment (App. No. LCP-5-SNM-21-0020-1). The amendment includes a revision allowing a maximum 60 ft. height and 2.75 Floor/Area Ratio (FAR) for development at the subject project site. This revision introduces a new FAR limit for the site not included in the current LUP and allows a maximum 41,250 sq. ft. development on the subject two lots.<sup>6</sup> The revision does not specify a maximum number of stories, but states “the development standards of medium-density multiple family residential areas shall not apply” for development located at the project site (1127 and 1129 Second Street), which standards relate specifically to number of building stories, height, and unit density.

The applicants propose a 40,583 sq. ft. development area, consistent with the new limitation specified in the proposed revision. The project has been designed with a 2.71 FAR to maximize living area for residents while also minimizing the impacts to visual resources associated with large buildings lacking articulation. The project design incorporates varying roof heights on the fourth and fifth floors, an open courtyard, and articulated floors to mitigate visual impacts related to size ([Exhibit 2](#)).

Furthermore, the proposed development will be dwarfed in mass and scale by several nearby structures, including the 160-ft. tall, 8.13 FAR building adjacent to the north of the project site at 111 Second Street. Other larger and/or taller buildings nearby include 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 the existing 135-ft. tall, 1.37 FAR Miramar Hotel at 1137 Ocean Avenue. 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. The proposed project is visually compatible with the surrounding neighborhood with regard to

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<sup>6</sup> 15,000 sq. ft. lot area \* 2.75 FAR= 41,250 sq. ft. project area (maximum)

height, mass, and scale. 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 project site is not located in a scenic view corridor per the Map No. 13 of the LUP, as Second Street is located two streets inland from the public view corridor and surrounded by development at least 30-ft. tall. The existing Miramar Hotel, located immediately west of the project site, blocks any potential ocean views on the project site; this would be the case even if the hotel parcel were developed with a much smaller building. As such, the proposed height will not impact any existing coastal views.

### **Coastal Hazards**

Section 30253 of the Coastal Act requires that new development minimize risks to life and property in hazardous areas. New development must also not significantly contribute to erosion or destruction of the site. The project is located approximately 490 ft. inland of the coastal bluffs at Palisades Park and 0.16 miles (two blocks) inland of the Santa Monica State Beach. Inland lots do not pose a significant degree of erosion, especially in highly developed areas such as the subject site. The co-applicant's (Ocean Avenue, LLC's) coastal hazards consultant for the Miramar Hotel Redevelopment Project, Geotechnologies Inc., provided a report dated January 6, 2021 describing the range in which excavation could impact geologic stability of the Palisades Park bluffs. The report indicates that the subject project site on Second Street is outside the potential impact area. As such, the project does not pose a high degree of risk with regard to erosion, wave inundation, or geologic instability.

The project includes 7,344 cy. of cut for construction of a subterranean parking level. The applicant's hydrology consultant, Fuscoe Engineering, has submitted a hydrology and urban runoff report dated June 1, 2019, which addresses the proposed grading in relation to existing groundwater levels onsite. The proposed parking level will extend approximately 11 ft. below the site grade. The report indicates that 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 29-ft. buffer and 63-ft. buffer between the historically highest groundwater elevation and current groundwater elevation, respectively. These buffers will be sufficient for the life of the development, as the best available science does not identify hazards associated with 29-ft. of sea level rise under even the highest risk aversion scenario. Therefore, the proposed excavation is highly unlikely to result in any emergent groundwater or resulting flooding risk. No dewatering measures are proposed. The engineering report indicates that if the building recommendations are followed, the development will be structurally sound for the life of the development.

### **Conclusion**

The project will provide affordable housing in an existing developed area of the coastal zone with adequate infrastructure to support the increased housing density and has been designed to provide sufficient dwelling unit sizes, open space areas, and architectural variation (such as varied roof heights and an open-air courtyard facing the abutting sidewalk). The project is visually compatible with the surrounding downtown area and will not impact any existing coastal views. The proposed location will not be subject to flooding,

erosion, or geologic instability, and the proposed excavation work and below-grade development does not pose any additional risks.

Therefore, the Commission finds that, as proposed and conditioned, the project conforms with Chapter 3 development and visual resources policies (30250, 30251, 30253, and 30604) of the Coastal Act, as well as the relevant certified LUP policies as amended.

### **C. 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 public access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resources areas from overuse.

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 onsite recreational facilities to serve the new development.

Section 30253 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 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 maximum public access and recreational opportunities shall be provided for all the people. Section 30252 specifies design methods that serve this goal, including provision of adequate parking facilities and public transit. These methods also ensure consistency with Section 30253(d), which requires new

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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 approximately 560 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 490 ft. west of the project site, and the popular Third Street Promenade is also less than 200 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 the public beach lots and metered street parking is especially important, 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.

The project proposes one subterranean parking level with 37 vehicle parking spaces and one vehicle parking space above grade, for a total of 38 spaces reserved for tenants. (An additional parking space is provided above grade, but restricted by the DA as a van-accessible parking space for passenger loading. In past actions, the Commission has typically required new multi-family residential development to provide two spaces per residential unit and, in some cases, one additional guest parking space for every three units. For the proposed, 42-unit development, this would result in a requirement of at least 84 resident parking spaces and 14 guest parking spaces. However, in past actions the Commission has accepted reduced parking for projects that include affordable dwelling units.<sup>7</sup>

In 2019, the Commission approved one of the current applicants' (CCSSM's) application for construction of a housing development with 37 affordable dwelling units and 29 parking spaces at 2120 Lincoln Boulevard in Santa Monica (CDP No. 5-19-0181). The applicants did not submit a parking study for the subject application, but the 2019 application for CDP No. 5-19-0181 was accompanied by a parking demand study/analysis, published by Crain & Assoc. on March 12, 2019, which considered other affordable housing development in Santa Monica. The study concluded that one- and two-bedroom affordable units typically require 0.5 parking spaces per unit, while three-bedroom units (i.e. "family units") typically require closer to 0.85 spaces per unit. The proposed project includes 31 units with up to two bedrooms and 11 units with three bedrooms. Using the formula provided in the 2019 study, the subject project would require approximately 25 parking spaces.<sup>8</sup> The proposed 38 parking spaces available for tenants exceeds this requirement and effectively provides 0.90 parking space per affordable unit.

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<sup>7</sup> Ref. [CDP 5-19-0181](#) (Community Corporation of Santa Monica), [CDP 5-19-0983](#) (NXT2 Shutters, LLC).

<sup>8</sup> (0.5 parking space \* 31 units) + (0.85 parking space \* 11 units) = 24.85 parking spaces

The certified LUP does not specify parking requirements for LUP designations, but the uncertified Santa Monica Municipal Code (SMMC) does provide specific requirements based on use and square footage. Although not part of the Commission's standard of review, the SMMC is another way to assess the amount of parking that would be required for development such as this in this area. For deed-restricted affordable units in the downtown area, SMMC Section 9.28.060 requires 0.25 parking space per one-bedroom unit and 0.5 parking space per two or more bedroom unit. In order to discourage driving and reduce CO2 emissions, the City recently enacted an ordinance with parking maximums for commercial development. The SMMC would thus allow a maximum of 17 parking spaces for the subject project.<sup>9</sup>

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. SMMC Section 9.28.110 provides an exception for residential units of three or more bedrooms, requiring these units to include one parking space bundled with lease or ownership of the unit for the life of the development. The SMMC also requires that for deed-restricted affordable units, the tenant may choose to either receive one parking space (included in the affordable monthly rent) or receive a rent discount equivalent to half the amount charged for monthly lease of a parking space, with no parking space provided onsite. In this case, the project will exceed the City's maximum 17 parking spaces by 22 parking spaces—however, the project provides all 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).

Of the 37 subterranean parking spaces, four spaces will provide EV charging stations, eight spaces will be wired for immediate, future EV charging use, and the remaining parking spaces will be wired with a lesser degree of infrastructure for potential future EV charging use (allowing future provision upon demonstrated need of more EV charging stations). There is no LUP standard for the ratio of EV charging spaces per standard vehicle spaces in residential structures parking lots, but in past actions, the Commission has required as least 5% of parking spaces to be EV-supported and an additional 5% to be EV-ready. The California Green Building Code requires four EV charging spaces for parking lots with greater than 201 parking spaces. The City requires 10% of parking spaces for new development to be provided as EV charging stations. The project satisfies these requirements. The project will provide 80 long-term bicycle parking spaces (16 above-ground spaces in a gated, roofed enclosure and 64 below-ground spaces) and eight short-term bicycle parking spaces located adjacent to the Second Street sidewalk. Construction of the new housing development will also result in elimination of two existing

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<sup>9</sup> (0.25 parking space \* 16 one-bedroom units) + (0.5 parking space \* 26 two and three-bedroom units) = 17 parking spaces

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curb cuts on Second Street, increasing the amount of curb space available for potential public on-street parking.

The project site is also located within one mile of several methods of public transportation, including the Downtown Santa Monica Expo Line station (0.8 miles away) and a Metro bus stop (0.3 miles away). With public transportation and bicycling as two available methods for tenants to commute to work, it is not necessary for all residential tenants to park onsite. The DA requires the co-applicant (Ocean Avenue, LLC) to pay for the cost of a regional transit pass/membership, such as Big Blue Bus 30-Day Pass, Breeze Bike Share monthly pass or other comparable bicycle share pass, Metro EZ Pass, Metro Tap Pass, or equivalent) for qualifying residential tenants for 55 years following the issuance of the Certificate of Occupancy for the 100% Affordable Housing Project. The DA uses the terms “pass” and “membership” to reflect the varying terminology used by different public transit entities (one public transportation entity may require transit passes for use, while another may require membership). These terms are not intended to reflect a difference in the timeframe of use allowed for the qualifying tenant. Residents (and all members of the subject resident’s household) who do not own, or long-term lease, a private vehicle and do not use onsite parking are eligible for a free, regional transit pass/membership. For each qualifying household, a transit pass/membership shall be available to all residents listed on a lease and their immediate family living in the same unit/household.

The project has been designed to provide sufficient parking for the proposed number of affordable units, ensuring the residents will not interfere with public access by relying on on-street parking, which is consistent with Section 30252 of the Coastal Act. The project also provides enough bicycle parking to provide spaces for all residents and offers a discount for residents who do not require a vehicle parking space, thus encouraging a reduction in vehicle miles traveled consistent with Section 30253(d) of the Coastal Act and Policy 20 of the certified LUP. The project’s ability to meet parking demand generated by the number of tenants may be impacted if the units were no longer provided at low-income rates, as the findings discussed above would no longer be applicable. The Commission thus imposes **Special Condition 1** requiring that the applicants, through acceptance of the subject CDP, agree that the 42 units will remain affordable for at least 99 years.

To ensure all proposed parking remains available solely for residents, **Special Condition 4** requires the applicants to acknowledge that any change in the proposed number of parking spaces, including, but not limited to, leasing spaces to third parties, reserving spaces for uses not approved under the subject permit, or changing the number of parking spaces, shall be submitted to the Executive Director to determine if an amendment to the permit is legally required.

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 8**, requiring that the property owners record a deed restriction against the property, referencing all of the Special Conditions of this permit.

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

## D. WATER QUALITY & MARINE RESOURCES

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states, 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, archeological 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 south of the project site, which ultimately drains into the Santa Monica Bay. This location renders it even more important the project is designed to reduce production of polluted runoff through establishment of permeable area onsite and construction practices BMPs.

The applicant's hydrology consultant, Fuscoe Engineering, has submitted a hydrology and urban runoff report dated June 1, 2019. The report indicates the existing parking lot is entirely hardscaped with no permeable area onsite. The proposed project will increase permeable area onsite by approximately 1,494 sq. ft. (approximately 10% of the total site area) via eight planter boxes distributed throughout the north and south side yards and two landscaping corridors at the front entrance. While the planter boxes will be installed atop hardscape, the report indicates the planters will still provide soil area for water infiltration. To ensure all landscaping onsite uses plants compatible with the subject area, **Special Condition 5** 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



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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.

The project must also be evaluated for potential contamination to groundwater onsite. As indicated above, the applicant's submitted hydrology report indicates the project will maintain an approximate 29-ft. buffer and 63-ft. buffer between the historically highest groundwater elevation and current groundwater elevation, respectively. These buffers will be sufficient for the life of the development and no dewatering measures are proposed during construction. The project is highly unlikely to introduce any materials into the groundwater reservoir.

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 6** thus requires the applicants to adhere to construction-related requirements to provide for the safe storage of construction materials and the safe disposal of construction debris. This condition requires the applicants to remove any and all debris resulting from construction activities within 24 hours of completion of the project. In addition, all construction materials, excluding lumber, shall be covered and enclosed on all sides, and as far away from a storm drain inlet and receiving waters as possible.

Thus, as proposed and conditioned, the project will adhere to construction best practices and utilize drought-tolerant, non-invasive landscaping in a manner consistent with sections 30230 and 30231 of the Coastal Act, as well as the relevant certified LUP policy.

## **E. 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 7,344 cy. of cut and no fill for the construction of one subterranean level. Based on aerial photographs of the site, which show a surface level parking lot has existed onsite since at least 1989 and the lack of permit history, it appears possible that significant grading has not previously occurred onsite.

The California Native American Heritage Commission (NAHC) maintains a confidential Sacred Lands File (SLF) that contains sites of traditional, cultural, or religious value to the Native American community. On March 27, 2019, the City of Santa Monica contacted the NAHC on 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 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, Representative 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 project is consistent with the protection of any found cultural deposits, the Commission imposes **Special Condition 7** requiring cultural and archaeological monitoring. To assure that the proposed project remains sensitive to the concerns of the affected Native American groups, a Native American monitor shall be present along with an archaeological monitor at the site during excavation activities to monitor the work. If a discovery is made, the professional archeologist must inform each tribal group and discuss treatment options.

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.

## **F. 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

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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. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act. Thus, approval of the proposed 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.

## **G. 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 City determined the project to be legally exempt from CEQA per Title 14, Section 15182 (Projects Pursuant to a Specific Plan) of the California Code of Regulations. Section 15182 states that residential 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 criteria listed above.

The co-applicant's (Ocean Avenue, LLC's) related but separate Miramar Hotel Redevelopment Project (CDP App. No. 5-21-0139) was determined by the City to require an Environmental Impact Report (EIR) in 2013, despite the proposed hotel development ultimately being exempted when the State Legislature revised Section 15182 to include mixed-use development in 2018 (prior to the City's local approval). The EIR for the Miramar Hotel Redevelopment Project discusses the subject affordable housing project (referenced in the EIR as the "100% Affordable Housing Project") in relation to its impact on neighborhood compatibility, housing availability, and potential impacts to cultural resources. The EIR determined that the project avoided and minimized these 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).)The CDP findings in this staff report have analyzed relevant coastal resources issues raised by the subject proposal. The Commission incorporates these findings as if set forth here in full. The Commission has 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

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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.

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## **APPENDIX A - SUBSTANTIVE FILE DOCUMENTS**

Certified Santa Monica Land Use Plan (August 1992)

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

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

## **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 permittees 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 permittees shall submit the results of the testing to the Executive Director for review and approval. The results shall be accompanied by the project archeologist's recommendation as to whether the findings are significant. The project archeologist's recommendation shall be made in consultation with the Native American monitors and the MLD when State Law mandates identification of a MLD. The Executive Director shall make the determination as to whether the deposits are significant based on the information available to the Executive Director. If the deposits are found to be significant, the permittees shall prepare and submit to the Executive Director a supplementary Archeological Plan in accordance with subsection B of this appendix and all other relevant subsections. If the deposits are found to be not significant, then the permittees may recommence grading in accordance with any measures outlined in the significance testing program.
- B. An applicant seeking to recommence construction following a determination by the Executive Director that the cultural deposits discovered are significant shall submit a supplementary Archeological Plan for the review and approval of the Executive Director. The supplementary Archeological Plan shall be prepared by the project archaeologist(s), in consultation with the Native American monitor(s), the Most Likely Descendent (MLD) when State Law mandates identification of a MLD, as well as others identified in the special condition. The supplementary Archeological Plan shall identify proposed investigation and mitigation measures. The range of investigation and mitigation measures considered shall not be constrained by the approved development plan. Mitigation measures considered may range from in-situ preservation to recovery and/or relocation. A good faith effort shall be made to avoid impacts to cultural

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

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