CALIFORNIA COASTAL COMMISSION
South Coast Area Office
301 E. Ocean Blvd. Suite 300
Long Beach, CA 90802-4302
(562) 590-5071

F19a

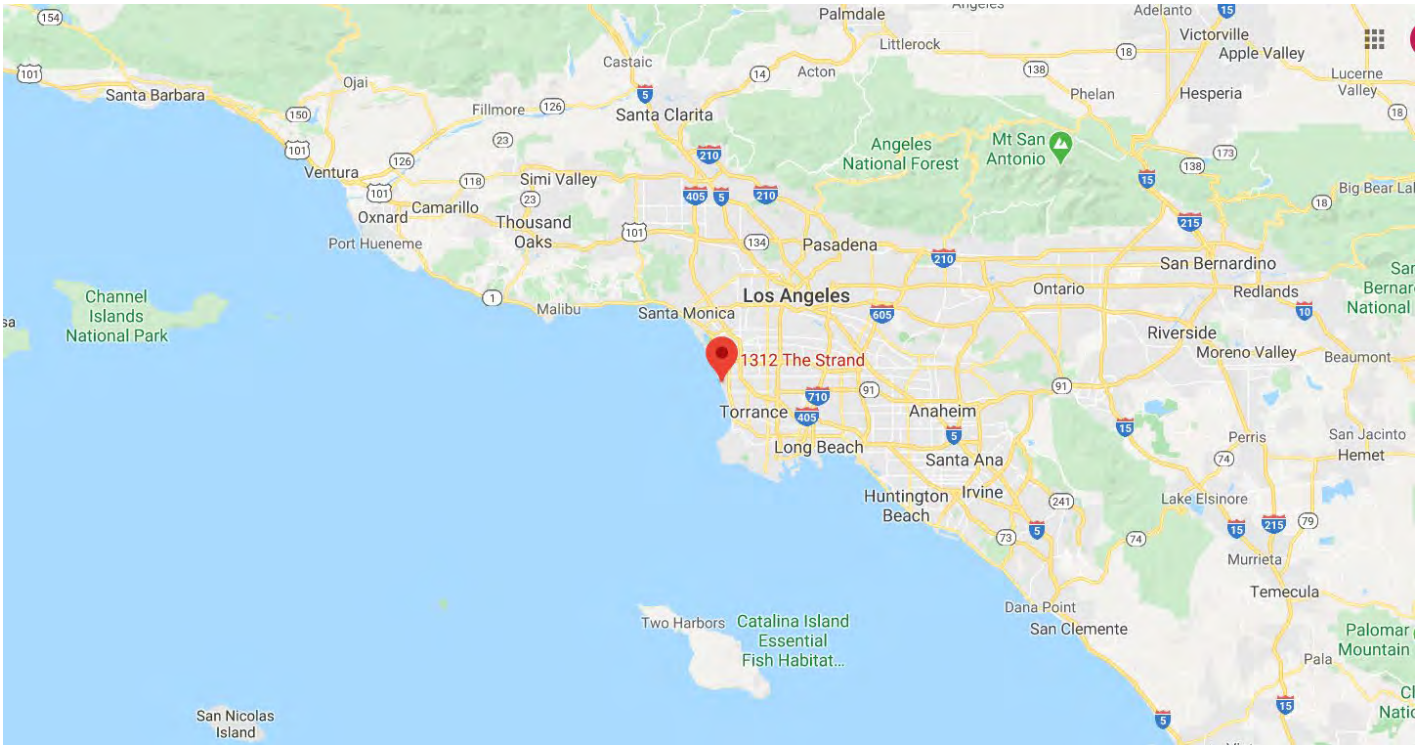
A-5-MNB-20-0020 & A-5-MNB-20-0041 REHEARING

(CORINNA COTSEN 1991 TRUST)

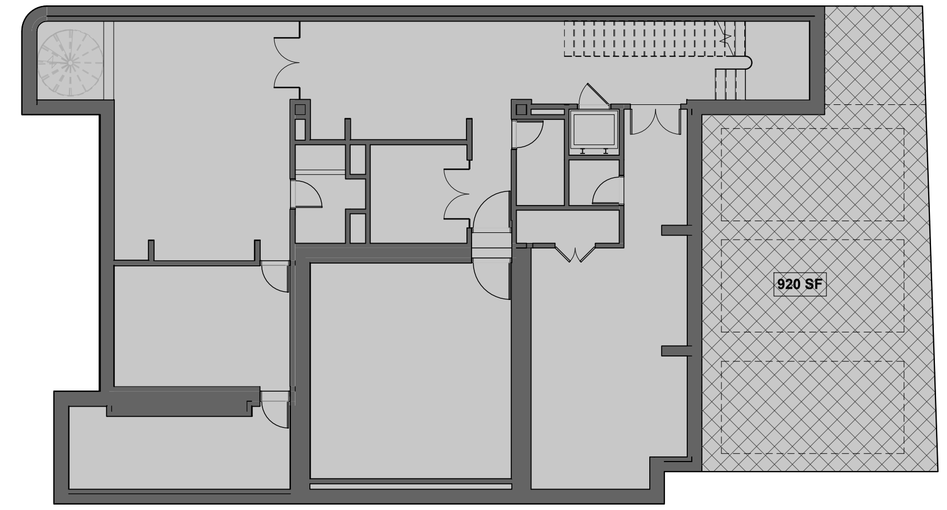
JUNE 10, 2022

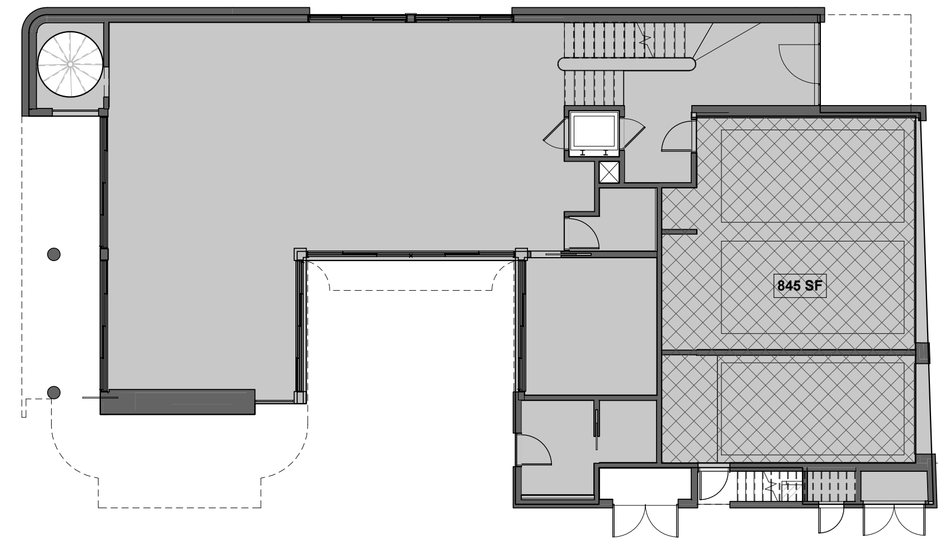
EXHIBITS

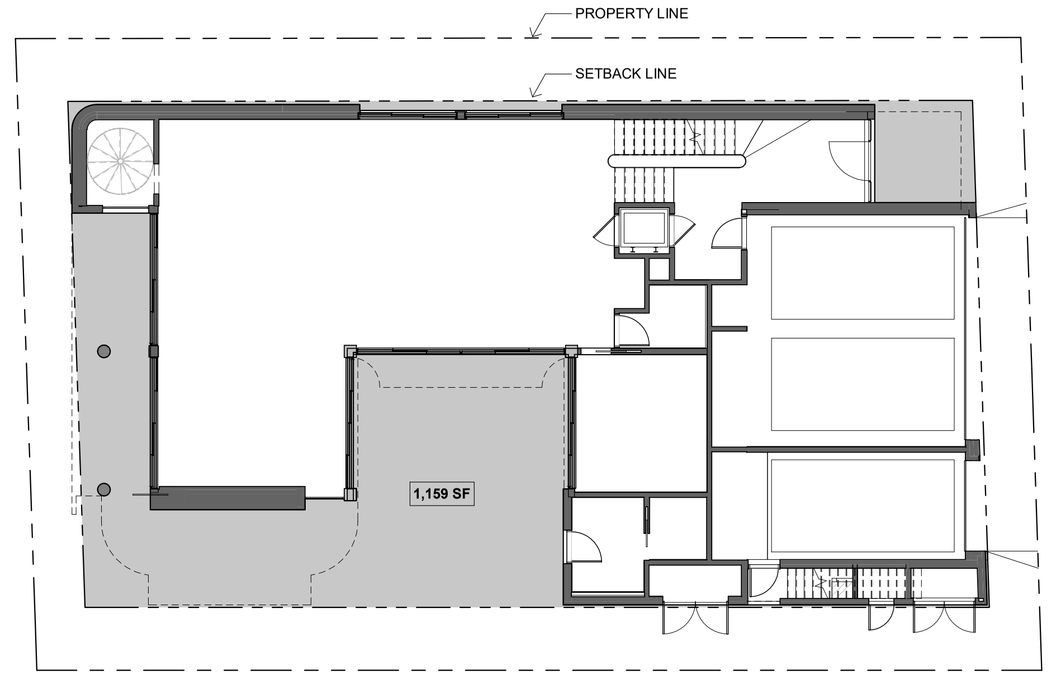
Exhibit 1 – Project Location
Exhibit 2 – Project Plans
Exhibit 3 – Local CDP No. 19-21
Exhibit 4 – Appeal A-5-MNB-20-0020
Exhibit 5 – Local CDP No. CA 19-21 *Nunc Pro Tunc*
Exhibit 6 – Appeal A-5-MNB-20-0041
Exhibit 7 – City of Manhattan Beach Urgency Ordinance 19-0020-U, dated 12/17/19.
Exhibit 8 – Judgment and Order of Remand, *Cotsen, et al. v. California Coastal Commission*, Case No. 20STCP04214
Exhibit 9 – Statement of Decision, *Cotsen, et al. v. California Coastal Commission*, Case No. 20STCP04214
Exhibit 10 – Adopted tentative ruling, *Sunshine Enterprises, LP v. California Coastal Commission*, Case No. BS158638
Exhibit 11 – Unpublished Opinion, *Sunshine Enterprises, LP v. California Coastal Commission,* Court of Appeal – Second District, BA284459
Exhibit 12 – Staff Report for Appeal No. A-5-MNB-20-0020 & A-5-MNB-20-0041; Staff Report Addendum

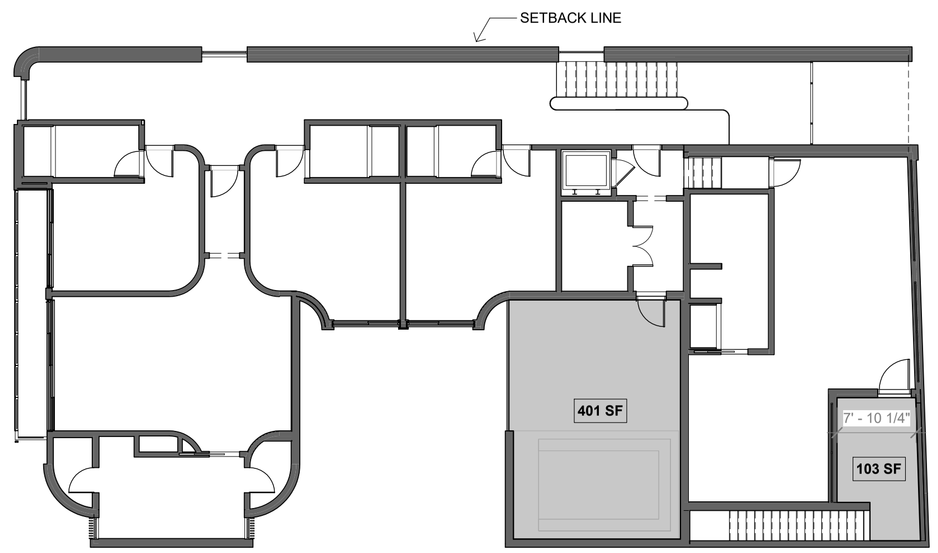


California Coastal Commission
A-5-MNB-20-0020 &
A-5-MNB-20-0041
Exhibit 1









OPEN SPACE REQUIREMENT

OUTDOOR OR UNENCLOSED AREA ON THE GROUND, OR ON A BALCONY, DECK, PORCH OR TERRACE DESIGNED AND ACCESSIBLE FOR LIVING, RECREATION, PEDESTRIAN ACCESS OR LANDSCAPING, THAT IS NOT MORE THAN 75% COVERED BY BUILDABLE FLOOR AREA, AND HAS A MINIMUM DIMENSION OF 5'-0" IN ANY DIRECTION, AND A MINIMUM AREA OF 48 SF; MINUS ANY PARKING FACILITIES, DRIVEWAYS, UTILITY OR SERVICES AREAS, OR ANY REQUIRED FRONT OR SIDE YARD (MBMC 10.04.030)

(1) FOR SINGLE-FAMILY DWELLING IN AREA DISTRICT III AND IV [...] THE MINIMUM REQUIREMENT IS 15% OF THE BUILDABLE FLOOR AREA PER UNIT, BUT NOT LESS THAN 220 SF. FOR CALCULATING REQUIRED OPEN SPACE, BASEMENT AREAS SHALL BE CALCULATED AS 100% BUILDABLE FLOOR AREA.
(2) THE AMOUNT OF A DWELLING UNIT'S REQUIRED OPEN SPACE LOCATED ABOVE THE SECOND STORY (WHERE PERMITTED BY HEIGHT REGULATIONS) SHALL NOT BE MORE THAN ONE-HALF OF THE TOTAL REQUIRED OPEN SPACE. (MBMC 10.12.030)

MINIMUM REQUIRED OPEN SPACE

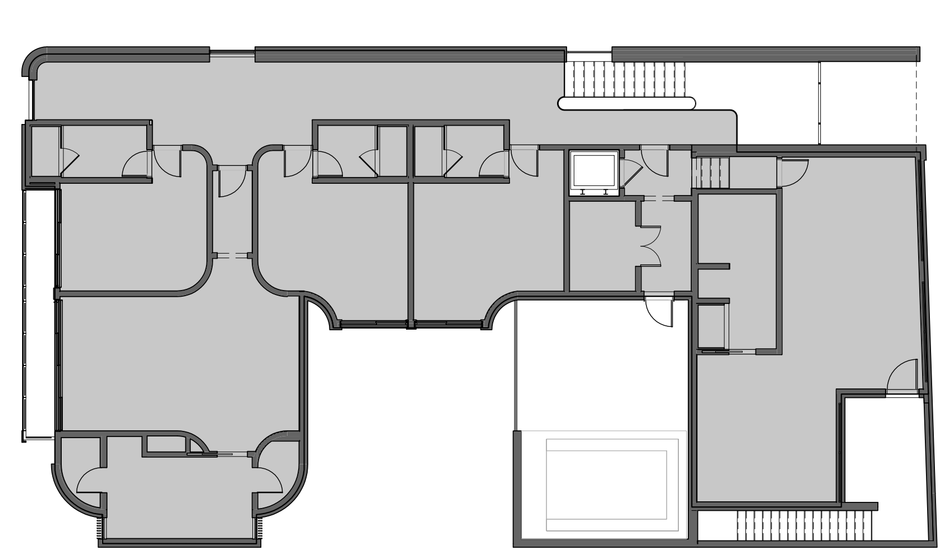
9,923 SF (BFA)	
X 15%	
1,488.5 SF REQUIRED	

PROPOSED OPEN SPACE

FIRST FLOOR	1,159 SF	*(69.7%)*
SECOND FLOOR	504 SF	*(30.3%)*
TOTAL PROPOSED	**1,663 SF**	*(100.0%)*

OPEN SPACE DIAGRAMS
3/32" = 1'-0"

3



BUILDABLE FLOOR AREA

THE TOTAL ENCLOSED AREA OF ALL STORIES OF A BUILDING, MEASURED TO THE OUTSIDE FACE OF THE STRUCTURAL MEMBERS IN EXTERIOR WALLS, AND THIRTY PERCENT (30%) OF THE AREA OF ALL BASEMENTS OF A BUILDING THAT ARE NOT ENTIRELY BELOW GRADE, AND INCLUDING HALLS AND THE AREA OF STAIRS, BUT EXCLUDING FLOOR AREA UNDER STAIRS AND THOSE PORTIONS OF A BASEMENT THAT ARE ENTIRELY BELOW GRADE. THE FOLLOWING ELEMENTS ARE ALSO EXCLUDED FROM A DETERMINATION OF BUILDABLE FLOOR AREA:

AREA DISTRICTS III & IV:
THAT AREA USED FOR VEHICLE PARKING AND LOADING [...] UP TO 600 SF WHERE THREE (3) ENCLOSED PARKING SPACES ARE REQUIRED AND PROVIDED.
UP TO 200 SF OF BASEMENT AREA FOR PURPOSES OF STORAGE AND MECHANICAL EQUIPMENT USE (MBMC 10.04.030)

MAXIMUM BUILDABLE FLOOR AREA

(FLOOR AREA FACTOR)	1.7
X (LOT AREA)	6,287 SF
(MAX. ALLOWABLE BFA)	**10,688 SF**

PROPOSED BUILDABLE FLOOR AREA

		EXCL	TOTALS
BASEMENT	4,135 SF	-200 SF	3,935 SF
FIRST FLOOR	3,143 SF	-0 SF	3,143 SF
GARAGE	845 SF	-845 SF	0 SF
SECOND FLOOR	2,845 SF	-0 SF	2,845 SF
TOTALS	10,968 SF	-1,045 SF	**9,923 SF**

LIVABLE SPACE SQUARE FOOTAGE BREAKDOWN

BASEMENT	4,135 SF	-1,120 SF	3,015 SF (EXCL. 200 SF + 920 SF CAR VAULT STORAGE AREA)
FIRST FLOOR	3,143 SF	-0 SF	3,143 SF
GARAGE	845 SF	-845 SF	0 SF
SECOND FLOOR	2,845 SF	-0 SF	2,845 SF
TOTALS	10,968 SF	-1,045 SF	**9,003 SF**

BUILDABLE FLOOR AREA DIAGRAMS
3/32" = 1'-0"

2

NORELIUS STUDIO
2807 PICO BLVD.
SANTA MONICA, CA 90405
424 248 3717 studio

PROJECT

THE STRAND

1316 THE STRAND
MANHATTAN BEACH, CA
90266

NOTES

NOT FOR CONSTRUCTION

SEAL / SIGNATURE

LICENSED ARCHITECT
BRUCE NORELIUS
No. C-32330
RENEWAL DATE 08/31/2021
STATE OF CALIFORNIA

ISSUE DATES

191021 COASTAL DEVELOPMENT PERMIT APPLICATION
191204 CDP CORRECTIONS
191213 PLANCHECK SUBMITTAL

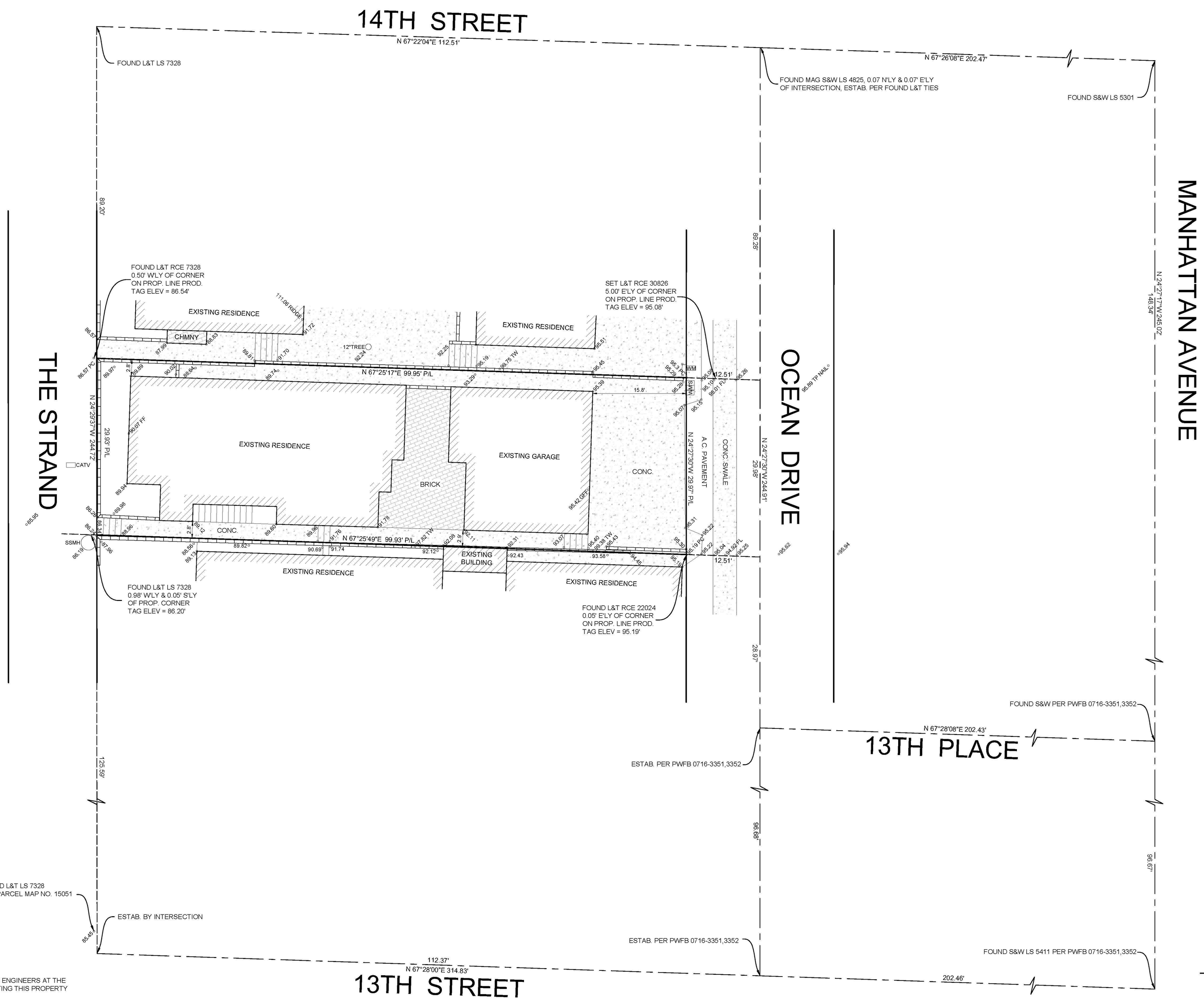
SHEET TITLE

AREA DIAGRAMS

SHEET NUMBER

A0.15

California Coastal Commission
A-5-MNB-20-0020 & A-5-MNB-20-0041
Exhibit 2 p. 1 of 12



California Coastal Commission
A-5-MNB-20-0020 &
A-5-MNB-20-0041
Exhibit 2 p. 2 of 12

NOTE:
A TITLE POLICY HAS BEEN PROVIDED AND REVIEWED BY DENN ENGINEERS AT THE TIME OF THIS SURVEY. ANY READILY AVAILABLE ITEMS AFFECTING THIS PROPERTY HAVE BEEN PLOTTED BASED ON PROVIDED DOCUMENTS.

PROVIDENT TITLE COMPANY
ORDER NO. 10394880-PS
DATED AUGUST 31, 2018

SCALE 1" = 8'

DENN ENGINEERS
3914 DEL AMO BLVD, SUITE 921
TORRANCE, CA 90503 (310) 542-9433

SURVEY AND TOPOGRAPHY

JOB ADDRESS
1313 OCEAN DRIVE
MANHATTAN BEACH, CA 90266

LEGAL DESCRIPTION
VACATED STREET & LOT 49,
VERANO BEACH
M.B. 3-97
APN 4179-026-008

THIS MAP CORRECTLY REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF PROFESSIONAL LAND SURVEYORS' ACT

GARY J. ROEHL R.C.E. 30826

DRAWN BY KW CHECK BY TS

DRAWN ON JANUARY 7, 2019

REVISIONS
REVISIONS

LEGEND

EXISTING BUILDING | BRICK
CONCRETE | WOOD DECK
+106.76 EXISTING ELEVATION
100 EXISTING CONTOUR
BLOCK WALL
X EXISTING FENCE

BCR	BEGINNING OF CURB RETURN
C/L	CENTERLINE
C.L.F.	CHAIN-LINK
E'LY	EASTERLY
EM	ELECTRIC METER
FD	FOUND
FE	FENCE
FF	FINISH FLOOR
FH	FIRE HYDRANT
FL	FLOW LINE
GFF	GARAGE FINISH FLOOR
GM	GAS METER
GW	GUY WIRE
L&T	LEAD AND TAG
MH	MANHOLE
N'LY	NORTHERLY
PC	PROPERTY CORNER / PROP. CORNER
PL. P/L	PROPERTY LINE / PROP. LINE
PP	POWER POLE
PPT	PARAPET
S&W	SPIKE AND WASHER
S'LY	SOUTHERLY
SPK	SPIKE
SSCO	SANITARY SEWER CLEAN OUT
SSMH	SANITARY SEWER MANHOLE
STK	STAKE / STAKE & TAG
STLT	STREET LIGHT
TC	TOP OF CURB
TW	TOP OF WALL / T.O.W.
TX	TOP OF DRIVEWAY APRON
W'LY	WESTERLY
WM	WATER METER

NOTE: ALL SETBACK DIMENSIONS SHOWN ARE MEASURED TO EXTERIOR SURFACE OF BUILDINGS UNLESS OTHERWISE NOTED.

BOUNDARY MONUMENTS ARE NOT NECESSARILY SET ON PROPERTY CORNERS. PLEASE REFER TO THE NOTATION ON THE PLANS FOR OFFSET DISTANCES. IF THERE ARE ANY QUESTIONS, PLEASE DO NOT HESITATE TO CONTACT DENN ENGINEERS FOR CLARIFICATION AT: (310) 542-9433, M-F 8:00 AM TO 5:00 PM.

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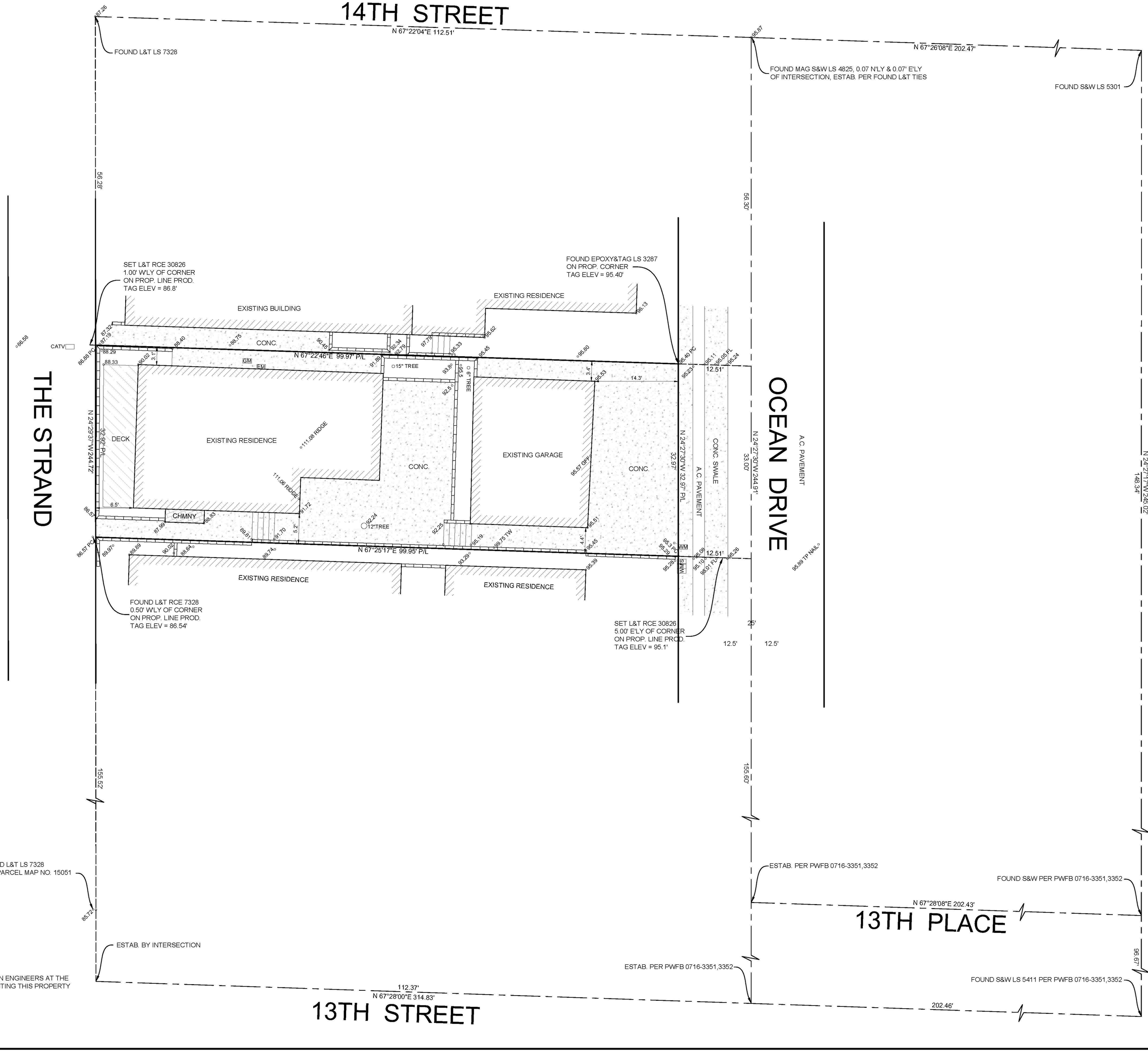
ANY CHANGES OR MODIFICATIONS MADE TO THIS PLAN WITHOUT WRITTEN CONSENT OF DENN ENGINEERS SHALL RELIEVE DENN ENGINEERS FROM ANY LIABILITY OR DAMAGE RESULTING FROM SUCH CHANGES OR MODIFICATIONS, INCLUDING ANY ATTORNEYS FEES OR COSTS INCURRED IN ANY PROCEEDING THAT DENN ENGINEERS MAY BE JOINED.

JOB NO. 18-513



California Coastal Commission
A-5-MNB-20-0020 &
A-5-MNB-20-0041
Exhibit 2 p. 3 of 12

NOTE:
A TITLE POLICY HAS BEEN PROVIDED AND REVIEWED BY DENN ENGINEERS AT THE TIME OF THIS SURVEY. ANY READILY AVAILABLE ITEMS AFFECTING THIS PROPERTY HAVE BEEN PLOTTED BASED ON PROVIDED DOCUMENTS.

* FIRST AMERICAN TITLE COMPANY
ORDER NO. 5842070
DATED JANUARY 10, 2019

SCALE 1" = 8'

DENN ENGINEERS
3914 DEL AMO BLVD, SUITE 921
TORRANCE, CA 90503 (310) 542-9433

SURVEY AND TOPOGRAPHY

JOB ADDRESS
1316 THE STRAND
MANHATTAN BEACH, CA 90266

LEGAL DESCRIPTION
VACATED STREET &
LOT 48 & PORTION OF LOT 47,
VERANO BEACH
M.B. 3-97
APN 4179-026-007

THIS MAP CORRECTLY REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF PROFESSIONAL LAND SURVEYORS' ACT

GARY J. ROEHL R.C.E. 30826

DRAWN BY KW CHECK BY XX

DRAWN ON JANUARY 3, 2018

REVISIONS
* TITLE UPDATE JANUARY 29, 2019

LEGEND

EXISTING BUILDING
BRICK
CONCRETE
WOOD DECK
×106.76 EXISTING ELEVATION
100 EXISTING CONTOUR
BLOCK WALL
X EXISTING FENCE

BCR	BEGINNING OF CURB RETURN
C/L	CENTERLINE
C.L.F.	CHAIN-LINK
E'LY	EASTERLY
EM	ELECTRIC METER
FD	FOUND
FE	FENCE
FF	FINISH FLOOR
FH	FIRE HYDRANT
FL	FLOW LINE
GFF	GARAGE FINISH FLOOR
GM	GAS METER
GW	GUY WIRE
L&T	LEAD AND TAG
MH	MANHOLE
N'LY	NORTHERLY
PC	PROPERTY CORNER / PROP. CORNER
PL, P/L	PROPERTY LINE / PROP. LINE
PP	POWER POLE
PPT	PARAPET
S&W	SPIKE AND WASHER
S'LY	SOUTHERLY
SPK	SPIKE
SSCO	SANITARY SEWER CLEAN OUT
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STK	STAKE / STAKE & TAG
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NOTE: ALL SETBACK DIMENSIONS SHOWN ARE MEASURED TO EXTERIOR SURFACE OF BUILDINGS UNLESS OTHERWISE NOTED.

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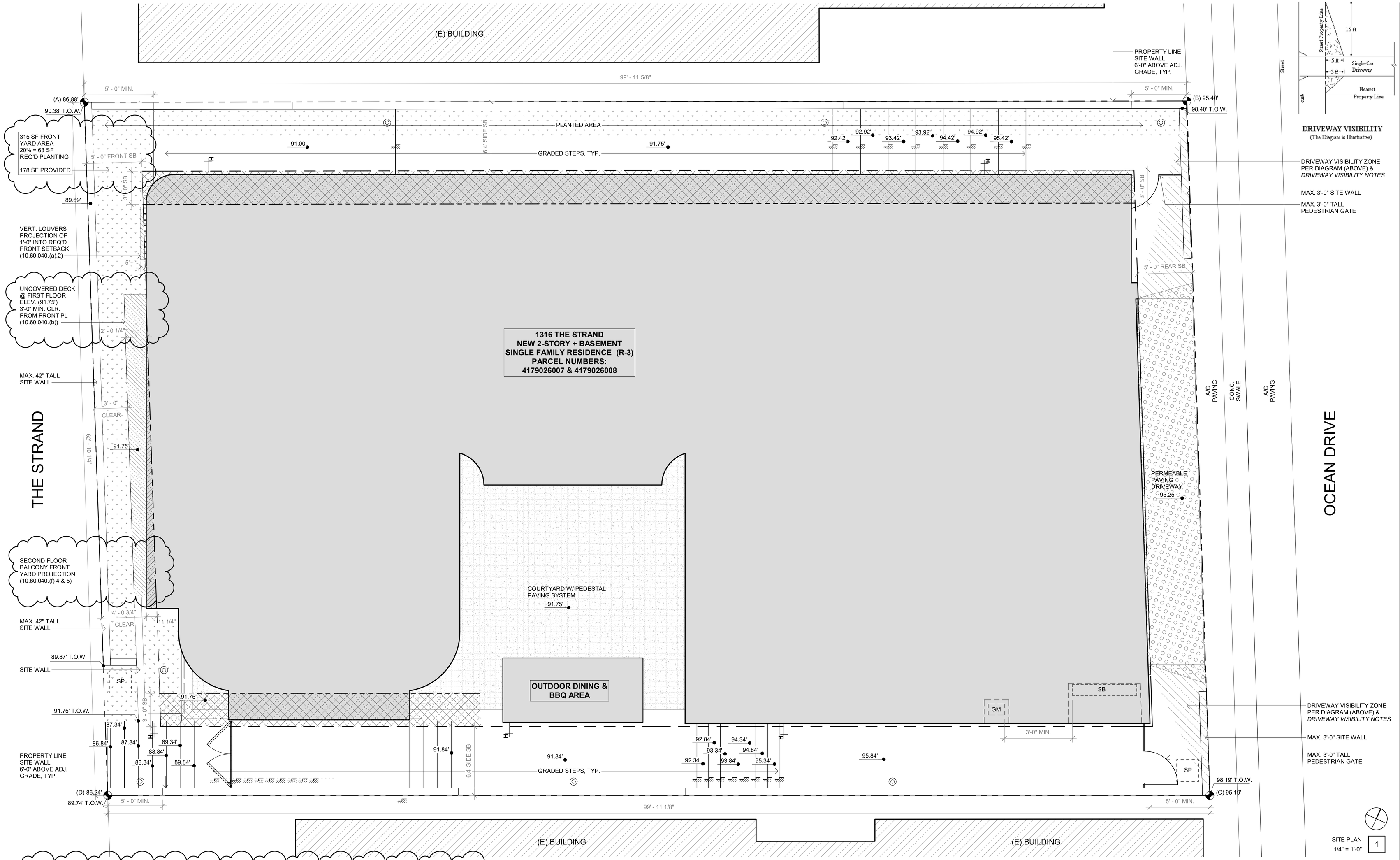
SHEET 1 OF 1

JOB NO. 18-516



DRIVEWAY VISIBILITY
(The Diagram is Illustrative)

SITE PLAN 1/4" = 1'-0" (1)

SITE PLAN NOTES
1. DO NOT SCALE FROM DRAWINGS.
2. NOTIFY ARCHITECT OF INCONSISTENCIES OR EXPOSED UNFORESEEN CONDITIONS IN CONFLICT WITH THE CONTRACT DOCUMENTS PRIOR TO COMMENCING WITH WORK.
3. ALL OPENINGS ARE DIMENSIONED TO CENTERLINE OF CLEAR OPENING.
4. ALL INSULATION MATERIALS SHALL BE CERTIFIED BY THE MANUFACTURER AS COMPLYING WITH THE CALIFORNIA QUALITY STANDARDS FOR INSULATION MATERIAL. DOORS AND WINDOWS BETWEEN CONDITIONED AND UNCONDITIONED SPACE SHALL BE FULL WEATHER-STRIPPED.
5. AN APPROVED SEISMIC SHUTOFF VALVE WILL BE INSTALLED ON THE FUEL GAS LINE ON THE DOWN STREAM SIDE OF THE UTILITY METER AND BE RIGIDLY CONNECTED TO THE EXTERIOR OF THE BUILDING OR STRUCTURE CONTAINING THE FUEL GAS PIPING.
6. CONTRACTOR TO PROVIDE, ERECT, AND MAINTAIN ALL TEMPORARY BARRIERS AND GUARDS, AND ALL TEMPORARY SHORING AND BRACING AS REQUIRED BY ALL CITY AND STATE REGULATIONS.
7. CONTRACTOR TO PROVIDE ADEQUATE WEATHER PROTECTION FOR THE PROJECT DURING THE COURSE OF THE WORK.
8. CONTRACTOR TO PROVIDE ALL NECESSARY EQUIPMENT FOR TEMPORARY POWER, LIGHTING, AND SANITARY FACILITIES FOR THE DURATION OF THE WORK.

DRIVEWAY VISIBILITY NOTES
1. VISIBILITY OF A DRIVEWAY CROSSING A STREET PROPERTY LINE SHALL NOT BE BLOCKED BETWEEN A HEIGHT OF 3 FEET AND 9 FEET FOR A DEPTH OF 5 FEET FROM THE STREET PROPERTY LINE AS VIEWED FROM THE EDGE OF THE RIGHT OF WAY ON EITHER SIDE OF THE DRIVEWAY AT A DISTANCE OF 15 FEET OR AT THE NEAREST PROPERTY LINE - STREET PROPERTY LINE INTERSECTION, WHICH IS LESS. MBMC 10.64.150
   A. EXCEPTION: PROPERTIES CONSISTING OF LOTS HAVING VEHICULAR ACCESS ONLY ACROSS A SIDEYARD LOCATED IN RESIDENTIAL DISTRICTS IN AREA DISTRICTS III AND IV ARE EXEMPT FROM THIS REQUIREMENT.

REFERENCE ELEVATION
HEIGHT CALCULATION: AVERAGE OF PROPERTY CORNER ELEVATIONS + HEIGHT LIMIT = MAX. ALLOWABLE ELEVATION
(A) 86.88' + (B) 95.40' + (C) 95.19' + (D) 86.24' = 363.71' / 4
AVERAGE = 90.93' + 30' = 120.93' MAX. ALLOWABLE HEIGHT

SITE WALLS
FENCE/WALL/HANDRAIL AND HEDGE HEIGHTS, AS MEASURED FROM THE FINISHED GRADE ADJACENT TO EACH SECTION OF THESE STRUCTURES, MAY BE A MAXIMUM OF: 42" IN THE FRONT YARD SETBACK, AND 6' AT ALL OTHER LOCATIONS ON SITE (3' IN DRIVEWAY VISIBILITY TRIANGLE AND IN TRAFFIC VISION CLEARANCE TRIANGLE).

SITE PLAN KEYNOTES

03 CONCRETE
- 03 35 00 CONCRETE FINISHING

04 MASONRY
- 04 20 00 BRICK RAINSCREEN

05 METAL
- 05 50 00 METAL GUARDRAILS
- 05 70 00 METAL STAIRS

06 WOOD, PLASTICS & COMPOSITES
- 06 15 00 WOOD DECKING
- 06 20 00 FINISH CARPENTRY
- 06 40 00 ARCHITECTURAL WOODWORK

07 THERMAL & MOISTURE PROTECTION
SEE ASSEMBLIES & DETAILS

08 OPENINGS
SEE SCHEDULES

09 FINISHES
- 09 20 00 GYPSUM BOARD
- 09 24 00 STUCCO
- 09 30 00 TILE
- 09 50 00 CEILINGS
- 09 60 00 FLOORING
- 09 72 00 WALL COVERINGS
- 09 75 00 STONE
- 09 78 00 INT. WALL PANELING
- 09 80 00 ACOUSTIC TREATMENT
- 09 90 00 PAINTING & COATING

10 SPECIALTIES
- 10 28 00 TOILET & BATH ACCESSORIES *SEE SCHEDULES*
- 10 30 00 FIREPLACE

11 EQUIPMENT
- 11 11 00 VEHICLE EQUIPMENT
- 11 30 00 KITCHEN APPLIANCES

12 FURNISHINGS
- 12 20 00 WINDOW TREATMENTS

13 SPECIAL CONSTRUCTION
- 13 11 00 SWIMMING POOLS
- 13 24 00 STEAM SHOWER

14 CONVEYING EQUIPMENT
- 14 20 00 ELEVATOR
- 14 45 00 VEHICLE LIFTS

22 PLUMBING
- 22 14 00 STORM DRAINAGE
- 22 40 00 PLUMBING FIXTURES *SEE SCHEDULES*
- 22 50 00 POOL SYSTEMS

23 HVAC
PENDING

26 ELECTRICAL
- 26 30 00 POWER GENERATING & STORAGE EQUIPMENT
- 26 56 00 EXTERIOR LIGHTING

32 SITE IMPROVEMENTS
- 32 10 00 VEHICLE PAVING
- 32 30 00 SITE IMPROVEMENTS

LEGEND
- PERMEABLE PAVING
- SETBACK
- FENCE
- GM GAS METER
- SP SUMP PIT PER CIVIL
- AREA DRAIN PER CIVIL
- PLANTED AREA
- PROPERTY LINE
- EASEMENT
- SB ELECTRICAL SWITCHBOARD
- HOSE BIB

NORELIUS STUDIO
2807 PICO BLVD.
SANTA MONICA, CA 90405
424 248 3717 studio

PROJECT

THE STRAND

1316 THE STRAND
MANHATTAN BEACH, CA
90266

NOTES

NOT FOR CONSTRUCTION

SEAL / SIGNATURE

LICENSED ARCHITECT
BRUCE NORELIUS
No. C-32330
RENEWAL DATE 08/31/2021
STATE OF CALIFORNIA

ISSUE DATES
- 191021 COASTAL DEVELOPMENT PERMIT APPLICATION
- 191204 CDP CORRECTIONS
- 191213 PLANCHECK SUBMITTAL

SHEET TITLE

SITE PLAN

SHEET NUMBER

A1.00

California Coastal Commission
A-5-MNB-20-0020 &
A-5-MNB-20-0041
Exhibit 2 p. 4 of 12

BASEMENT PLAN
1/4" = 1'-0"

1

FLOOR PLAN NOTES

1. DO NOT SCALE FROM DRAWINGS.
2. DIMENSIONS ARE TO FACE OF WOOD STUD (FOS), CENTERLINE OF STRUCTURAL STEEL, FACE OF STRUCTURAL CONCRETE, AND CENTERLINE OF OPENING UNLESS NOTED OTHERWISE.
3. ANY INCONSISTENCIES OR UNFORESEEN CONDITIONS TO BE REVIEWED BY THE ARCHITECT PRIOR TO PROCEEDING WITH CONSTRUCTION.
4. ALL DOORS AND WINDOWS DIMENSIONED TO CENTERLINE OF CLEAR OPENING.
5. ALL CASEWORK DIMENSIONS TO FACE OF FINISH.
6. PROVIDE 1.6 GALLONS OF WATER PER FLUSH TOILETS.
7. WATER HEATERS ARE TO BE STRAPPED OR HAVE A RIGID CONNECTION TO AN ADJACENT WALL. (SEC 507.3, UPC)
8. PROVIDE R-12 EXTERIOR BLANKET FOR HOT WATER HEATER. R-3 INSULATION SHALL BE PROVIDED FOR THE FIRST FIVE FEET OF THE WATER HEATER OUTLET PIPE. ALL WATER HEATING AND SPACE CONDITIONING EQUIPMENT. SHOWER HEADS AND FAUCETS SHALL BE C.E.C. CERTIFIED. ALL STEAM AND STEAM CONDENSATE RETURN PIPING AND ALL CONTINUOUSLY RECIRCULATING DOMESTIC HEATING OR HOT WATER PIPING SHALL BE INSULATED PER PLUMBING DIVISION.
9. ALL INSULATION MATERIALS SHALL BE CERTIFIED BY THE MANUFACTURER AS COMPLYING WITH THE CALIFORNIA QUALITY STANDARDS FOR INSULATIONMATERIAL. DOORS AND WINDOWS BETWEEN CONDITIONED AND UNCONDITIONED SPACE SHALL BE FULL WEATHER-STRIPPED.
10. AN APPROVED SEISMIC SHUTOFF VALVE WILL BE INSTALLED ON THE FUEL GAS LINE ON THE DOWN STREAM SIDE OF THE UTILITY METER AND BE RIGIDLY CONNECTED TO THE EXTERIOR OF THE BUILDING OR STRUCTURE CONTAINING THE FUEL GAS PIPING.
11. CONTRACTOR IS TO PROVIDE, ERECT AND MAINTAIN ALL TEMPORARY BARRIERS AND GUARDS, AND ALL TEMPORARY SHORING AND BRACING AS REQUIRED BY ALL CITY AND STATE REGULATIONS.
12. CONTRACTOR IS TO PROVIDE ADEQUATE WEATHER PROTECTION FOR THE BUILDING AND ITS CONTENTS DURING THE COURSE OF WORK.
13. CONTRACTOR TO PROVIDE TEMPORARY POWER POLE AND METER FOR THE DURATION OF THE WORK AS REQUIRED. CONTRACTOR TO MAINTAIN TEMPORARY LIGHT AS REQUIRED FOR THE DURATION OF THE WORK.
14. CONTRACTOR IS TO PROVIDE TEMPORARY SANITARY FACILITIES AS TO LEAST IMPACT NEIGHBORS AND AS DIRECTED BY CITY REGULATIONS.
15. INSTALL ON THE COLD WATER SUPPLY PIPE AT THE TOP OF THE WATER HEAT A 'T' FITTING TO PLUMB FOR FUTURE SOLAR WATER HEATING.

03 CONCRETE
- 03 35 00 CONCRETE FINISHING

04 MASONRY
- 04 21 00 BRICK VENEER

05 METAL
- 05 50 00 METAL GUARDRAILS
- 05 70 00 METAL STAIRS

06 WOOD, PLASTICS & COMPOSITES
- 06 15 00 WOOD DECKING
- 06 20 00 FINISH CARPENTRY
- 06 40 00 ARCHITECTURAL WOODWORK

07 THERMAL & MOISTURE PROTECTION
SEE ASSEMBLIES & DETAILS

08 OPENINGS
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SEE SCHEDULES

26 LIGHTING
PENDING

32 SITE IMPROVEMENTS
- 32 10 00 VEHICLE PAVING
- 32 30 00 SITE IMPROVEMENTS

LEGEND
- PROPERTY LINE
- EM — ELECTRIC PANEL & METER
- GM — GAS METER
- EV — ELECTRIC VEHICLE CHARGER
- (X) XX.XX' — PROPERTY CORNER
- X' — ELEVATION TRANSITION
- XX.XX' — SPOT ELEVATION
- 1/4" : 12" — SLOPE

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No. C-32330
RENEWAL DATE 08/31/2021
STATE OF CALIFORNIA

ISSUE DATES
- 191021 COASTAL DEVELOPMENT PERMIT APPLICATION
- 191204 CDP CORRECTIONS
- 191213 PLANCHECK SUBMITTAL

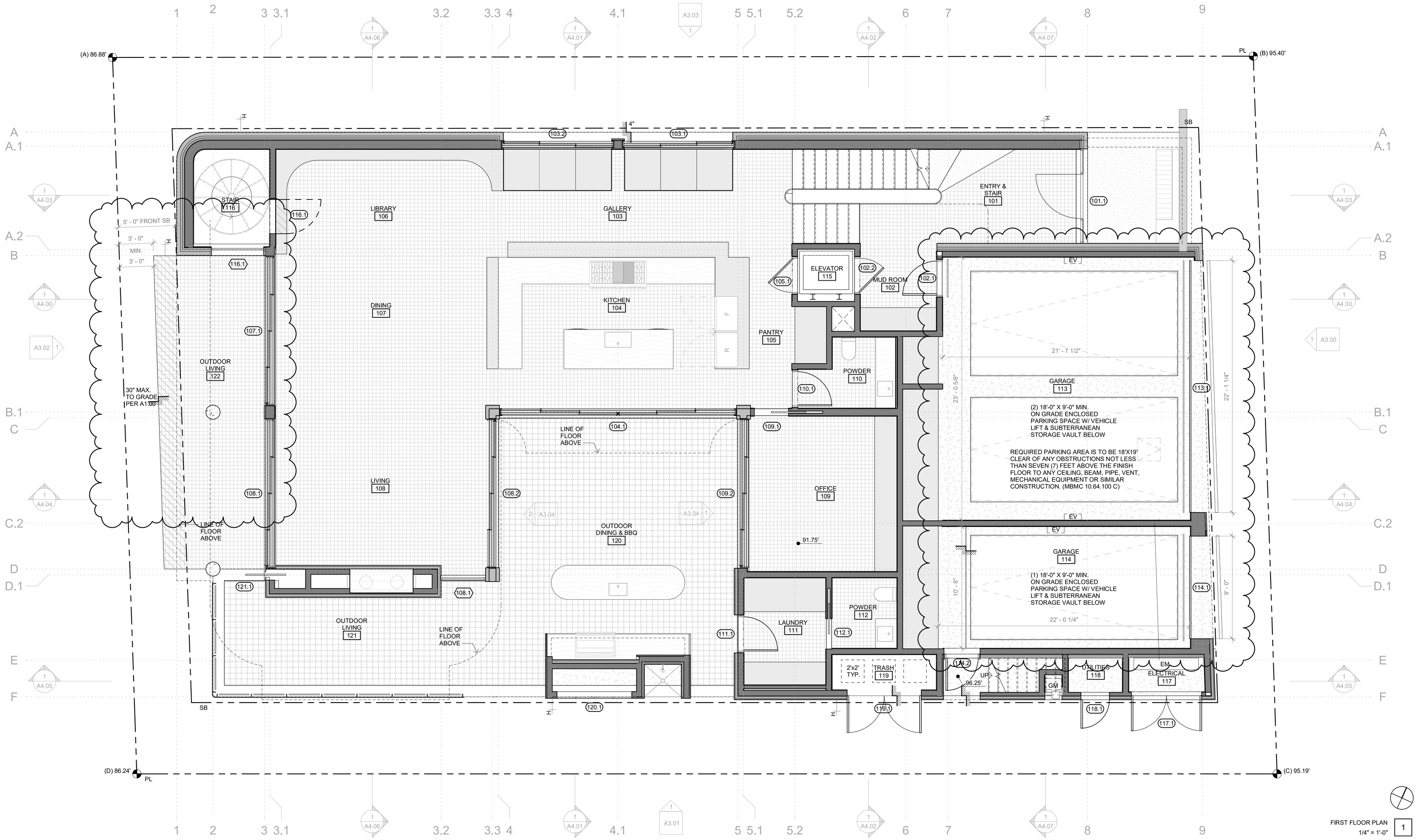
SHEET TITLE

BASEMENT PLAN

SHEET NUMBER

A2.01

California Coastal Commission
A-5-MNB-20-0020 &
A-5-MNB-20-0041
Exhibit 2 p. 5 of 12



FIRST FLOOR PLAN 1
1/4" = 1'-0"

FLOOR PLAN NOTES

1. DO NOT SCALE FROM DRAWINGS.
2. DIMENSIONS ARE TO FACE OF WOOD STUD (FOS), CENTERLINE OF STRUCTURAL STEEL, FACE OF STRUCTURAL CONCRETE, AND CENTERLINE OF OPENING UNLESS NOTED OTHERWISE.
3. ANY INCONSISTENCIES OR UNFORESEEN CONDITIONS TO BE REVIEWED BY THE ARCHITECT PRIOR TO PROCEEDING WITH CONSTRUCTION.
4. ALL DOORS AND WINDOWS DIMENSIONED TO CENTERLINE OF CLEAR OPENING.
5. ALL CASEWORK DIMENSIONS TO FACE OF FINISH.
6. PROVIDE 1.6 GALLONS OF WATER PER FLUSH TOILETS.
7. WATER HEATERS ARE TO BE STRAPPED OR HAVE A RIGID CONNECTION TO AN ADJACENT WALL. (SEC 507.3, UPC)
8. PROVIDE R-12 EXTERIOR BLANKET FOR HOT WATER HEATER. R-3 INSULATION SHALL BE PROVIDED FOR THE FIRST FIVE FEET OF THE WATER HEATER OUTLET PIPE. ALL WATER HEATING AND SPACE CONDITIONING EQUIPMENT. SHOWER HEADS AND FAUCETS SHALL BE C.E.C. CERTIFIED. ALL STEAM AND STEAM CONDENSATE RETURN PIPING AND ALL CONTINUOUSLY RECIRCULATING DOMESTIC HEATING OR HOT WATER PIPING SHALL BE INSULATED PER PLUMBING DIVISION.
9. ALL INSULATION MATERIALS SHALL BE CERTIFIED BY THE MANUFACTURER AS COMPLYING WITH THE CALIFORNIA QUALITY STANDARDS FOR INSULATIONMATERIAL. DOORS AND WINDOWS BETWEEN CONDITIONED AND UNCONDITIONED SPACE SHALL BE FULL WEATHER-STRIPPED.
10. AN APPROVED SEISMIC SHUTOFF VALVE WILL BE INSTALLED ON THE FUEL GAS LINE ON THE DOWN STREAM SIDE OF THE UTILITY METER AND BE RIGIDLY CONNECTED TO THE EXTERIOR OF THE BUILDING OR STRUCTURE CONTAINING THE FUEL GAS PIPING.
11. CONTRACTOR IS TO PROVIDE, ERECT AND MAINTAIN ALL TEMPORARY BARRIERS AND GUARDS, AND ALL TEMPORARY SHORING AND BRACING AS REQUIRED BY ALL CITY AND STATE REGULATIONS.
12. CONTRACTOR IS TO PROVIDE ADEQUATE WEATHER PROTECTION FOR THE BUILDING AND ITS CONTENTS DURING THE COURSE OF WORK. CONTRACTOR TO PROVIDE TEMPORARY POWER POLE AND METER FOR THE DURATION OF THE WORK AS REQUIRED. CONTRACTOR TO MAINTAIN TEMPORARY LIGHT AS REQUIRED FOR THE DURATION OF THE WORK.
13. CONTRACTOR IS TO PROVIDE TEMPORARY SANITARY FACILITIES AS TO LEAST IMPACT NEIGHBORS AND AS DIRECTED BY CITY REGULATIONS.
14. INSTALL ON THE COLD WATER SUPPLY PIPE AT THE TOP OF THE WATER HEAT A "T" FITTING TO PLUMB FOR FUTURE SOLAR WATER HEATING.

03 CONCRETE
- 03 35 00 CONCRETE FINISHING

04 MASONRY
- 04 21 00 BRICK VENEER

05 METAL
- 05 50 00 METAL GUARDRAILS
- 05 70 00 METAL STAIRS

06 WOOD, PLASTICS & COMPOSITES
- 06 15 00 WOOD DECKING
- 06 20 00 FINISH CARPENTRY
- 06 40 00 ARCHITECTURAL WOODWORK

07 THERMAL & MOISTURE PROTECTION
SEE ASSEMBLIES & DETAILS

08 OPENINGS
SEE SCHEDULES

09 FINISHES
- 09 20 00 GYPSUM BOARD
- 09 24 00 STUCCO
- 09 30 00 TILE
- 09 50 00 CEILINGS
- 09 60 00 FLOORING
- 09 72 00 WALL COVERINGS
- 09 75 00 STONE
- 09 78 00 INT. WALL PANELING
- 09 80 00 ACOUSTIC TREATMENT
- 09 90 00 PAINTING & COATING

10 SPECIALTIES
- 10 28 00 TOILET & BATH ACCESSORIES
- 10 30 00 FIREPLACE

11 EQUIPMENT
- 11 11 00 VEHICLE LIFTS
- 11 30 00 KITCHEN APPLIANCES

12 FURNISHINGS
- 12 20 00 WINDOW TREATMENTS

13 SPECIAL CONSTRUCTION
- 13 11 00 SWIMMING POOLS
- 13 24 00 STEAM SHOWERS

14 CONVEYING EQUIPMENT
- 14 20 00 ELEVATOR

22 PLUMBING
SEE SCHEDULES

26 LIGHTING
PENDING

32 SITE IMPROVEMENTS
- 32 10 00 VEHICLE PAVING
- 32 30 00 SITE IMPROVEMENTS

LEGEND
- PROPERTY LINE
- EM — ELECTRIC PANEL & METER
- GM — GAS METER
- EV — ELECTRIC VEHICLE CHARGER
- (X) XX.XX' — PROPERTY CORNER
- X" — ELEVATION TRANSITION
- XX.XX' — SPOT ELEVATION
- 1/4" : 12" — SLOPE

NORELIUS STUDIO
2807 PICO BLVD.
SANTA MONICA, CA 90405
424 248 3717 studio

PROJECT

THE STRAND

1316 THE STRAND
MANHATTAN BEACH, CA
90266

NOTES

NOT FOR CONSTRUCTION

SEAL / SIGNATURE

LICENSED ARCHITECT
BRUCE NORELIUS
No. C-32330
RENEWAL DATE 08/31/2021
STATE OF CALIFORNIA

ISSUE DATES
- 191021 COASTAL DEVELOPMENT PERMIT APPLICATION
- 191204 CDP CORRECTIONS
- 191213 PLANCHECK SUBMITTAL

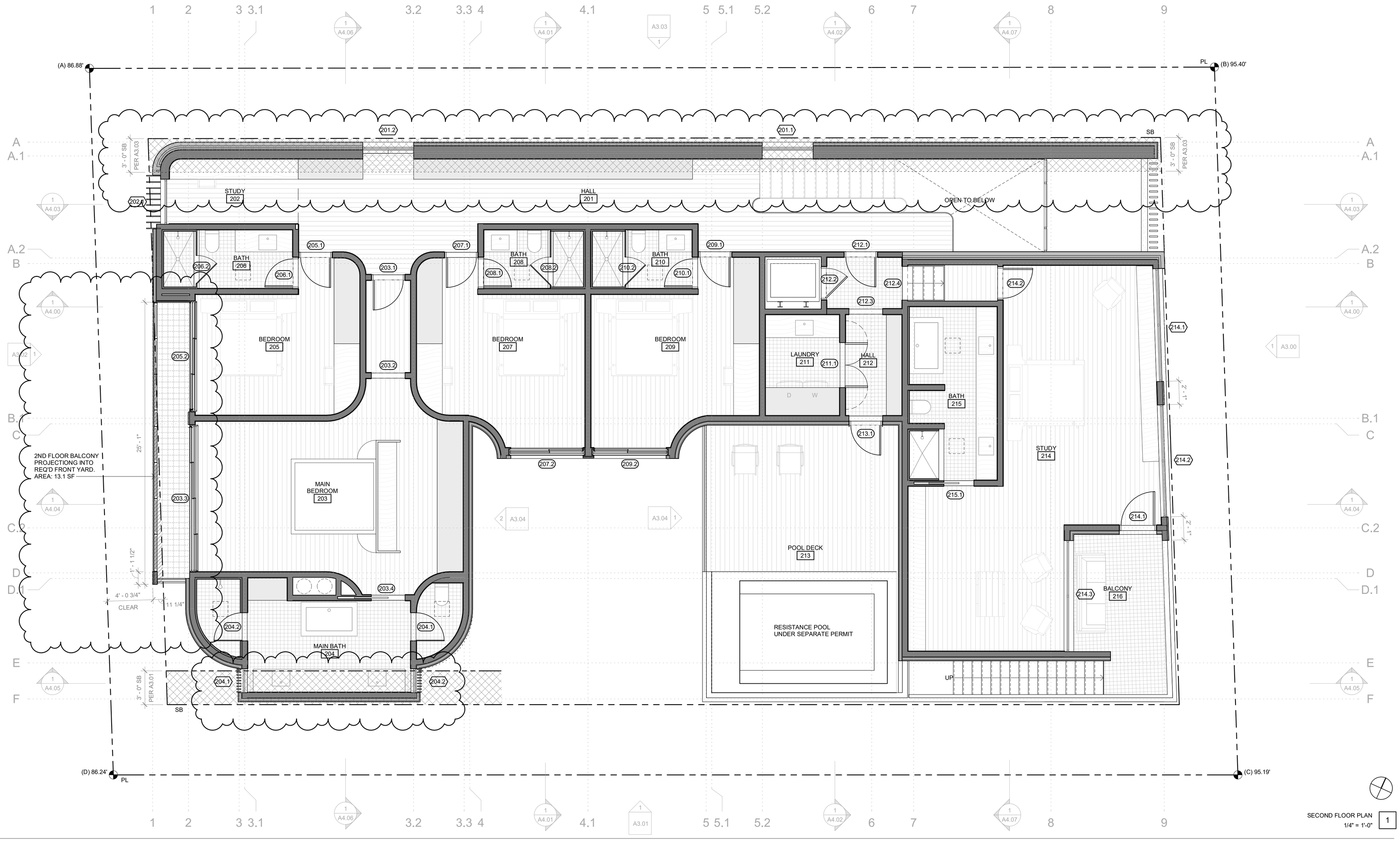
SHEET TITLE

FIRST FLOOR PLAN

SHEET NUMBER

A2.10

California Coastal Commission
A-5-MNB-20-0020 &
A-5-MNB-20-0041
Exhibit 2 p. 6 of 12



SECOND FLOOR PLAN 1
1/4" = 1'-0"

FLOOR PLAN NOTES

1. DO NOT SCALE FROM DRAWINGS.
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BALCONY YARD PROJECT SUMMARY

AREA:	3 X 1/2 BUILDABLE LOT WIDTH (25' - 2")	75.5 SF (75' - 6")
	PROPOSED BALCONY AREA (TOTAL)	13.1 SF
LENGTH:	2/3 X BUILDABLE LOT WIDTH (50' - 4")	33' - 3"
	2ND STORY BALCONY LENGTH	25' - 1" (REAR)
DEPTH:	3'-0" MAX. INTO REQUIRED YARD	A1.00 & A2.20
	2'-0" CLR. TO PROPERTY LINE	A1.00 & A2.20

03 CONCRETE
- 03 35 00 CONCRETE FINISHING

04 MASONRY
- 04 21 00 BRICK VENEER

05 METAL
- 05 50 00 METAL GUARDRAILS
- 05 70 00 METAL STAIRS

06 WOOD, PLASTICS & COMPOSITES
- 06 15 00 WOOD DECKING
- 06 20 00 FINISH CARPENTRY
- 06 40 00 ARCHITECTURAL WOODWORK

07 THERMAL & MOISTURE PROTECTION
SEE ASSEMBLIES & DETAILS

08 OPENINGS
SEE SCHEDULES

09 FINISHES
- 09 20 00 GYPSUM BOARD
- 09 24 00 STUCCO
- 09 30 00 TILE
- 09 50 00 CEILINGS
- 09 60 00 FLOORING
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- 09 80 00 ACOUSTIC TREATMENT
- 09 90 00 PAINTING & COATING

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- 10 30 00 FIREPLACE

11 EQUIPMENT
- 11 11 00 VEHICLE LIFTS
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- 32 10 00 VEHICLE PAVING
- 32 30 00 SITE IMPROVEMENTS

LEGEND

- PROPERTY LINE
- EM — ELECTRIC PANEL & METER
- GM — GAS METER
- EV — ELECTRIC VEHICLE CHARGER
- (X) XX.XX' — PROPERTY CORNER
- X" — ELEVATION TRANSITION
- XX.XX' — SPOT ELEVATION
- 1/4" : 12" — SLOPE

California Coastal Commission
A-5-MNB-20-0020 &
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Exhibit 2 p. 7 of 12

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424 248 3717 studio

PROJECT

THE STRAND

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90266

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SEAL / SIGNATURE

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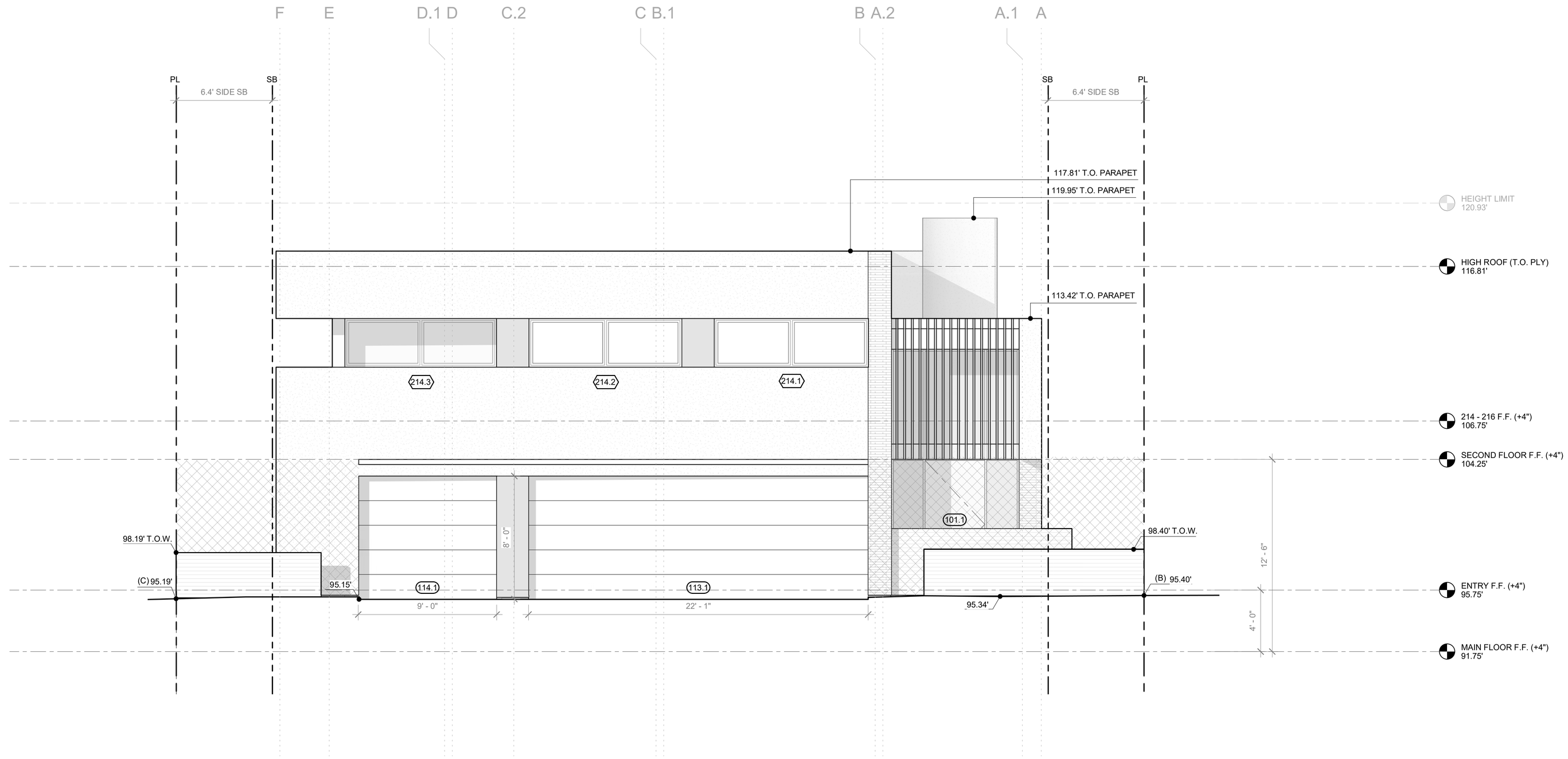
SHEET TITLE

SECOND FLOOR PLAN

SHEET NUMBER

A2.20



EAST ELEVATION
1/4" = 1'-0"

1

California Coastal Commission
A-5-MNB-20-0020 &
A-5-20-0041
Exhibit 2 p. 8 of 12

EXTERIOR ELEVATION NOTES

1. PARAPETS, SATELLITE ANTENNAE, RAILS, SKYLIGHTS AND ROOF EQUIPMENT MUST BE WITHIN THE HEIGHT LIMIT.
2. DO NOT SCALE FROM DRAWINGS.
3. ALL GUARDRAILS TO BE 42" ABOVE ADJACENT FINISHED WALKING SURFACE.
4. ALL HANDRAILS TO BE 34" - 38" ABOVE FINISHED FLOOR.
5. MAXIMUM 3-15/16" DIAMETER OPENING IN ALL GUARDRAILS OR HANDRAILS, TYP.
6. ALL CHIMNEY ASSEMBLIES AND SPARK ARRESTORS TO BE UL COMPLIANT.
7. CONTRACTOR TO VERIFY REQUIRED HEIGHTS AND BUILDING ENVELOPE DIMENSIONS. NOTIFY ARCHITECT OF ANY DISCREPANCIES.
8. GLAZING WITHIN 18" OF ADJACENT WALKING SURFACE TO BE FULLY TEMPERED.
9. EXTERIOR WALLS WITH A FIRE SEPARATEION DISTANCE OF 5'-0" OR LESS MUST BE 1-HR FIRE-RESISTANCE RATED FOR EXPOSURE TO FIRE FROM BOTH SIDES.
10. SEE *A0.00 TITLE PAGE* FOR BALCONY PROJECTION SUMMARY.

ELEVATIONS KEYNOTES

03 CONCRETE
- 03 35 00 CONCRETE FINISHING

04 MASONRY
- 04 20 00 BRICK RAINSCREEN

05 METAL
- 05 50 00 METAL GUARDRAILS
- 05 70 00 METAL STAIRS

06 WOOD, PLASTICS & COMPOSITES
- 06 15 00 WOOD DECKING
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- 22 14 00 STORM DRAINAGE
- 22 40 00 PLUMBING FIXTURES
- 22 50 00 POOL SYSTEMS

23 HVAC
PENDING

26 ELECTRICAL
- 26 30 00 POWER GENERATING & STORAGE EQUIPMENT
- 26 56 00 EXTERIOR LIGHTING

32 SITE IMPROVEMENTS
- 32 10 00 VEHICLE PAVING
- 32 30 00 SITE IMPROVEMENTS

LEGEND
- PL — PROPERTY LINE
- SB — SETBACK LINE
- LINE OF ABUTTING ADJACENT GRADE
- LINE OF TOP OF RETAINING WALL OR 42" GUARDRAIL ON SITE WALL
- LINE OF PRE-CONSTRUCTION GRADE & LINE OF ADDED 3'-0" SETBACK FOR WALLS OVER 24'-0" IN HT.
- (X) XX.XX' PROPERTY CORNER
- XX.XX' SPOT ELEVATION
- EM ELECTRIC PANEL & METER
- GM GAS METER
- EV ELECTRIC VEHICLE CHARGER
- X" ELEVATION TRANSITION
- 1/4" : 12" SLOPE

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424 248 3717 studio

PROJECT

THE STRAND

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NOTES

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SEAL / SIGNATURE

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BRUCE NORELIUS
No. C-32330
RENEWAL DATE
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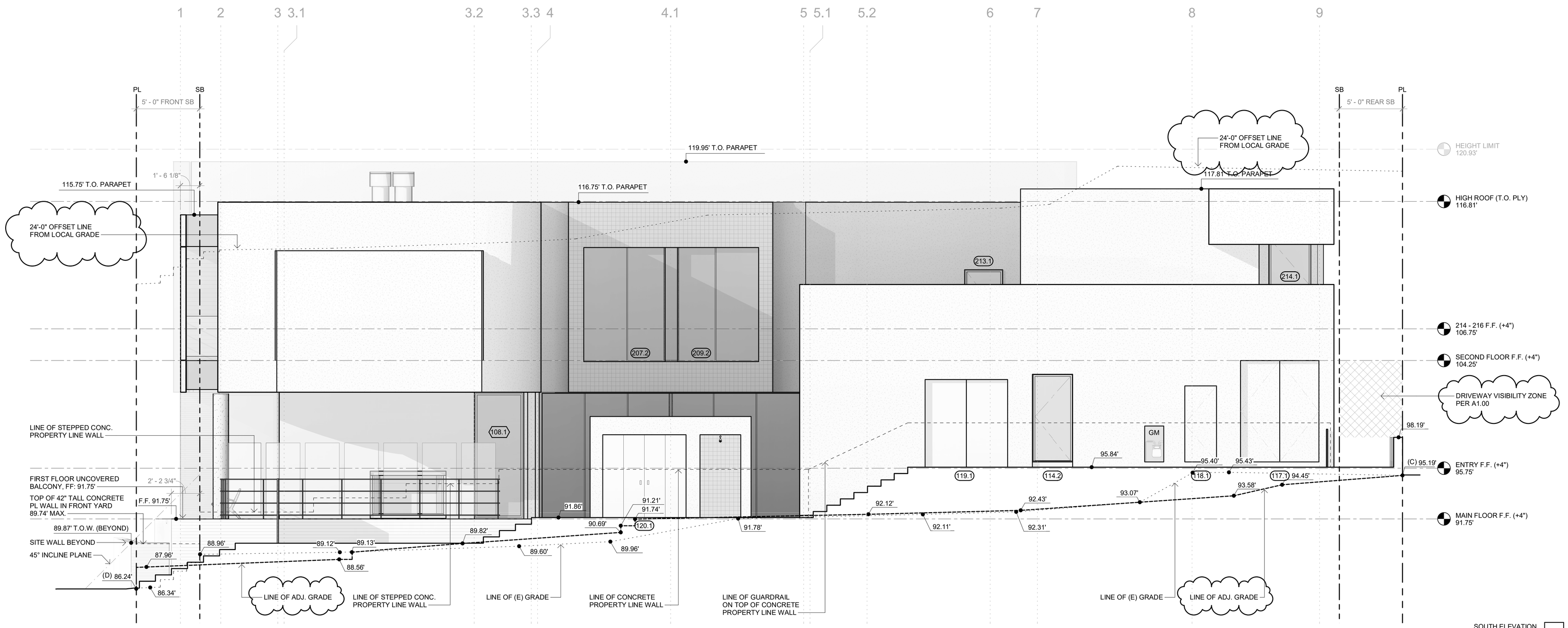
- 191204 CDP CORRECTIONS
- 191213 PLANCHECK SUBMITTAL

SHEET TITLE

EXTERIOR ELEVATIONS

SHEET NUMBER

A3.00



SOUTH ELEVATION
1/4" = 1'-0"

1

California Coastal Commission
A-5-MNB-20-0020 &
A-5-MNB-20-0041
Exhibit 2 p. 9 of 12

EXTERIOR ELEVATION NOTES

1. PARAPETS, SATELLITE ANTENNAE, RAILS, SKYLIGHTS AND ROOF EQUIPMENT MUST BE WITHIN THE HEIGHT LIMIT.
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6. ALL CHIMNEY ASSEMBLIES AND SPARK ARRESTORS TO BE UL COMPLIANT.
7. CONTRACTOR TO VERIFY REQUIRED HEIGHTS AND BUILDING ENVELOPE DIMENSIONS. NOTIFY ARCHITECT OF ANY DISCREPANCIES.
8. GLAZING WITHIN 18" OF ADJACENT WALKING SURFACE TO BE FULLY TEMPERED.
9. EXTERIOR WALLS WITH A FIRE SEPARATEION DISTANCE OF 5'-0" OR LESS MUST BE 1-HR FIRE-RESISTANCE RATED FOR EXPOSURE TO FIRE FROM BOTH SIDES.
10. SEE *A0.00 TITLE PAGE* FOR BALCONY PROJECTION SUMMARY.

ELEVATIONS KEYNOTES

03 CONCRETE
- 03 35 00 CONCRETE FINISHING

04 MASONRY
- 04 20 00 BRICK RAINSCREEN

05 METAL
- 05 50 00 METAL GUARDRAILS
- 05 70 00 METAL STAIRS

06 WOOD, PLASTICS & COMPOSITES
- 06 15 00 WOOD DECKING
- 06 20 00 FINISH CARPENTRY
- 06 40 00 ARCHITECTURAL WOODWORK

07 THERMAL & MOISTURE PROTECTION
SEE ASSEMBLIES & DETAILS

08 OPENINGS
SEE SCHEDULES

09 FINISHES
- 09 20 00 GYPSUM BOARD
- 09 24 00 STUCCO
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- 09 90 00 PAINTING & COATING

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- 11 11 00 VEHICLE LIFTS
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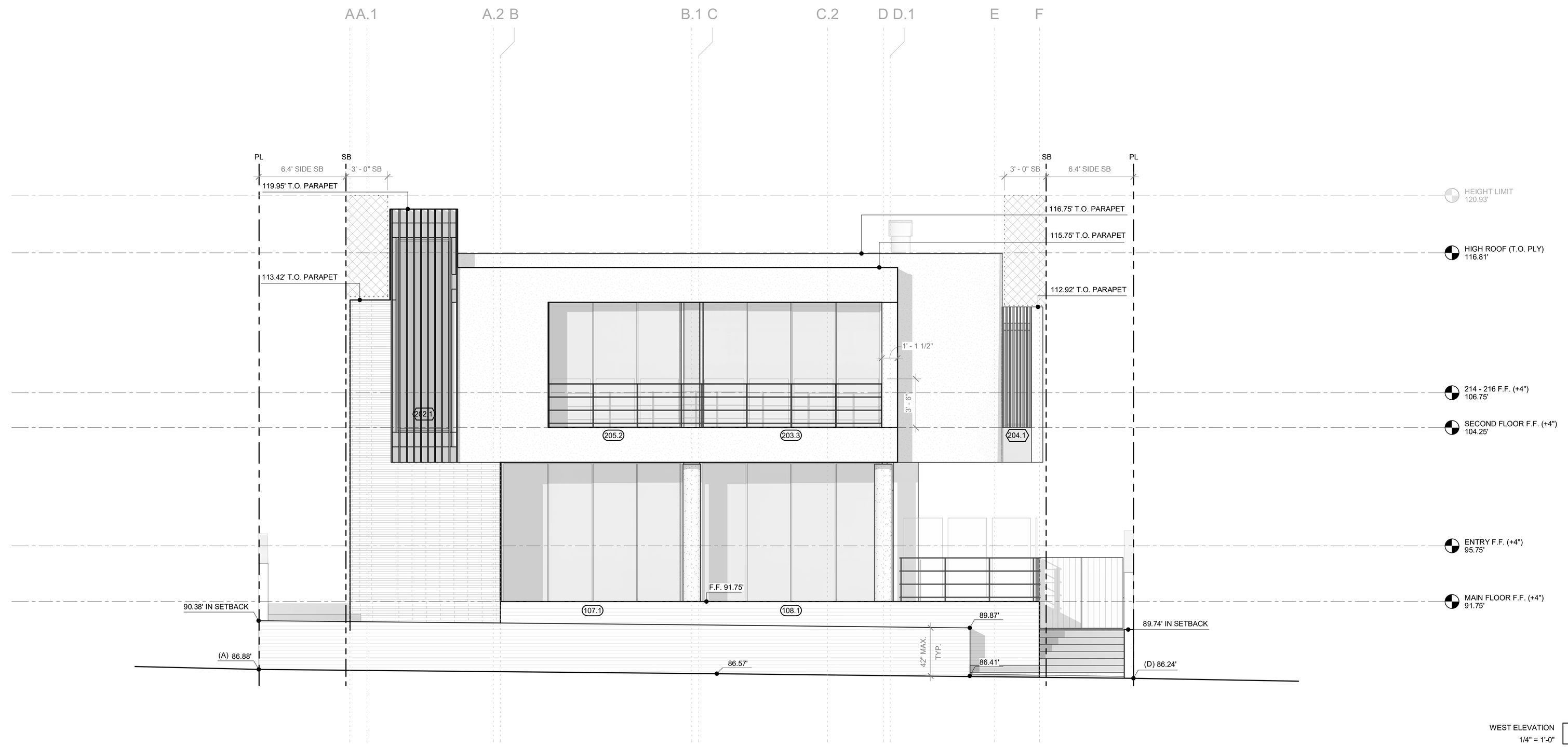
191021 COASTAL DEVELOPMENT PERMIT APPLICATION
191204 CDP CORRECTIONS
191213 PLANCHECK SUBMITTAL

SHEET TITLE

EXTERIOR ELEVATIONS

SHEET NUMBER

A3.01



WEST ELEVATION
1/4" = 1'-0"

1

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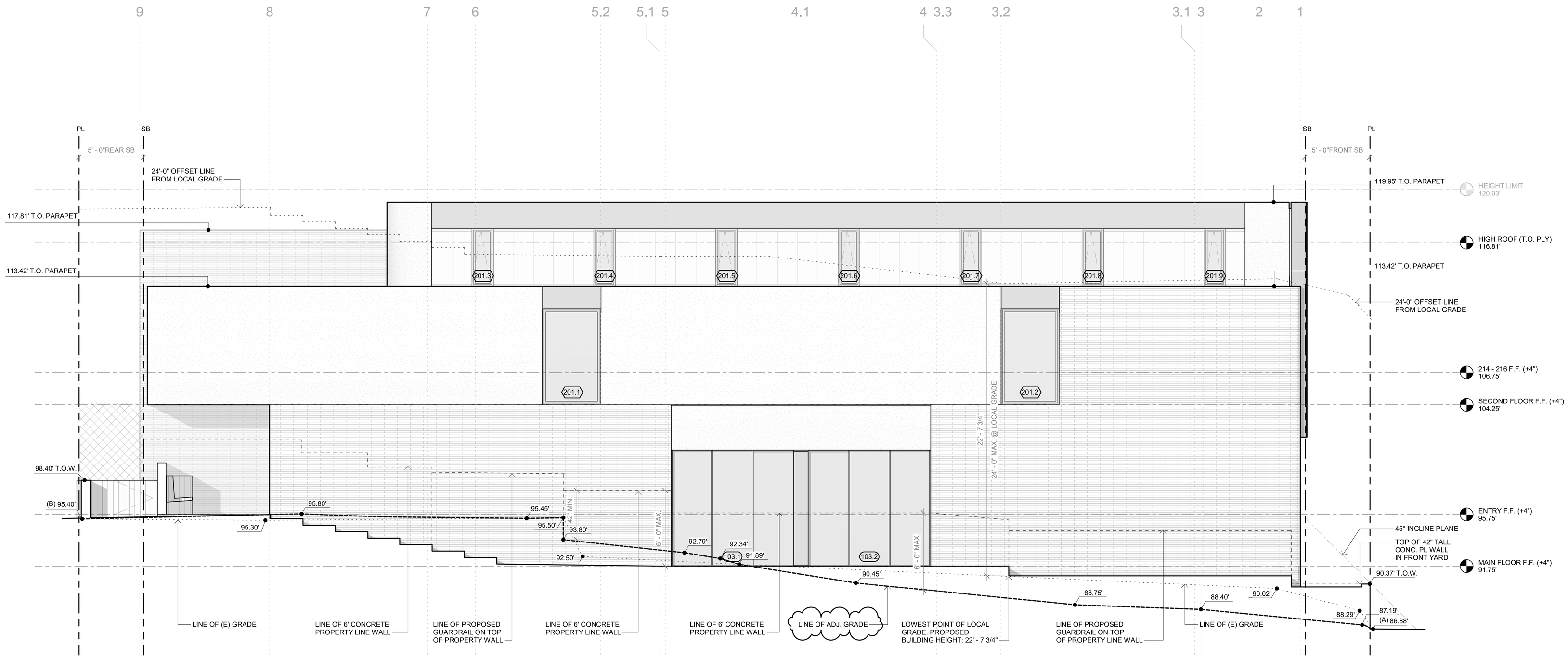
SHEET TITLE

EXTERIOR ELEVATIONS

SHEET NUMBER

A3.02



NORTH ELEVATION 1

1/4" = 1'-0"

EXTERIOR ELEVATION NOTES

1. PARAPETS, SATELLITE ANTENNAE, RAILS, SKYLIGHTS AND ROOF EQUIPMENT MUST BE WITHIN THE HEIGHT LIMIT.
2. DO NOT SCALE FROM DRAWINGS.
3. ALL GUARDRAILS TO BE 42" ABOVE ADJACENT FINISHED WALKING SURFACE.
4. ALL HANDRAILS TO BE 34" - 38" ABOVE FINISHED FLOOR.
5. MAXIMUM 3-15/16" DIAMETER OPENING IN ALL GUARDRAILS OR HANDRAILS, TYP.
6. ALL CHIMNEY ASSEMBLIES AND SPARK ARRESTORS TO BE UL COMPLIANT.
7. CONTRACTOR TO VERIFY REQUIRED HEIGHTS AND BUILDING ENVELOPE DIMENSIONS. NOTIFY ARCHITECT OF ANY DISCREPANCIES.
8. GLAZING WITHIN 18" OF ADJACENT WALKING SURFACE TO BE FULLY TEMPERED.
9. EXTERIOR WALLS WITH A FIRE SEPARATEION DISTANCE OF 5'-0" OR LESS MUST BE 1-HR FIRE-RESISTANCE RATED FOR EXPOSURE TO FIRE FROM BOTH SIDES.
10. SEE *A0.00 TITLE PAGE* FOR BALCONY PROJECTION SUMMARY.

ELEVATIONS KEYNOTES

03 CONCRETE
- 03 35 00 CONCRETE FINISHING

04 MASONRY
- 04 20 00 BRICK RAINSCREEN

05 METAL
- 05 50 00 METAL GUARDRAILS
- 05 70 00 METAL STAIRS

06 WOOD, PLASTICS & COMPOSITES
- 06 15 00 WOOD DECKING
- 06 20 00 FINISH CARPENTRY
- 06 40 00 ARCHITECTURAL WOODWORK

07 THERMAL & MOISTURE PROTECTION

SEE ASSEMBLIES & DETAILS

08 OPENINGS

SEE SCHEDULES

09 FINISHES
- 09 20 00 GYPSUM BOARD
- 09 24 00 STUCCO
- 09 30 00 TILE
- 09 50 00 CEILINGS
- 09 60 00 FLOORING
- 09 72 00 WALL COVERINGS
- 09 75 00 STONE
- 09 78 00 INT. WALL PANELING
- 09 80 00 ACOUSTIC TREATMENT
- 09 90 00 PAINTING & COATING

10 SPECIALTIES
- 10 28 00 TOILET & BATH ACCESSORIES
- 10 30 00 FIREPLACE

11 EQUIPMENT
- 11 11 00 VEHICLE LIFTS
- 11 30 00 KITCHEN APPLIANCES

12 FURNISHINGS
- 12 20 00 WINDOW TREATMENTS

13 SPECIAL CONSTRUCTION
- 13 11 00 SWIMMING POOLS
- 13 24 00 STEAM SHOWERS

14 CONVEYING EQUIPMENT
- 14 20 00 ELEVATOR

22 PLUMBING
- 22 14 00 STORM DRAINAGE
- 22 40 00 PLUMBING FIXTURES
- 22 50 00 POOL SYSTEMS

23 HVAC

PENDING

26 ELECTRICAL
- 26 30 00 POWER GENERATING & STORAGE EQUIPMENT
- 26 56 00 EXTERIOR LIGHTING

32 SITE IMPROVEMENTS
- 32 10 00 VEHICLE PAVING
- 32 30 00 SITE IMPROVEMENTS

LEGEND

- PL — PROPERTY LINE
- SB — SETBACK LINE
- LINE OF ABUTTING ADJACENT GRADE
- LINE OF TOP OF RETAINING WALL OR 42" GUARDRAIL ON SITE WALL
- LINE OF PRE-CONSTRUCTION GRADE & LINE OF ADDED 3'-0" SETBACK FOR WALLS OVER 24'-0" IN HT.
- (X) XX.XX' PROPERTY CORNER
- XX.XX' SPOT ELEVATION
- EM ELECTRIC PANEL & METER
- GM GAS METER
- EV ELECTRIC VEHICLE CHARGER
- X' ELEVATION TRANSITION
- 1/4" : 12" SLOPE

California Coastal Commission
A-5-MNB-20-0020 &
A-5-MNB-20-0041
Exhibit 2 p. 11 of 12

NORELIUS STUDIO
2807 PICO BLVD.
SANTA MONICA, CA 90405
424 248 3717 studio

PROJECT

THE STRAND

1316 THE STRAND
MANHATTAN BEACH, CA
90266

NOTES

NOT FOR CONSTRUCTION

SEAL / SIGNATURE

LICENSED ARCHITECT
BRUCE NORELIUS
No. C-32330
RENEWAL DATE 08/31/2021
STATE OF CALIFORNIA

ISSUE DATES

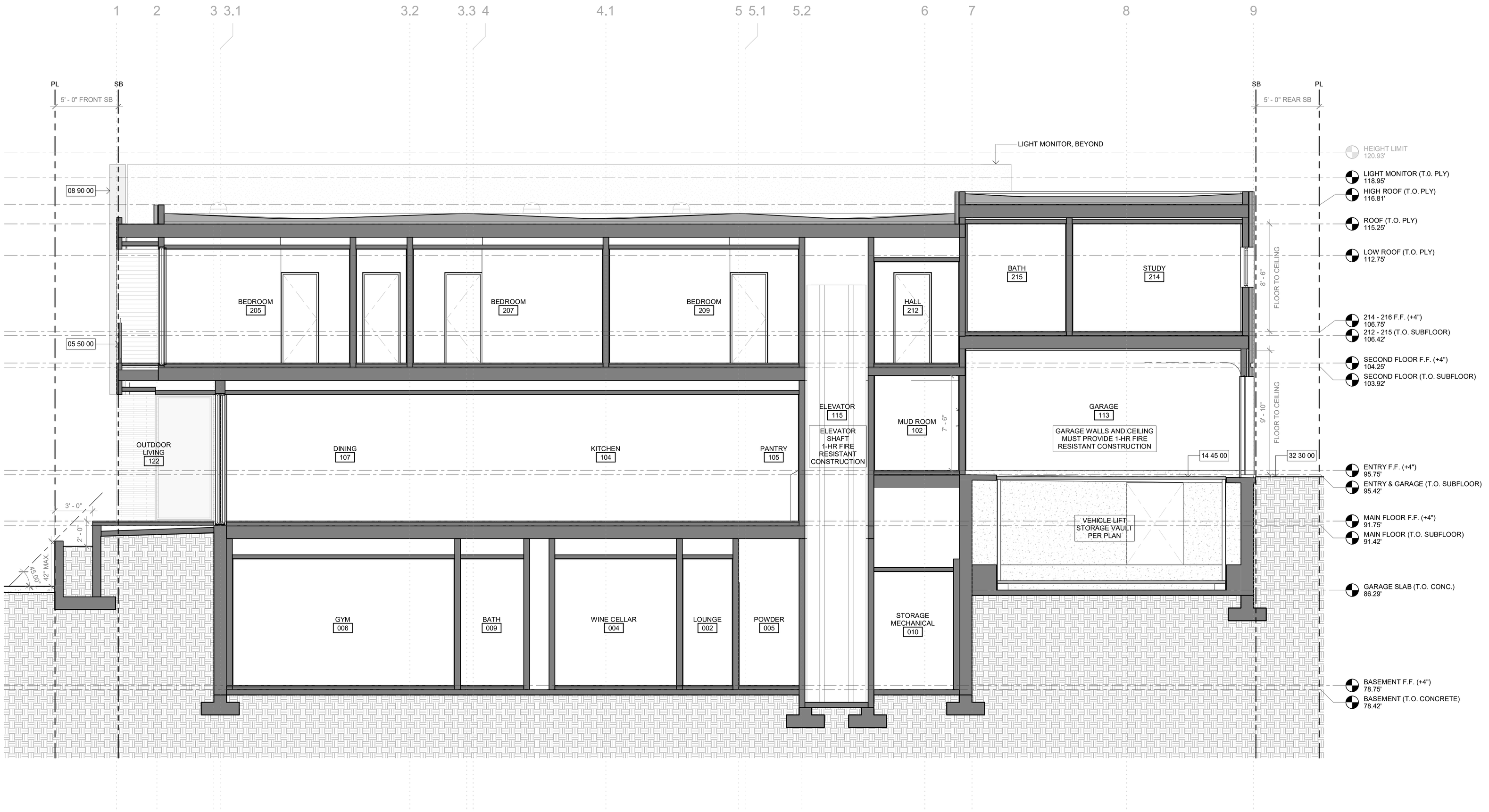
191021 COASTAL DEVELOPMENT PERMIT APPLICATION
191204 CDP CORRECTIONS
191213 PLANCHECK SUBMITTAL

SHEET TITLE

EXTERIOR ELEVATIONS

SHEET NUMBER

A3.03



SECTION 1
1/4" = 1'-0"

1

SECTION NOTES

1. DO NOT SCALE FROM DRAWINGS.
2. DIMENSIONS ARE TO FACE OF WOOD STUD (FOS), CENTERLINE OF STRUCTURAL STEEL, FACE OF STRUCTURAL CONCRETE, AND CENTERLINE OF OPENING UNLESS NOTED OTHERWISE.
3. ANY INCONSISTENCIES OR UNFORESEEN CONDITIONS TO BE REVIEWED BY THE ARCHITECT PRIOR TO PROCEEDING WITH CONSTRUCTION.

SECTION KEYNOTES

03 CONCRETE
- 03 35 00 CONCRETE FINISHING

04 MASONRY
- 04 20 00 BRICK RAINSCREEN

05 METAL
- 05 50 00 METAL GUARDRAILS
- 05 70 00 METAL STAIRS

06 WOOD, PLASTICS & COMPOSITES
- 06 15 00 WOOD DECKING
- 06 20 00 FINISH CARPENTRY
- 06 40 00 ARCHITECTURAL WOODWORK

07 THERMAL & MOISTURE PROTECTION
SEE ASSEMBLIES & DETAILS

08 OPENINGS
SEE SCHEDULES

09 FINISHES
- 09 20 00 GYPSUM BOARD
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- 09 30 00 TILE
- 09 50 00 CEILINGS
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- 26 30 00 POWER GENERATING & STORAGE EQUIPMENT
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32 SITE IMPROVEMENTS
- 32 10 00 VEHICLE PAVING
- 32 30 00 SITE IMPROVEMENTS

California Coastal Commission
A-5-MNB-20-0020 &
A-5-MNB-20-0041
Exhibit 2 p. 12 of 12

NORELIUS STUDIO
2807 PICO BLVD.
SANTA MONICA, CA 90405
424 248 3717 studio

PROJECT

THE STRAND

1316 THE STRAND
MANHATTAN BEACH, CA
90266

NOTES

NOT FOR CONSTRUCTION

SEAL / SIGNATURE

LICENSED ARCHITECT
BRUCE NORELIUS
No. C-32330
RENEWAL DATE 08/31/2021
STATE OF CALIFORNIA

ISSUE DATES

191021 COASTAL DEVELOPMENT PERMIT APPLICATION
191204 CDP CORRECTIONS
191213 PLANCHECK SUBMITTAL

SHEET TITLE

BUILDING SECTION

SHEET NUMBER

A4.00

City Hall 1400 Highland Avenue Manhattan Beach, CA 90266-4795
Telephone (310) 802-5000 FAX (310) 802-5001 TDD (310) 802-3501

RECEIVED
South Coast Region

MAR 23 2020

CALIFORNIA
COASTAL COMMISSION

COASTAL DEVELOPMENT PERMIT

On March 03, 2020, the Community Development Department of the City of Manhattan Beach granted Corinna Cotsen and Lee Rosenbaum, (property owner) this permit for the development described below, subject to the attached Standard and Special conditions. The application for the Coastal Development Permit was submitted to the City and deemed complete on October 21, 2019.

Site: 1316 The Strand

Description: Demolition of a single-family residence and a nonconforming triplex and construction of a new single-family residence with attached three-car garage.

CEQA: The project is Categorically Exempt per 15303 "New Construction or Conversion of Small Structures", as the proposed construction consists of one single-family residence.

Issued by: Ted Faturos, Assistant Planner

COMMUNITY DEVELOPMENT DEPARTMENT
Carrie Tai, AICP, Director

Acknowledgment:

The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

Signature of Permittee: _____ Date: 3/17/2020

California Coastal Commission
A-5-MNB-20-0020 &
A-5-MNB-20-0041
Exhibit 3 p. 1 of 4

Required Findings: (Per Section A.96.150 of the Local Coastal Program)

Written findings are required for all decisions on Coastal Development Permits. Such findings must demonstrate that the project, as described in the application and accompanying material, or as modified by any conditions of approval, conforms with the certified Manhattan Beach Local Coastal Program.

1. The property is located within Area District III (Beach Area) and is zoned Residential High Density, RH.

2. The General Plan and Local Coastal Program/Land Use Plan designation for the property is High Density Residential.

3. The project is consistent with the residential development policies of the Manhattan Beach Local Coastal Program, specifically Policies II. B.1, 2, & 3, as follows:

   II.B.1: The proposed structure is consistent with the building scale in the coastal zone neighborhood and complies with the applicable standards of the Local Coastal Program-Implementation Plan;

   II.B.2: The proposed structure is consistent with the residential bulk control as established by the development standards of the Local Coastal Program-Implementation Plan;

   II.B.3: The proposed structure is consistent with the 30' Coastal Zone residential height limit as required by the Local Coastal Program-Implementation Plan.

4. The project is consistent with the public access and recreation policies of Chapter 3 of the California Coastal Act of 1976, as follows;

   Section 30212 (a) (2): The proposed structure does not impact public access to the shoreline, adequate public access is provided and shall be maintained along The Strand.

   Section 30221: Present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

5. The proposed use is permitted in the RH zone and is in compliance with the City's General Plan designation of High Density Residential; the project will not be detrimental to the public health, safety or welfare of persons residing or working in or adjacent to the neighborhood of such use; and will not be detrimental to properties or improvements in the vicinity or to the general welfare of the City.

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 Community Development Department.

2. Expiration. The Coastal Development Permit shall expire one-year from the date of approval if the project has not commenced during that time. The Director of Community Development may grant a reasonable extension of time for due cause. Said time extension shall be requested in writing by the applicant or authorized agent prior to the expiration of the one-year period.

3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the Director of Community Development.

4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Director of Community Development.

5. Inspections. The Community Development Department staff shall be allowed to inspect the site and the development during construction subject to 24-hour advance notice.

6. Assignment. The permit may be assigned to any qualified persons subject to submittal of the following information to the Director of Community Development:

    a. A completed application and application fee as established by the City's Fee Resolution;

    b. An affidavit executed by the assignee attesting to the assignee's agreement to comply with the terms and conditions of the permit;

c. Evidence of the assignee's legal interest in the property involved and legal capacity to undertake the development as approved and to satisfy the conditions required in the permit;

d. The original permittee's request to assign all rights to undertake the development to the assignee; and,

e. A copy of the original permit showing that it has not expired.

7. Terms and Conditions are Perpetual. These terms and conditions shall be perpetual, and it is the intention of the Director of Community Development and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

Special Conditions:

1. The project shall be developed in conformance with all applicable development standards of the RH zoning district, and Chapter 2 of the Local Coastal Program - Implementation Program.

2. Any future rooftop solar panels must be within the maximum building height limit of 120.93' as shown on the approved plans.

CALIFORNIA COASTAL COMMISSION
South Coast Area Office
300 East Ocean Blvd, Suite 301
Long Beach, CA 90802-4302
(562) 590-5071

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

SECTION I. Appellant(s)

Name, mailing address and telephone number of appellant(s):

SECTION II. Decision Being Appealed

1. Name of local/port government: City of Manhattan Beach

2. Brief description of development being appealed:

   Demolition of an existing 1,568 sq. ft. single-family residence and an existing 2,556 sq. ft. triplex on two adjacent lots and construction of a 9,920 sq. ft. three-story, single-family residence with an attached 845 sq. ft. three-car garage. Lot sizes: 1312 The Strand is 2,987 sq. ft. and 1316 The Strand is 3,300 sq. ft.

3. Development's location (street address, assessor's parcel no., cross street, etc.):

   1312 and 1316 The Strand, Manhattan Beach

4. Description of decision being appealed:

   a. Approval; no special conditions:_____

   b. Approval with special conditions: **XX**

   c. Denial:_____

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A-5-MNB-20-0020
DATE FILED: 4-6-2020
DISTRICT: South Coast

5. Decision being appealed was made by (check one):

   a. Planning Director/Zoning Administrator: XX

   b. City Council/Board of Supervisors: _____

   c. Planning Commission: _____

   d. Other: _____

6. Date of local government's decision: January 7, 2020

7. Local government's file number: Coastal Development Permit No. CA 19-21

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties.
(Use additional paper as necessary.)

1. Name and mailing address of permit applicant:

   Corinna Cotsen and Lee Rosenbaum
   1316 The Strand, Manhattan Beach, CA 90266

2. Name and mailing address of permit applicant's agent:

3. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

   a.

   b.

   c.

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government Coastal Permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page. Please state briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing.

Appeal Contentions:

- The approved single-family residence is significantly larger than the surrounding residential development. The large single-family residence is also out of character with the general pattern of multi-family building in the immediate vicinity. Of the 17 ocean-fronting parcels on the block to the north, on the subject block, and on the block to the south (The Strand between 15th Street and 12th Street), there are 11 multi-family structures ranging from two to four units and only six single family residences. The proposed merger of the two separate lots would also result in a lot size that is larger than 16 of the 17 parcels. The size of proposed structure, the use of the two sites for one single family residence, and the large resulting lot size would be inconsistent with community character as it would facilitate a larger, less dense development pattern and would constitute a negative precedent that would result in potential significant cumulative impact if other similar projects were approved.
- The City CDP does not include approval of the lot merger. City staff has indicated that the applicant has applied for the lot merger, but that the lot merger has not yet been approved. On the subject site, the Implementation plan allows a minimum of one unit per lot, without the merger in place, the proposed development results in less than one unit per lot. More importantly, the land use on the subject site is "RH - High Density Residential." The intent of the RH land use designation is to promote density through the construction of multi-family structures. RH properties are permitted by right to 1-5 units and can construct 6+ units with a Precise Development Plan or Site Development Permit. The Minimum Lot Area Per Dwelling Unit on RH sites is 850 sq. ft. The combined total lot size of the 2 parcels is 6,287 (2,987 (1313) +3,300 (1316)). While it is likely that other zoning standards would reduce the potential maximum number of units that could be constructed on the two sites, based only on the size of the two lots and the minimum lot size per dwelling unit, 7.4 units could be constructed (6,287/850).

Relevant LUP Policies:

B. Residential Development

POLICY II.B.1: Maintain building scale in coastal zone residential neighborhoods consistent with Chapter 2 of the Implementation Plan.

POLICY II.B.2: Maintain residential building bulk control established by development standards in Chapter 2 of the Implementation Plan.

Relevant IP Policies:

A.01.030. Purposes

The Broad puposes of the Zoning Code are to protect and promote the public health, safety, and general welfare, and to implement the policies of the City of Manhattan Beach Local Coastal Plan, as provided in the California Government Code, Title 7, Chapters 3 and 4 and in the California Consitution, Chapter 11, Section 7. More Specifically, the Zoning Code is intended to:

A. *Provide a precise guide for the physical development of the Coastal Zone in order to:*

    1. *Preserve the character and quality of residential neighborhoods consistent with the character of the two area districts of the Coastal Zone;*

    2. *Foster convenient, harmonious, and workable relationships among land uses; and,*

    3. *Achieve progressively the arrangement of land uses described in the Local Coastal Plan...*

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

_____ _____

Signature of Appellant(s) or Authorized Agent Date

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

Signature of Appellant(s) or Authorized Agent

Date: 4/3/20

Note: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby
authorize _____
to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date: _____

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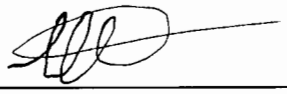
South Coast Region
APR 03 2020
CALIFORNIA
COASTAL COMMISSION

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT (Page 4)

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.



Signature of Appellant(s) or Authorized Agent

Date: 04/06/2020

Note: If signed by agent, appellant(s) must also sign below.

Section VI. Agent Authorization

I/We hereby
authorize _____
to act as my/our representative and to bind me/us in all matters concerning this appeal.

Signature of Appellant(s)

Date: _____

City Hall 1400 Highland Avenue Manhattan Beach, CA 90266-4795
Telephone (310) 802-5000 FAX (310) 802-5001 TDD (310) 802-3501

COASTAL DEVELOPMENT PERMIT

On March 03, 2020, the Community Development Department of the City of Manhattan Beach granted Corinna Cotsen and Lee Rosenbaum, (property owner) this permit for the development described below, subject to the attached Standard and Special conditions. The application for the Coastal Development Permit was submitted to the City and deemed complete on October 21, 2019. The application for the lot merger was submitted to the City and deemed complete on November 15, 2019.

Site: 1316 The Strand

Description (corrected *nunc pro tunc* 07/08/2020): Demolition of a single-family residence and a nonconforming triplex on separate adjacent lots, merger of two adjacent lots into one single lot, and construction of a new single-family residence with attached three-car garage.

CEQA: The project is Categorically Exempt per 15303 "New Construction or Conversion of Small Structures", as the proposed construction consists of one single-family residence.

Issued by: Ted Faturos, Assistant Planner

COMMUNITY DEVELOPMENT DEPARTMENT
Carrie Tai, AICP, Director

/s/Carrie Tai

Acknowledgment:

The undersigned permittee acknowledges receipt of this permit and agrees to abide by all terms and conditions thereof.

Signature of Permittee: _____ Date: 7/23/2020

Fire Department Address: 400 15th Street, Manhattan Beach, CA 90266 FAX (310) 802-5201
Police Department Address: 420 15th Street, Manhattan Beach, CA 90266 FAX (310) 802-5101
Public Works Department Address: 3621 Bell Avenue, Manhattan Beach, CA 90266 FAX (310) 802-5301
City of Manhattan Beach Web Site: http://www.ci.manhattan-beach.ca.us

Required Findings: (Per Section A.96.150 of the Local Coastal Program)

Written findings are required for all decisions on Coastal Development Permits. Such findings must demonstrate that the project, as described in the application and accompanying material, or as modified by any conditions of approval, conforms with the certified Manhattan Beach Local Coastal Program.

1. The property is located within Area District III (Beach Area) and is zoned Residential High Density, RH.

2. The General Plan and Local Coastal Program/Land Use Plan designation for the property is High Density Residential.

3. The project is consistent with the residential development policies of the Manhattan Beach Local Coastal Program, specifically Policies II. B.1, 2, & 3, as follows:

   II.B.1: The proposed structure is consistent with the building scale in the coastal zone neighborhood and complies with the applicable standards of the Local Coastal Program-Implementation Plan;

   II.B.2: The proposed structure is consistent with the residential bulk control as established by the development standards of the Local Coastal Program-Implementation Plan;

   II.B.3: The proposed structure is consistent with the 30' Coastal Zone residential height limit as required by the Local Coastal Program-Implementation Plan.

4. The project is consistent with the public access and recreation policies of Chapter 3 of the California Coastal Act of 1976, as follows;

   Section 30212 (a) (2): The proposed structure does not impact public access to the shoreline, adequate public access is provided and shall be maintained along The Strand.

   Section 30221: Present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.

5. The proposed use is permitted in the RH zone and is in compliance with the City's General Plan designation of High Density Residential; the project will not be detrimental to the public health, safety or welfare of persons residing or working in or adjacent to the neighborhood of such use; and will not be detrimental to properties or improvements in the vicinity or to the general welfare of the City.

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 Community Development Department.

2. Expiration. The Coastal Development Permit shall expire one-year from the date of approval if the project has not commenced during that time. The Director of Community Development may grant a reasonable extension of time for due cause. Said time extension shall be requested in writing by the applicant or authorized agent prior to the expiration of the one-year period.

3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the Director of Community Development.

4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Director of Community Development.

5. Inspections. The Community Development Department staff shall be allowed to inspect the site and the development during construction subject to 24-hour advance notice.

6. Assignment. The permit may be assigned to any qualified persons subject to submittal of the following information to the Director of Community Development:

    a. A completed application and application fee as established by the City's Fee Resolution;

    b. An affidavit executed by the assignee attesting to the assignee's agreement to comply with the terms and conditions of the permit;

c. Evidence of the assignee's legal interest in the property involved and legal capacity to undertake the development as approved and to satisfy the conditions required in the permit;

d. The original permittee's request to assign all rights to undertake the development to the assignee; and,

e. A copy of the original permit showing that it has not expired.

7. Terms and Conditions are Perpetual. These terms and conditions shall be perpetual, and it is the intention of the Director of Community Development and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

Special Conditions:

1. The project shall be developed in conformance with all applicable development standards of the RH zoning district, and Chapter 2 of the Local Coastal Program - Implementation Program.

2. Any future rooftop solar panels must be within the maximum building height limit of 120.93' as shown on the approved plans.

CALIFORNIA COASTAL COMMISSION
South Coast Area Office
300 East Ocean Blvd, Suite 301
Long Beach, CA 90802-4302
(562) 590-5071

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

SECTION I. Appellant(s)

Name, mailing address and telephone number of appellant(s):

SECTION II. Decision Being Appealed

1. Name of local/port government: City of Manhattan Beach

2. Brief description of development being appealed:

   Demolition of an existing 1,568 sq. ft. single-family residence and an existing 2,556 sq. ft. triplex on two adjacent lots and construction of a 9,920 sq. ft. three-story, single-family residence with an attached 845 sq. ft. three-car garage. Merger of the two existing adjacent lots (1312 The Strand is 2,987 sq. ft. and 1316 The Strand is 3,300 sq. ft.) into one 6,287 sq. ft. lot.

3. Development's location (street address, assessor's parcel no., cross street, etc.):

   1312 and 1316 The Strand, Manhattan Beach

4. Description of decision being appealed:

   a. Approval; no special conditions:_____

   b. Approval with special conditions: **XX**

   c. Denial:_____

Note: For jurisdictions with a total LCP, denial decisions by a local government cannot be appealed unless the development is a major energy or public works project. Denial decisions by port governments are not appealable.

TO BE COMPLETED BY COMMISSION:

APPEAL NO:_____
DATE FILED:_____
DISTRICT: South Coast

5. Decision being appealed was made by (check one):

   a. Planning Director/Zoning Administrator: **XX**

   b. City Council/Board of Supervisors: _____

   c. Planning Commission: _____

   d. Other: _____

6. Date of local government's decision: March 3, 2020

7. Local government's file number: Coastal Development Permit No. CA 19-21

SECTION III. Identification of Other Interested Persons

Give the names and addresses of the following parties.
(Use additional paper as necessary.)

1. Name and mailing address of permit applicant:

   Corinna Cotsen and Lee Rosenbaum
   Corinna Cotsen 1991 Trust
   6363 Wilshire Blvd., Suite 650
   Los Angeles, CA 90048

2. Name and mailing address of permit applicant's agent:

   _____
   _____
   _____
   _____

3. Names and mailing addresses as available of those who testified (either verbally or in writing) at the city/county/port hearing(s). Include other parties which you know to be interested and should receive notice of this appeal.

   a. _____
      _____
      _____

   b. _____
      _____
      _____

   c. _____
      _____
      _____

SECTION IV. Reasons Supporting This Appeal

Note: Appeals of local government Coastal Permit decisions are limited by a variety of factors and requirements of the Coastal Act. Please review the appeal information sheet for assistance in completing this section, which continues on the next page. Please state briefly your reasons for this appeal. Include a summary description of Local Coastal Program, Land Use Plan, or Port Master Plan policies and requirements in which you believe the project is inconsistent and the reasons the decision warrants a new hearing.

Appeal Contentions:

There was a previous Notice of Final Action (NOFA) for essentially the same project that was already appealed by two members of the Commission (Ref: Appeal No. A-5-MNB-20-0020). Subsequent to staff posting the staff report for Appeal No. A-5-MNB-20-0020, in which staff recommended that the Commission determine that a substantial issue exists with respect to the grounds of the appeal, the applicant requested postponement of the appeal hearing. Contrary to staff's direction, the applicant then requested that the City revise the previously approved project and re-issue the NOFA to incorporate the lot merger (while still not withdrawing their previous application); which does not in any way address the resource protection issues raised by the previous appeal. Moreover, the new revised project raises all the previous issues and grounds for appeal while simply clarifying that the lot merger, which the previous appeal noted was inconsistent with the LCP and Coastal Act, is part of the approved project. Therefore, the new action by the City continues to raise all the same issues as the original action by the City as discussed in more detail below.

The approved single-family residence is significantly larger than the surrounding residential development. The large single-family residence is also out of character with the general pattern of multi-family buildings in the immediate vicinity. Of the 17 ocean-fronting parcels on the block to the north, on the subject block, and on the block to the south (The Strand between 15th Street and 12th Street), there are 11 multi-family structures ranging from two to four units and only six single family residences. The proposed merger of the two separate lots would also result in a lot size that is larger than 16 of the 17 parcels. The size of the proposed structure, the use of the two sites for one single family residence, and the large resulting lot size would be inconsistent with community character as it would facilitate a larger, less dense development pattern and would constitute a negative precedent that would result in potential significant cumulative impacts if other similar projects were approved.

In past permit and appeal actions, the Commission has found that new development should be concentrated in existing developed areas where it can be accommodated in order to minimize impacts to coastal resources as well as to minimize energy consumption and vehicle miles traveled and the loss of residential units in urban areas has been an emerging concern for the Commission in many other communities, especially in the greater Los Angeles areas, as many existing duplexes and triplexes have been converted to large single family residences. In this case, the approved project would result in the loss of residential units on site inconsistent with development policies and provisions of the City's certified LCP

Specifically, the two project sites support 4 residential units. As approved by the City, the project would result in the reduction of 3 units on site so that there would only be one residential unit over both lots inconsistent with the land use plan designation for the site that would provide a minimum of one unit per lot and is clearly intended to allow for even higher densities on each lot. The approved lot merger is intended to facilitate such reduction in density on site by eliminating one of the lots. The land use on the subject site is "RH - High Density Residential." The intent of the RH land use designation is to promote density through the construction of multi-family structures. RH properties are permitted by right to 1-5 units and can construct 6+ units with a Precise Development Plan or Site Development Permit. The Minimum Lot Area Per Dwelling Unit on RH sites is 850 sq. ft. The combined total lot size of the 2 parcels is 6,287 (2,987 (1313) +3,300 (1316)). While it is likely that other zoning standards would reduce the potential maximum number of units that could be constructed on the two sites, based only on the size of the two lots and the minimum lot size per dwelling unit, 7.4 units could be constructed (6,287/850).

Relevant LUP Policies:

B. Residential Development

POLICY II.B.1: Maintain building scale in coastal zone residential neighborhoods consistent with Chapter 2 of the Implementation Plan.

POLICY II.B.2: Maintain residential building bulk control established by development standards in Chapter 2 of the Implementation Plan.

Relevant IP Policies:

A.01.030. Purposes

The Broad purposes of the Zoning Code are to protect and promote the public health, safety, and general welfare, and to implement the policies of the City of Manhattan Beach Local Coastal Plan, as provided in the California Government Code, Title 7, Chapters 3 and 4 and in the California Constitution, Chapter 11, Section 7. More Specifically, the Zoning Code is intended to:

A. *Provide a precise guide for the physical development of the Coastal Zone in order to:*

    1. *Preserve the character and quality of residential neighborhoods consistent with the character of the two area districts of the Coastal Zone;*

    2. *Foster convenient, harmonious, and workable relationships among land uses; and,*

    3. *Achieve progressively the arrangement of land uses described in the Local Coastal Plan...*

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

DocuSigned by:
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Signature of Appellant(s) or Authorized Agent

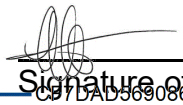
08/09/2020

Date

SECTION V. Certification

The information and facts stated above are correct to the best of my/our knowledge.

DocuSigned by:



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08/10/2020

Signature of Appellant(s) or Authorized Agent Date

URGENCY ORDINANCE NO. 19-0020-U

AN INTERIM ORDINANCE OF THE CITY OF MANHATTAN BEACH AMENDING THE CITY'S LOCAL COASTAL PROGRAM TO REGULATE RESIDENTIAL DEVELOPMENT PROJECTS THAT REQUIRE THE DEMOLITION OF DWELLING UNITS, AND MAKING A DETERMINATION OF EXEMPTION UNDER CEQA

THE MANHATTAN BEACH CITY COUNCIL HEREBY ORDAINS AS FOLLOWS:

Section 1. The City Council hereby amends Manhattan Beach Local Coastal Program Section A.12.020 to regulate residential development projects that require the demolition of residential dwelling units, by adding subsection (P) to the "Additional Use Regulations" column for "Residential Uses" to read as follows:

"(P). The City shall not approve a residential development project that will require the demolition of legal residential dwelling units unless the project is consistent with Government Code Section 66300(d), as the same may be amended from time to time. For purposes of this subsection, a residential development project shall include remodels/alterations, as well as the construction of a single-family dwelling.

A junior accessory dwelling unit, as defined in Section 10.74.020 of the Manhattan Beach Municipal Code, may be constructed to comply with this subsection, and the property owner shall record a declaration of restrictions, in a form approved by the City Attorney, placing the following restrictions on the property, the property owner, and all successors in interest: (i) the property owner shall be an owner-occupant, unless the owner is a government agency, land trust, or housing organization; (ii) the junior accessory dwelling unit is to be rented only for terms of 30 days or longer; (iii) the junior accessory dwelling unit is to be rented only for an "affordable rent" as defined in Health and Safety Code Section 50053; (iv) the junior accessory dwelling unit is not to be sold or conveyed separately from the single-family dwelling; (v) the property owner and all successors in interest shall maintain the junior accessory dwelling unit and the property in accordance with all applicable junior accessory dwelling unit requirements and standards, including the restrictions on the size and attributes of the junior accessory dwelling unit provided in Government Code Section 65852.22; and (vi) that any violation will be subject to penalties as provided in Municipal Code Chapter 10.04. Proof of recordation of the covenant shall be provided to the City at a time deemed appropriate by the Director of Community Development."

Section 2. Term. This Ordinance is an urgency ordinance for the immediate preservation of the public peace, health and safety within the meaning of Government Code Sections 65858 and 36937(b) and therefore shall be effective

California Coastal Commission
A-5-MNB-20-0020 &
A-5-MNB-20-0041
Exhibit 7 p. 1 of 4

immediately upon its adoption. This Ordinance shall expire on January 31, 2020, unless extended by the City Council at a regularly noticed public hearing, pursuant to California Government Code Section 36937(b).

Section 3. Legislative Findings. The City is currently studying the potential land use, public services, parking, traffic, and infrastructure effects of residential development projects that reduce the total number of residential dwelling units in the City. As the Legislature noted in its findings for Senate Bill No. 330, "California is experiencing a housing supply crisis, with housing demand far outstripping supply." The Legislature also found that this housing crisis has resulted in – among other things – increased poverty and homelessness, longer commute times, higher exposure to fire hazard, and increasing greenhouse gas emissions. Residential development projects that reduce the number of dwelling units in the City will exacerbate the housing crisis and its various consequences. Unless the City adopts this interim urgency ordinance, the City may be compelled to approve a residential development project that may have severe negative impacts on the surrounding community or adopt permanent standards without the benefit of an inquiry and study on the appropriate restrictions on the approval of residential development projects in the City and in particular areas. Based upon the foregoing, the City Council hereby finds that there is a current and immediate threat to the public health, safety, or welfare if new residential development projects reduce the number of dwelling units in the City, and that the approval of additional subdivisions, use permits, variances, building permits, or any other applicable entitlement for such projects which is required in order to comply with the City's Local Coastal Program would result in that threat to public health, safety, or welfare. Due to the foregoing circumstances, it is necessary for the preservation of the public health, safety, and welfare for this Ordinance to take effect immediately. This Ordinance is an urgency ordinance for the immediate preservation of the public peace, health, and safety within the meaning of Government Code Sections 65858 and 36937(b) and therefore shall be passed immediately upon its introduction and shall become effective immediately upon its adoption.

The City intends to consider the adoption of permanent regulations within a reasonable time. The Planning Commission, the City Council and the people of Manhattan Beach require a reasonably limited, yet sufficient period of time to establish permanent regulations for residential development projects that require the demolition of dwelling units. Given the time required to schedule and conduct duly noticed public hearings before the Planning Commission and the City Council, the City Council finds that this Ordinance is necessary to prevent the approval of residential development projects with a reasonable potential to conflict with the City's permanent regulations. The City Council has the authority to adopt an interim ordinance pursuant to Government Code Sections 65858 and 36937(b) in order to protect the public health, safety, or welfare.

Section 4. California Environmental Quality Act Exemption. The City Council determines that this ordinance is exempt from environmental review under the California Environmental Quality Act, (California Public Resources Code §§ 21000, et seq., ("CEQA") and the CEQA Guidelines (14 California Code of Regulations §§ 15000, et seq.) because this zoning ordinance implements the provisions of Government Code Section 65852.2 and is therefore exempt from CEQA pursuant to Public Resources Code Section 21080.17 and California Code of Regulations Section 15282(h). To the extent that any provisions of this ordinance are not exempt pursuant to Section 15282(h), the amendments are not subject to CEQA pursuant to CEQA Guidelines Section 15061(b)(3), because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

Section 5. Internal Consistency. Any provision of the Local Coastal Program, to the extent that it is inconsistent with this Ordinance is hereby repealed, and the City Clerk shall make any necessary changes to the Local Coastal Program for internal consistency.

Section 6. Severability. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance, and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the Ordinance would be subsequently declared invalid or unconstitutional.

Section 7. Savings Clause. Neither the adoption of this Ordinance nor the repeal or amendment by this Ordinance of any ordinance or part or portion of any ordinance previously in effect in the City, or within the territory comprising the City, shall constitute a waiver of any license, fee or penalty or the penal provisions applicable to any violation of such ordinance.

Section 8. Discretionary and non-discretionary residential development applications which include all of the submittal requirements for a complete application, that are accepted by the City before 5:30 PM, December 17, 2019, are not subject to this urgency ordinance.

ADOPTED on December 17, 2019.

NANCY HERSMAN
Mayor

ATTEST:

LIZA TAMURA
City Clerk

APPROVED AS TO FORM

QUINN M. BARROW
City Attorney

DEPARTMENT 85 LAW AND MOTION RULINGS

Case Number: 20STCP04214 **Hearing Date:** January 4, 2022 **Dept:** 85

Corinna Cotsen, et al. v. California Coastal Commission, 20STCP04214

Tentative decision on petition for writ of mandate: denied

Petitioners Corinna Cotsen ("Cotsen"), as Trustee of the Corinna Cotsen 1991 Trust, ("Cotsen Trust"), and Coral Courts, LLC ("Coral Courts") apply for a writ of mandate directing Respondent California Coastal Commission ("Coastal Commission" or "Commission") to set aside its decision to deny a Coastal Development Permit ("CDP") for the project at 1312 The Strand ("1312 Property") and 1316 The Strand ("1316 Property") Manhattan Beach, California (collectively, "Cotsen Property").

The court has read and considered the moving papers, opposition, and reply, and renders the following tentative decision.

A. Statement of the Case

1. The Petition

Petitioners Cotsen Trust and Coral Courts commenced this proceeding on December 23, 2020 alleging causes of action for (1) traditional mandamus, (2) administrative mandamus, and (3) violation of 42 USC section 1983. The verified Petition alleges in pertinent part as follows.

The Cotsen Trust owns the Cotsen Property. The Cotsen Property is 6,287 square feet and is separated from the sandy beach by a downslope 12-foot-wide pedestrian walkway, a landscaped buffer, and a paved bike path. The area surrounding the Cotsen Property is developed with a mix of single and multi-family residences.

Cotsen inherited the 1316 Property from her grandparents who built the existing house on it in 1956 and lived there until Cotsen's grandmother passed away in 1995. Cotsen subsequently transferred the 1316 Property to the Cotsen Trust.

In 2018, John Lyon, Cotsen's neighbor owning the 1312 Property, passed away. The 1312 Property was developed with a triplex and Cotsen purchased it through Coral Courts. Coral Courts subsequently transferred the 1312 Property to the Cotsen Trust. Coral Courts no longer holds any interest in the 1312 Property. Cotsen's intent is to demolish both her family house and the 1312 Property's triplex and build a single-family house for her family across both parcels.

The Cotsen Property is located in the Residential High Density ("RH") zone of the City of Manhattan Beach ("City") and governed by Manhattan Beach Municipal Code ("MBMC") section 10.12.020. It is also in Area III - Beach Area of the coastal zone. The RH zone provides for the development of 1-5 residential units on RH properties by right.

On October 21, 2019, Cotsen filed a CDP application with the City to demolish the structures on Cotsen Property and to construct a new, two-story over a basement, 9.923 square foot single-family residence and attached three-car garage on the Cotsen Property (the "Project"). The Project is a single-family residence that is compliant with the RH zone and allowed by right under the MBMC and the City's Local Coastal Program ("LCP"). The Project is designed to comply with all laws, policies, and guidelines in effect when the CDP application was filed and deemed complete. The 2019 laws do not prohibit a

single-family residence in the RH zone, do not prevent a lot merger, and do not require a one-to-one replacement of housing units. The Project objectively complies with the LCP.

The City deemed the CDP application complete on October 21, 2019 and approved it on January 7, 2020, finding that the Project is consistent with the LCP. On March 19, 2020, the City sent a Notice of Final Government Action to the Commission. The Notice of Final Government Action did not include the merger of the 1312 Property and the 1316 Property in its Project description.

On April 6, 2020, Commissioners Linda Escalante ("Escalante") and Mike Wilson ("Wilson") appealed the City's approval of the CDP Application ("Appeal No. A-5-MNB-20-0020"), arguing that the Project is inconsistent with the zoning and residential development policies of the LCP.

On November 15, 2019, an associated application for a lot merger of the 1312 Property and the 1316 Property was submitted to the City and deemed complete. The City processed the lot merger application, reissued the CDP with an updated Project description, and issued a revised Notice of Final Government Action on July 23, 2020.

Commissioners Escalante and Wilson filed Appeal No. A-5-MNB-20-0041, reasserting their arguments that the Project is inconsistent with the zoning and residential development policies of the LCP (collectively, Appeal No. A-5-MNB-20-0041 and Appeal No. A-5-MNB-20-0020 are referred to as the "Appeals").

The Commission accepted the Appeals on October 8, 2020, finding that a substantial issue existed with regard to the Project. On October 16, 2020, the Commission's Executive Director issued a Report and Recommendation (the "staff report") recommending that the CDP application be denied. On November 4, 2020, the Commission held a public hearing on the Appeals. After the public testimony had concluded, the Commission rejected the Project and voted to deny the CDP application.

Petitioners have exhausted all administrative remedies and has no other plain, speedy, or adequate remedy at law.

2. Course of Proceedings

On February 25, 2021, the parties stipulated to bifurcate and separately try the mandamus claims and the claim for violation of 42 USC section 1983. The non-mandamus claim was stayed.

B. Standard of Review

CCP section 1094.5 is the administrative mandamus provision which structures the procedure for judicial review of adjudicatory decisions rendered by administrative agencies. Topanga Ass'n for a Scenic Community v. County of Los Angeles, ("Topanga") (1974) 11 Cal.3d 506, 514-15.

CCP section 1094.5 does not on its face specify which cases are subject to independent review, leaving that issue to the courts. Fukuda v. City of Angels, (1999) 20 Cal.4th 805, 811. Decisions of the Commission are governed by the substantial evidence standard. Ross v. California Coastal Comm., (2011) 199 Cal.App.4th 900, 921. "Substantial evidence" is relevant evidence that a reasonable mind might accept as adequate to support a conclusion (California Youth Authority v. State Personnel Board, ("California Youth Authority") (2002) 104 Cal.App.4th 575, 585) or evidence of ponderable legal significance, which is reasonable in nature, credible and of solid value. Mohilef v. Janovici, (1996) 51 Cal.App.4th 267, 305, n.28.

The Commission's decision and findings may rely on any relevant evidence, regardless of its admissibility in civil actions. 14 CCR §13065. Substantial evidence on which the Commission may rely includes expert opinions, photographs, and observations from Commissioners, Commission staff, and the public. La Costa Beach Homeowners' Assn., *supra*, 101 Cal.App.4th at 819; LT-WR, LLC v. California Coastal Com., (2007) 152 Cal.App.4th 770, 793-94.

The court may not reweigh the evidence, or disregard or overturn a finding simply because a contrary finding would be more reasonable. Boreta Enterprises, Inc. v. Department of Alcoholic Beverage Control, (1970) 2 Cal.3d 85, 94. A court may only overturn the agency's decision if a reasonable person could not have reached the decision based on the evidence that the agency had before it. Bolsa Chica Land Trust v. Superior Court, (1999) 71 Cal.App.4h 493, 503.

An agency is presumed to have regularly performed its official duties (Evid. Code §664), and the petitioner therefore has the burden of proof. Steele v. Los Angeles County Civil Service Coastal Commission, (1958) 166 Cal.App.2d 129, 137. The petitioner has the burden of demonstrating that the agency's findings are not supported by substantial evidence in light of the whole record. Young v. Gannon, (2002) 97 Cal.App.4th 209, 225. The trial court considers all evidence in the administrative record, including evidence that detracts from evidence supporting the agency's decision. California Youth Authority, *supra*, 104 Cal.App.4th at 585.

Petitioners are obligated to lay out the evidence favorable to the other side and show why it is lacking. The "[f]ailure to do so is fatal" to any substantial evidence challenge and "is deemed a concession that the evidence supports the findings." Defend the Bay v. City of Irvine, (2004) 11928 Cal.App.4th 1261, 1266. The reviewing court should "not independently review the record to make up for appellant's failure to carry his burden." Ibid. The court must resolve reasonable doubts in favor of the Commission's decision. Paoli v. California Coastal Com. (1986) 178 Cal.App.3d 544, 550.) It may reverse only if, based on the evidence before the Commission, no reasonable person could have reached the Commission's conclusion. La Costa Beach Homeowners Assn. v. California Coastal Com. (2002) 101 Cal.App.4th 804, 814.

The agency's decision must be based on the evidence presented at the hearing. Board of Medical Quality Assurance v. Superior Court, (1977) 73 Cal.App.3d 860, 862. The hearing officer is only required to issue findings that give enough explanation so that parties may determine whether, and upon what basis, to review the decision. Topanga, *supra*, 11 Cal.3d at 514-15. Implicit in CCP section 1094.5 is a requirement that the agency set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order. Id. at 515.

Legal issues are for the court to decide. However, California law affords "great weight" to the Commission's interpretation of the Coastal Act and its regulations, given its special familiarity with these legal issues. Ross v. California Coastal Com. (2011) 199 Cal.App.4th 900, 922-23. The court's review is "quite limited, and the Commission is "given substantial deference." Evans v. City of San Jose, (2005) 128 Cal.App.4th 1123, 1145-46.

C. The Coastal Act

1. The LCP

The Coastal Act of 1976 (Public Resources Code[1] §30000 *et seq.*,) ("Coastal Act") is the legislative continuation of the coastal protection efforts commenced when the People passed Proposition 20, the 1972 initiative that created the Commission. *See* Ibarra v. California Coastal Comm., (1986) 182 Cal.App.3d 687, 693. One of the primary purposes of the Coastal Act is the avoidance of deleterious consequences of development on coastal resources. Pacific Legal Foundation v. California Coastal Comm., (1982) 33 Cal.3d 158, 163. The California Supreme Court described the Coastal Act as a comprehensive scheme to govern land use planning for the entire coastal zone of California. Yost v. Thomas, (1984) 36 Cal.3d 561, 565. The Coastal Act must be liberally construed to accomplish its purposes and objectives. §30009.

The Coastal Act's goals are binding on both the Coastal Commission and local government and include: (1) maximizing, expanding and maintaining public access (§§ 30210-14); (2) expanding and protecting public recreation opportunities (§§ 30220-24); 3) protecting and enhancing marine resources including biotic life (§§ 30230-37); and (4) protecting and enhancing land resources (§§ 30240-44). The supremacy of these statewide policies over local, parochial concerns is a primary purpose of the Coastal Act, and the Coastal Commission is therefore given the ultimate authority under the Coastal Act and its interpretation. Pratt Construction Co. v. California Coastal Comm., ("Pratt") (2008) 162 Cal.App.4th 1068, 1075-76.

Because local areas within the coastal zone may have unique issues not amenable to centralized administration, Coastal the Act "encourage[s] state and local initiatives and cooperation in preparing procedures to implement coordinated planning and development" in the coastal zone. §30001.5; Ibarra v.

California Coastal Comm., *supra*, 182 Cal.App.3d at 694-96. To that end, the Coastal Act requires that "each local government lying, in whole or in part, within the coastal zone" prepare a LCP. §30500(a). The local government prepares the LCP in consultation with the Coastal Commission and with full public participation. §§ 30500(a), (c), 30503; McAllister v. California Coastal Comm., (2009) 169 Cal.App.4th 912, 930, 953. The Coastal Commission has no authority to impose either an LUP or an LIP on local governments. Ibarra v. California Coastal Comm., *supra*, 182 CaI.App.3d at 696.

The LCP provides a comprehensive plan for development within the coastal zone with a focus on preserving and enhancing the overall quality of the coastal zone environment as well as expanding and enhancing public access. Citizens of Goleta Valley v. Board of Supervisors, (1990) 52 Cal.3d 553, 571. The Coastal Act defines an "LCP" as:

> "[A] local government's (a) land use plans, (b) zoning ordinances, (c) zoning district maps, and (d) within sensitive coast resource areas, other implementing actions, which, when taken together, meet the requirements of, and implement the provisions and policies of this division [the Coastal Act] at the local level." §30l08.6.

Thus, the LCP consists of a land use plan ("LUP")[2] and the implementing actions of zoning ordinances, district maps, and other implementing actions ("LIP"). Yost v. Thomas, *supra*, 36 Cal.3d at 571-72. These may be prepared together or sequentially, and may be prepared separately for separate geographical areas or "segments" of a local coastal zone. §30511.

Under normal circumstances, the local government drafts an LCP in accordance with Coastal Commission guidelines (*See* §§ 30501, 30503), and the local government's governing body adopts the proposed LCP as being in conformity with provisions of the Coastal Act. §30510. The local government then submits the LCP to the Coastal Commission for review and certification. §30511(a). In making this determination, the Commission first reviews the LUP for conformity with the policies in the Coastal Act. City of Chula Vista v. Superior Court, (1982) 133 Cal.App.3d 472, 481; §§ 30500-26. After the required public hearing(s), it may certify or not certify all or a portion of the LUP. §§ 30512, 30512.2. If the Coastal Commission does not certify the LUP, it must provide written reasons for not certifying and may suggest changes to the local government, that if enacted, would result in certification of the LUP. The Commission does not normally have the authority to change the LUP through its own action or to require the local government to do so. Ibid.

Once the LUP is certified, the Commission reviews the LIP to determine whether those items are sufficient to implement the policies of the certified LUP. §30513. If the Commission determines the LIP provisions are adequate, it certifies the LCP. As with the LUP, if the Commission denies certification of the LIP, it may suggest modifications that, if adopted, would result in certification of the LCP. Ibid. Once an LCP is certified, the Commission can continue to monitor the City's implementation of the LCP and can recommend corrective action. §30519.5.

2. The Commission's Ability to Appeal the City's Decision

The scope of the Commission's appellate authority over CDPs issued by a city with a certified LCP is limited. "[A]n action taken by a local government on a coastal development permit application may be appealed to the commission for only [a few] types of developments," including (1) developments located within 300 feet of the mean high tide line, (2) developments on tidelands, wetlands, public trust lands, or within 300 feet of a seaward face of a bluff, and (3) major public works projects. §30603(a). Additionally, the only grounds for appeal are that the locally approved development does not conform to the standards of the LCP or the Coastal Act's access policies. §30603(b)(1); Schneider v. California Coastal Com., (2006) 140 Cal. App. 4th 1339, 1344-45.

The appeal is a two-step process. The Commission first decides whether the appeal raises a "substantial issue" of compliance with Chapter 3 policies. §30625(b); 14 CCR §13115(b). If the

Commission decides that the appeal raises a substantial issue, then the City's CDP is nullified, and the Commission conducts a *de novo* review of the permit. §§ 30621(a), 30625(b)(2); Kaczorowski v. Mendocino County Board of Supervisors, ("Kaczorowski") (2001) 88 Cal.App.4th 564, 569.

On *de novo* review, the Commission decides whether to approve or deny the CDP. 14 CCR §13115. The Commission's jurisdiction is limited to whether the project conforms to the standards of the LCP and Chapter 3 access policies. Kaczorowski, *supra,* 88 Cal.App.4th at 569. In evaluating Chapter 3 policy compliance, the City's LCP is advisory in nature and may provide guidance for the appeal. The Commission hears the CDP application as if no local governmental unit was previously involved, "deciding for itself whether the proposed project satisfies legal standards and requirements." Kaczorowski, *supra,* 88 Cal.App.4th at 569. Once the Commission has assumed jurisdiction for the project, it retains jurisdiction to consider modifications to the project. *See e.g.*, Security National Guaranty, Inc. v. California Coastal Commission, ("Security National") (2008) 159 Cal. App. 4th 402, 408.

4. The LCP

a. LUP Policies

The City has a certified LCP. AR 585–764. It includes five LUP residential development policies. AR 589. The two relevant policies are: (1) maintain building scale in coastal zone residential neighborhoods consistent with Chapter 2 of the Implementation Plan (LUP Policy II.B.1); and (2) maintain residential building bulk control established by development standards in Chapter 2 of the Implementation Plan (LUP Policy II.B.2). AR 589.

b. The LIP

The broad purposes of the City's zoning code are to protect and promote the public health, safety, and public welfare, and to implement the policies of the LCP. LCP §A.01.030(A); AR 604. More specifically, the zoning code is intended to provide a precise guide for the physical development of the coastal zone in order to: (1) preserve the character and quality of the residential neighborhoods consistent with the character of the two area districts of the coastal zone, (2) foster convenient, harmonious, and workable relationship among land use; and (3) achieve progressively the arrangement of land uses described in the LCP. Ibid.

There are three types of zoning regulations controlling the use and development of property. LCP §A.01.040(B); AR 605. First, land use regulations specify land use permitted, conditionally permitted, or prohibited in each district, and include special requirements if applicable to specific uses. LCP §A.01.040(B)(1); AR 605. Second, development regulations control the height, bulk, location, and appearance of structures on development sites. LCP §A.01.040(B)(2); AR 605. Third, administrative regulations contain detailed procedures for the administration of zoning regulations. LCP §A.01.040(B)(3); AR 605.

LIP Chapter A.12 regulates residential districts. AR 630. One of the specific purposes of residential districts us to encourage reduced visual building bulk with effective setback, height, open space, site area, and similar standards, and provide incentives for retention of existing smaller homes. LCP §A.12.010(D); AR 630.

Residential high density (RH) districts permit single family residences. LCP §A.12.020; AR 631. Multi-family residential developments with five or fewer units also are permitted in RH districts. LCP §A.12.020; AR 633. Multi-family residential developments with six or more units are permitted pursuant to a Precise Development Plan or Site Specific Development Plan. LCP §A.12.020; AR 633.

Pursuant to property development regulations in RH districts, the minimum lot area per dwelling unit in Area III (Beach Area) is 850 sq. ft. LCP §A.12.030; AR 634. Lots can be 2,700 to 7,000 square feet. LCP §A.12.030; AR 634. The maximum buildable floor area is 1.7 times the lot area. LCP §AR.12.030; AR 634. There is a 30-foot height limit. LCP §A.12.030; AR 634. There is an open space requirement of 15% of the buildable floor area per unit, but not less than 220 square feet. LCP §A.12.030(M); AR 634, 639.

5. The Housing Crisis Act of 2019

An affected city or an affected county shall not approve a housing development project that will require the demolition of residential dwelling units unless the project will create at least as many residential dwelling units as will be demolished. Government Code §66300(d)(1). This shall only apply to a housing development project that submits a complete application … on or after January 1, 2020. Government Code §66300(d)(4).

C. Statement of Facts

1. Background

The Cotsen Property is located in the City's jurisdiction and the Cotsen Trust owns the Cotsen Property. AR 1456–59, 1677– 80. The Cotsen Property is located within Area III of the City's RH Zone. AR 1.

The Cotsen Property is 6,287 square feet in area and consists of two adjacent lots located at the 1312 Property and the 1316 Property. AR 1. The 2987 square foot lot on the 1312 Property has an existing 2556 square foot triplex. AR 5. The 3300 square foot lot on the 1316 Property has a 1568 single-family residence. AR 5. The two lots are separated from the sandy beach by a downslope 12-foot-wide public walkway, a landscaped buffer, and a paved bike path. AR 1, 5, 15.

Cotsen inherited the 1316 Property from her grandparents, who built the current house in 1956 and lived in it until Cotsen's grandmother passed away in 1995. AR 60–61. Cotsen subsequently transferred the 1316 Property to the Cotsen Trust. AR 1456–59.

When Cotsen's neighbor passed away in 2018, the Cotsen Trust purchased the adjacent 1312 Property. AR 1677–80. Cotsen's intent is to demolish both her family house on the 1316 Property and the triplex on the 1312 Property and build a single-family house for her family across both parcels. AR 5, 60–61.

The 17 oceanfront parcels on the Cotsen Property block and the two block to the north and south have 11 multi-family structures and six single family residences. AR 9. The majority of structures are multi-family in nature. AR 9. Of the 17 parcels, 16 are smaller than The Project's merged lots of 6287 square feet would be larger than 16 of the 17 parcels. AR 10, 386.

The Commission certified the City's LCP in May 1994. AR 12. Since that time, the City has issued CDPs subject to an appeal to the Coastal Commission. AR 12. The Cotsen Property lies within the Coastal Commission's appeal jurisdiction. AR 5.

2. The City's Approvals of the CDP Application

On October 21, 2019, Cotsen applied to the City for a CDP for demolition of the structures on the Cotsen Property and construction of the Project. AR 5, 1460-502.

On November 15, 2019, Cotsen applied to merge the 1312 Property with the 1316 Property. AR 1503 – AR 1504.

The City approved the CDP application for construction of the Project on January 7, 2020, making findings of fact that the Project is consistent with the LCP. AR 1518–21. The City sent the Commission a Notice of Final Action for this approval. AR 5.

The City did not include the lot merger in its CDP project description. Id. On July 23, 2020, the City amended its CDP approval *nunc pro tunc* to include the lot merger. AR 1692–97. The City sent the Commission a Notice of Final Action for this amended approval. AR 6.

4. The Appeal by Commissioners Escalante and Wilson

On April 6, 2020, Commissioners Escalante and Wilson appealed the City's initial CDP approval (Appeal No. A-5-MNB-20-0020). AR 6. Following the City's amended CDP approval, the two Commissioners filed a second appeal (Appeal No. A-5-MNB-20-0041). AR 6.

The Coastal Commission found that the appeals raised a substantial issue for de novo appeal on October 8, 2020. AR 516.

The Commission staff issued a report on October 16, 2020 recommending that the CDP application

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be denied. AR 1–52.

5. The Appeal Hearing and Decision

On November 4, 2020, the Commission held an online public hearing on the two appeals. AR 53–54, 180, 185, 384–401 (transcript of the hearing). Mandy Revell, a Coastal Program Analyst, presented the staff's recommendation. AR 384–388. Sherman Stacey, Esq., appeared for Cotsen. AR 389–95. Commissioners Rice, Wilson and Brownsey expressed support for the staff's recommendation to deny the CDP application. AR 397–99. At the conclusion of the hearing, the Commission rejected the Project and unanimously voted to deny the CDP application. AR 399–401; AR 2393–94.

The staff report, which apparently became the Commission's findings of fact,[3] indicates as follows.

a. RH District Development

LUP Policy II.B.1 and II.B. 2 and LIP sections A.12.020 and A.12.030 are the relevant policies for planning and locating new development in the coastal zone of the City. AR 6. The intent of the RH designation on which the Cotsen Property is located is to promote density through multi-family structures. AR 6. Development of one to five units is permitted by right and density of six plus units is allowed with a Precise Development Plan or Site Development Permit. AR 6. The minimum density of the Project site is two full residential units. AR 6. The merger of the two lots facilitates a less dense development pattern than contemplated by the LCP. AR 6. Thus, the Project is not consistent with the intent of the RH designation in the LCP. AR 6.

The staff report cited section 30250 (concerning new development contiguous with existing development) and acknowledged that it is not a standard of review for this appeal. AR 6-7. The report indicated that merging two RH-designated lots reduces by approximately half the density contemplated for this area of the City. As a result, the Project raises significant questions as to the Project's consistency with the LCP, which allows for and promotes density in this area through the construction of multi-family structures. AR 7.

The staff report referred to the state's housing supply shortage and the fact that between 2009 and 2019, approximately 45 residential units were approved for demolition to be replaced by single-family residences or structures with fewer residential units. AR 7. While the applicant's CDP application was submitted before the January 1, 2020 effective date of SB 330, which prohibits local approval of housing development which will demolish existing structures to create fewer units than before (no net loss), and SB 330 is not the standard of review for this Project anyway, the new law is relevant because projects resulting in a net loss of housing units and density potential have contributed to the current housing shortage. AR 7. It is important to consider the current housing situation and the high-density designation of lots when considering whether the proposed development is consistent with the intent of the high-density designation of lots. AR 7. The housing crisis also makes it increasingly important to maintain and concentrate development in already developed areas. AR 7.

The RH area is specifically planned to house denser development than other residential areas of the City. AR 8. Because those other areas restrict housing density, it is appropriate to maintain or increase the density in the RH designation. AR 8. The merging of two RH designated lots essentially circumvents the density requirements prescribed by the RH designation to allow 0.5 units on the current lots, instead of one, thereby achieving a lower density than is specified by the LCP and planned for in this area. AR 8. The Project reduces residential density by 75% by demolishing a triplex and a single-family residence and replacing them with a new larger single-family residence. While the RH designation allows for construction of a single-family residence on one lot, the policy calls for "more intense form[s]" of development, not less. AR 8.

b. Community Character

LIP policies A.01.030 and A.12.010 set forth the pertinent zoning code. AR 8-9. Although the

LCP lacks robust policies that would prohibit the loss of residential units, it does contain zoning and land use designations designed to promote and maintain density and community character. AR 9. The coastal zone extends only six to eight blocks inland of the beach, most of the lots zoned for residential use are either zoned medium or high density, and most of the low density residential zoned lots are outside the coastal zone. AR 9. Thus, the community character of residential development within the City's coastal zone is primarily multi-family, higher density, especially near the pier where the Project's lots are located. AR 9.

The Project raises issues regarding the community character policies of the LCP. AR 9. The Project would effectively encourage downsizing in an area designated for high-density development. AR 9. Of the 17 ocean-fronting parcels on the block and the two immediately adjacent blocks, there are 11 multi-family structures and only six single-family residences. AR 9. The majority of structures in the immediate vicinity also are multi-family structures. AR 9. Although single-family residences have been developed on RH-zoned lots, the LCP's policies intend the area to accommodate multi-family residential development. AR 10.

Further, the merger of the two lots would result in a lot size of 6287 square feet, which is larger than 16 of the 17 parcels on the block. AR 10. Thus, the lot size is out of character with the general pattern of development in this location. AR 10. The size of the proposed structure, the use of two sites for one single family residence, and the resulting large lot size would be inconsistent with the community character as it would facilitate a larger, less dense development pattern than what is intended by the RH designation in the LCP. AR 10.

The applicant could maintain the existing structures on the two lots or could demolish them and construct two new duplexes on the site. AR 10. Either of these two alternatives permits economic use of the Cotsen Property, as do other options. AR 11.

c. Groundwater

The Project does not account for changes to the groundwater level over time, particularly due to the sea level rise that is expected over the coming decades. AR 12. Commission staff does not have sufficient information whether the basement would be flooded by rising groundwater levels resulting from climate change, and whether the Project would protect groundwater supplies as required by the LCP. AR 12.

D. Analysis

Petitioners seeks a writ of mandate directing the Coastal Commission to set aside its denial of a CDP for the Project for two reasons: (1) the Commission wrongly interpreted the LCP as preferring multi-family to single-family homes in the RH zone; and (2) the Commission wrongly interpreted the LCP to permit it to make a subjective decision based on community character.

The Commission argues that it has discretion to draw an inference that the LCP is intended to prevent housing density loss in the coastal zone and to assess a proposed home subjectively to determine if it fits community character. Reply at 4.

As Petitioners argue, these are issues of law concerning the proper interpretation of the LCP. *See* Pet. Op. Br. at 10. In analyzing the Commission's authority, the court must afford great weight to the Commission's interpretation of the Coastal Act and the LCP. Ross v. California Coastal Com., *supra*, 199 Cal.App.4th at 922-23.

1. The Rules of Judicial Construction for the LCP

The construction of local agency charter provisions, ordinances, and rules is subject to the same standards applied to the judicial review of statutory enactments. Domar Electric v. City of Los Angeles, (1994) 9 Cal.4th 161, 170-72; Department of Health Services of County of Los Angeles v. Civil Service Commission, (1993) 17 Cal.App.4th 487, 494. In construing a legislative enactment, a court must ascertain the intent of the legislative body which enacted it so as to effectuate the purpose of the law. Brown v. Kelly Broadcasting Co., (1989) 48 Cal.3d 711, 724; Orange County Employees Assn. v. County of Orange, (1991) 234 Cal.App.3d 833, 841. The court first looks to the language of the statute, attempting to give

effect to the usual, ordinary import of the language and seeking to avoid making any language mere surplusage. Brown v. Kelly Broadcasting Co., (1989) 48 Cal 3d 711, 724. Significance, if possible, is attributed to every word, phrase, sentence and part of an act in pursuance of the legislative purpose. Orange County, *supra*, 234 Cal.App.3d at 841. "'The statute's words generally provide the most reliable indicator of legislative intent; if they are clear and unambiguous, '[t]here is no need for judicial construction and a court may not indulge in it. [Citation.]'" MCI Communications Services, Inc. v. California Dept. of Tax & Fee Administration, ("MCI") (2018) 28 Cal. App. 5th 635, 643.

After certification of an LCP, the findings necessary to approve a CDP are consistency with the certified LCP (§30604(b)) and with the public access and recreation policies of the Coastal Act (§30604(c)). The Commission exceeds its jurisdiction and fails to proceed in the manner required by law when its decision is reached by a faulty legal interpretation of an LCP. Schneider v. California Coastal Commission, *supra*, 140 Cal.App.4th at 1345 (permit decision would improperly add terms that are not included in LCP to protect views "from" the ocean to the shore). The effect of such a Commission decision is to amend the LCP where it does not have the power to do without an amendment submitted by the City. Id.; §30514; *see also* Security National, supra, 159 Cal.App.4th at 422-23 (Commission cannot not designate new environmentally sensitive habitat areas not designated in the LCP). Pet. Op. Br. at 10; Reply at 4-5.

2. The Project Is Consistent with RH District Requirements

The Commission found, and Petitioners agree, that "single family residences are permitted by right on RH properties". *See* AR 1-2, 6. This is consistent with LIP section A.12.020, which states: "In the following schedule, the letter "P" designates use classifications permitted in residential districts." AR 630. In LIP section A.12.020's Schedule, the letter P appears opposite "Single-Family Residences" under the heading "RH". AR 631. The plain meaning of the Schedule is consistent with the Commission's finding that "single family residences are permitted by right". AR 1-2, 6.

The Commission also found that the LCP's intent in designating the RH area on which the Cotsen Property is located is to promote density through multi-family structures. AR 6. The RH area is specifically planned to house denser development than other residential areas of the City. AR 8. Development of one to five units is permitted by right and density of six plus units is allowed with a Precise Development Plan or Site Development Permit. AR 6. Because other residential areas of the City restrict housing density, it is appropriate to maintain or increase the density in the RH area. AR 8.

The Commission further found that the LCP prohibits merging residential lots in the RH zone. The minimum density of the Project site is two full residential units. AR 6. The merger of the two lots facilitates a less dense development pattern than contemplated by the LCP. AR 6. Thus, the Project is not consistent with the intent of the RH land use designation in the LCP. AR 6.

Petitioners argue that the Commission's decision purports to find an intent in the LCP to require at least one house per existing lot in the RH zone. Petitioners contend that the plain meaning of the LCP does not prohibit lot mergers or create a preference for multi-family housing in the RH zone, and any intent must be derived from the words of the LCP itself, not unsupported inferences. Pet. Op. Br. at 10.

The court agrees with Petitioners that the LCP's residential use and development regulations are plain and unambiguous.

The LUP contains general policies that are embodied in corresponding LIP measures. AR 598-601. The LUP's residential development policies refer to Chapter 2 of the LIP:

> **"Policy II.B.1**: Maintain building scale in coastal zone residential neighborhoods consistent with chapter 2 of the Implementation Plan." (emphasis added). AR 589.
>
> **"Policy II.B.2**: Maintain residential building bulk control established by development standards in chapter 2 of the Implementation Plan." (emphasis added). AR 589.

The words "consistent with" in LUP Policy II.B.1 mean that the scale of residences needs to comply

with LIP chapter 2. The words "established by" in LUP Policy II.B.2 mean that the bulk (size) of residences is set by LIP chapter 2's development regulations. *See* Reply at 6.

The purpose of the LIP's zoning provisions is to protect and promote the public health, safety, and general welfare, and to "implement the policies" of the LCP. LIP §A.01.030; AR 604.

More specifically, the LIP's Zoning Code is intended to "provide a precise guide" for property development. Id. The LIP provides definitions for its zoning regulations:

> "**Chapter A.04. Definitions**
> **A.04.010. Purpose and applicability**.
> "The purpose of this chapter is to ensure precision in interpretation of the zoning regulations…" AR 609 (emphasis added).
> The LIP also includes rules of construction for its zoning regulations:
> "**A.04.020. Rules for construction of language**. In addition to the General Provisions of the Municipal Code, the following rules of construction shall apply: A. The particular shall control the general…" AR 609. Reply at 5.

The LIP's property development regulations provide the development standards for residential districts:

> "**Development Regulations** control the height, bulk, location, and appearance of structures on development sites. Development regulations for base zoning districts and area districts are in Part II of the zoning regulations; development regulations for overlay districts are in Part III…" LIP §A.01.040(B)(2) (emphasis added). AR 605.

LIP Chapter A.12 concerns Residential Districts. AR 630. LIP Policy A.12.010(D) states that one of the purposes of the residential zoning districts is to "encourage reduced visual building bulk with effective setback, height open space, site area, and similar standards…" AR 630.

LIP section A.12.030 sets forth the property development regulations for residential zoning districts: "The following schedule prescribes development regulations for residential zoning districts in each Area District . . . The columns establish the basic requirements for permitted and conditional uses." AR 634.

The Cotsen Property is governed by the RH column under Area District III. The first entry is for "Lot Dimensions". AR 634. Under "Area (sq.ft.)" there are entries for both a minimum and a maximum lot size. Id. The minimum lot size is 2,700 square feet and the maximum lot size is 7,000 square feet. Id. In the "Additional Regulations" column opposite "Area (sq.ft.)" there is reference to a Subsection (K).[4] Subsection (K) explains what is meant by "minimum" and "maximum" lot area. "Minimum and maximum lot area numbers represent a range of permitted lot areas applicable to new subdivisions and building sites created by merging, and/or the lot line adjustments for lots or portions of lots." AR 638 (emphasis added).

The Project's merged lot measures 6,287 square feet. AR 1, 5, 10. This 6,287 in square footage does not exceed the maximum of 7,000 square feet and is achieved by merging the two lots. As Petitioners argue, the plain meaning of the LCP is that a single-family residence on a parcel not larger than 7,000 square feet created by merging is permitted. AR 634. Pet. Op. Br. at 11-12.

The Commission concedes that Petitioners' proposed single-family home meets all the LCP development regulations -- lot and structure size, height, open space, and setbacks – but argues that the Project is inconsistent with certain LCP policies. Opp. at 9.

The plain language of the LCP undercuts the Commission's argument. As Petitioners argue (Reply at 6), it is undisputed that Cotsen's single-family home is a permitted use in the City's RH (High-Density Residential) zone. AR 630-33. It is undisputed that the proposed home conforms to the applicable development regulations. AR 634-45. Finally, it is undisputed that the LIP permits a lot merger of up to 7,000 square feet. AR 634.[5] The LIP's purpose of ensuring precision in the interpretation of the LIP's

zoning regulations (AR 609), the fact that its development regulations are intended to "implement the policies" of the LUP (AR 604), and the LIP's express rule of construction that the "particular shall control over the general," collectively make the LCP clear and unambiguous. When a project meets the LCP's specific residential use and development regulations, it is consistent with the RH zone designation.[6]

3. The LCP Contains No Preference for High Density

The Commission found that high density is preferred in the RH area:

> "The RH area of the City is specifically planned to house more dense development than other residential areas in the City. Thus, because other areas, specifically those without the RH land use designation, restrict density, it is appropriate to maintain or even increase rather than reduce density in areas with the RH designation." AR 1, 8.

As Petitioners argue, this finding is the central basis for the Commission's denial of the CDP, which it claims is inconsistent with section 30250. *See* AR 384, 396-99 (comments of various Commissioners). But even the Commission admits that the LCP does not require maintenance of the current density of residential development because it also found that the LCP currently lacks robust policies[7] that would explicitly prohibit the loss of residential units", and that section 30250 is not the standard for review. AR 1, 9. Pet. Op. Br. at 14.

As Petitioners conclude (Pet. Op. Br. at 11), the Commission's decision wrongly contends that the LCP creates a preference for multiple units. No such preference exists in the LCP, which allows single-family residences and multiple units without preference.

Nor does the Commission cite to any language in the LCP that would support such a conclusion. The mere fact that other residential areas of the City are zoned at lower densities than the RH zone does not mean that expressly permitted uses in the RH zone may be prohibited. The LCP expressly allows private owners to both create a building site up to 7,000 square feet by "merging" and to choose to construct either one, two, or three residential units on their property. It contains no language that one permitted use is preferred over another.[8]

The Commission argues that a project involving a lot merger or that eliminates significant housing does not have to be expressly prohibited to be inconsistent with the LCP. The LCP anticipates this in LIP section A.96.030, which defines "Development" as a "change in the density or intensity of use of land." AR 779. Even the mere change from a duplex to a single-family home without a change in the structure of the home could have impacts to coastal resources that would require a CDP. Opp. at 17.

The Commission interpreted the LCP as meaning that the "RH area of the City is specifically planned to house more dense (*sic*.) development than other residential areas in the City." AR 8. Given the correlation between concentrating development in existing developed areas and the protection of coastal resources reflected in sections 30007.5 and 30250, the Commission argues that it appropriately determined that the proposed merger of two lots and the permanent demolition of a triplex to construct one much larger single-family residence—in an area where higher density development is intended to be located—would frustrate the intent of the LCP. The Commission, not Petitioners, is entitled to deference in interpreting the LCP and the Commission reasonably applied the LCP in a manner consistent with the requirements of the Coastal Act. Opp. at 17-18.

The Commission findings explain that the residential areas near the Project site are zoned for Medium Density or High Density, and most of the single-family/low density zoned lots within the City are outside the coastal zone. AR 9. The LCP protects single-family residences from encroachment by multi-family development,[9] so multi-family development can only be sited in allowed areas. AR 630. While single-family residences also are allowed on RH-designated lots, the intent of the LCP is to allow for and accommodate higher density developments such as duplexes and triplexes in the RH-designated areas. This interpretation is consistent with the Coastal Act's emphasis on encouraging the concentration of

development in existing developed areas and minimizing vehicle miles travelled. §§ 30250, 30253(d). While the words "a minimum of one unit per lot" are not in the LCP, the Commission reasonably determined that the development of one single-family home across two lots—effectuated through a lot merger—and the demolition of a triplex in a High-Density area simply goes too far and is not consistent with the intent of the LCP. Opp. at 16-18.

The court disagrees. While the Commission is entitled to great deference in interpreting the LCP, it points to nothing in the LCP on which to base its position other than the existence of the RH designation. The Commission's findings and opposition arguments about density preference are not based on any language in the LCP. The Commission correctly points out that the LCP protects single-family residence from encroachment by multi-family development, but the converse is not true; there is nothing in the RH designation that expresses a preference of multi-family over single-family development. The Commission's suggestion that "the intent of the LCP is to allow for and accommodate higher density developments such as duplexes and triplexes in RH-designated areas", is true. But the inclusion of multi-family housing in the RH area does not mean that there is a preference for duplexes and triplexes in RH areas. Single-family homes are equally permitted. The meaning of the LCP is plain and no deference to the Commission is required. *See* Schneider, *supra*, 140 Cal.App.4th at 1345 (Commission may not add language to LCP in construing it).

The Commission attempts to rely on section 30250, but its decision admits that statute is not the standard of review. Moreover, section 30250 is irrelevant to Petitioners' CDP application. Under section 30250, new development must be located in one of two places in the coastal zone: (1) next to existing developed areas able to support the new development or (2) in cases where new development cannot be located near existing development, in areas where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. Thus, section 30250 concerns where new development projects will be located, not the density of that development. In particular, section 30250 has no bearing on the demolition of existing structures and development on merged lots.

5. The Commission Wrongly Relied on State Housing Policy to Contradict the Plain Language of the LCP

After noting that the state is currently experiencing a housing supply shortage of approximately 90,000 residential units each year, the Commission found that "it is becoming increasingly important to maintain and concentrate development in already developed and appropriate areas in order to ensure that coastal resources are protected" and referred to The Housing Crisis Act of 2019 adopted by the Legislature in SB 330. AR 1, 5-8, 2226-60. Among other provisions, SB 330 added Government Code section 66300, which provides in part:

> "An affected city or an affected county shall not approve a housing development project that will require the demolition of residential dwelling units unless the project will create at least as many residential dwelling units as will be demolished." Govt. Code §66300(d)(1).

As Petitioners argue, the Commission clearly was motivated to find an intent in the LCP to support the state's policy about a lack of housing. AR 1–2, 6-7. But 2020 policy objectives do not factor into interpreting the 1995 LCP and do not overcome the plain meaning of its words. Pet. Op. Br. at 12. Both Commission Chair Brownsey and Deputy Director Hudson claim that "evolving policy" (AR 384, 396-98) allows the Commission to alter the interpretation of the LCP. But to claim that the Commission's denial is supported by "evolving" policy is to admit that the existing LCP does not support denial. Pet. Op. Br. at 15.

The proper interpretation of statutes and ordinances cannot vary depending upon the policy winds of the state. This is particularly true for statutes and ordinances permitting development – including the LCP – because, as the Permit Streamlining Act shows, developers must rely on existing law to make their decisions. It would be poor public policy indeed to allow an agency to alter the proper interpretation of a permitting ordinance depending upon newer state policy. In that circumstance, the proper procedure is for

the Commission is to amend the ordinance, thereby providing proper notice to all those concerned.

The Commission effectively sought to impose SB 330's no net loss prohibition on Petitioners' CDP application. But the Legislature expressly precluded application of SB 330 to project applications submitted by December 31, 2019: "This subdivision shall only apply to a housing development project that submits a complete application pursuant to Section 65943 on or after January 1, 2020." Govt. Code §66300(d)(4); AR 2226, 2258. Pet. Op. Br. at 18-19. There is no dispute that Petitioners submitted a complete application to the City before January 1, 2020. AR 1, 7. As a consequence, SB 330 has no application to the Project.

The Commission argues that it did not apply SB 330. In fact, it expressly found that SB 330 does not apply to the Project and that the Housing Crisis Act does not amend the Coastal Act and is not the standard of review. AR 7. The Commission's decision only acknowledged that the Housing Crisis Act is "reflective of statewide policy to encourage and increase housing throughout the state, which may impact coastal resources in the coastal zone if it is not well-planned or undertaken with coastal protection in mind." AR 7. Opp. at 19.

The Commission argues that it is entitled to consider statewide policies in making Coastal Act decisions, lest state agencies act in conflict with each other. *See* Pratt, *supra*, 162 Cal.App.4th at 1075-76) (Commission "applies state law and policies to determine whether the development permit complies with the LCP."). The Commission is not required to ignore the housing crisis in California or the state's policies on this issue when reviewing development for consistency with an LCP. The Commission argues that the Coastal Act (section 30250) addresses housing needs in the coastal zone by encouraging the concentration of development in existing developed areas to protect coastal resources, and the LCP carries out the Coastal Act's responsible growth policy. Opp. at 19.

The answer is that the Commission may rely on a general statewide policy of a need for housing, but it may not use that general policy to rewrite the LCP and overcome the LIP's development standards. The Commission cannot vary from the LCP's plain language by relying on the state's general housing policies. *See* Schneider, *supra*, 140 Cal.App.4th at 1345. The Coastal Act provides a mechanism for exactly this situation in the form of an LCP Amendment. §30519.5(a).[10] Nor is there a specific housing policy on which the Commission may rely. The Commission cannot excise SB 330's policy from the inapplicable statute and apply it to the Project. To do so would be a backdoor means of violating Govt. Code section 66300(d)(4)'s limitation on the application of SB 330.

The Project is consistent with the plain language of the LCP's RH designation and the Commission erred in deciding otherwise.

6. Community Character

As stated *ante*, the Commission's decision (AR 1, 6) relied on the following LUP policies which refer to Chapter 2 of the LIP:

> **Policy II.B.1**: Maintain building scale in coastal zone residential neighborhoods consistent with chapter 2 of the Implementation Plan. (Emphasis added). AR 589.
>
> **Policy II.B.2**: Maintain residential building bulk control established by development standards in chapter 2 of the Implementation Plan. (Emphasis added.) AR 589.

The Commission's decision also relied on LIP section A.01.030 setting forth the "Purposes" of the LCP. AR 1, 8. LIP section A.01.030(A)(1) describes the purposes of the Zoning Code for the coastal zone as "to protect and promote the public health, safety, and general welfare, and to implement the policies of the LCP. More specifically, the Zoning Code is intended to "[p]rovide a precise guide for the physical development of the Coastal Zone" in order to: 1. Preserve the character and quality of residential neighborhoods consistent with the character of the two area districts of the Coastal Zone; . . ." AR 604 (emphasis added).

a. Neighborhood Impacts

Based on these LUP policies and LIP section A.01.030, the Commission concluded that the Project's home would not be consistent with community character:

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> "Therefore, the size of the proposed structure, the use of the two sites for one single family residence, and the resulting large lot size would be inconsistent with the community character as it would facilitate a larger, less dense development pattern than what is intended by the RH designation in the Commission-certified LCP. Thus, the use of the two lots for one single-family residence, and the resulting large lot size is inconsistent with the community character of the area as described by LCP policies regarding residential development. The development proposed by the applicant is therefore not consistent with the community character policies of the LCP and should be denied." AR1, 10.

Petitioners contend (Pet. Op. Br. at 15-16) that they followed LIP section's A.01.030(A)(1)'s "precise guide for physical development" because the Project is consistent with the LCP's community character policies contained in Chapter 2 of the LIP.

LIP section A.01.040(B) states, in part:

> **"Section 10.10.040 B. Types of Regulations.**
> 1. **Land Use Regulations** specify land uses permitted, conditionally permitted, or prohibited in each zoning district, and include special requirements, if any, applicable to specific uses…
>
> 2. **Development Regulations** control the height, bulk, location, and appearance of structures on development sites. Development regulations for base zoning districts and area districts are in Part II of the zoning regulations… These include regulations for site development, parking and loading, signs and nonconforming uses and structures." AR 605 (emphasis added).

Petitioners argue that, because the Project complies with the allowable RH uses and with all applicable LIP development standards, it is consistent with community character as anticipated by the LCP. LIP Chapter 2 includes LIP sections A.12.020 and A.12.030. The former provides that single-family residences are permitted by right in the RH zone. AR 630-31. LIP section A.12.030 sets for the property development regulations for the RH districts and the Project adheres to all of its requirements of floor area, height, and open space requirements: Pet. Op. Br. at 16.

- LIP §A.12.030 – the maximum lot size is 7,000 square feet and the Cotsen Property merged lot is 6,287 square feet.
- LIP §A.12.030 – the maximum buildable floor area is 1.7 times the lot area, which is 10,688 square feet for the Cotsen Property (6,287 x 1.7=10,688); the Project has 9,923 square feet in buildable floor area.
- LIP §A.12.030(M) – the usable open space must be at least 1,486 square feet; the Project provides 1,663 square feet of usable open space.
- LIP §A.12.030 – the residence has a 30-foot height limit (and three stories); the Project's maximum height is 29.03' and is not more than three stories.
- LIP §10.12.030 – the residence must meet minimum setbacks from property lines; the Project meets these requirements. AR 77-87. Pet. Op. Br. at 17.

The Commission's decision describes the area surrounding the Cotsen Property as a mixture of single-family and multi-family residences. AR 1, 9. Petitioners note that the area will remain a mixture of single-family and multi-family residences when the Project is completed. The Commission's decision states that the Cotsen Property's block and the blocks to the north and south collectively have 11 multi-

family residences and six single-family residences. Id. When the Project is completed, there will be ten multifamily structures and six single family structures, an immaterial difference. Looking at the wider waterfront community, there are more than 1,500 residential parcels in the two blocks of the City near the ocean, all of which are zoned RM or RH.[11] AR 88-89, 91. There is a mixture of single-family and multi-family residences and will remain as such if the Project is built. Pet. Op. Br. at 17.

Petitioners note that the Commission took a more expansive view of community character. Without support in the LCP, certain Commissioners viewed community character to include "not just with physical structure consistency, but also with how that physical structure then supports human ecosystem. Because the human ecosystem within the built environment is part of community character". AR 384, 397 (Commissioner Rice). Deputy Director Hudson agreed. Id. Petitioners argue that this is a total disconnect with the LCP, which connect a "precise guide for the physical development" to the protection of the "character and quality of residential neighborhoods." Further, there is no substantial evidence that demolishing older buildings and building a new home would affect "the human ecosystem". Pet. Op. Br. at 18.

The Commission responds that the LCP contains policies designed to preserve the character of residential neighborhoods by preserving the current residential use and current size of homes. Section 30251 sets forth Coastal Act policies regarding the siting of new development to ensure protection of coastal resources, including scenic and visual qualities of coastal areas:

> 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 . . . (emphasis added).

The LCP, which the Commission certified as consistent with Chapter 3 of the Coastal Act, implements the Coastal Act's visual resource protection mandate through various policies in the LUP and LIP (Zoning Code). LUP Policies II.B.1 and II.B.2 curb building scale and bulk to avoid out-of-character homes that are not compatible with the surrounding development. LIP Chapter 2 is the Coastal Zone Zoning Ordinance and Enforcement Code (AR 602), and it contains the LIP policies for the preservation of community character (LIP Policy A.01.030; AR 604) and reduction of building bulk (LIP Policy A.12.010(D)). Opp. at 10-11.

The Commission argues that the LCP allows it to consider community character. LIP section A01.030 states that the purpose of the Zoning Code is to "[p]rovide a precise guide for the physical development of the Coastal Zone in order to…Preserve the character and quality of residential neighborhoods consistent with the character of the two area districts of the Coastal Zone" (AR 604 (emphasis added)), and argues that this policy requires it to review the character and quality of the Project's neighborhood and determine if the project is consistent with that character.

The Commission disputes Petitioners' argument that, if the Project complies with the LIP's maximum and minimum physical building standards, it is automatically consistent with community character. LIP section A.01.030 is a prerequisite, not a trigger point. By its own language, LIP section A.01.030 is a guide which implements the Coastal Act's requirement that new development be compatible with the character of the surrounding area. §30251. If a project fails to meet the physical building limits, there must be an automatic denial for failure to conform to the community character. But meeting the maximum limits does not result in automatic approval of a project as consistent with community character. Otherwise, every project meeting these maximum and minimum standards would have to be approved, and 10,000+ square foot, double lot homes could one day replace all the multi-family homes in the RH area. This would indeed change the character and quality of the neighborhood.[12] Opp. at 11-12.

The Commission argues that Petitioners advocate for a narrower view of the LCP's requirements, but the Commission's approach is not unreasonable. A decision on the compatibility of the project with the surrounding area is a subjective decision. Reddell v. Cal. Coastal Com., ("Reddell") (2009) 180 Cal. App.

4th 956, 970. The Commission argues that its finding of inconsistency with the LCP's community character policy should be upheld so long as a "reasonable person" could reach the same conclusion. As in Reddell, the Commission's decision should be upheld because evidence in the record "provides a basis for concluding that the project is larger in scale" than the surrounding area. The Commission's decision to consider community character subjectively, in conjunction with the explicit building requirements, is a reasonable application of the LCP in a manner that is most consistent with the Coastal Act's protection of coastal resources. *See*, *e.g.*, §30007.5 (in carrying out the Coastal Act, potential conflicts should "be resolved in a manner which on balance is the most protective of significant coastal resources). Opp. at 12.

The Commission notes that the Project's merged lots would be substantially larger than those near it. The Project's lots are located on the third block north of the Manhattan Beach pier, between 13th and 14th Streets. AR 15. The 17 ocean-front parcels on the Project block and the two adjacent blocks[13] are 11 multi-family and six single-family residences. AR 200, 203, 386, 437. Of the 17 ocean-front parcels, 16 are substantially smaller than the two lots the Project would merge. AR 89, 93, 200, 203, 386. The homes immediately east of the Project's block also appear to be multi-family. AR 203. Almost all the lots surrounding the Project are half the size of the merged lots. AR 93.

The Project's home size also is substantially larger than the surrounding structures.[14] The Project is a very large two-story house of 9,920 square feet, with a basement and an attached 845 square foot, 3-car garage on two combined lots totaling 6,287 square feet. AR 1. This massive, almost 10,000 square foot house, comprised of two levels, a basement, and a three-car garage would, as a result of the proposed merger, would sit over double the land regularly allotted for up to five or more residential units. *See* AR 202-03 (photographs showing bulk and scale of proposed residence). Given that the Project spans two existing lots and is 9,920 square feet whereas most of the surrounding lots are smaller, and that the maximum square footage allowed by the LCP is 10,688 square feet, the Project home would be one of the largest structures in the neighborhood.

While the Project meets the minimum size requirements prescribed by the LCP, LIP section A.12.010(D) states that the specific purposes of residential districts are to "[e]ncourage reduced visual building bulk with effective setback, height, open space, site area, and similar standards, and provide incentives for retention of existing smaller homes." AR 630. Project approval would not align with LIP section A.12.010(D)'s policy of encouraging reduced visual bulk or incentivizing the retention of smaller homes. The Project's size may be within the maximum size for the area, but those same maximums apply to multi-family housing in the RH area. AR 631, 634. The standards must be large to accommodate multi-family development, but they do not require that single-family homes also be approved at the same size where LIP section A.12.010(D) encourages reduced bulk and retention of existing smaller homes. Opp. at 12-13.

The Commission argues that the High Density designation of the RH area further supports denial of the Project as not consistent with community character. Petitioners' lots are located in a small area of the City near the beach and pier and downtown commercial areas. AR 52. LIP section A.12.020 permits five or fewer units on each lot in the RH area by right and six or more units with a Precise Development Plan or Site Development Permit. AR 631. The coastal zone within the City only extends approximately six to eight blocks inland of the beach. Most of the residential lots are zoned either Medium or High Density, and most of the single-family/low density zoned lots are outside the coastal zone. AR 9. Furthermore, of the 17 ocean-fronting parcels on the three-block area, there are 11 multi-family structures ranging from two to four units and only six single-family residences. Opp. at 13.[15]

The Commission concludes that, based on the merged lot and home size, the Project does not conform with the policies of the LCP designed to protect the character of this neighborhood. Opp. at 9-10. This house is an outlier. Opp. at 11.

Petitioners reply that LIP section A.01.030 only relates generally to the preservation of residential character. The Commission inflates its jurisdiction by stating, without legal authority, that "[t]his policy requires the Commission to review the character and quality of the Project's neighborhood and determine if

the project is consistent with that character." In doing so, the Commission ignores section 30604(b) and LIP section A.01.030. AR 604. Since the LIP (Zoning Ordinance) is the "precise guide" provided to preserve community character, and because it "implements the policies" of the LUP, the Commission's consistency analysis must stop with the LCP's use and development regulations. The Project's house is not an outlier as argued by the Commission. It would not be introducing a single-family home into a neighborhood where there are none. In fact, 35% of the 17 parcels in the three-block area already contain a single-family home. Reply at 7-8.

Petitioners contend that, if a project that meets the use and development regulations, it is necessarily consistent with the LCP's community character. Over the last 20 years, there were at least 53 projects for new single-family homes that replaced multiple units (reduced density) in the City's RH or RM zones. AR 90-99. All 53 projects met the LCP's maximum and minimum development regulations and were approved by the City without Commission objection, even those that involved lot mergers[16] and comparably sized single-family residences. AR 1719-20, 1743-44, 1751-52, 1782-83, 1813-15, 1822-23, 1838-39, 1844-45. Only two of the 53 similar projects were appealed to the Commission. AR 2031-55, 2111-57. In both appeals (demolition of a duplex or a triplex to construct a single-family home), the Commission did not find that the project raised a substantial issue of LCP consistency. AR 2037, 2139. The Commission compared those CDPs to the certified LCP development regulations and determined objective compliance. AR 2037-43, 2139-45. Nothing in the Commission staff reports for the two appeals mentions any subjective community character requirement. Reply at 8-9.

Petitioners argue that LIP section A.01.040(B)(1) explains that there may be more than one use permitted in each zoning district and that the land use regulations may include "special requirements" that apply to some, but not all, uses. AR 605. In the RH zone, the LIP permits a range of uses: small family home day care, single-family homes, and up to five multi-family units. AR 630-31. LIP section A.12.030 (Property development regulations: RS, RM, and RH districts) explains these special requirements (or "Additional Regulations"). AR 634-45. For example, single-family residences are expressly permitted in the RH zone (AR 630-31) but they have different open space requirements than a multi-family residence. LIP §A.12.030(M); AR 639. This shows the LIP's purposeful differentiation of the development regulations for single-family and multi-family developments and undermines the Commission's assertion that the RH zone's development regulations are "rather large to accommodate multi-family development," but "do not require that single-family homes also be approved at the same size…". The LIP already includes adjustments for size and bulk depending on the proposed use. Reply at 10-11.

Petitioners distinguish Reddell, *supra* 180 Cal.App.4th at 956. Unlike the City's LCP, the Reddell LCP in involved a subjective analysis for project approval. In Reddell, the project was a mixed-use building of commercial spaces and six single-family residences to be located on a bluff. Id. at 960. There were issues about whether the project was consistent with a visitor-serving zone, parking requirements, and the location of project on a bluff edge. With respect to the latter, the court found the project incompatible with the unique character of the surrounding area because the structure would loom over existing development on the bluff and become the dominant feature. Id. at 696-70. The court upheld the Commission's decision, noting that the LCP permitted the exercise of discretion to make a benefit/detriment analysis and specifically allowed subjectivity when determining impacts on visual resources. Id. at 966. Petitioners argue that no such allowance is included in the City's LCP. Reply at 9-10.

While the court agrees that Reddell is distinguishable, Petitioners are incorrect that compliance with the LIP necessarily compels approval of a project's community character. Unlike the Commission's interpretation of the LCP as preferring multi-family residences in the RH zone, which was not supported by the LCP's plain language, the Commission's argument that the LIP permits its discretionary approval of community character is supported by both the Coastal Act and by the Commission's interpretation of the LIP to which the court must give deference. Ross v. California Coastal Com., *supra,* 199 Cal.App.4th at 922-23.

Section 30251 sets forth Coastal Act policies regarding the siting of new development to ensure

protection of coastal resources, including scenic and visual qualities of coastal areas, and requires that it be visually compatible with the character of surrounding areas. The LCP implements the Coastal Act's visual resource protection mandate through various policies in the LUP and LIP (Zoning Code). LUP Policies II.B.1 and II.B.2 curb building scale and bulk to avoid out-of-character homes that are not compatible with the surrounding development. LIP Chapter 2 contains the LIP policies for the preservation of community character (LIP Policy A.01.030; AR 604) and reduction of building bulk (LIP Policy A.12.010(D)).

LIP section A.01.030 states that the purpose of the Zoning Code is to "[p]rovide a precise guide for the physical development of the Coastal Zone in order to…Preserve the character and quality of residential neighborhoods consistent with the character of the two area districts of the Coastal Zone". AR 604. LIP section A.12.010 provides in pertinent part as follows:

> "In addition to the general purposes listed in Chapter A.01; (*sic.*) the specific purposes of residential districts are to:…(D) Encourage reduced visual building bulk with effective setback, height, open space, site area, and similar standards, and provide incentives for retention of existing smaller homes. Include provision for an administrative Minor Exception procedure to balance the retention of smaller older homes will still allowing for flexibility for building upgrades below the minimum allowable square footage." (Emphasis added.)

The Commission is correct that LIP section A.01.030 indicates that the Zoning Code provides a precise guide for development, in part to preserve the character of neighborhoods. This neighborhood character specifically encourages reduced building bulk and the preservation of retention of existing smaller homes. LIP §A.12.010. Nothing in LIP section A.01.030's general purpose or LIP A.12.010's specific purpose of preserving community character limits the Commission's community character evaluation. LIP section A01.030 may be a "precise guide", precise, but the Commission may reasonably interpret this language as only a guide and only for the developer. The Commission is entitled to interpret this language in a manner that does not mean that a project in compliance with the LIP's use and development regulations necessarily is consistent with the LCP's community character requirements. Rather, the Commission may reasonably interpret LIP section A.01.030 as a prerequisite which permits its separate Coastal Act determination under section 30251 whether a new development is compatible with the character of the surrounding area.

Based on section 30251 and its interpretation of LIP section A.01.030 to which the court must give deference, the Commission was entitled to consider community character. The Commission's conclusion that the Project's lot and home size is out of character with the surrounding community is supported by substantial evidence.

b. Cumulative Impacts

The Commission also argues that the cumulative impact of the 53 projects cited by Petitioners that demolished multi-family homes and replaced them with single-family homes further supports its decision to deny the CDP. The LCP requires that new development be compatible with the "character and quality" of the surrounding area as primarily multi-family and single lot. AR 604, 630. In assessing a project's impacts on coastal resources, including community character, the Commission considers the cumulative effects in light of other past, present, and probable future developments. Stanson v. San Diego Coast Regional Com., (1980) 101 Cal.App.3d 38, 47–48. The City's pattern of development supports the Commission's concern that this Project, when viewed cumulatively with similar projects that have occurred or are likely to occur, is not compatible with the primarily multi-family character of the area. Opp. at 15-16.

The parties agree that there has been a trend in the City's coastal zone of projects demolishing multi-family developments and replacing them with single-family homes. The 53 CDPs for single-family homes to replace duplexes or triplexes were issued between 2001 and 2019, five of which included lot mergers, for a total loss of 80 housing units. But this historical development pattern supports, rather than

undermines, the Commission's decision to deny the Project. Opp. at 15. The Project, when viewed cumulatively with similar projects in the area, is transforming the character of the area from primarily multi-family to single-family. Several of the single-family homes in the three-block area were previously duplexes or triplexes and were demolished to construct single-family residences. AR 1943 (117 13th Street), 1794 (1204 The Strand), 97 and 1880 (1408 The Strand), 1915 (1410 The Strand), 1904 (1516 The Strand). Opp. at 16, n. 6. The development trend shows that, without Commission intervention, the City is likely to continue approving projects that replace duplexes and triplexes with large residences, undermining the community character. *See* Opp. at 15-16.

Petitioners reply that the Commission's claim that it has to intervene to stop a trend is undermined by the 20 years in which the Commission never appealed a City approval of a single-family home that reduced density. The Commission would have the court believe that the Project is the tipping point, and the City is likely to continue approving projects that replace duplexes and triplexes with large residences. Petitioners argue that the Commission's intervention was unnecessary because of SB 330, which limited the projects that reduce residential unit count.

As a result of SB 330 and the City's Urgency Ordinance, projects that would reduce the number of residential units could no longer be approved where the application was after January 1, 2020. Petitioner's single-family home Project is exempt from SB 330, a fact of which the Commission received notice from the City. AR 1659-60. New state law, not the Commission's action, ended the trend. Reply at 12. Petitioners are correct and the Project's cumulative impact has no bearing on the community character analysis.[17]

c. Conclusion

The Commission reasonably determined that the proposed demolition of a triplex, lot merger, and construction of a large single-family residence across what was previously two lots is not consistent with the Coastal Act and LCP requirement that the character of the surrounding area be preserved.

7. The Commission Finding Regarding Groundwater Is Unsupported

The Commission's findings state: "[T]here is insufficient information to determine if ground water will be protected as required by the certified LUP especially in light of expected sea level rise, due to the project's inclusion of a subterranean basement and garage." AR 1, 12.

In response to the Commission's staff report recommending this finding, on July 10, 2019 Petitioners submitted a soils report by NorCal Engineering. AR 135-70. The basement is ten feet below the highest grade. AR 20. In boring B-1, the soils engineer drilled 22.5 feet below the surface without encountering groundwater. AR 140-41, 369. In a staff addendum, Commission Engineer Lesley Ewing and Geologist Joseph Street admitted that "the proposed basement will not likely impact groundwater." AR 210, 212. Despite this admission, the Commission did not revise the findings recommended in its staff report. Petitioners conclude that the Commission's finding of a lack of evidence for impact on groundwater is not supported by substantial evidence. Pet. Op. Br. at 18.

The Commission responds that the staff addendum also stated that Engineer Ewing remained concerned that a basement so close to the ocean could act as a retention device "if exposed over time" and a "full subterranean basement is not appropriate at this ocean-front location." AR 212. Opp. at 18.

Neither the addendum nor the Commission's opposition provides any explanation for Engineer Ewing's "concern". As such, it is an unsupported opinion that may be disregarded. Hongsathavij v. Queen of Angels/Hollywood Presbyterian Med. Center, (1998) 62 Cal.App.4th 1123, 1137. An expert's opinion is no better than the facts upon which it is based. Turner v. Workmen's Comp. Appeals Board, (1974) 42 Cal.App.3d 1036, 1044. In fact, the addendum even states that the "primary issue" is inconsistency with LCP policies of zoning and community character, not groundwater impact. AR 212.

E. Conclusion

The Petition's mandamus claims are denied. The case is ordered transferred to Department 1 for

assignment to an I/C court to handle the claim for violation of 42 USC section 1983.

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[1] All further statutory references are to the Public Resources Code unless otherwise stated.

[2] An LUP is defined in section 30108.5 as: "[T]he relevant portions of a local government's general plan, or local coastal element which are sufficiently detailed to indicate the kinds, location, and intensity of land uses, the applicable resource protection and development policies and, where necessary, a listing of implementing actions."

[3] The court saw no reference in the record that the Commission adopted the staff report as its findings but the parties' briefs so indicate.

[4] The introductory paragraph to LIP section A.12.030 states that the "letters in parentheses in the 'Additional Regulations' column refer to 'Additional Development Regulations' following the Schedule." AR 634.

[5] The Commission found that the Project's merger of two lots into a single 6,287 square foot lot is not consistent with the LCP because it would facilitate a less dense development pattern. AR 1, 6, 8. Not so. The Commission's finding that two lots cannot be merged where it decreases density is not supported by the LCP, which allows the creation of a residential lot by merger when the newly created lot is between 2,700 and 7,000 square feet. LIP §A.12.030; AR 634. The LCP reflects no intent to require a minimum of one residence per lot, or to prohibit the merger of two lots into one. Further, there are no "density requirements prescribed by the RH designation". *See* Pet. Op. Br. at 13-14. The Project's merger of two lots is expressly permitted by the LCP and nothing about merging two RH-designated lots violates its requirements.

[6] Petitioners point out that, although the Commission's findings state that the LCP "specifically calls for 'more intense forms' of development not less intense development", nowhere does the LCP say so. Pet. Op. Br. at 13, n. 7. The Commission's opposition admits that is true. Opp. at 18, n. 8.

[7] Petitioners correctly argue that the Commission's finding that the LCP lacks "robust policies" implies that it contains some policies designed to preserve housing density. In fact, there are no policies in the LCP that prohibit the loss of residential units or that preserve housing density. Reply at 11.

[8] Petitioners argue that the Commission's findings are undercut by City's consistent application of the LCP over a period of more than 20 years. In the past 20 years, the City approved CDPs for 53 new single family residences where duplexes or triplexes previously existed. AR 90-99, 1719-2118. Five of these CDP decisions included lot mergers -- 4016 The Strand, 4004 The Strand, 204-208 The Strand, 212-220 The Strand, and 116 31st Street. AR 1727-42, 1759-66, 1813-21, 1844-64, 2061-74. All these CDPs were within the Commission's appeal jurisdiction and yet the Commission never contended that the LCP favors multi-family housing. Pet. Op. Br. at 11, n. 5, 14. Clearly, the Commission has not previously interpreted the LCP to limit lot mergers and a concordant loss of density. Pet. Op. Br. at 14-15.

The Commission correctly replies that the mere fact that a Commissioner did not appeal any of the 53 prior CDPs approved by the City does not mean that it must approve the Project. The Commission's decision not to appeal, or to accept an appeal, of prior City-approved projects shows only that the Commission declined to assert jurisdiction over them, not that the Commission made any affirmative findings on the merits of a project. Opp. at 16.

[9] LIP Policy A.12.010(C) states: "Protect adjoining single-family residential districts from excessive loss of sun, light, quiet, and privacy resulting from proximity to multifamily development." Opp. at 16, n. 7.

[10] Petitioners point out that approximately two months after their application was deemed complete, the City adopted Urgency Ordinances 19-0020-U (1AR48-51) and Urgency Ordinance 20-0003-U (6AR1522-1524) to implement SB 330's no net loss mandate by requiring an equal number of replacement units for residential units that are demolished. An LCP amendment seemingly will follow in due course.

[11] There are 42 residential blocks south to north between 1st Street and 45th Street. The two blocks east to west closest to the beach generally have between 32 and 72 lots with a rough average of 40 lots. The total is more than 1,500 residential parcels. Pet. Op. Br. at 17, n. 13. Example photographs of ocean fronting houses are located at AR15, 1744, 1752, 1768, 1783, 1799, 1808, 1814, 1823, 1839, 1845, and 1876. Pet. Op. Br. at 17.

[12] The court declines to use babble of "human ecosystem" used by one Commissioner.

[13] Petitioners complain that the Commission does not explain how it selected a "community" of only 17 parcels. There are 42 residential blocks south to north between 1st Street and 45th Street and the two blocks closest to the beach generally have between 32 and 72 lots with a rough average of 40 lots. AR 88, 91-95. There are more than 1,500 ocean-front residential parcels, far more than the 17 parcels selected by the Commission. Reply at 8, n. 2. The short answer is that the Commission reasonably can consider the three-block area of the Cotsen Property – the block on which it is located and the two immediately adjacent blocks -- as the community.

[14] The Commission argues that Petitioners' summary of the 53 CDPs issued for single-family homes to replace multi-family homes (AR 96-99) does not indicate the square footage of the new homes. *See also* AR 1719-2119. However, Petitioners included two Commission staff reports for two appeals of the CDPs which describe far smaller homes than Petitioners' proposed home of 9,920 square feet and on far smaller lots. Similarly, almost all of the photographs included with those CDP appeals show homes far smaller homes on single lots. Opp. at 9-10, n. 3 (listing various citations).

[15] The Commission adds that section 30250 of the Coastal Act -- with which the LCP must be consistent (*see* McAllister v. California Coastal Commission (2008) 169 Cal.App.4th 912, 931 (assuming LCP incorporates Coastal Act requirements) -- contains policies designed to encourage concentrating development in existing developed areas to minimize impacts to coastal resources that can result from unplanned development or pressure to build in undeveloped areas. Opp. at 14. As discussed *ante*, section 30250 has little to do with the density of development; it concerns a preference for the location of development contiguous to developed areas to preserve undeveloped areas. The Commission also relies on section 30253(d), which provides that new development shall be sited so as to "[m]inimize energy consumption and vehicle miles traveled." This provision also has no bearing on density and again concerns location. Opp. at 14.

[16] *See* Property 2 (AR 1727-42), Property 5 (AR 1759-66), Property 12 (AR1813-21), Property 16 (AR 1844-64), and Property 44 (AR2061-74). Reply at 9, n. 4.

[17] Although Petitioners do not raise the argument, there is an issue whether the Commission can consider cumulative impacts under section 30250. The court in Billings v. Cal. Coastal Commission, (1980) 103 Cal.App.3d 740-41 observed: "Section 30250 … first requires that a new development shall not be located in a previously undeveloped area unless there are adequate public services and the development 'will not have *significant adverse effects, either individually or cumulatively*, on coastal resources." (emphasis added). Under Billings, section 30250 only requires that new development occur in already developed areas and, when existing developed areas cannot accommodate it, the new development must occur in areas with adequate public services where it will not cause individual or cumulative impacts on coastal resources. It does not require analysis of cumulative impacts where new development occurs in an

existing developed area. *Cf.* San Diego Navy Broadway Complex Coalition v. California Coastal Commission, (2019) 40 Cal.App.5th 563, 594 (noting conflicting case law interpretations of section 30250 in Billings and Sierra Club v. Superior Court, (1985) 168 Cal.App.3d 1138, 1141, which stated that all new development must not have significant individual or cumulative adverse effects on coastal resources under section 30250).

Dept 85

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CORAL COURTS, LLC

FILED
Superior Court of California
County of Los Angeles

FEB 14 2022

Sherri R. Carter, Executive Officer/Clerk of Cou
By: J. De Luna, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CORINNA COTSEN, AS TRUSTEE OF THE CORINNA COTSEN 1991 TRUST; and CORAL COURTS, LLC, Petitioners, vs. CALIFORNIA COASTAL COMMISSION; and DOES 1 through 10, inclusive Respondents.	CASE NO. 20STCP04214 (Assigned for all purposes to Department 85, Judge James Chalfant) **~~[PROPOSED]~~ JUDGMENT AND ORDER OF REMAND** Case Filed: December 23, 2020 Trial Date: January 4, 2022

On January 4, 2022, the above-captioned Verified Petition for Writ of Mandate ("Petition") came on regularly for trial as to the First through Fourth Causes of Action. Trial was held in Department 85 of the above-entitled Court, the Honorable James C. Chalfant, Judge, presiding without a jury. Sherman L. Stacey appeared as counsel for Petitioners Corinna Cotsen, as Trustee of the Corinna Cotsen 1991 Trust and Coral Courts, LLC (collectively, "Petitioners"). Deputy Attorney General Erica B. Lee appeared as counsel for Respondent California Coastal Commission ("Respondent").

Respondent having certified and Petitioners having lodged the record of proceedings in Respondent's Case Nos. A-5-MNB-20-0020 and A-5-MNB-20-0047, the Court has admitted such record of proceedings into evidence without objection. The Court considered the Petition, the briefs of the parties in support and in opposition to the Petition, and the oral argument presented by counsel for Respondent and Petitioners. The Court being fully advised in the matter hereby now enters judgment as follows:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. The Writ of Mandate sought in the Petition is denied.
2. The Court adopts its tentative ruling dated January 4, 2022, as its Statement of Decision under Code of Civil Procedure Section 632, except as modified for the remand of the Respondent's decision described in Paragraph 3 of this Judgment.
3. The decision of the Respondent in Respondent's Case Nos. A-5-MNB-20-0020 and A-5-MNB-20-0041 is remanded to the Respondent for reconsideration by Respondent as to whether, in light of the Court's Statement of Decision, a Coastal Development Permit should have been denied for the demolition of the structures at 1312 and 1316 The Strand, Manhattan Beach, County of Los Angeles, State of California.

4. The Respondent shall make a decision on reconsideration within one hundred eighty days (180) days of the date on which this Judgment is served upon Respondent, but shall make every effort to make a decision sooner if possible.
5. Within ten (10) days of the decision of the Respondent on reconsideration, the Respondent shall file a return with the Court describing the action which Respondent has taken.
6. With the consent of the Petitioners, the Fourth and Fifth Causes of Action in the Petition are dismissed.
7. In all other respects, judgment is for Respondent.
8. Neither Petitioners nor Respondent shall recover its costs in this action.

IT IS SO ORDERED.

DATED: 2/14/22

Judge of the Superior Court
JAMES C. CHALFANT

APPROVED AS TO FORM

Erica Lee

ERICA B. LEE
Deputy Attorney General
Attorneys for Respondent and Defendant
California Coastal Commission

California Coastal Commission
A-5-MNB-20-0020 &
A-5-MNB-20-0041, Exhibit 9 p. 3 of 4

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 5820 Canoga Avenue, Suite 300, Woodland Hills, CA 91367.

On February 10, 2022, I served the foregoing documents described as:

[PROPOSED] ORDER AND JUDGMENT ON REMAND

on all interested parties in this action as follows:

Xavier Becerra, Attorney General of California
Christina Bull Arndt, Supervising Deputy Attorney General
Erica B. Lee, Deputy Attorney General
300 South Spring Street, Suite 1702
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[X] **(BY EMAIL OR ELECTRONIC TRANSMISSION)**: I caused a copy of the document(s) to be sent from e-mail address tperry@gaineslaw.com to the persons at the addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California, that the foregoing is true and correct.

Executed on February 10, 2022, at Woodland Hills, California.

Tiffany Perry
TIFFANY PERRY

California Coastal Commission
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Sunshine Enterprises, LP v. California Coastal Commission, BS 158638

Tentative decision on petition for writ of mandate: denied

Petitioner Sunshine Enterprises, LP ("Sunshine") seeks a writ of mandate to compel the California Coastal Commission ("Commission") to set aside its decision to deny Coastal Development Permit ("CDP") No. 5-15-0030 and order the Commission to approve it.

The court has read and considered the moving papers, opposition, and reply, and renders the following tentative decision.

A. Statement of the Case

Petitioner Sunshine commenced this proceeding on November 5, 2015. The operative pleading is the First Amended Petition ("FAP") filed February 22, 2017. The FAP alleges in pertinent part as follows.

Petitioner is the legal and beneficial owner of real property located at 1515-1525 Ocean Avenue, and 1530 Second Street, Santa Monica, California ("Property"). Prior to 2010, the Property was improved with two aged motels with a total of 87 units. At that time, the Property was owned by Ocean Avenue Management LLC ("OAM"). The beneficial owners of OAM are the same as the owners of Petitioner Sunshine.

Between 2005 and 2007, OAM applied to the City of Santa Monica ("City") for Development Review Permit 05-007, CDP 05-009, Variance 06-018, and General Plan Amendment 06-001 ("City Permits") to demolish the two motels and construct a new hotel with 164 rooms over a 4-level subterranean garage.

On September 23, 2008, the City approved the City Permits. At the time, City Ordinance No. 1516 required payment to the City of a fee where lower cost visitor accommodations were removed and not replaced. The City found that 72 of the 87 rooms in the existing motels were lower cost visitor accommodations but that no fee would be required because substantial evidence supported the finding that predicted prices for the new hotel would also provide lower cost visitor accommodations.

The City imposed Special Condition No. 8 for the City Permits which required OAM to report annually the average daily room rate for each of 72 rooms in the new hotel. If the average daily room rate exceeded the amount of a lower cost visitor accommodation, the property owner would be obligated to pay a fee calculated in accordance with Ordinance No. 1516.

On March 5, 2009, OAM applied to the Commission for CDP 5-09-040 to demolish the two existing motels and construct a 164-room hotel over a 4-level subterranean garage consistent with the City's approval of the City Permits. On June 11, 2009, the Commission approved CDP 5-09-040 subject to five Standard Conditions and five Special Conditions.

In January 2010, the City authorized Petitioner to demolish the existing structures, and Petitioner did so during January and February 2010. In February, 2010, the City issued a "foundation only" permit authorizing the excavation and construction of a subterranean garage and hotel foundations, which Petitioner did between February 2010 and June 2010. On June 21, 2010, the City issued a building permit for the construction of the new hotel.

On September 30, 2011, Petitioner completed construction of the new hotel in conformance with the plans approved by the Commission in CDP 5-09-040. On October 1,

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2011, the City issued a temporary Certificate of Occupancy for the new hotel. On October 7, 2011, the new hotel, named "The Shore Hotel", was opened for business.

On April 30, 2013, in accordance with City Special Condition No. 8, Petitioner submitted to the City a report of annual average room rates for the Shore Hotel for year 2012. The City determined that the average room rates for the Shore Hotel exceeded rates the City considered lower cost visitor accommodations and notified Petitioner that the fee required by Special Condition No. 8 was $1,211,688. Petitioner paid the fee on December 9, 2013.

On November 1, 2013, Petitioner learned that CDP 5-09-040 had never been issued because the documents necessary to satisfy Special Conditions 1 through 5 to CDP 5-09-040 were not adequate. If the OAM had been notified by the Commission that it needed to submit additional documents in order to satisfy the Special Conditions, it would have done so.

On November 21, 2013, Petitioner requested in writing that the Commission issue CDP 5-09-040. The Commission refused.

On August 27, 2014, Petitioner submitted an application to amend the Commission's June 11, 2009 action on CDP 5-09-040 by eliminating reference to a "moderate" priced hotel and tendered an application fee of $9,864 as required by Commission Regulations. The Commission rejected Petitioner's application on the grounds that CDP 5-09-040 had expired and could not be amended. The Commission demanded that Petitioner file an entirely new application for a CDP and demanded a filing fee of $39,456.

Petitioner then tendered a new Application to the Commission for a CDP to construct the already completed and operating Shore Hotel and paid a filing fee of $39,456. The Commission assigned CDP 5-15-0030 to the new application, placed it on its June 10, 2015 calendar, and gave public notice of the hearing.

On August 25, 2015, a Commission Staff Report was prepared for CDP 5-15-0030. The Staff Report recommended that CDP 5-15-0030 be approved subject to nine Special Conditions. Petitioner objected to Special Conditions 2, 6B, 6B4, 6C, 8, and 9. The Executive Director of the Commission recommended that CDP 5-15-0030 be approved subject to a Special Condition No. 8 which requires Petitioner to pay a fee in the amount of $2,929,197.00.

On September 9, 2015, the Commission held a public hearing on CDP 5-15-0030 and voted to deny it. The Commission did not specify any facts upon which denial of CDP 5-15-0030 was to be based. Nor did the Commission direct its staff to make any specific findings of fact to support the decision to deny.

On February 12, 2016, the Commission held a hearing to consider Revised Findings proposed by staff in support of its decision to deny CDP 5-15-0030. Petitioner appeared and objected to the proposed Revised Findings. The Commission overruled Petitioner's objections and adopted the Revised Findings.

Petitioner alleges that exaction of a $2,929,197 fee from Petitioner is an unconstitutional taking of property in violation of the Fifth and Fourteenth Amendments of the United States Constitution, and beyond the jurisdiction of the Commission under Public Resources Code section 30010.

Petitioner also alleges that the Commission's finding of fact that the Shore Hotel is inconsistent with Public Resources Code Sections 30244, 30213, 30252 and 30253 was not supported by substantial evidence. The finding that denial of CDP 5-15-0030 is necessary to avoid prejudice to the ability of the local government to prepare a local coastal program in conformity with Chapter 3 does not support the decision to deny CDP 5-15-0030. The denial of

CDP 5-15-0030 because of Petitioner's objections to Special Condition 6 and 8 deprived Petitioner of a fair hearing.

Petitioner further alleges that the Commission abused its discretion by denying CDP 5-15-0030, which would authorize the demolition of the two previously existing structures, because the Commission made no finding that retention of the structures was feasible.

Petitioner finally alleges that the Commission failed to meet the time deadlines of Public Resources Code section 30621 and Government Code section 65952, and failed to comply with the express conditions under which Petitioner was granted a waiver of time under Government Code section 65957. The Commission was therefore deprived of jurisdiction to approve or disapprove CDP 5-15-0030, which must be approved by operation of law.

B. Standard of Review

CCP section 1094.5 is the administrative mandamus provision which structures the procedure for judicial review of adjudicatory decisions rendered by administrative agencies. Topanga Ass'n for a Scenic Community v. County of Los Angeles, ("Topanga") (1974) 11 Cal.3d 506, 514-15. The pertinent issues under section 1094.5 are (1) whether the respondent has proceed without jurisdiction, (2) whether there was a fair trial, and (3) whether there was a prejudicial abuse of discretion. CCP §1094.5(b). An abuse of discretion is established if the respondent has not proceeded in the manner required by law, the decision is not supported by the findings, or the findings are not supported by the evidence. CCP §1094.5(c).

CCP section 1094.5 does not in its face specify which cases are subject to independent review of evidentiary findings. Fukuda v. City of Angels, (1999) 20 Cal.4th 805, 811. Instead, that issue was left to the courts. In cases other than those requiring the court to exercise its independent judgment, the substantial evidence test applies. CCP §1094.5(c). Judicial review of Commission permit decisions is governed by the substantial evidence standard. Bolsa Chica Land Trust v. Superior Court, (1999) 71 Cal.App.4th 493, 506-08.

"Substantial evidence" is relevant evidence that a reasonable mind might accept as adequate to support a conclusion (California Youth Authority v. State Personnel Board, (2002) 104 Cal.App.4th 575, 585) or evidence of ponderable legal significance, which is reasonable in nature, credible and of solid value. Mohilef v. Janovici, (1996) 51 Cal.App.4th 267, 305, n.28. Substantial evidence may include expert opinion, oral presentations at a public hearing, photographs, and staff-prepared written materials. Anthony v. Snyder, (2004) 116 Cal.App.4th 643, 660-61. The trial court considers all evidence in the administrative record, including evidence that detracts from evidence supporting the agency's decision. California Youth Authority, *supra*, 104 Cal.App.4th at 585. A court may reverse the Commission's decision only if a reasonable person could not reach the agency's conclusion. Bolsa Chica, *supra*, 71 Cal.App.4th at 503.

An agency is presumed to have regularly performed its official duties (Ev. Code §664), and the petitioner seeking administrative mandamus therefore has the burden of proof. Steele v. Los Angeles County Civil Service Commission, (1958) 166 Cal.App.2d 129, 137; Afford v. Pierno, (1972) 27 Cal.App.3d 682, 691 ("[T]he burden of proof falls upon the party attacking the administrative decision to demonstrate wherein the proceedings were unfair, in excess of jurisdiction or showed prejudicial abuse of discretion).

The agency's decision at the hearing must be based on the evidence. Board of Medical Quality Assurance v. Superior Court, (1977) 73 Cal.App.3d 860, 862. The hearing officer is

only required to issue findings that give enough explanation so that parties may determine whether, and upon what basis, to review the decision. Topanga, *supra*, 11 Cal.3d at 514-15. Implicit in section 1094.5 is a requirement that the agency set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order. Id.

C. Coastal Act

The California Coastal Act of 1976 ("Coastal Act") (Pub. Res. Code[1] §30000 *et seq.*) is the legislative continuation of the coastal protection efforts commenced when the People passed Proposition 20, the 1972 initiative that created the Commission. *See* Ibarra v. California Coastal Comm., (1986) 182 Cal.App.3d 687, 693. One of the primary purposes of the Coastal Act is the avoidance of deleterious consequences of development on coastal resources. Pacific Legal Foundation v. California Coastal Comm., (1982) 33 Cal.3d 158, 163. The Supreme Court described the Coastal Act as a comprehensive scheme to govern land use planning for the entire coastal zone of California. Yost v. Thomas, (1984) 36 Cal.3d 561, 565. The Coastal Act must be liberally construed to accomplish its purposes and objectives. §30009.

The Coastal Act's goals are binding on both the Commission and local government and include: (1) maximizing, expanding and maintaining public access (§§ 30210-14); (2) expanding and protecting public recreation opportunities (§§ 30220-24); 3) protecting and enhancing marine resources including biotic life (§§ 30230-37); and (4) protecting and enhancing land resources (§§ 30240-44). The supremacy of these statewide policies over local, parochial concerns is a primary purpose of the Coastal Act, and the Commission is therefore given the ultimate authority under the Act and its interpretation. Pratt Construction Co. v. California Coastal Comm., (2008) 162 Cal.App.4th 1068, 1075-76.

The heart of the Coastal Act is the requirement that all persons shall obtain a CDP prior to undertaking development within the coastal zone. §30106. Before it can approve a project, the Commission must make the finding that the project, as conditioned, is consistent with the applicable Chapter 3 policies of the Coastal Act and the applicable requirements of the California Environmental Quality Act ("CEQA") (§21000 *et seq.*). §§ 21080.5, 30604(a); 14 Cal. Code Regs. 13096(a). Two Coastal Act objectives served by the permitting process include protecting, encouraging and, where feasible, providing "[l]ower cost visitor and recreational facilities" and ensuring "maximum access ... and recreational opportunities" on the coast. §§ 30210, 30213.

The Commission acts in a quasi-judicial capacity when acting on a CDP application. *See, e.g.*, Pacifica Corp. v. City of Camarillo, (1983) 149 Cal.App.3d 168, 177 ("[T]he courts have uniformly held that the coastal permit process is adjudicatory"). A party may seek after-the-fact permit approval if development occurs without a permit. *See, e.g.*, LT-WR, L.L.C. v. California Coastal Com., (2007) 152 Cal.App.4th 770, 794-795. Based on the evidence, the Commission may grant, deny or otherwise condition the development based on all applicable Coastal Act policies. Id.

D. Motion to Augment

Petitioner Sunshine makes a "Request to Augment Record", which the court deems to be a motion to augment the administrative record pursuant to LASC 3.231(g)(3). The motion is

[1] All further statutory references are to the Public Resources Code unless otherwise stated.

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timely filed and seeks to augment the record with a letter dated February 10, 2016 from Petitioner's counsel to the Commission objecting to the Revised Findings. Stacey Decl., Ex. A. Respondent Commission does not oppose this motion.

The letter submitted by Petitioner was before the Commission as part of the February 12, 2016 hearing. The letter was delivered both by email on February 11, 2016 and to the members of the Commission on February 12, 2016. Stacey Decl. ¶4. The letter is therefore properly part of the administrative record.

The motion to augment the administrative record with the February 10, 2016 letter is granted.

E. Statement of Facts[2]

1. CDP 5-09-040

On March 5, 2009, Petitioner applied for CDP CDP 5-09-040 to replace two aging motels with a single, limited amenity moderate priced Travelodge Hotel. AR 761. The application stated that the new hotel would increase the number of affordable moderate priced guest rooms from 87 to 164, and provide an additional 110 non-required parking spaces. AR 761.

Petitioner's application stated that it had retained PKF Consulting in order to determine the most feasible replacement for the two hotels currently on the Property. AR 844. PKF Consulting determined that the two currently existing hotels would soon be inperable due to age and physical condition, and the most economically viable option was to demolish the two hotels and replace them with a single hotel, either a moderate price hotel or a boutique luxury hotel. AR 844. Petitioner elected to pursue a moderately-priced Travelodge Hotel. AR 844. Petitioner

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[2] Petitioner asks the court to judicially notice (1) 14 CCR section 13055(h)(3) (Ex. B), (2) 14 CCR section 13073 (Ex. C), and (3) Santa Monica Municipal Code section 2.32.010 (Ex. D). The requests are granted. Evid. Code §452(b). In reply, Petitioner asks the court to judicially notice three Florida statutes (Exs. A-D) and California Code of Administrative Regulations title 14, sections 130053.4 and 13053.5 (Exs. E-F). The requests are granted. Evid. Code §452(b).

The Commission asks the court to judicially notice (1) screenshots from Petitioner's website (Exs. 1-8). Petitioner objects to the request for judicial notice for Exhibits 1-8.

The existence of a company's website may be judicially noticed. Ev. Code ə452(h); Gentry v. eBay, Inc., (2002) 99 Cal.App.4th 816, 821 n.1 (taking judicial notice of the manner in which a company described its operations on its web-site). Although a court may take judicial notice of the website, it may not accept its contents as true. *See* Ragland v. U.S. Bank Nat. Assn., (2012) 209 Cal.App.4th 182, 193 ("When judicial notice is taken of a document, however, the truthfulness and proper interpretation of the document are disputable." [Citations omitted.]). *But see* Ampex Corp. v. Cargle, (2005) 128 Cal.App.4th 1569, 1573 n.2 (finding that documents published on Internet were amenable to judicial review to the extent the records were "...not reasonably subject to dispute and [were] capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy."). Screenshots from Petitioner's website may be judicially noticed only if they are relevant. A document not presented to the agency and included in the administrative record is relevant only if it meets the test of CCP section 1094.5(e). The Commission makes no effort to meet that test, and the requests are denied.

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made this decision despite the fact that a luxury boutique hotel would have been more profitable. AR 844. The floor plans for the new hotel demonstrated that it would be a limited amenities hotel with a basic lobby, swimming pool, small exercise room, manager's office, standard housekeeping facilities, and small breakfast/meeting room. AR 844. There would be no restaurant, bar, spa, lounge, or similar amenities. AR 844. The application stated that the hotel would provide diversity of price to much needed affordable lodging in the City. AR 846.

On May 18, 2009, Commission staff recommended granting CDP 5-09-040. AR 783. The recommendation relied on Petitioner's representation that the new hotel would be a moderately priced Travelodge hotel with a proposed room rate of $164 per night. AR 789. The new hotel would not have a restaurant, bar, spa, lounge, or other upscale facilities. AR 789. The smaller rooms and lack of amenities would make it difficult to convert the hotel into a luxury hotel in the future. AR 795. The project therefore was consistent with 30213, which requires that lower cost visitor facilities in the Coastal Zone be protected, encouraged, and provided where feasible, and section 30213, which limits the Commission's ability to regulate room rates. AR 795. Petitioner also indicated that the additional parking spaces would be available as public parking, consistent with section 30252, which requires that new development maintain and enhance public access through parking facilities. AR 798. On June 11, 2009, the Commission granted CDP 5-09-040 as part of its consent calendar. AR 2276-81.

On June 29, 2011, the Commission issued a Notice of Intent to Issue Permit (Upon Satisfaction of Special Conditions) ("Notice") for CDP 5-09-040. AR 2282. The Notice stated that the Commission's approval would remain valid for two years from the date of approval. AR 2282. Petitioner was required to fulfill the "prior to issuance" special conditions, obtain and sign the CDP, and commence development within two years of the approval date. AR 2282.

2. The City Entitlements

a. Approval

The Project environmental impact report ("EIR") found that a records search revealed no known fossil sites within one mile of the Property. AR 1598. The closest known site was 1.8 miles away. AR 1598. The sole archaeological site was site 19-002392H, which is located five blocks from the Project site and contains only "buried historic refuse containing domestic items and structural debris from the 1920s-1930s." AR 1597-98. The EIR evaluation showed this site to be less than significant. AR 1598. Six additional cultural resources studies were conducted within a one-half mile radius, and all failed to identify any archeological resources. AR 1598.

When Petitioner applied to the City for local approvals, the City noted that the hotel's proposed size conflicted with the City's land use plan because it would block ocean views from public viewing decks at the Santa Monica Place shopping mall. AR 919. These viewing decks had become less useful in the past ten years as commercial buildings built along Second Street and Ocean Avenue diminished the view and use of the decks for outdoor dining declined. AR 919. In exchange for building an affordable hotel, the City's staff recommended amending the City's land use plan to "remove... the public viewing platforms" from the Scenic and Visual Resources Map of the City's Land Use Plan. AR 919. The City explained that while the Project would result in the loss of scenic views of the ocean, it was not feasible to reduce the size of the hotel and also retain the benefits of the increased affordable lodging. AR 920.

The City conditioned approval of the hotel on a Transportation Demand Management program. AR 991. Petitioner was required to provide transit information guests, maintain six

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on-site bicycles for guest use, assist guests with booking for shuttles, bicycle rentals, and flex car services, and provide free Big Blue Bus tokens to guests. AR 991. The City stated explicitly that it was approving the Travelodge Hotel as a low cost lodging facility. AR 1076. The City imposed Condition #8 on the approval, which stating that if any of the low cost rooms cease to be low cost, Petitioner would be required to pay a mitigation fee pursuant to Ordinance 1516. AR 1076. City staff determined that the hotel would not be considered low cost if daily rates exceeded $172.27. AR 1076.

On September 23, 2008, the City approved the Project to build a Travelodge Hotel. AR 1147-48.

b. The Shore Hotel

OAM applied to the Commission for a CDP to demolish the two existing motels and construct a 164-room hotel over a 4-level subterranean garage consistent with the City's approval of the City Permits. On June 11, 2009, the Commission approved CDP 5-09-040 subject to five Standard Conditions and five Special Conditions. Pet. After the City also authorized Petitioner to demolish the existing structures, Petitioner did so during January and February 2010. Pet.

On June 21, 2010, the City issued a building permit for the construction of the new hotel. Pet. Petitioner completed construction of the new hotel in conformance with the plans approved by the Commission in CDP 5-09-040. Pet. The City issued a temporary Certificate of Occupancy and on October 7, 2011, the "The Shore Hotel", was opened for business.

c. Mitigation Fee

The Shore Hotel is a boutique luxury hotel, not a moderately priced hotel. On September 6, 2013, the City's Economic Development Division determined that the appropriate mitigation fee required under Ordinance 1516 for Petitioner's removal of affordable lodging at the Property totaled $16,829 per room. AR 63-64. Because 72 units were removed, the total amount of mitigation fee was $1,211,688. AR 63.

Petitioner paid the mitigation fee on October 3, 2013. AR 698. The City acknowledged receipt of the $1,211,688 from Petitioner in December 2013. AR 697. The Acknowledgement and Receipt for Payment of Affordable Lodging Mitigation Fee stated the payment fulfills all of Petitioner's obligations for the Shore Hotel under Ordinance 1516. AR 697. However, "because this project is under the concurrent jurisdiction of the City and the California Coastal Commission, the elimination of the low cost lodging at the Shore Hotel through the payment of this fee also requires review by the Coastal Commission." AR 697.

3. The Commission's Notice of Violation

On January 15, 2014, the Commission sent Violation Notice V-5-13-029 to Petitioner. AR 11. The Violation Notice stated that it had approved CDP 5-09-040 subject to special conditions which had not been fulfilled and the CDP expired. AR 11. Petitioner's Project as approved was a moderately priced hotel with no restaurant and limited amenities. AR 11. The Shore Hotel is a boutique hotel with suites, expensive room rates, a reastaurnat and a retial space. AR 11. Additionally, guests are charged $35 per day to park in the underground parking. AR 11. To address the unpermitted development, the Violation Notice indicated that Petitioner should submit an after-the-fact permit application. AR 11.

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On August 28, 2014, Petitioner submitted an application to amend CDP 5-09-040. AR 11. The Commission's notified Petitioner that it could not amend CDP 5-09-040 because it had never been issued and now was expired. AR 2350. The Commission stated that Petitioner would be required to apply for an after-the-fact permit. AR 2350. The fees for an after-the-fact permit would be twice the original fee submitted. AR 2350. The Commission was willing to provide a 40% discount given the LEED status of the hotel. AR 2350.

On January 29, 2015, the Commission stated that it received an application (CDP 5-15-0030) to amend CDP 5-09-040. AR 2361. The Commission re-stated that it could not process Petitioner's application to amend CDP 5-09-040 because that permit had expired. AR 2361. Accordingly, the letter also served as a denial of Petitioner's appeal to the denial of the application to amend CDP 5-09-040. AR 2361.

4. CDP 5-15-0030

a. Application Process

On January 6, 2015, Petitioner submitted an application for CDP 5-15-0030. AR 1. The application fee was $39,456. AR 1. The application described the proposed development as the construction of a new 89,900 square foot, four-story hotel with 164 guestrooms, and the related demolition of two aged and obsolete motels ("Project"). AR 2. The application stated that the Petitioner had already paid a $1,211,688 mitigation fee to the City. AR 2. The existing number of parking spaces was 68, and the Project proposed to add 284 new spaces. AR 4. The Application claimed that the development would protect existing lower-cost visitor and recreational facilities. AR 6.

On May 27, 2015, Petitioner's counsel signed a 90-day time waiver. AR 151, 497. The agreement stated that the application and Commission staff agreed to extend from July 5 to October 3, 2015 the time limits of Govt. Code section 65952 for a decision on CDP 5-15-0030. AR 497. Petitioner's cover email stated that the waiver was given on the express understanding that the matter would be scheduled for the July meeting and would not be scheduled for September in Eureka. AR 151.

On August 20, 2015, Petitioner's counsel proposed several terms and conditions to resolve the dispute with the Commission. AR 127. Although Petitioner's counsel felt that imposition of any mitigation fee beyond the $1,218,600 extracted by the City pursuant to Ordinance 1516 would be an abuse of discretion, Petitioner proposed an additional mitigation fee of $1,229,400, which would be deposited in five equal annual installments of $245,880. AR 127.

b. Staff Report

On August 25, 2015, the Commission's staff submitted a report recommending approval of the Application with conditions. AR 10. The Staff Report noted that 72 of the rooms in the demolished hotels were considered lower cost. AR 11-12. The proposed new hotel has 164 high cost rooms. AR 12. In past Commission actions, new hotel development have been required to provide 25% of the total hotel rooms at a lower cost rate or provide mitigation for the lack of lower cost rooms. AR 12. In this case, 25% of the 92 new hotel rooms would be 23 rooms. AR 12. Any mitigation imposed on the Project should therefore include both the loss of the 72 lower cost rooms and the failure to provide 23 new lower cost rooms. AR 12.

The Commission has required mitigation for impacts to lower cost overnight

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accommodations for over 35 years. AR 12. Consistent with recent Commission actions, an in-lieu fee requirement is imposed for every lower cost room lost, and also for 25% of new construction that is not at a lower cost rate. AR 12. In this way, the Commission requires a mitigation fee for the loss of lower cost rooms now and in the future. AR 12. Although Petitioner paid a mitigation fee to the City, the fee was not sufficient mitigation for the loss of the lower cost accommodations. AR 12. The City imposed a fee of $16,000 per room, but the Staff Report determined that a fee of $42,120 per room was appropriate for the true cost of the impacts to lower cost accommodations. AR 12. The City informed the applicant that its mitigation fee would be subject to the Commission's separate review and approval. AR 12.

Special Condition 1 would restrict any future development on the Property by requiring that any future development be approved through an amendment to CDP 5-15-0030 or an additional CDP. AR 16.

Special Condition 2 would require Petitioner to indemnify the Commission for any costs incurred to defend CDP 5-15-0030. AR 16.

Special Condition 3 would require Petitioner to execute and record a deed restriction against the Property imposing the CDP's special conditions on the Property. AR 16.

Special Condition 4 would require Petitioner to comply with all conditions imposed by the City. AR 16.

Special Condition 5 would require the Shore Hotel to remain open to the general public as a short-term hotel. AR 17.

Special Condition 6 would require the Project to incorporate the City's Transportation Demand Management Program. AR 17. This includes the distribution of information regarding transit in all hotel guest rooms and at the reception desk, onsite bicycle parking, assistance to guests for booking transit alternative, and free Big Blue Bus tokens for guests and employees. AR 17. Petitioner also would be required to actively encourage employee participation in ride sharing programs, provide a validation program for members of the public using onsite parking at a rate less than or equal to the rates for City municipal structure 4. AR 17. For the first six years following the issuance of CDP 5-15-0030, Petitioner would be required to submit a bi-annual report for monitoring the proposed measures and to make 294 parking spaces available to serve the hotel, restaurant, retail space, and the general public. AR 18.

Special Condition 7 would require the submission of an archeological monitoring plan to ensure that any prehistoric or historic cultural resources will be identified. AR 18.

Special Condition 8 would require Petitioner to pay a $4,001,400 mitigation fee for the loss of lower cost rooms. AR 19. This amount would be reduced by the $1,211,688 paid to the City, for a remaining mitigation fee of $2,789,712. AR 19. Special Condition 8 also would impose a 5% administrative cost of $139,485. AR 19. The total in-lieu mitigation fee due within 90 days of Commission approval was $2,929,197. AR 19.

Special Condition 9 further required Petitioner to pay additional application fees of $26,304. AR 20.

c. Petitioner's Objections

At the September 9, 2015 hearing, Petitioner's counsel provided a written letter of Petitioner's objections to the Staff Report. AR 138. Petitioner objected to the scheduling of the meeting on September 9, 2015, stating that it had only received the Staff Report on August 28, 2015, six days before the hearing, and the Staff Report contained considerable new material. AR

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139. Petitioner was not prepared to respond to the Staff Report at the September 9, 2015 meeting, and asked that the Commission postpone the vote to a subsequent meeting. AR 139. Petitioner relied on its right under Commission Regulation section 13073(a) to a one time continuance. AR 139.

Recognizing, however, that the Commission was not likely to agree to a postponement, Petitioner also included objections to the Staff Report. AR 140. Petitioner objected to the Special Condition 3 that it be compelled to record a deed restriction on the Property. AR 142. Petitioner objected to Special Condition 6B, as no such requirement was included in CDP 5-09-040. AR 142. The exact same structure found to comply with the Coastal Act in CDP 5-09-040 was actually constructed, and the Commission should be collaterally estopped from imposing Special Condition 6B. AR 142-43. Petitioner further argued that the Commission had no jurisdiction to regulate parking rates. AR 143. The Commission also had no power in Special Condition 6C to require that the Shore Hotel reimburse employees for public transit, or to require that the Shore Hotel offer public parking. AR 143-44.

Petitioner objected to the mitigation fees demanded in the Staff Report. AR 144-45. The Commission had never before required fees in excess of the fees demanded by the City. AR 145. The Commission also had never before required fees for construction of new hotel rooms in the City. AR 145. Petitioner also challenged the mitigation fee on constitutional grounds, asserting that the fee must bear a reasonable relationship with the intended use and public impact of the development. AR 146.

Petitioner asked the Commission to approve CDP 5-15-0030 without Special Conditions 3, 6B, 6C, 8, and 9. AR 149.

d. <u>September 9, 2015 Hearing</u>

At the September 9, 2015 hearing, Petitioner's counsel again asked for a postponement of the hearing. AR 592. The Commission's counsel advised that although the Commission's Regulations give applicants a right to postponement, the request must comply with all applicable deadlines. AR 593. Petitioner had already agreed to an extension once, and the Permit Streamlining Act is explicit that only one extension is allowed. AR 593. Petitioner was not entitled to a second postponement. AR 593. The Commission then offered to allow Petitioner to withdraw the application and reapply, and the Commission would waive the reapplication fees. AR 593. Petitioner declined the offer. AR 593.

Petitioner repeated its objections to the Special Conditions in the Staff Report, in particular to Special Conditions 6 and 8. AR 594-97. Petitioner argued there was no appropriate nexus for a mitigation fee because the two hotels present on the Property before the Project were old and obsolete. AR 596. Further, there was no reason to penalize Petitioner for building additional hotel rooms, as that did not reduce the amount of rooms available in the Coastal Zone. AR 596.

The Commissioners discussed the fact that Petitioner had originally proposed to build a lower cost hotel, and then constructed a luxury hotel. AR 608. Commissioner Groom stated that an applicant should not be rewarded for failing to live up to the commitment of low cost spaces and the Project should be denied. AR 608. Commissioner Howell described the Project as a bait and switch, and stated that he did not believe that any mitigation fee could bring the Project into compliance with section 30213. AR 608. Commissioner Shallenberger acknowledged that an after-the-fact permit is always difficult, but he was not necessarily imposed to mitigation fees.

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However, he did not believe that the proposed mitigation was sufficient. AR 609.

Commissioner McClure inquired of staff what the Commission's options were to compel compliance if CDP 5-15-0030 was not granted. AR 612. Staff responded that the hotel was an open violation, and it would be a matter for the enforcement division to address. AR 612. These enforcement remedies would not necessarily require the Shore Hotel to close down. AR 613.

The Commission voted unanimously to deny CDP 5-15-0030. AR 617.

e. Revised Findings

On January 21, 2016, Commission Staff submitted a Staff Report: Revised Findings ("Revised Findings"). AR 633. The Revised Findings stated that, at the September 9, 2015 meeting, the Commission determined that the Project adversely affected coastal access because it was not in conformity with policies of the Coastal Act that encourage lower cost visitor serving facilities, and protect existing lower cost overnight accommodations. AR 633. The Project does not provide any lower cost accommodations to replace the 72 lower cost hotel rooms that were lost when the previous hotels were demolished. AR 634. Nor does the Project propose to convert any of the 92 new additional hotel rooms to lower cost accommodations. AR 634. The mitigation fees charged by the City were insufficient, and Petitioner opposed any further mitigation fee. AR 634.

Because the Project neither protected on-site lower cost accommodations nor provided for sufficient mitigation, it is inconsistent with section 30213 of the Coastal Act. AR 634. Section 30213 states that lower cost visitor serving facilities, including lower cost overnight accommodations, shall be protected, encouraged, and provided where feasible. AR 636. In its 2009 CDP application, Petitioner provided a feasibility study showing that the provision of lower cost accommodations was economically feasible for the Project. AR 636. In the current application, Petitioner provides no studies or evidence to support Petitioner's claim that it is no longer economically feasible to provide lower-cost accommodations. AR 636. So long as lower cost accommodations remain feasible, they should be provided as part of the Project. AR 636.

In the alternative, an in-lieu mitigation fee is required. AR 636. The Staff's proposed mitigation fee based on the cost of shared cabin rooms was insufficient because the value of 72 ocean front hotel rooms was not adequately replaced by 75 beds in shared cabin rooms. AR 660. Additionally, there was insufficient evidence that the cabins could be offered to the general public at lower cost rates in perpetuity. AR 660. The Department of Parks and Recreation could only tentatively commit to the proposed mitigation project because of the need for additional funding to complete the cabins. AR 660. The proposed in-lieu mitigation fee in the Staff Report would not have fully mitigated the Project's impacts, and in any event Petitioner refused to accept that condition. AR 636.

The Revised Findings also determined that the current parking conditions at the Project were not adequate for consistency with sections 30252 and 30253. AR 652. The parking spaces onsite serve only the hotel, restaurant, and retail space, and are not available for general parking. AR 652. If excess hotel parking were available to the general public, it would alleviate parking constraints on public coastal access. AR 652. Petitioner was opposed to a condition that it adopt a transportation demand management program and other parking measures. AR 652. Without such measures, the Project is inconsistent with the Coastal Act. AR 652.

f. February 12, 2016 Hearing

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On February 12, 2016, the Commission met to approve the Revised Findings. AR 734-35. The Commission staff addressed Petitioner's argument that there was no evidence that it would have been feasible to retain the old hotels on the Property. AR 735. Staff pointed out that the Application was not solely for demolition, and so a feasibility finding was not required. AR 735. Staff also noted that the Application for CDP 5-15-0030 was not the same as the Project proposed in CDP 5-09-040, because the as-built Shore Hotel contains a restaurant and other amenities that were specifically not going to be provided in CDP 5-09-040. AR 735-36. Finally, Staff denied that the Commission denied the application simply because Petitioner objected to the mitigation fee. AR 736. The denial was based on the Project's inconsistency with the Coastal Act, and Petitioner's objections were addressed for context only. AR 736. The Commission chose to reject the entire Project rather than try to craft an acceptable mitigation fee from the dias. AR 736.

Petitioner's counsel replied that the Commission's denial of the CDP 5-15-0030 was an attempt to fix the prices at the Shore Hotel. AR 737.

The Commission voted unanimously to approve the Revised Findings. AR 741.

F. Analysis

Petitioner Sunshine argues that the Commission's denial of CDP 5-15-0030 was (1) an unlawful response to Petitioner's objection to an unconstitutional attempt to impose an in-lieu mitigation fee, and (2) not supported by substantial evidence. Petitioner also procedurally argues that CDP 5-15-0030 should have been approved by operation of law under the Permit Streamlining Act (Govt. Code §65950 *et seq.*).

1. In-Lieu Mitigation Fee

Petitioner argues that the Commission cannot constitutionally impose a monetary fee for (a) the demolition of the two old hotels, and (b) the construction of the new Shore Hotel. Pet. Op. Br. at 4. Petitioner asserts that under Koontz v. St. Johns River Water Management Dist., ("Koontz") (2013) _ U.S. _, 133 S.Ct. 2586, 2603, any demand for in-lieu mitigation payments must satisfy the requirements of Nollan v. California Coastal Commission, ("Nollan") (1987) 483 U.S. 825, and Dolan v. City of Tigard, ("Dolan") (1994) 512 U.S. 374. Petitioner lawfully objected on the ground that the proposed mitigation fee violated Koontz.

a. Applicability of Koontz

The United States Supreme Court in Nollan established that the taking of an interest in property as a condition of a CDP requires a nexus between the impacts of the development and the interest taken. Nollan, *supra*, 483 U.S. at 837. The high court in Dolan held that if a nexus exists under Nollan, then the interest taken must be roughly proportional to the development's identified impacts. Dolan, *supra*, 512 U.S. at 391. In both Nollan and Dolan, the taking evaluated was the agency's requirement for a permit that some portion of the developer's real property be dedicated to a public purpose. Nollan, *supra*, 483 U.S. at 827 (permit conditioned on the transfer to the public of an easement across the property); Dolan, *supra*, 512 U.S. at 377 (permit conditioned on dedication of a portion of property for flood control and traffic improvements).

In Koontz, the United States Supreme Court extended the analysis of Nollan and Dolan to in-lieu payments or mitigation fees demanded by a permitting body. Koontz, *supra*, 133 S.Ct. at

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2599. Koontz applied the nexus and rough proportionality tests to the denial of a permit where the denial was based on the property owner's refusal to comply with a monetary demand. Id. at 2595-96 ("Even if respondent would have been entirely within its rights in denying the permit for some other reason, that greater authority does not imply a lesser power to condition permit approval on petitioner's forfeiture of his constitutional rights.").

Petitioner argues that it is unquestioned that (a) $4,140,885 was demanded, Petitioner opposed the demand, and CDP 5-15-0030 was denied because $4,140,885 was not enough of a mitigation fee. Pet. Op. Br. at 5.

As Respondent Commission argues (Opp. at 11), constitutional taking case law does not apply to the Commission's denial of CDP 5-15-0030. The Commission did not deny CDP 5-15-0030 because Petitioner refused to pay a mitigation fee, but rather the Commission determined at its September 9, 2015 hearing that the Staff Report's recommendation for mitigation was insufficient. AR 608-09, 636. The Commission never set any mitigation amount that would be acceptable for the Project to comply with section 30213. At least Commissioner Howell did not believe that a mitigation fee in any amount would bring the Project into compliance with section 30213 because Petitioner had performed a bait and switch. AR 608. The Commission found the after-the-fact Project non-compliant with Coastal Act policies, and that is the basis for its denial. It follows that the Commission would have denied CDP 5-15-0030 even if Petitioner had not objected to the proposed amount of a mitigation fee. Because the Commission did not condition approval of CDP 5-15-0300 on the payment of money, Koontz does not apply.

In reply, Petitioner argues that the Staff Report's calculation of a $4,140,885 mitigation fee shows that the Commission demanded money, and the Commission denied CDP 5-15-0030 simply because Petitioner refused to comply with the money demand. Reply at 2. Petitioner notes that the Revised Findings indicate that Petitioner would need to pay some unspecified sum in excess of the $4,140,885 proposed in the Staff Report to obtain a permit. Reply at 2.

Petitioner is blurring the distinction between the Staff Report recommendation for a $4,140,885 mitigation fee and the Commission's decision. The Revised Findings expressly stated that, while the Commission has sometimes mitigated the loss of lower cost existing hotel rooms with construction of new hostel beds, RV parks, or campgrounds, that approach is not always adequate. AR 660. In this case, the Staff Report's proposed mitigation fee based on the cost of shared cabins was insufficient because the value of 72 ocean front hotel rooms is not adequately replaced by 75 beds in shared cabin rooms. AR 660. The Revised Findings also noted that there was insufficient evidence the cabins could be offered to the general public at lower cost rates in perpetuity because the cost of operating the cabins was not defined. AR 660. The Department of Parks and Recreation further could only tentatively commit to the proposed mitigation project because of the need for additional funding for infrastructure around the cabins. AR 660.

While the Commission accepted the concept of a mitigation fee, it concluded that the Staff Report's mitigation fee calculation was unworkable. Nowhere in its Revised Findings analysis did the Commission state that it would approve CDP 5-15-0030 if Petitioner paid an appropriately calculated mitigation fee. Instead, the Revised Findings clearly stated that Petitioner's application is not consistent with section 30213, which requires lower cost lower cost overnight accommodations to be protected, encouraged, and provided where feasible. AR 636. The Project did not provide lower cost overnight accommodations, did not provide evidence that such lower cost accommodations were not feasible, and did not provide sufficient

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mitigation for the loss of the lower-cost accommodations. AR 636. Moreover, even if an appropriate fee could be calculated, Petitioner stated that it would not pay it. Therefore, the Project could not be carried out successfully and CDP 5-15-0030 was denied. AR 661.

Koontz does not apply to the Commission's denial of CDP 5-15-0030 because that denial was not conditioned upon the payment of a mitigation fee. The Commission properly determined that Petitioner's application did not satisfy section 30213 and denied the CDP on that basis.[3]

b. Nexus and Proportionality

Assuming *arguendo* that Koontz applies because the Commission agreed in concept to some mitigation fee above the rejected $4,140,885 amount, the rejected mitigation fee recommended in the Staff Report has a nexus and is roughly proportional to the Commission's interest in protecting lower cost accommodations.[4]

i. Scope of the Mitigation Fee

Petitioner argues that no in-lieu fees related to the demolition of the old hotels can be lawful because the Commission lacked a lawful basis to deny a CDP to demolish the structures. Pet. Op. Br. at 5. Petitioner notes that section 30612 provides that a CDP application to demolish a structure shall not be denied unless the retention of the structure is feasible.[5] No evidence was presented, and the Commission made no finding, that retention of the two old hotel structures was feasible. The only evidence in the record is that retention of the derelict existing structures was "unfeasible." AR 302. Consequently, Petitioner asserts that the Commission cannot impose any fees based on their demolition.

As the Commission's staff stated at hearing (AR 735) and as the Commission argues now (Opp. at 16), the Commission need not show that maintaining the two old hotels was feasible under section 30612 in order to compel mitigation. The purpose of Petitioner's CDP 5-15-0030 application was not solely to demolish the two old hotels on the Property. Opp. at 16. In fact, the application's primary purpose was to construct a new hotel. AR 2. Petitioner provides no authority that a permit with a dual purpose -- demolition and construction – must meet the feasibility requirement of section 30612.

Once a mitigation fee was permissible for a dual purpose CDP 5-15-0030, the Commission may base the amount of such fee on all lost low income units, including the 72 demolished low cost units. The Commission need not find that the maintenance of the existing hotels and their low cost units would be feasible in order to impose a mitigation fee based partly on their loss. The Chapter 3 policies still apply to the permit, the low cost units are still lost, and there is no legal or policy reason to require the Commission to parse the mitigation fee without a

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[3] Petitioner argues that a denial of CDP 5-15-0300 simply because Petitioner objected would deny due process. Pet. Op. Br. at 10-11. The court agrees, but that is not what happened.

[4] The court cannot perform this analysis for the unknown amount that the Commission would actually charge.

[5] Section 30612 provides: "An application for a coastal development permit to demolish a structure shall not be denied unless the agency authorized to issue that permit, or the commission, on appeal, where appeal is authorized by this division, finds, based on a preponderance of the evidence, that retention of that structure is feasible."

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finding of infeasibility. *See* Pet. Op. Br. at 8.[6]

This conclusion about the proper scope of the mitigation fee is bolstered by the present circumstance where Petitioner conducted a bait and switch, obtaining a permit for a moderately priced Travelodge and then constructing a boutique luxury hotel. Petitioner cannot now be heard to complain that the mitigation fee includes the loss of existing low cost hotel rooms simply because the Commission made no feasibility finding that the two hotels Petitioner already has demolished were feasible for continued operation. Equity permits the Commission to look at all permissible mitigation fee bases for the lost low cost units that Petitioner failed to deliver.[7]

Petitioner relies (Pet. Op. Br. at 6-7) on Bullock v. City and County of San Francisco, ("Bullock") (1990) 221 Cal.App.3d 1072, in which the City of San Francisco sought to force a residential hotel owner, who wanted to convert the use of his hotel from long-term rental to short-term tourist rental, to comply with an ordinance requiring an in lieu fee for replacement of a residential hotel. Id. at 1099-1100. The court equated the city's effort to prevent the plaintiff from withdrawing from the rental market as a demand for ransom and found that the city could not burden the landlord's right to take the hotel out of use in violation of the Ellis Act (Govt. Code §7060 *et seq.*). As the Commission argues, Bullock involves the preemption of a city ordinance by state law (Ellis Act) and has no bearing on this case. Opp. at 16.

ii. Nexus for New Rooms

Petitioner argues that there is no nexus between the construction of new hotel rooms and a mitigation fee as required by Nollan. Petitioner claims that the Commission is unlawfully attempting to set room rates, and that it lacks the power to impose mitigation fees for new construction. Pet. Op. Br. at 8-9.

Section 30213 reads: "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, motel, 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." (Emphasis added.)

Petitioner contends that the Commission is effectively prohibiting construction of a hotel that does not have room rates acceptable to the Commission. Yet, the Commission does not have the power to set rates, a fact it acknowledged in 2009. AR 795. Applying section 30213, Petitioner concludes that the Commission cannot "provide" for lower cost visitor facilities because it lacks the power to establish room rates. While the Commission found that the Project did not "encourage" lower cost accommodations because the $4,140,885 fee was too low, the Commission provided no subsidy or incentive to encourage Petitioner to provide lower cost rooms. Pet. Op. Br. at 9-10.

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[6] With evidence of feasibility, the Commission could require an in-lieu fee for a permit application solely to demolish the two old hotels.

[7] Petitioner contends that the footprint of the Shore Hotel is the same as the proposed Travelodge, and there are no material differences between the two buildings. Reply at 9. Both the City, by imposing a mitigation fee, and the Commission, by in denying CDP 5-15-0300, disagree.

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The Project involves the demolition of two lower cost hotels and the construction of a single luxury boutique hotel. AR 2. The boutique hotel has 164 luxury rooms. Id. By building a luxury hotel, Petitioner removed any opportunity for the Property to support a moderately priced hotel. This was an issue of particular concern in 2009 when the Commission approved CDP 5-09-040. AR 795.

There is a strong nexus between the Commission's interest in preserving and encouraging lower cost accommodations, as set forth in Section 30213, and the requirement that removal of lower cost accommodations through development be mitigated by payment of an in-lieu fee. The mitigation fee may then be used to provide lower cost accommodations elsewhere -- such as the Staff Report's recommendation that the mitigation fee for CDP 5-15-0030 be used for lower cost cabins. AR 33-34.

iii. Rough Proportionality

The amount of the fee initially proposed in the Staff Report is also roughly proportional to the identified impacts of the Project as required by Dolan. The Commission staff used a report from Hosteling International, which found that the cost to construct a new hostel was $42,120 per bed. AR 32. The staff then multiplied this amount by the number of hotel rooms demolished, coupled with 25% of the newly constructed rooms, to produce a mitigation fee of $4,001,400. AR 37. This fee would have been significantly higher if staff had used the approximate cost to replace hotel rooms instead of hostel beds. AR 658.

The Commission never made any specific findings as to what would be an appropriate mitigation fee. AR 634. It merely found that the proposed amount in the Staff Report was insufficient. Id. This was in large part because the $4 million mitigation recommended by staff was not enough to build and operate the proposed cabins. AR 660. The finding that some mitigation fee above $4 million is necessary to actually effectuate a mitigation measure is roughly proportional to the impact caused by the Project's demolition of and failure to construct new affordable hotel rooms.

This finding was not an attempt to effectively set room rates as Petitioner contends. Rather, it is a mitigation for Petitioner's failure to provide lower cost rooms. This mitigation most certainly "encourages" Petitioner (and other property developers) to provide lower cost visitor facilities in the Coastal Zone pursuant to section 30213. A party can be encouraged to act by use of a carrot (subsidy) or a stick (penalty). In this case, the mitigation is a payment to offset the Project's destruction of lower cost rooms and failure to construct new ones. It is not an attempt to fix room rates at a particular level.

2. Sections 30244, 30252, and 30253

Petitioner argues that the Commission's findings that the Project does not comply with sections 30244, 30252, and 30253 are not supported by substantial evidence. Pet. Op. Br. at 11.

Section 30244 provides: "Where development would adversely impact archaeological or paleontological resources as identified by the State Historic Preservation Officer, reasonable mitigation measures shall be required."

The Commission found that consistency of the Project with section 30244 "cannot be determined." AR 651. Section 30244 requires mitigation measures where development would adversely impact archeological or paleontological resources. The EIR found no paleontological fossil sites within one mile of the Property. AR 651. Similarly, only one archeological site was

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located near the Property, and it was five blocks from the Project site and contains only "buried historic refuse containing domestic items and structural debris from the 1920s-1930s." AR 1597-98. The EIR evaluation showed this archeological site to be less than significant. AR 1598.

The Commission notes that the EIR recommended that a qualified archeologist monitor grading and excavation activities at the Property (AR 1598) and that Petitioner agreed to this mitigation when applying for CDP 5-09-040 (AR 2284-86). As a result, the Commission asserts that a cultural resources survey is necessary to determine whether the Project is consistent with section 30244. Opp. at 17.

The EIR stated that six cultural resources studies were already performed within a half mile radius of the Project, and none found any archeological resources. AR 1598. It is unclear why the Commission should require a seventh cultural resources study for the Project. Moreover, the requirement that an archeologist monitor the site during excavation is not equivalent to a cultural resources study. The fact that Petitioner agreed to a monitor is not substantial evidence that any study was necessary. The Commission's finding that it could not determine the Project's consistency with section 30244 is not supported by substantial evidence.

Petitioner challenges the findings that the Project would be inconsistent with sections 30252 and 30253. Pet. Op. Br. at 12.

Section 30252 provides in pertinent part: "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 (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation". (Emphasis added.) AR 651.

Section 30253 provides in pertinent part: "New development shall do all of the following: (d) Minimize energy consumption and vehicle miles traveled". (Emphasis added.) AR 651.

Collectively, sections 30252 and 30253 require that new development maintain enhance public access to the coast by providing adequate parking facilities and minimizing vehicle miles. With respect to parking, the Commission's Revised Findings state for the adequacy of parking: "The proposed project will provide a total of 284 parking spaces within a subterranean garage. The total parking requirement for the 164 room hotel... under the Commission parking standards... would require 138 spaces". AR 651-52. Petitioner asserts that the Project provides adequate parking because the Commission acknowledges it provides 284 parking spaces, 146 more spaces more than the 138 spaces required by the Commission's parking standards. AR 4. According to Petitioner, the Commission reaches a bizarre conclusion that "[t]he current parking conditions at the Shore Hotel are not adequate". AR 652. Petitioner argues that the Commission wants to control the 146 extra spaces by requiring that the public be able to occupy them and by controlling their price. Pet. Op. Br. at 12-13.

The Commission properly points out that the high cost of parking at the Property ($35 per day) means that the 146 extra parking spaces at the hotel do not increase the supply of public parking. AR 652. In addition, the parking spaces onsite serve only the hotel, restaurant, and retail space, and are not available for general parking. AR 652. The patrons of the restaurant at the Property are directed to park in nearby public lots, not at the Property, placing greater strain on the supply of affordable public parking. Id. Therefore, the mere fact that the Project includes more parking spaces than required by Commission standards does not mean that the spaces enhance public access to the coast. The Commission's finding that the Project is not consistent with section 30252 is supported by substantial evidence.

As for minimizing vehicle miles traveled under section 30253, Petitioner points out that the City imposed a condition that Petitioner comply with the Transportation Demand and Management standards, including providing information about transit, free bus tokens, and maintaining bikes for the use of guests. AR 991. According to Petitioner, the Commission added additional measures in Special Condition 6B which are unsupported by any evidence of their necessity in light of the City's Transportation Demand and Management standards. Pet. Op. Br. at 13.

The Commission's opposition does not directly defend Special Condition 6B. *See* Opp. at 17. The Commission's Revised Findings stated that, to minimize energy consumption and vehicle miles, the hotel would need to provide for non-vehicular, carpooling and public transit incentives. AR 652. Yet, Petitioner already is required to comply with the City's Transportation Demand and Management standards, a requirement reiterated by the Commission in Special Condition 6A. AR 17. The Commission made no finding why Special Condition 6B's additional transportation measures were necessary to ensure consistency with section 30253. AR 652-53. The Revised Findings merely state that the Project would be inconsistent with section 30253 without imposition of Special Condition 6A and 6B. AR 652. This is not sufficient as a matter of substantial evidence, nor to bridge the analytical gap between evidence and analysis under Topanga, *supra*, 11 Cal.3d at 514-15. *See* Pet. Op. Br. at 13.

The Revised Findings contain substantial evidence to support the finding that the Project is inconsistent with section 30252. They do not contain substantial evidence to support the findings that the Project is inconsistent with sections 30244 and 30253.

3. Deemed Approved

Petitioner argues that CDP 5-15-0030 should have been deemed approved under the Permit Streamlining Act (Govt. Code §65950 *et seq.*). Pet. Op. Br. at 14.

Government Code section 65952 requires an agency to take action on a permit application within 180 days. This period can be extended once up to 90 days by "mutual written agreement." Govt. Code §65957. Where the agency does not meet the deadline, the permit application shall be deemed approved. Govt. Code §65956(b).

Petitioner's CDP 5-15-0030 application was filed on January 6, 2015. AR 1. On May 27, 2015, Petitioner agreed to a 90-day extension of the statutory 180 day period. AR 151, 497. This agreement extended the time for Commission action from July 5 to October 3, 2015. AR 497. The Commission acted to deny CDP 5-15-0030 on September 9, 2015, within the statutory time limit.

Petitioner argues that it agreed to continue the initial 180 day time limit conditioned on the Commission's agreement to reschedule the hearing in July or August, but not in September. AR 151. Despite this condition, the Commission scheduled CDP 5-15-0030 for September 9, 2015. Petitioner asserts that the 90 day extension was void because the Commission breached the agreement to schedule the meeting for July or August. Pet. Op. Br. at 14.

The express terms of the extension agreement do not contain any reference to a condition that the matter be heard in a specific month. AR 497. The only reference to such a term is in Petitioner's counsel's cover email, which states that the "waiver is given on the express understanding that the matter will be scheduled for the July hearing...." AR 151. The waiver agreement does not contain an integration clause, and Petitioner is correct that contemporaneous agreements are not barred by the parol evidence rule. Reply at 10. Nonetheless, Govt. Code

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section 65957 requires the parties mutually to agree to the extension in writing. The Commission never agreed in writing Petitioner's condition that the meeting be scheduled in a particular month. Moreover, Petitioner's counsel's "understanding" does not prove that Commission staff even orally agreed to Petitioner's condition. The Commission did not breach the agreement to extend the time for action on the CDP 5-15-0030 application.

Petitioner also argues that it was entitled to a postponement of the September 9, 2015 meeting as a matter of right, and the postponement would have forced the Commission to deem the application approved. Pet. Op. Br. at 15. 14 CCR section 13073 provides that an applicant for a coastal development permit "shall have one right" to postpone the vote to a subsequent meeting. 14 CCR §13073(a). Any request for postponement must include a waiver of any applicable time limits for Commission action on the application. 14 CCR §13073(c). However, Petitioner may only agree to one extension, and that extension already had occurred. *See* Govt. Code §65957. Thus, as the Commission argues (Opp. at 19), Petitioner was unable to satisfy the requirements of the postponement regulation. The Commission did not err in refusing to postpone the September 9, 2016 hearing.

G. Conclusion

Although the Commission's findings under sections 30244 and 30253 are not supported by substantial evidence and/or adequate analysis, this fact does not require that the Commission set aside its denial of CDP 5-15-0030. The Commission's findings that the Project does not comply with section 30213 and 30252 are sufficient to support the denial. The petition for writ of mandate is denied.

Respondent's counsel is ordered to prepare a proposed judgment, serve it on Petitioner's counsel for approval as to form, wait ten days after service for any objections, meet and confer if there are objections, and then submit the proposed judgment along with a declaration stating the existence/non-existence of any unresolved objections. An OSC re: judgment is set for June 29, 2017 at 9:30 a.m.

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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

COURT OF APPEAL – SECOND DIST.
FILED
Mar 22, 2019
DANIEL P. POTTER, Clerk
sstahl Deputy Clerk

SUNSHINE ENTERPRISES LP, Plaintiff and Appellant, v. CALIFORNIA COASTAL COMMISSION. Defendant and Respondent.	B284459 (Los Angeles County Super. Ct. No. BS158638)

APPEAL from a judgment of the Superior Court of Los Angeles County, James C. Chalfant, Judge. Affirmed.

Gaines & Stacey, Sherman L. Stacey and Rebecca A. Thompson for Plaintiff and Appellant

Xavier Becerra, Attorney General, Daniel A. Olivas, Assistant Attorney General, and Mitchell E. Rishe, Deputy Attorney General, for Defendant and Respondent

In 2009, Sunshine Enterprises applied to the California Coastal Commission (the Commission) for a permit to demolish two low-cost motels in downtown Santa Monica and replace them with a limited-amenity, moderately-priced Travelodge Hotel. Before applying to the Commission, Sunshine Enterprises obtained approval from the City of Santa Monica (the City) for the hotel, including an incentive allowing the hotel to block ocean views, because the proposed hotel would provide affordable accommodations in an area where such accommodations were in dwindling supply. The Commission then approved Sunshine Enterprises' permit application on that same basis. However, Sunshine Enterprises never completed the permit's prior-to-issuance conditions. As a result, the Commission never issued the permit, which eventually expired. Nevertheless, Sunshine Enterprises demolished the two low-cost motels and built a luxury boutique hotel in their place.

In 2013, Sunshine Enterprises requested that Commission staff issue the expired permit. The staff advised Sunshine Enterprises to seek after-the-fact approval for the hotel. However, the Commission ultimately denied the permit application after finding that the fee Sunshine Enterprises had previously paid to the City was inadequate to mitigate the hotel's impact on the supply of lower-cost accommodations in the area. Sunshine Enterprises then filed a petition for writ of mandate to set aside the Commission's decision to deny the permit. The trial court held that substantial evidence supported the Commission's decision to deny Sunshine Enterprises' after-the-fact permit application as inconsistent with the Coastal Act. We affirm.

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FACTUAL BACKGROUND

On March 4, 2009, Sunshine Enterprises informed the Commission that it planned to demolish two aging, low-cost motels it owned in downtown Santa Monica and had hired PKF Consulting to advise it on the type of hotel to build in place of the low-cost motels.[1] Sunshine Enterprises told the Commission it had "elected to pursue a replacement moderately-priced Travelodge rather than yet another new luxury hotel" and that it had made this decision "even though PKF concluded that a luxury hotel would be more profitable than a moderately priced Travelodge."

When Sunshine Enterprises applied to the City for local approval, City Planning Division Manager Amanda Schachter noted that the proposed hotel would block ocean views from public viewing decks located at the Santa Monica Place mall, and thus conflicted with the City's land use plan. However, in exchange for Sunshine Enterprises' promise to build a moderately-priced hotel, City staffers would recommend amending the land use plan to remove the viewing platforms from the plan. "While the proposed project would result in the loss of scenic views of the ocean from the third floor publicly accessible viewing decks located on the west side of Santa Monica Place, . . . the significance of this resource has been diminished over time both in terms of the extent of the view and its

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[1] Before 2010, the motels were owned by Ocean Avenue Management. The beneficial owners of Ocean Avenue Management are the same as the owners of Sunshine Enterprises.

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utilization," Schachter noted. Further, it was not feasible to reduce the size of the proposed project, which would necessarily cut the number of hotel rooms, and still retain the project's relative affordability. Therefore,"[t]he proposed project's benefit of providing moderately-priced visitor-serving lodging near the coast outweighs the loss of this diminished ocean view."

In approving the proposed project, however, the City made clear that it was "approving the Travelodge Hotel as a low cost lodging facility." To that end, the City imposed a condition on the project, which provided that should "any of the low cost rooms cease to be low cost lodging, including if the room has become higher cost lodging or converted to another use, [Sunshine Enterprises] shall pay a mitigation fee pursuant to [City] Ordinance 1516."[2] At the time, the average daily room rate for low cost lodging was $172.27.

On March 5, 2009, Sunshine Enterprises applied to the Commission for a coastal development permit to demolish the two existing motels and build a single 164-room "limited-amenity moderate[ly] priced Travelodge Hotel" consistent with its approval from the City. The application stated that the project would "replace and increase the number of affordable moderate[ly]-priced guestrooms from 87 to 164, which is much

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[2] The purpose of City Ordinance 1516 was to "reduce the negative impact on affordable visitor accommodations caused by new commercial and new hotel and motel development which requires demolition of exiting visitor accommodations." To that end, the ordinance imposed a fee to "help diminish the overall loss of low cost lodging accommodations in the City and to mitigate the adverse consequences of removal of low cost lodging accommodations in the Coastal Zone."

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needed and preferred use in the coastal zone." In its report to the Commission, staff noted that, based on a survey of hotels within the City's coastal zone, it was evident there was a shortage of low and moderate priced overnight accommodations within this area. The staff report recommended that the Commission approve the coastal development permit subject to five special conditions, as well as five standard conditions.

Special condition 1 required Sunshine Enterprises to obtain a new or amended coastal development permit should the project "change in the density or intensity of [land use], or change from the project description" of a moderately priced Travelodge hotel. However, the staff report noted, such a change was unlikely given that "the hotel will not be easily converted to a luxury or high end hotel without major modifications, which will need to be reviewed and approved by the City and Coastal Commission." Special conditions 2, 4 and 5 were "prior-to-issuance" conditions and required completion before a coastal development permit would issue and development could lawfully commence. Standard condition 2 provided that the permit would expire if development did not begin within two years or the applicant did not apply for an extension prior to the expiration date.

On June 11, 2009, the Commission approved the proposed project and adopted the staff report in its entirety, including the special conditions. On June 18, 2009, the Commission issued a notice of intent to issue permit. The notice expressly stated that this was not a coastal development permit and warned Sunshine Enterprises that the Commission would not issue the permit until Sunshine Enterprises satisfied each of the prior-to-issuance special conditions. To that end, the Commission informed Sunshine Enterprises: "The Commission's approval of the

[permit] is valid for two years from the date of approval. To prevent expiration of the [permit], you must fulfill the 'prior to issuance' Special Conditions, obtain and sign the [permit], and commence development within two years of the approval date . . . . You may apply for an extension pursuant to the Commission's regulations at [California Code of Regulations], title 14, section 13169." A Sunshine Enterprises representative signed the notice of intent, acknowledging that it fully understood its contents, including all conditions imposed.

Sunshine Enterprises did not fulfill all of the Commission's prior-to-issuance special conditions within the two-year deadline and did not file for an extension before the deadline. Therefore, the Commission's approval expired and no permit was issued. Nevertheless, Sunshine Enterprises demolished the two low-cost motels and built a new hotel in their place.[3] However, Sunshine Enterprises did not build the "limited amenity moderate[ly] priced Travelodge Hotel" the Commission had approved. Instead, it built a self-described "luxury boutique hotel," called the Shore Hotel.

As noted above, when approving the proposed project, the City had imposed a condition providing that should "any of the low cost rooms cease to be low cost lodging, including if the room has become higher cost lodging . . . [Sunshine Enterprises] shall pay a mitigation fee pursuant to [City] Ordinance 1516." In

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[3] Although Sunshine Enterprises never received a confirmation from the Commission that a permit had been issued, it proceeded with both demolition and construction claiming a mistaken belief that the Commission must have simply transmitted the permit directly to the City without informing Sunshine Enterprises.

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accordance with this condition, the City informed Sunshine Enterprises in September 2013 that the Shore Hotel's average daily room rates had exceeded the authorized rate for low cost lodging and it was required to pay an affordable lodging mitigation fee. Sunshine Enterprises paid the City a $1,211,688 mitigation fee, which had been calculated by the City at $16,829 per room for the 72 lost lower-cost rooms. However, the City warned Sunshine Enterprises that it should also contact the Commission because the Commission's prior approval contained its own affordability requirements. In other words, because the project was under the concurrent jurisdiction of the City and the Commission, "the elimination of the low cost lodging at the Shore Hotel through the payment of this fee also requires review by the . . . Commission."

In November 2013, well after Sunshine Enterprises had demolished the two low-cost motels and built a new luxury hotel, Sunshine Enterprises requested that the Commission issue a coastal development permit. Because the Commission's prior 2009 approval had expired without the issuance of a permit, Commission staff advised Sunshine Enterprises to seek after-the-fact authorization for the demolition of the prior motels and construction of the new hotel.[4] Commission staff also

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[4] Fees for an after-the-fact permit application are five times the original amount although that increase may be reduced if the after-the-fact permit application can be processed by staff without significant additional review time (as compared to the time required for the processing of a regular permit), or the owner did not undertake the development for which the owner is seeking the after-the-fact permit. However, in no case shall the

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recommended that Sunshine Enterprises' permit application contain "necessary conditions to limit or mitigate impacts to coastal resources, such as public access to the coast." Despite this recommendation, Sunshine Enterprises applied for approval of its prior demolition of the low-cost motels and construction of the already-built luxury hotel without addressing mitigation of the hotel's impact on coastal resources.[5]

At the Commission's hearing on Sunshine Enterprises' after-the-fact permit application, the Commission determined that the $1,211,688 mitigation fee Sunshine Enterprises had already paid to the City was insufficient to fully mitigate the impacts to the lost lower-cost accommodations because the City's formula in Ordinance 1516 was "outdated." Moreover, because the City did not have a certified local coastal program, the City's mitigation fee did not "represent compliance with Chapter 3 policies of the Coastal Act." Although Commission staff had recommended an additional mitigation fee, the Commission did not ultimately determine what an appropriate mitigation fee would be, as Sunshine Enterprises "strongly opposed any additional in-lieu fees."[6] After a hearing on the matter, the

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reduced fees be less than double the original amount. (Cal. Code Regs., tit. 14, § 13055, subd. (d)(1)-(2).)

[5] Sunshine Enterprises' 2009 permit application was numbered "CDP 5-09-040" while its 2015 after-the-fact permit application was numbered "CDP 5-15-0030."

[6] The Commission's staff recommended approval of the permit on condition that Sunshine Enterprises pay a total of $4,001,400 in mitigation fees, with credit for the $1,211,688 it had already paid to the City. According to Sunshine Enterprises, this recommendation followed the Commission's practice of using

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Commission denied Sunshine Enterprises' permit application because, as proposed, "it did not conform with the Coastal Act's mandate to preserve, provide and encourage low cost, overnight accommodations." On November 5, 2015, Sunshine Enterprises filed a petition for writ of mandate to set aside the Commission's decision to deny the after-the-fact permit and to order that the Commission approve the permit.[7] Trial took place on June 1, 2017.

TRIAL COURT OPINION

The trial court held that substantial evidence supported the Commission's decision to deny Sunshine Enterprises' after-the-fact permit application as inconsistent with the Coastal Act

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"in lieu" fees to mitigate the loss of affordable overnight accommodations in the coastal zone.

[7] On June 29, 2018, the Commission filed a request for judicial notice of court documents showing that on March 27, 2015, Sunshine Enterprises filed a petition for writ of mandate in a separate action to compel the Commission to issue and amend the expired 2009 coastal development permit. On May 10, 2017, Sunshine Enterprises dismissed the separate action case with prejudice. According to the Commission, by dismissing its case, Sunshine Enterprises conceded that its demolition of the two low-cost motels, and its construction and operation of the luxury Shore Hotel, was unpermitted development in violation of Public Resources Code section 30600. We grant the request for judicial notice as to the existence of these documents. (Evid. Code, §§ 452, subd. (d), 459.) We cannot take judicial notice of their meaning, however. (*Fremont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 113.)

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because: (1) the project did not provide lower-cost accommodations, did not provide evidence that lower-cost accommodations were not feasible, and did not provide sufficient mitigation for the loss of lower-cost accommodations; and (2) the high cost of parking at the hotel did not increase the supply of public parking in the coastal zone.

The trial court also rejected Sunshine Enterprises' argument that its permit application should be deemed approved because the Commission set the hearing on a date Sunshine Enterprises did not agree to and refused its request to further postpone the hearing as a matter of right. The trial court found that Government Code section 65957 required that the parties mutually agree in writing to an extension, and that the Commission had not agreed to set the hearing on any particular date. The trial court also found that Sunshine Enterprises could not satisfy the requirements under the Commission's regulations for a further postponement as of right.

DISCUSSION

I. The California Coastal Act

The California Coastal Act of 1976 (Coastal Act; Pub. Resources Code, § 30000 et seq.) is the legislative continuation of the coastal protection efforts that began when Californians enacted Proposition 20, which created the Commission. (See *Ibarra v. California Coastal Com.* (1986) 182 Cal.App.3d 687, 693.) One of the primary purposes of the Coastal Act is avoiding the harmful consequences of development of coastal resources. (See Pub. Resources Code, § 30001.) The Coastal Act must be

liberally construed to accomplish its purposes and objectives. (*Id.*, § 30009.)

The Coastal Act's goals are binding on both the Commission and local government and include: (1) maximizing, expanding and maintaining public access (Pub. Resources Code, §§ 30210-30214); (2) expanding and protecting public recreation opportunities (*id.*, §§ 30220-30224); (3) protecting and enhancing marine resources (*id.*, §§ 30230-30236); and (4) protecting and enhancing land resources (*id.*, §§ 30240-30244). A fundamental purpose of the Coastal Act is to ensure that state policies prevail over the concerns of local government. (See *Charles A. Pratt Construction Co., Inc. v. California Coastal Com.* (2008) 162 Cal.App.4th 1068, 1075.) As a result, the Commission has the ultimate authority to ensure that coastal development conforms to the policies embodied in the Coastal Act. (*Ibid.*)

The heart of the Coastal Act is the requirement that a party must obtain a coastal development permit prior to undertaking development within the coastal zone. (Pub. Resources Code, § 30600.) Before it can approve a project, the Commission must find that the project, as conditioned, is consistent with the applicable policies of Chapter 3 of the Coastal Act as well as the applicable requirements of CEQA, the California Environmental Quality Act (*id.*, § 21000 et seq.). The Commission acts in a quasi-judicial capacity when reviewing a coastal development permit application. (See *Pacifica Corp. v. City of Camarillo* (1983) 149 Cal.App.3d 168, 177 ["courts have uniformly held that the coastal permit process is adjudicatory"].) A party may seek after-the-fact permit approval if development occurs without a permit. (See, e.g., *LT-WR, L.L.C. v. California Coastal Com.* (2007) 152 Cal.App.4th 770, 794-795.) Based on the

evidence before it, the Commission may grant, deny or otherwise condition the development based on all applicable Coastal Act policies. (See *ibid.*)

II. Standard of Review

Our role in reviewing Commission decisions is to determine " 'whether (1) the [Commission] proceeded without, or in excess of, jurisdiction; (2) there was a fair hearing; and (3) the [Commission] abused its discretion.' [Citations.]" (*Ross v. California Coastal Com.* (2011) 199 Cal.App.4th 900, 921.) The Commission abuses its discretion if it does not proceed in the manner required by law, its order or decision is not supported by the findings, or its findings are not supported by substantial evidence. (*Ibid.*) In determining whether the Commission's findings are supported by substantial evidence, we examine the whole record and consider all relevant evidence, including evidence detracting from the Commission's decision. While we engage in some weighing to fairly estimate the worth of the evidence, we do not conduct an independent review of the record where we substitute our own findings and inferences for the Commission. It is the Commission's role to weigh the preponderance of conflicting evidence and we may reverse the Commission's decision only if no reasonable person could have reached the same conclusion based on the same evidence. (*Id.* at pp. 921-922.)

Lastly, while appellate courts review questions of law de novo, the Commission's interpretation of the statutes and regulations under which it operates is entitled to great weight, given the Commission's special familiarity with the regulatory and legal issues. (*Ross v. California Coastal Com.*, *supra*, 199

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Cal.App.4th at p. 938 ["Courts must defer to an administrative agency's interpretation of a statute or regulation involving its area of expertise unless the challenged construction contradicts the clear language and purpose of the interpreted provision"].)

III. Merits

A. *Public Resources Code Section 30612*

Public Resources Code section 30612 provides that: "An application for a coastal development permit to demolish a structure shall not be denied unless the agency authorized to issue that permit . . . finds, based on a preponderance of the evidence, that retention of that structure is feasible." Relying upon section 30612, Sunshine Enterprises first contends that the Commission failed to determine the feasibility of retaining the "existing deteriorated buildings." However, the statute does not require that the Commission determine the feasibility of retaining a structure when a permit applicant—such as Sunshine Enterprises—seeks not just to demolish a structure, but to replace the structure with new development.[8]

Nevertheless, according to Sunshine Enterprises, the Commission abused its discretion by not determining the feasibility of retaining the two low-cost motels under Public Resources Code section 30612. However, Sunshine Enterprises did not apply for prospective authorization to demolish existing structures. Instead, Sunshine Enterprises applied for after-the-fact approval of demolition that had already occurred. Given that

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[8] Of course, when Sunshine Enterprises applied for an after-the-fact permit, the allegedly deteriorated buildings were no longer "existing"—they had been demolished five years earlier.

the motels no longer existed, the Commission would have difficulty evaluating whether the retention of the motels was feasible. Under these circumstances, evaluating the feasibility of retaining the demolished motels would have been a futile and an idle act, which the law does not require. (See Civ. Code, §§ 3531, 3532.)

Furthermore, Sunshine Enterprises did not apply only to demolish the motels; it also sought to replace the motels with a new luxury boutique hotel. Thus, Public Resources Code section 30612, which, by its plain language, applies only to demolition permits, is inapplicable here. Sunshine Enterprises cites no authority to the contrary. Indeed, as the trial court determined: "[Sunshine Enterprises] provides no authority that a permit with a dual purpose—demolition and construction—must meet the feasibility requirement of [Public Resources Code] section 30612." Sunshine Enterprises' argument also contradicts the Commission's interpretation of Public Resources Code section 30612—an interpretation that is entitled to deference under our standard of review. (See *Ross v. California Coastal Com.*, *supra*, 199 Cal.App.4th at p. 938.)

Sunshine Enterprises next argues that because the Commission's regulations require that "functionally related development" be the subject of a single permit application, not analyzing the feasibility of retention whenever an application includes demolition of an existing structure would effectively render Public Resources Code section 30612 a "nullity."[9]

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[9] The applicable regulation provides that: "To the maximum extent feasible, functionally related developments to be performed by the same applicant shall be the subject of a single permit application. The executive director shall not accept

According to Sunshine Enterprises, this is because, "in urban locations, demolition and construction will be considered together." Sunshine Enterprises provides no authority for this proposition, however. Moreover, the applicable regulation does not prevent an applicant from seeking approval of a permit solely for demolition.[10] (See Cal. Code Regs., tit. 14, § 13053.4, subd. (a).)

We also note that Sunshine Enterprises did not raise the applicability of Public Resources Code section 30612 when submitting its after-the-fact permit application in August 2014 or during the public hearing on its permit application in September 2015, at which time the Commission voted to deny the application. In February 2016, the Commission held a hearing to consider revised findings proposed by staff in support of its decision to deny the permit application. Sunshine Enterprises objected to the proposed revised findings, and, in so doing, cited Public Resources Code section 30612 for the first time. The Commission overruled Sunshine Enterprises' objections and adopted the findings. Notably, however, the sole purpose of a revised findings hearing is to "address whether the proposed

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for filing a second application for development which is the subject of a permit application already pending before the commission." (Cal. Code Regs., tit. 14, § 13053.4, subd. (a).)

[10] As discussed above, Sunshine Enterprises would have been ineligible for a demolition-only permit, given that it had already demolished the motels and replaced them with the Shore Hotel when applying for an after-the-fact permit. Because Sunshine Enterprises did not apply for a permit solely to demolish the motels but also to replace them with the Shore Hotel, Public Resources Code section 30612 does not apply.

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revised findings reflect the action of the commission." (Cal. Code Regs., tit. 14, § 13096, subd. (c).) Such a hearing does not provide an applicant the opportunity to re-argue its permit application or for the Commission to reconsider its permitting decision. (See *ibid.*) Thus, Sunshine Enterprises failed to raise section 30612 at a time when the Commission could consider it. Therefore, Sunshine Enterprises failed to exhaust its administrative remedies on this issue.

When a statute provides an adequate administrative remedy, courts lack jurisdiction to consider the issue until the petitioner exhausts that administrative process. (*Styne v. Stevens* (2001) 26 Cal.4th 42, 55-56.) Failure to exhaust available administrative remedies deprives a court of jurisdiction to act until those remedies are exhausted. (*Abelleira v. District Court of Appeal* (1941) 17 Cal.2d 280, 291-292.) The exhaustion doctrine applies to review of the Commission's actions.[11] (*Walter H. Leimert Co. v. California Coastal Com.* (1983) 149 Cal.App.3d 222, 232.) Furthermore, courts have frequently used the Commission's interpretation as an aid in statutory construction. (See, e.g., *Reddell v. California Coastal Com.* (2009) 180 Cal.App.4th 956, 965; *La Fe, Inc. v. County of Los Angeles* (1999) 73 Cal.App.4th 231, 240.) As noted by the Commission, such deference is especially important here given that no published

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[11] Although questions of law alone do not require exhaustion (*Griswold v. Mt. Diablo Unified Sch. Dist.* (1976) 63 Cal.App.3d 648, 653), the Commission's consideration of the issue here would involve questions of fact, specifically, whether Public Resources Code section 30612 should apply to Sunshine Enterprises' after-the-fact permit application and, if so, whether retention of the two low-cost motels was feasible.

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case has ever interpreted Public Resources Code section 30612 in the manner Sunshine Enterprises advocates here. The question as to whether Public Resources Code section 30612 applies to all permit applications, or if the statute should be limited to demolition-only permits, should be addressed by the Commission in the first instance.[12]

B. *Mitigation Fees*

Sunshine Enterprises also argues that the Commission may not impose conditions such as fees to mitigate the impacts of that demolition, as such conditions would lack a "nexus" between the mitigation fees and the demolition permit.[13] Sunshine Enterprises provides no authority for this proposition. Furthermore, the Commission may, in fact, impose conditions in order to mitigate the impacts of demolition. For example, the

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[12] Thus, we need not reach the Commission's alternative argument that even if Public Resources Code section 30612 were to apply, Sunshine Enterprises would be equitably estopped from requiring the Commission to determine feasibility after-the-fact.

[13] See *Nollan v. California Coastal Com'n* (1987) 483 U.S. 825 [107 S.Ct. 3141, 97 L.Ed.2d 677] (*Nollan*), which examined the appropriate analytical framework for assessing whether a government-imposed requirement for developing property is a taking. *Nollan* held that a required dedication of a public easement across private property to obtain a building permit was a taking. (*Id.* at p. 831.) The mandated easement meant "a 'permanent physical occupation' has occurred," thereby triggering the right to just compensation. (*Id.* at p. 832.) *Nollan* found the "essential nexus" between " 'legitimate state interests' " and the required easement, which might have removed the requirement from a takings analysis, was lacking. (*Id.* at p. 837.)

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Commission may condition demolition so that it does not disturb environmentally sensitive habitats (Pub. Resources Code, § 30240); or does not result in geologic hazards (*id.*, § 30253); or does not interfere with coastal access (*id.*, § 30211). Here, it is undisputed that the demolished motels were low-cost and that demolishing them removed low-cost accommodations from the coastal zone. Thus, the Commission may lawfully place conditions on a demolition permit to mitigate the demolition's impacts on coastal access, i.e., the removal of low-cost accommodations on the coast.

Sunshine Enterprises' citation to *Bullock v. City and County of San Francisco* (1990) 221 Cal.App.3d 1072 in support of its argument is inapt. In *Bullock*, the plaintiff bought a condemned San Francisco hotel and spent a substantial amount of money renovating it for transient (i.e. tourist) occupancy. During renovation, the city adopted an ordinance that required owners of residential hotel units to obtain a permit from the city before converting the property to any other use. (*Id.* at pp. 1080-1081.) The hotel owner sought an exemption from the new ordinance, which the city denied. (*Id.* at p. 1081.) Years of litigation followed. After discovering that the hotel was being operated as a tourist hotel without the required permit or exemption, the city sought a preliminary injunction to restrain the owner from operating the property as a tourist hotel. (*Id.* at p. 1083.) The hotel owner then invoked the Ellis Act, declaring his intention to exit the rental market altogether.[14] (*Id.* at

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[14] The Ellis Act provides, in relevant part, that "[n]o public entity . . . shall, by statute, ordinance, or regulation, or by administrative action implementing any statute, ordinance or regulation, compel the owner of any residential real property to

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pp. 1083-1084.) The trial court granted the injunction, and the owner appealed. (*Id.* at p. 1085.) The Court of Appeal reversed, holding that the Ellis Act preempted a crucial provision of the ordinance, and that, having properly invoked the Ellis Act, the hotel owner was entitled to quit the business of providing residential rental units. (*Id.* at p. 1095.) Here, the Commission is not forcing Sunshine Enterprises to remain in business. Nor is it forcing Sunshine Enterprises to operate a low-cost hotel, as in *Bullock*. Therefore, *Bullock* is inapplicable here.

C. *Public Resources Code Section 30213*

Public Resources Code section 30213 provides that the Commission "shall not: (1) require that overnight room rentals be fixed at an amount certain for any privately owned and operated hotel, motel, 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."

According to Sunshine Enterprises, the Commission's permit denial was a de facto attempt to set room rates for the Shore Hotel in violation of Public Resources Code section 30213. However, Sunshine Enterprises cites no legal authority for this proposition. Furthermore, although the Commission denied Sunshine Enterprises' application for after-the-fact approval of a luxury hotel, that denial did not fix room rates "at an amount certain." Nor did the Commission preclude Sunshine Enterprises

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offer, or to continue to offer, accommodations in the property for rent or lease . . . ." (Gov. Code, § 7060, subd. (a).)

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from seeking future approval for its hotel, as long as it provided adequate mitigation for the hotel's impact on coastal access.[15] Although Sunshine Enterprises contends that the Commission's focus on room rates demonstrates that the Commission denied its permit application because it objected to the amount the Shore Hotel charged for a room, the Commission unarguably cited the room rates to show that the hotel was not low-cost, which therefore justified a mitigation fee.

Sunshine Enterprises also argues that the Commission's denial of an after-the-fact permit was based on its objection to the proposed in-lieu fee. According to Sunshine Enterprises, this was tantamount to a demand for money under *Koontz v. St. Johns River Water Management Dist.* (2013) 570 U.S. 595 [133 S.Ct. 2586, 186 L.Ed.2d 697] (*Koontz*). In *Koontz*, the Supreme Court held that the government may "condition approval of a permit on the dedication of property to the public so long as there is a 'nexus' and 'rough proportionality' between the property that the government demands and the social costs of the applicant's proposal." (*Id.* at pp. 605-606, citing *Nollan*, *supra*, 483 U.S. at p. 837 and *Dolan v. City of Tigard* (1994) 512 U.S. 374, 391 [114 S.Ct. 2309, 129 L.Ed.2d 304] (*Dolan*).) As discussed above, however, the Commission did not condition permit approval on the dedication of property. In other words, the Commission did not require that Sunshine Enterprises give up a property interest for which the government would have been required to pay just

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[15] Courts have upheld a condition to a coastal development permit that required an applicant to pay money to mitigate for the loss of coastal access. (See, e.g., *Ocean Harbor House Homeowners Assn. v. California Coastal Com.* (2008) 163 Cal.App.4th 215, 237.)

compensation under the takings clause outside of the permit process. Nor did the Commission require Sunshine Enterprises to dedicate any portion of its property to the public or to pay any money to the public. (See *California Building Industry Assn. v. City of San Jose* (2015) 61 Cal.4th 435, 461 (*California Building Industry*).)

In *Koontz*, a property owner sought a permit from the local water district to develop a portion of his Florida property and agreed to deed a conservation easement to the district on the remainder of the property. (*Koontz, supra,* 570 U.S. at p. 601.) Believing that the proposed development would destroy wetlands on the property, the water district told the property owner that it would not issue a permit unless he agreed to either reduce the size of his development or pay a mitigation fee to enhance wetlands elsewhere. (*Id.* at pp. 601-602.) The property owner filed suit. (*Id.* at p. 602.) The Florida Supreme Court found that *Nollan* and *Dolan* did not apply because the water district did not approve the property owner's permit application on the condition that he comply with the water district's demands. Instead, the district denied the property owner's application because he refused to make concessions. (*Id.* at p. 603.) The Supreme Court reversed, holding that "[t]he principles that undergird our decisions in *Nollan* and *Dolan* do not change depending on whether the government approves a permit on the condition that the applicant turn over property or denies a permit because the applicant refuses to do so." (*Id.* at p. 606, italics omitted.)

Nollan and *Dolan* establish that the government may not condition the approval of a land-use permit on the owner's relinquishment of a portion of his property unless there is a " 'nexus' " and " 'rough proportionality' " between the

government's demand and the effects of the proposed land use. (*Koontz, supra,* 570 U.S. at pp. 605-606.) *Koontz* extended the *Nollan/Dolan* test to apply to government demands for money as a condition for a land-use permit. (*Id.* at p. 612.) "[S]o-called 'in lieu of' fees are utterly commonplace . . . and they are functionally equivalent to other types of land use exactions." (*Ibid.*) Accordingly, the Supreme Court concluded that they too must satisfy the nexus and rough proportionality requirements of *Nollan* and *Dolan*. (*Ibid.*) But the court also agreed that "so long as a permitting authority offers the landowner at least one alternative [to the money condition] that would satisfy *Nollan* and *Dolan*, the landowner has not been subjected to an unconstitutional condition." (*Id.* at p. 611.)

Since *Koontz*, California courts have addressed the applicability of the opinion to in lieu fees. In *California Building Industry*, for example, our state Supreme Court considered a housing ordinance requiring 15 percent of all residential developments of 20 or more units to be made available at an affordable cost. (*California Building Industry, supra,* 61 Cal.4th at pp. 449-450.) The city provided residential developers with "a menu of options from which to select alternatives" to complying with the requirement, including an option of paying an in-lieu fee based on the median sales price of a housing unit affordable to a moderate-income family. (*Ibid.*) A developer sued to invalidate the ordinance, contending that under the unconstitutional conditions doctrine, as well as *San Remo Hotel v. City and County of San Francisco* (2002) 27 Cal.4th 643 (*San Remo Hotel*), the city was required to demonstrate a reasonable relationship between any adverse public impacts caused by the new residential units and the exactions and conditions imposed on

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developers. (*California Building Industry, supra,* at pp. 443, 452-453.)

Our Supreme Court held that the unconstitutional conditions doctrine was inapplicable because the ordinance did not impose an exaction on the developer's property within the meaning of the takings clauses of the federal and California Constitutions. (*California Building Industry, supra,* 61 Cal.4th at pp. 443-444.) The court found that the ordinance did not require a developer to "give up a property interest for which the government would have been required to pay just compensation under the takings clause outside of the permit process." (*Id.* at p. 461.) Instead, the 15 percent set-aside requirement "simply places a restriction on the way the developer may use its property by limiting the price for which the developer may offer some of its units for sale. . . . [¶] Rather than being an exaction, the ordinance falls within . . . municipalities' general broad discretion to regulate the use of real property to serve the legitimate interests of the general public and the community at large." (*Ibid.*) Such land use restrictions, enacted under the government's "general police power[ ] to regulate the development and use of real property within its jurisdiction to promote the public welfare" are constitutionally permissible so long as they "bear[] a reasonable relationship to the public welfare." (*Id.* at p. 455.) The court noted that "[n]othing in *Koontz* suggests that the unconstitutional conditions doctrine under *Nollan* and *Dolan* would apply where the government simply restricts the use of property without demanding the conveyance of some identifiable protected property interest (a dedication of property or the payment of money) as a condition of approval." (*Id.* at p. 460.) Therefore, the court held, "the

affordable housing requirement of the San Jose ordinance as a whole—including the voluntary off-site options and in lieu fee that the ordinance makes available to a developer—does not impose an unconstitutional condition in violation of the takings clause." (*Id.* at pp. 468-469.) "No developer is required to pay the in lieu fee and may always opt to satisfy the ordinance by providing on-site affordable housing units." (*Id.* at p. 476.)

In so holding, the court rejected the developer's reliance on *San Remo Hotel*, which involved a challenge to a land use restriction requiring property owners seeking to convert long-term rental units to short-term units to provide a comparable number of long-term rental units at another location or pay an in-lieu fee. (*San Remo Hotel, supra*, 27 Cal.4th at p. 651.) In *San Remo Hotel*, the court had held that the challenged fee was valid because it was reasonably related to mitigating the impact caused by the proposed conversion of long-term rental housing to short-term rentals. (*Id.* at pp. 672-679.) Citing the "reasonably related" language, the developer in *California Building Industry* argued that the housing requirements must also "satisfy something similar to the *Nollan/Dolan* test." (*California Building Industry, supra*, 61 Cal.4th at pp. 469-470.) But the court held that the cited portion of *San Remo Hotel* "applies only to 'development mitigation fees' [citation]—that is, to fees whose purpose is to mitigate the effects or impacts of the development on which the fee is imposed—and does not purport to apply to price controls or other land use restrictions that serve a broader constitutionally permissible purpose or purposes unrelated to the impact of the proposed development." (*Id.* at p. 472, italics omitted.) In contrast to the development-mitigation fee at issue in *San Remo Hotel*, San Jose's housing ordinance was intended to

"advance purposes beyond mitigating the impacts or effects that are attributable to a particular development or project and instead 'to produce a widespread public benefit' [citation] that inures generally to the municipality as a whole . . . ." (*Id.* at p. 474.)

Notably, in 2016, this court decided *616 Croft Ave., LLC v. City of West Hollywood* (2016) 3 Cal.App.5th 621. There, a developer applied to the city for permits to demolish two single-family homes and build an 11-unit condominium complex in their place. (*Id.* at p. 624.) The city determined that the project fell under a housing ordinance that required developers to sell or rent a portion of newly constructed units at below-market rates or pay an in-lieu fee "designed to fund construction of the equivalent number of units the developer would have otherwise been required to set aside." (*Id.* at p. 624-625.) Although the city approved the application in 2005, by the time the developer sought building permits in 2011, the in-lieu fee had nearly doubled. (*Id.* at p. 625.) The developer paid the fee under protest and sued the city, arguing that the in-lieu fee was an unconstitutional condition under *Nollan* and *Dolan*. (*Id.* at pp. 625-626.)

Applying *California Building Industry*, we held that *Nollan* and *Dolan* were not implicated because the developer "paid the in-lieu fee voluntarily as an alternative to setting aside a number of units." (*616 Croft Ave., LLC v. City of West Hollywood, supra*, 3 Cal.App.5th at pp. 628-629, italics omitted.) We further held that the in-lieu fee was not subject to the Mitigation Fee Act because the fee's purpose was not to mitigate any adverse impact of the new development, and the fee was part of a land use

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regulation that broadly applied the nondiscretionary fees to a class of owners.[16] (See *id.* at p. 629.)

Here, the Commission did not deny Sunshine Enterprises' permit application based on its refusal to accept a condition, i.e., pay a mitigation fee. As noted by the trial court, Sunshine Enterprises was attempting to blur the distinction between the Commission staff's mitigation fee recommendation and the Commission's ultimate decision. Indeed, nowhere in its analysis did the Commission state it would approve the permit if Sunshine Enterprises paid an appropriately calculated mitigation fee. Instead, the trial court said, the Commission denied the permit application as inconsistent with the Coastal Act.[17] Thus,

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[16] The Mitigation Fee Act applies when "a monetary exaction other than a tax or special assessment . . . is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project." (Gov. Code, § 66000, subd. (b).)

[17] The trial court expressly observed: "While the Commission accepted the concept of a mitigation fee, it concluded that the Staff Report's mitigation fee calculation was unworkable. Nowhere in its Revised Findings analysis did the Commission state that it would approve [the permit application] if [Sunshine Enterprises] paid an appropriately calculated mitigation fee. Instead, the Revised Findings clearly stated that [Sunshine Enterprises'] application is not consistent with [Public Resources Code] section 30213, which requires lower cost . . . overnight accommodations to be protected, encouraged, and provided where feasible. The Project did not provide lower cost overnight accommodations, did not provide evidence that such lower cost accommodations were not feasible, and did not provide sufficient mitigation for the loss of the lower cost accommodations. . . .

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Koontz is inapplicable here.[18] As noted by the Commission, applying *Koontz* to the Commission's denial in this case would expand the reach of regulatory takings beyond established Supreme Court precedent.

Lastly, Sunshine Enterprises argues that the Commission's findings do not support its decision to deny the permit application because the Commission did not determine the appropriate mitigation fee. Instead, it simply denied the application. However, Division Three of this court rejected this argument in *LT-WR, L.L.C. v. California Coastal Com.*, *supra*, 152 Cal.App.4th 770. There, as here, the applicant complained that "rather than denying the application, the Commission should have approved the application, subject to appropriate conditions

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Moreover, even if an appropriate fee could be calculated, [Sunshine Enterprises] stated that it would not pay it. Therefore, the Project could not be carried out successfully and [the permit application] was denied." According to the trial court, because the Commission properly determined that Sunshine Enterprises' permit application did not satisfy Public Resources Code section 30213, and denied the application on that basis, *Koontz* did not apply.

[18] Consequently, we need not reach the Commission's alternative argument that, even if *Koontz* applies, substantial evidence supports the conclusion that: (1) the Commission had a legitimate interest in mitigating the loss of lower-cost accommodations in the coastal zone; (2) there is an "essential nexus" between Sunshine Enterprises' demolition of the two low-cost motels and the payment of an in-lieu fee to replace the demolished motel rooms; and (3) mitigation via an in-lieu fee is "roughly proportional" to the Shore Hotel's impacts on lower-cost accommodations.

of approval." (*Id.* at p. 801.) The Court of Appeal rejected that reasoning, instead finding "the Commission is not required to redesign an applicant's project to make it acceptable." (*Ibid.*)

D. *Alleged Due Process Violation*

Again relying on *Koontz*, Sunshine Enterprises contends that the denial of its permit application amounts to a denial of due process. According to Sunshine Enterprises, denying a permit application because an applicant objects to a condition puts "coercive pressure" on the applicant to agree to the condition. (See *Koontz, supra*, 570 U.S. at p. 607.) Furthermore, Sunshine Enterprises argues, "when the Commission suppresses objections under threat of denial, the Commission then prevents a party from exhausting its administrative remedies, and thereby, access to the courts."

We first note that Sunshine Enterprises does not identify a condition it agreed to only after the Commission exerted "coercive pressure." Nor does Sunshine Enterprises identify the objection allegedly suppressed by the Commission's threat of denial. Although, as discussed above, Sunshine Enterprises in fact failed to object pursuant to Public Resources Code section 30612 at a time when the Commission could consider the objection, there is no evidence that this failure was caused by the Commission's allegedly coercive conduct.

We next note that, under Sunshine Enterprises' reasoning, the Commission could never deny a permit application, or even place a condition on a permit, because doing so would constitute "coercive pressure" in violation of the applicant's right to due process. But that is not the holding of *Koontz*. Instead, *Koontz* notes that "regardless of whether the government ultimately

succeeds in pressuring someone into forfeiting a constitutional right, the unconstitutional conditions doctrine forbids burdening the Constitution's enumerated rights by coercively withholding benefits from those who exercise them." (*Koontz, supra*, 570 U.S. at p. 606.) In other words, *Koontz* guarantees judicial review to prevent the government from coercively withholding benefits from those who exercise their constitutional rights. *Koontz* protects Sunshine Enterprises' right to challenge the Commission's permit denial, a right that Sunshine Enterprises has exercised by filing its appeal here.

E. *The Permit Streamlining Act*

Lastly, Sunshine Enterprises contends that its permit application should be "deemed approved" under the Permit Streamlining Act. The Permit Streamlining Act requires that a public agency act upon a permit application within 180 days after the application is determined complete by the agency, allowing up to one 90-day extension, for a total time to act of not more than 270 days. (Gov. Code, §§ 65952, 65957.) "In the event that a lead agency or a responsible agency fails to act to approve or to disapprove a development project within the time limits required . . . the failure to act shall be deemed approval of the permit application for the development project" provided that "public notice required by law has occurred." (*Id.*, § 65956, subd. (b).)

Sunshine Enterprises does not contend that the Commission failed to act within the Permit Streamlining Act's time limits. Instead, Sunshine Enterprises argues that its application should be deemed approved as of July 11, 2015 or August 15, 2015, because the Commission did not set the hearing on its application for those months, as Sunshine Enterprises had

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requested. In the alternative, Sunshine Enterprises argues that its application should be deemed approved as of October 3, 2015, when the Commission did not give Sunshine Enterprises an opportunity to postpone the hearing further.

At the Commission's request, Sunshine Enterprises and the Commission signed an agreement to extend the time limits under Government Code section 65952 by 90 days. According to Sunshine Enterprises, it agreed to that 90-day continuance on condition that the Commission set the rescheduled hearing for July 2015 or August 2015, but the Commission instead rescheduled the hearing for September 2015. However, the parties' signed agreement contained no such condition. Although Sunshine Enterprises did send a contemporaneous email that purportedly conditioned the extension to July 2015 or August 2015, Government Code section 65957 requires that the applicant and public agency mutually agree in writing to the extension.[19] Sunshine Enterprises does not provide a record citation demonstrating that the Commission agreed to Sunshine Enterprises' condition.

Furthermore, Government Code section 65956, subdivision (b), precludes deemed approval without "public notice

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[19] As noted above, the time limit in Government Code section 65952 "may be extended once upon mutual written agreement of the project applicant and the public agency for a period not to exceed 90 days from the date of the extension." (Gov. Code, § 65957.) No other extension, continuance, or waiver of these time limits either by the project applicant or the lead agency is permitted, except as provided in this section or Government Code section 65950.1, which is not relevant here. (See *ibid.*)

required by law." The applicant may provide the public notice, as long as it gives seven days' advance notice to the agency of its intent to do so. (*Id.*, § 65956, subd. (b); see *Ciani v. San Diego Trust & Savings Bank* (1991) 233 Cal.App.3d 1604, 1609.) Sunshine Enterprises does not provide a record citation demonstrating that public notice "warning of the potential for deemed approval" was given by either the Commission or Sunshine Enterprises before the July 2015 or August 2015 Commission meetings.

Sunshine Enterprises also contends that it should have been allowed an additional postponement as " 'a matter of right.' "[20] However, pursuant to Government Code section 65957, the parties agreed to extend the total period for Commission action by no more than 270 days. Furthermore, "[a]ny request for postponement pursuant to [California Code of Regulations., title 14, section 13073, subdivision (a)] . . . shall include a waiver of any applicable time limits for commission action on the application." (Cal. Code Regs., tit. 14, § 13073, subd. (c).) Given that Sunshine Enterprises could not unilaterally waive the time

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[20] In so arguing, Sunshine Enterprises relies on California Code of Regulations, title 14, section 13073, subdivision (a), which provides: "Where an applicant for a coastal development permit determines that he or she is not prepared to respond to the staff recommendation at the meeting for which the vote on the application is scheduled, the applicant shall have one right, pursuant to this section, to postpone the vote to a subsequent meeting. The applicant's right to postpone shall be exercised prior to commencement of the public testimony portion of the public hearing."

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limits of the Permit Streamlining Act, it could not postpone the hearing any further.[21]

DISPOSITION

The judgment is affirmed. Each party to bear its own costs on appeal.

NOT TO BE PUBLISHED

JOHNSON, J.

We concur:

ROTHSCHILD, P. J.

WEINGART, J.*

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[21] Indeed, according to the transcript of the hearing, Sunshine Enterprises waived any right to hold the hearing at a later date. When the Commission's chair asked counsel for Sunshine Enterprises if he wanted to withdraw the application and reapply if the Commission waived the re-filing fees, counsel responded, "I decline it, we've prepared as best we can for today. And we will proceed."

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

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CALIFORNIA COASTAL COMMISSION
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W15c

Appeals Filed:	04/06/2020
	08/11/2020
SI Found:	10/08/2020
Staff:	M. Revell-LB
Staff Report:	10/16/2020
Hearing Date:	11/04/2020

STAFF REPORT: REGULAR CALENDAR DE NOVO

Appeal Numbers:	**A-5-MNB-20-0020 & A-5-MNB-20-0041**
Applicant:	**Corinna Cotsen 1991 Trust**
Agent:	Sherman Stacey, Gaines and Stacey, LLP
Local Government:	City of Manhattan Beach
Local Decision:	Approval with Conditions
Appellants:	Commissioners Linda Escalante and Mike Wilson
Project Location:	1312 and 1316 The Strand, Manhattan Beach, Los Angeles County (APN(s) 4179-026-007 & 4179 026-008)

Project Description for A-5-MNB-20-0020:

Demolition of an existing 1,568 sq. ft. single-family residence and an existing 2,556 sq. ft. triplex on two adjacent lots and construction of a 9,920 sq. ft. two-story over basement, single-family residence with an attached 845 sq. ft. three-car garage across both lots with a combined total area of 6,287 sq. ft.

Project Description for A-5-MNB-20-0041:

Same as A-5-MNB-20-0020, except that a merger of the two existing adjacent lots (1312 The Strand is 2,987 sq. ft. and 1316 The Strand is 3,300 sq. ft.) into one 6,287 sq. ft. lot is also proposed.

Staff Recommendation: Deny

PLEASE NOTE THAT THIS WILL BE A VIRTUAL MEETING. As a result of the COVID-19 emergency and the Governor's Executive Orders N-29-20 and N-33-20, this Coastal Commission meeting will occur virtually through video and teleconference. Please see the Coastal Commission's Virtual Hearing Procedures posted on the Coastal Commission's webpage at www.coastal.ca.gov for details on the procedures of this hearing. If you would like to receive a paper copy of the Coastal Commission's Virtual Hearing Procedures, please call 415-904-5202.

SUMMARY OF STAFF RECOMMENDATION.

Staff recommends that the Commission deny the proposed project because it is inconsistent with the intent of the High-Density Residential land use designation of the certified LCP. On October 8, 2020, the Commission determined that appeals A-5-MNB-20-0020 & A-5-MNB-20-0041 raised a substantial issue with respect to consistency with the City's certified LCP. The de novo hearing was postposed at the applicant's request.

The proposed development includes the demolition of an existing 1,568 sq. ft. single-family residence on one lot and the demolition of an existing 2,556 sq. ft. triplex on an adjacent lot, a lot merger, and construction of a 9,920 sq. ft. three-story, single-family residence (two stories over basement), with an attached 845 sq. ft. three-car garage over the entire site (both lots). The City-approved project would result in a net loss of three residential units and a reduction of one RH – High Density Residential lot.

The intent of the RH land use designation is to promote density through the construction of multi-family structures. Development of 1-5 units on RH properties is permitted by right and density of 6+ units is allowed with a Precise Development Plan or Site Development Permit. The proposed project is not consistent with the intent of the high-density residential land use designation of the certified LCP and, in addition, is out of character with the general pattern of surrounding residential development with regard to density, building scale, and lot size. The City's certified implementation plan allows a minimum of one unit per lot for RH designated properties; thus, the minimum density of the in-situ area of the entire project site is two full residential units. The merger of the two lots facilitates a larger, less dense development pattern than what is contemplated in the Commission-certified LCP. Additionally, the City-approved single-family residence is significantly larger than the surrounding residential development and is out of character with the general pattern of multi-family buildings in the immediate vicinity.

Therefore, the proposed project is inconsistent with the zoning and residential development policies of the certified LCP. The motions to adopt staff's recommendations can be found on **Page 4.**

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EXHIBITS

I. MOTION AND RESOLUTION

Motion I:

I move that the Commission **approve** Coastal Development Permit No. **A-5-MNB-20-0020** for the development proposed by the applicant.

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution I:

The Commission hereby denies Coastal Development Permit No. **A-5-MNB-20-0020** for the proposed development on the ground that the development will not conform with the Certified Local Coastal Plan and the public access and recreation policies of Chapter 3 of the Coastal Act. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

Motion II:

I move that the Commission **approve** Coastal Development Permit No. **A-5-MNB-20-0041** for the development proposed by the applicant.

Staff recommends a **NO** vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution II:

The Commission hereby denies Coastal Development Permit No. **A-5-MNB-20-0041** for the proposed development on the ground that the development will not conform with the Certified Local Coastal Plan and the public access and recreation policies of Chapter 3 of the Coastal Act. Approval of the permit would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

II. FINDINGS AND DECLARATIONS

A. Project Description and Location

The City of Manhattan Beach approved the demolition of an existing 1,568 sq. ft. single-family residence and an existing 2,556 sq. ft. triplex on two adjacent lots owned by the same applicant, a merger of the two lots (1312 The Strand is 2,987 sq. ft. and 1316 The Strand is 3,300 sq. ft.) into one 6,287 sq. ft. lot, and construction of a 9,920 sq. ft., 30-ft. high, two-story over basement, single family residence with an attached 845 sq. ft. three-car garage (**Exhibit 2**). The current configuration of the existing residential units on the lots consist of a three-unit triplex at 1312 The Strand, which is comprised of (2) two bed, 2 bath units (upper and lower along on the Strand) and (1) one bed, one bath unit over the garage fronting the alley with six on-site parking spaces, and a 1,568 sq. ft single-family residence at 1316 The Strand with two onsite parking spaces. In total, the existing lots currently provide 4 residential units. The City-approved project would result in a net loss of three residential units and one Residential High-Density designated lot. The triplex at 1312 The Strand is a legal non-conforming structure because it does not meet current development standards for open space requirements, but it is consistent with the density policies of the certified local coastal program (LCP).

The project site is located in an urbanized neighborhood within Area District III (Beach Area) of the City of Manhattan Beach and is zoned Residential High-Density (RH) under the Certified LCP. The project site consists of two adjacent rectangular shaped, ocean-fronting lots located at 1312 and 1316 The Strand; the lots are 2,987 sq. ft. and 3,300 sq. ft., respectively (**Exhibit 1**). The site is located along The Strand, which is a 12-ft. wide paved public walkway between the ocean-fronting residences and the sandy beach and is between the first public road parallel to the sea (Ocean Drive) and the sea. Pursuant to the City's certified LCP, the project site is located in an appealable area. Public access to the beach is available via a public access stairway located at the terminus of 14th Street approximately 120 ft. upcoast of the project site.

B. Project History

On January 7, 2020, the City of Manhattan Beach approved a coastal development permit (CDP) application for the proposed project and determined that it was categorically exempt from the California Environmental Quality Act (CEQA) under Section15303 'New Construction or Conversion of Small Structures', as the proposed construction consists of one single-family residence (**Exhibit 2**).

On March 23, 2020, the Coastal Commission's South Coast District Office received a valid Notice of Final Action (NOFA) for Local CDP No. CA 19-21. The Commission issued a Notification of Appeal Period on March 25, 2020. On April 6, 2020, Commissioners Escalante and Wilson filed the appeal during the ten (10) working day appeal period (**Exhibit 4**). No other appeals were received. The City and applicant were notified of the appeal by Commission staff in a letter also dated April 6, 2020.

On May 21, 2020, a staff report for the appealed project was published, however on June 4, 2020, prior to the public hearing for the appeal, the applicant waived the 49-day

deadline for Commission action on the appeal and requested a postponement of the Commission hearing. The City then revised the previously approved local CDP to incorporate the lot merger (while still not withdrawing or rescinding their previous application). The Commission received a new Notice of Final Action (NOFA) for City of Manhattan Beach Local CDP No. CA 19-21*c* on July 29, 2020. On August 9, 2020, Commissioners Escalante and Wilson filed an appeal during the ten (10) working day appeal period (**Exhibit 6**). No other appeals were received. The City and applicant were notified of the appeal by Commission staff in a letter dated August 11, 2020. On October 8, 2020, the Commission determined that appeals A-5-MNB-20-0020 & A-5-MNB-20-0041 raised a substantial issue with respect to consistency with the City's certified LCP.

C. Development

The Manhattan Beach LCP includes the following relevant policies related to locating and planning new residential development in the coastal zone:

> **LUP Policy II.B.1 States: Maintain building scale in coastal zone residential neighborhoods consistent with Chapter 2 of the Implementation Plan.**
>
> **LUP Policy II.B.2 States: Maintain residential building bulk control established by development standards in Chapter 2 of the Implementation Plan.**
>
> **Section A.12.020 of Chapter 2 of the Certified Implementation Plan (IP)** provides that single-family residences are permitted by right on RH properties and that multi-family residential development on RH properties are permitted by right to 5 or fewer units, and 6 or more units can be constructed with a Precise Development Plan or Site Specific Development Plan.
>
> **Section A.12.030 of Chapter 2 of the Certified IP** dictates that the minimum lot area per dwelling unit for the RH district in Area III (Beach Area) is 850 sq. ft.

The subject lots are located within Area District III (Beach Area), and are zoned Residential High Density, or RH by the Commission-certified LCP. The intent of the RH land use designation is to promote density through the construction of multi-family structures. Development of 1-5 units on RH properties is permitted by right and density of 6+ units is allowed with a Precise Development Plan or Site Development Permit. The City's certified implementation plan allows a minimum of one unit per lot for RH designated properties; thus, the minimum density of the in-situ area of the entire project site is two full residential units. The merger of the two lots facilitates a larger, less dense development pattern than what is contemplated in the Commission-certified LCP. Thus, the proposed project is not consistent with the intent of the RH land use designation of the certified LCP.

Section 30250 of the Coastal Act states, in part:

> (a) New residential, commercial, or industrial development, except as otherwise provided in this division, **shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it** or, where such

> areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. In addition, land divisions, other than leases for agricultural uses, outside existing developed areas shall be permitted only where 50 percent of the usable parcels in the area have been developed and the created parcels would be no smaller than the average size of surrounding parcels. [Emphasis added]

Although Section 30250 of the Coastal Act is not a standard of review for this appeal, the Commission-certified LCP is. Clearly, the merging of the two RH designated lots reduces the density potential contemplated for this specific delineated area of the City by approximately half. The RH area of the City is specifically planned to house more dense development than other areas of the City. As a result, the project raises significant questions as to the project's consistency with the LCP, which allows for and promotes density in this area through construction of multi-family structures.

The state is currently experiencing a housing supply shortage of approximately 90,000 units on a yearly basis[1]. Specifically, within the Commission's appealable area of the City of Manhattan Beach, which is a small portion of the entire coastal zone within the City, (**Exhibit 8**) between 2009 and 2019, approximately 45 residential units were approved to be demolished by replacing multi-unit structures with single-family residences or structures with fewer residential units (e.g. converting triplexes to duplexes) through the approval of local CDPs.[2] Housing shortages throughout the state have been met with growing efforts to address and improve availability. For example, on January 1, 2020, the Housing Crisis Act of 2019 (Senate Bill 330 (Skinner)) took effect with the goal of increasing housing stock. The Housing Crisis Act prohibits an affected city or county from approving a housing development that will require the demolition of occupied or vacant residential dwelling units unless the project will create at least as many residential dwelling units as will be demolished (no net loss). However, the applicant submitted the local CDP application for this project to the City on October 21, 2019, prior to the effective date of SB 330, which was January 1, 2020. Thus, the new state law does not apply to this project. Furthermore, the Housing Crisis Act does not amend the Coastal Act and is not the standard of review for the subject project. However, the new state law is relevant because projects resulting in a loss of housing units and density potential, such as the case here, have significantly contributed to the current housing shortage in the state, which compelled the Legislature to enact housing laws such as SB 330. The Housing Crisis Act and other recently adopted housing laws are reflective of a statewide policy to encourage and increase housing throughout the state, which may impact coastal resources in the coastal zone if it is not well-planned or undertaken with coastal resource protection in mind. Thus, while not a standard of review, it's important to consider the current housing situation and the high-density designation of the subject lots when considering whether the proposed development is consistent with the intent of the high-density designated lots. Moreover, as

[1] Dahdoul, Ahmad, et. al. 7 May 2017. "*Building California's Future: Increasing the Supply of Housing to Retain California's Workforce*". USC Price. Pp. 3-4. https://cfce.calchamber.com/wp-content/uploads/2017/06/CFCE-Building-Californias-Future-Final-Report-May-7-2017.pdf.

[2] Based on Notices of Final Action from the City of Manhattan Beach from 2009 to 2019.

a result of the statewide housing crisis, it is becoming increasingly important to maintain and concentrate development in already developed and appropriate areas in order to ensure that coastal resources are protected.

The RH area of the City is specifically planned to house more dense development than other residential areas in the City. Thus, because other areas, specifically those without the RH land use designation, restrict density, it is appropriate to maintain or even increase rather than reduce density in areas with the RH designation. Therefore, in this case, the merging of two RH designated lots essentially circumvents the density requirements prescribed by the RH designation in the certified LCP to allow 0.5 units on the current (prior to merger) lots, instead of one, thereby achieving a lower density than is specified by the Commission-certified LCP and originally planned for in this area.

In addition, not only does the proposed project reduce the density potential prescribed in the Commission-approved LCP by approximately half, it reduces actual residential density by 75% by demolishing a triplex and a single-family residence and replacing them with one new large single-family residence across the entire site, which consists of two lots. While the RH designation allows for the construction of a single-family residence on a lot, the policy specifically calls for “more intense form[s]” of development not less intense development. In this case, while two single-family residences could be found consistent with the certified LCP (one on each lot), one single-family residence across both lots is not.

Therefore, the development proposed by the applicant does not conform to the residential development policies of the certified LCP in the coastal zone.

D. COMMUNITY CHARACTER

Chapter II of the IP includes the following policies:

A.01.030. Purposes

> The broad purposes of the Zoning Code are to protect and promote the public health, safety, and general welfare, and to implement the policies of the Local Coastal Plan, as provided in the California Government Code, Title 7, Chapters 3 and 4 and in the California Constitution, Chapter 11, Section 7. More specifically, the Zoning code is intended to:
>
> A. Provide a precise guide for the physical development of the Coastal Zone in order to:
>
> > 1. Preserve the character and quality of residential neighborhoods consistent with the character of the two area districts of the Coastal Zone;
> >
> > 2. Foster convenient, harmonious, and workable relationships among land uses; and
> >
> > 3. Achieve progressively the arrangement of land uses described in the

Local Coastal Plan.

A.12.010 Specific Purposes (Residential Districts) In addition to the general purposes listed in Chapter A.01; the specific purposes of residential districts are to:

D. Provide appropriately located areas for residential development that are consistent with the Local Coastal Plan and with standards of public health and safety established by the City Code.
E. Ensure adequate light, area, privacy, and open space for each dwelling and protect residents from harmful effects of excessive noise, population density, traffic congestion, and other adverse environmental effects.
F. Protect adjoining single-family residential districts from excessive loss of sun, light, quiet, and privacy resulting from proximity to multifamily development.
G. Encourage reduced visual building bulk with effective setback, height, open space, site area, and similar standards, and provide incentives for retention of existing smaller homes. Include provision for an administrative Minor Exception procedure to balance the retention of smaller older homes while still allowing for flexibility for building upgrades below the minimum allowable square footage.

Although the City's LCP currently lacks robust policies that would explicitly prohibit the loss of residential units, it does contain zoning and land use designations designed to promote and maintain density and community character. Within Manhattan Beach, the coastal zone only extends approximately six to eight blocks inland of the beach. With the exception of a few lots within this small area of the City, most of the lots zoned for residential use are either zoned Medium or High Density. Most of the single-family/low density zoned lots within the City are outside of the coastal zone. Thus, the character of residential development within the coastal zone of the City is primarily multi-family/higher density, especially near the pier, where the subject lots are located

The proposed project raises issues with regard to the community character policies of the Certified LCP. In this case the applicant is proposing to replace one triplex and one single-family residence (four residential units in total) with one new single-family residence on a relatively large lot. By removing a 3-unit multi-family structure on one lot and permanently removing one high-density residential lot through the lot merger, the project would effectively encourage downzoning in an area that has been designated for high-density development by the City, including multi-family residential development.

The project site is located in an urbanized neighborhood developed with two- and three-story residential structures up to 30 ft. in height. Of the 17 ocean-fronting parcels on the block to the north, on the subject block, and on the block to the south (The Strand between 15th and 12th Streets) there are 11 multi-family structures ranging from two to four units and only six single family residences. Comparatively, the majority of the surrounding structures in the immediate vicinity are multi-family structures, and single-family residences are less prevalent. Although single-family residences may be, and have been, developed on the RH zoned lots, it is evident that the policies in the certified

LCP intended for the area surrounding the project site to accommodate multi-family residential development.

Furthermore, the merger of the two separate lots would result in a combined total lot size of 6,287 sq. ft., which is larger than 16 of the 17 parcels on this block, including those that are developed with multi-unit structures. Thus, the lot size is also out of character with the general pattern of development in this location.

Therefore, the size of the proposed structure, the use of the two sites for one single family residence, and the resulting large lot size would be inconsistent with the community character as it would facilitate a larger, less dense development pattern than what is intended by the RH designation in the Commission-certified LCP. Thus, the use of the two lots for one single-family residence, and the resulting large lot size is inconsistent with the community character of the area as described by LCP policies regarding residential development. The development proposed by the applicant is therefore not consistent with the community character policies of the LCP and should be denied.

E. Project Alternatives

There are several potential alternatives to the proposed project that would be consistent with the certified LCP, including:

No project

The applicant could retain the existing triplex and single-family residence on the two lots without structural renovations that would require a CDP. No changes to the existing site conditions would result from the “no project” alternative. In addition, development would continue to be concentrated in an already developed area that is well-served by public transportation and public amenities.

The triplex at 1312 The Strand was constructed in 1948, and the single-family residence at 1316 The Strand was constructed in 1955 before the Coastal Act was passed. Therefore, the existing structures are 72 years old and 65 years old, respectively, which is within the anticipated life of a residential structure (structures are typically expected to last for 75 years). The applicant has not provided any information to indicate that that it would not be feasible to retain the existing triplex and single-family residence. Therefore, retention of the existing structures is considered feasible, and the Commission is under no obligation to approve demolition of the existing structures based on the available information.

Construct new Multi-Family Structures

Alternatively, the applicant could demolish the existing triplex and single-family residence and construct two new duplexes on the subject lots. This alternative would retain four residential units on site or could even result in an increase in the number of units on the site.

Therefore, alternatives to the proposed project exist and denial of the proposed project will neither eliminate all economically beneficial or productive use of the applicant's property, nor unreasonably limit the owner's reasonable investment-backed expectations of significant economic value on the property. In addition to the two provided examples, there are certainly other options for the sites that are consistent with the certified LCP.

F. WATER QUALITY

The Coastal Marine Resources Policies in the third section of the LUP state:

> The Coastal Act policies require the maintenance, enhancement, and protection of marine resources and the maintenance of the biological productivity and the quality of coastal waters. Act policies also require that coastal waters be protected against effects of wastewater discharges, entrainment, and runoff, that ***ground water supplies be protected***, and that coastal resources be protected against spillage of crude oil, gas, petroleum products, or other hazardous substances (emphasis added).

The project site is located on two oceanfront lots, and is therefore vulnerable to erosion, flooding, wave runup, and storm hazards. These hazard risks are exacerbated by sea-level rise that is expected to occur over the coming decades. The proposed project includes construction of a basement and a subterranean garage (**Exhibit 2**) The applicant has not submitted any information with regard to the location of the groundwater table in this location, where the groundwater level is in relationship to the proposed basement, or whether the basement would need to be dewatered during or after construction.

Basements and subterranean development can displace groundwater. Though this issue is not likely to be relevant in most of the coastal zone, basements can displace ground water if they extend beyond the depth of the water table in confined aquifers causing the surrounding groundwater to rise. If installed in many homes throughout a region, their cumulative impact could result in a localized rise in groundwater and flooding.

Furthermore, the proposed project does not account for changes to the groundwater level overtime that could occur with sea level rise. Sea-level has been rising for many years. Several different approaches have been used to analyze the global tide gauge records in order to assess the spatial and temporal variations, and these efforts have yielded sea-level rise rates ranging from about 1.2 mm/year to 1.7 mm/year (about 0.5 to 0.7 inches/decade) for the 20th century, but since 1990 the rate has more than doubled, and the rate of sea-level rise continues to accelerate. Since the advent of satellite altimetry in 1993, measurements of absolute sea-level from space indicate an average global rate of sea-level rise of 3.4 mm/year or 1.3 inches/decade – more than twice the average rate over the 20th century and greater than any time over the past one thousand years. Recent observations of sea-level along parts of the California coast have shown some anomalous trends; however, there is unequivocal evidence that the climate is warming, and such warming is expected to cause sea-levels to rise at an accelerating rate throughout this century.

Should the groundwater level rise with rising sea levels, the basement would be subject to flooding and would require permanent dewatering. Since staff does not have sufficient information as to whether the basement would be impacted by rising groundwater levels over the life of the development, or how sea level rise will impact groundwater in this location, Commission staff cannot determine whether the proposed development will protect ground water supplies as required by the certified LCP. Therefore, there is insufficient information to determine if ground water will be protected as required by the certified LUP especially in light of expected sea level rise, due to the project's inclusion of a subterranean basement and garage. Accordingly, the Commission denies the CDP application.

G. LOCAL COASTAL PROGRAM

The City of Manhattan Beach's Land Use Plan (LUP) was certified by the Commission in June of 1981. From 1992 through 1994, the City adopted and submitted to the Coastal Commission amendments to the LCP LUP which the Coastal Commission partially certified, pending the City's acceptance of suggested modifications to the Coastal Zoning Maps and LUP Policy Map related to designations for the El Porto area, the Metlox site, and the Santa Fe railroad right-of-way, and to certain designation titles, as well as a Coastal Access Map and text amendments to define the City's Coastal Permit jurisdiction as the land inland of the mean high tide line. The City accepted the Commission's suggested modifications, which the Executive Director determined was legally adequate, and the Commission concurred at its May 10-13th meeting in 1994, thus certifying the City of Manhattan Beach LCP. The City began issuing local coastal development permits shortly thereafter. The project site is located within the City of Manhattan Beach's certified jurisdiction and is subject to the policies of the certified LCP.

H. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

Section 13096 of the Commission's regulations requires Commission approval of Coastal Development Permit applications to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment. The City of Manhattan Beach is the lead agency for CEQA compliance and determined the project is Categorically Exempt per Section 15303 as "New Construction or Conversion of Small Structures" as the proposed construction consists of one single-family residence.

As a responsible agency under CEQA, the Commission has determined that the proposed project, as conditioned, is not consistent with the development policies of the Coastal Act. As described above, the proposed project would have adverse environmental impacts. There are feasible alternatives or mitigation measures available, such as retaining the existing development or developing multi-family structures on the two lots. Therefore, the proposed project is not consistent with CEQA or the policies of the Coastal Act because

feasible alternatives exist which would lessen significant adverse impacts that the proposed project would have on the environment. Therefore, the Commission denies the proposed project because of the availability of environmentally preferable alternatives.

In any event, CEQA does not apply to private projects that public agencies deny or disapprove. Pub. Res. Code § 21080(b)(5). Accordingly, because the Commission denied the proposed project, it is not required to adopt findings regarding mitigation measures or alternatives.