

**CALIFORNIA COASTAL COMMISSION**

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# Th6a

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 Staff: K. Tomaier-LB  
 Staff Report: 3/24/2023  
 Hearing Date: 4/13/2023

## STAFF REPORT: CONSENT CALENDAR

**Application No.:** 5-21-0715

**Applicant:** Timothy and Christina Noonan

**Agent:** Jacquelyn Gentes

**Location:** 1419 Palisades Beach Road, Santa Monica, Los Angeles County (APN: 4291-031-003)

**Project Description:** Demolition of a one-story, 1,106 sq. ft., single-family residence and attached 303 sq. ft. accessory unit and construction of a 40-ft., three-story, 4,447 sq. ft. single-family residence with a 638 sq. ft. attached ADU, 707 sq. ft. three-car garage, rear yard deck, roof deck, a new driveway, curb cut, and grading (155 cu. yd. cut, 110 cu. yd. fill) built across two tied lots totaling 4,998 sq. ft.

**Staff Recommendation:** Approval with conditions

## SUMMARY OF STAFF RECOMMENDATION

The applicant is proposing to demolish a 1,106 sq. ft. single-family residence and attached 303 sq. ft. accessory unit constructed prior to passage of the Coastal Act and construct a three-story, approximately 40-ft high, 4,447 sq. ft. single-family residence with an attached 638 sq. ft. ADU, a new driveway and curb cut, a three-car attached garage, a rear yard deck projection, and roof deck on two tied lots totaling 4,998 sq. ft. ([Exhibit 2](#)).<sup>1</sup> The project site is a beachfront lot located approximately 35 ft. inland from

<sup>1</sup> City-approved plans indicate that the two tied lots are 5,014 sq.ft. combined.

the beach. The standard of review for this project is Chapter 3 of the Coastal Act, and the certified Land Use Plan (LUP) for Santa Monica provides guidance.

The applicant is also proposing after-the-fact approval for the demolition of interior and exterior portions of the house. As such, **Special Condition No. 9** requires the applicant to submit an after-the-fact application fee.

The project site is designated in the Santa Monica certified LUP as Low Density Multiple Residential. As conditioned, the proposed project (a single-family residence and ADU) is consistent with the Santa Monica LUP's maximum density for this site. The project site is also designated in the City's uncertified zoning code as R2-BCH (Multi-Family Residential), which allows one residential unit per lot. Under the State ADU law, ADUs do not count towards a site's density limit. As such, although not the standard of review, the proposed project is also consistent with the uncertified zoning code's maximum density for this site. However, to ensure the existing housing is maintained, staff recommends the Commission impose **Special Condition No. 1** requiring the current owner and all future owners to retain the single-family residence and the ADU as two separate units.

The proposed project is located in an area where coastal hazards exist and could adversely impact the development. In order to analyze the project site for sea level rise impacts consistent with the Coastal Commission's Sea Level Rise Guidance, staff first followed the methodology outlined in the OPC's 2018 Sea level Rise document to establish a projected sea level range for the new development. Under an estimated 6.6-foot sea level rise and 100-year storm scenario, the project site is not anticipated to be subject to coastal erosion, wave uprush, or coastal flooding; however, coastal areas are dynamic environments, and it is difficult to predict with certainty how any particular project site will be impacted. The project, which includes the demolition of an existing single-family residence and attached accessory unit and construction of a single-family residence and attached accessory dwelling unit, constitutes new development. As such, the new single-family residence and attached accessory dwelling unit is not entitled to shoreline protection. Therefore, staff recommends the Commission impose **Special Condition 8** to require the applicant to waive any rights to future shoreline protection that it might have under existing law and **Special Condition 7**, which requires the applicant to assume the risk of development within an area with a known vulnerability to coastal hazards, including, but not limited to, coastal flooding. Finally, to ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, staff recommends the Commission impose **Special Condition 10**, requiring that the property owners record a deed restriction, referencing all the Special Conditions of this permit.

As proposed by the applicant and conditioned, staff believes the proposed development can be found to be consistent with the Chapter 3 policies of the Coastal Act. Thus, staff recommends that the Commission **APPROVE** coastal development permit application 5-21-0715 with **eleven** special conditions regarding: 1) retention of 2 units onsite; 2) water quality, drainage, and landscaping plans; 3) bird-strike prevention; 4) storage of construction materials, mechanized equipment, and removal of construction debris; 5) construction staging plan; 6) water quality standards; 7) assumption of risk; 8) no future shoreline protective device; 9) after-the-fact application fee; 10) deed restriction; and

11) future development. The motion and resolution can be found on Page 5 of the staff report.

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## EXHIBITS

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

[Exhibit 2 – Project Plans](#)

[Exhibit 3 – Parcel Map](#)

[Exhibit 4 – 1949 Building Record and Permit](#)

## MOTION AND RESOLUTION

### Motion:

I move that the Commission approve the coastal development permit applications included on the consent calendar in accordance with the staff recommendations.

Staff recommends a **YES** vote. Passage of this motion will result in approval of all the permits included on the consent calendar. The motion passes only by affirmative vote of a majority of the Commissioners present.

**Resolution:** The Commission hereby approves CDP 5-21-0715, subject to the conditions below, for the proposed development and adopts the findings set forth below on grounds that the development as conditioned will be in conformity with the provisions of Chapter 3 of the California Coastal Act and will not prejudice the ability of the local government having jurisdiction over the area to prepare a local coastal program conforming to the provisions of Chapter 3. Approval of the permit complies with the California Environmental Quality Act because either 1) feasible mitigation measures and/ or alternatives have been incorporated to substantially lessen any significant adverse effects of the development on the environment, or 2) there are no further feasible mitigation measures or alternative that would substantially lessen any significant adverse impacts of the development on the environment.

## STANDARD CONDITIONS

This permit is granted subject to the following standard conditions:

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

**5. Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

## **SPECIAL CONDITIONS**

This permit is granted subject to the following standard conditions:

**1. Retention of Two Onsite Units.** The development approved by Coastal Development Permit No. 5-21-0715 is for construction of a 4,447 sq. ft. single-family residence and one 638 sq. ft. attached accessory dwelling unit. The applicant and all assigns/successors shall maintain the ADU as a separate unit. At no point may the ADU be incorporated into the single-family residence or converted to a non-residential use. Ingress and egress (doors) between the attached ADU and the primary residence are prohibited. One of the four onsite parking spaces shall be maintained for the ADU.

### **2. Water Quality, Drainage and Landscaping Plans.**

- A.** The applicant shall undertake development in accordance with the drainage and run-off control plan, dated January 28, 2021, showing that roof and surface runoff will be captured and filtered with grate inlet/catch basins. Vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants, which are non-invasive. No plant species listed as problematic and/or invasive by the California Native Plant Society, the California Exotic Pest Plant Council, or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a 'noxious weed' by the State of California or the U.S. Federal Government shall be utilized within the property. The applicant shall incorporate Best Management Practices (BMPs) into the construction and postconstruction phases of the subject development.
- B.** Any proposed changes to the approved plan shall be reported to the Executive Director. No changes to the approved plan shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

### **3. Bird Strike Prevention**

PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit revised plans showing the location, design, height, and materials of oceanfront deck railing systems, fences, screen walls, gates, windows and the like for the review and written approval of the Executive Director. Said plans shall include, at a minimum, the following requirements:

- A.** Oceanfront deck railing systems, fences, screen walls, gates, and windows and

the like that are subject to this permit shall use materials designed to minimize bird-strikes with the deck railing, fence, gate, window or similar feature. Such materials may consist of all or in part of wood, wrought iron, frosted or partially frosted glass, or other visually permeable barriers that are designed to prevent creation of a bird strike hazard. Clear glass or Plexiglas shall not be installed. All materials shall be maintained throughout the life of the development to ensure continued effectiveness at minimizing bird strikes and shall be maintained at a minimum in accordance with manufacturer specifications.

- B. The residence shall be designed to use minimal exterior lighting and minimize light pollution from interior lighting to the maximum extent feasible to minimize nighttime bird-strike hazards.

**4. Storage of Construction Materials, Mechanized Equipment, and Removal of Construction Debris.** The permittee shall comply with the following construction-related requirements:

- A. No demolition or construction materials, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion;
- B. No demolition or construction equipment, materials, or activity shall be placed in or occur in any location that would result in impacts to environmentally sensitive habitat areas, streams, wetlands or their buffers;
- C. Any and all debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project;
- D. Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters;
- E. All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day;
- F. The applicants shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction;
- G. Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the Coastal Zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required;
- H. All stockpiles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and

shall not be stored in contact with the soil;

- I. Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems;
  - J. The discharge of any hazardous materials into any receiving waters is prohibited;
  - K. Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The area shall be located as far away from the receiving waters and storm drain inlets as possible;
  - L. Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction- related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity; and
  - M. All BMPs shall be maintained in a functional condition throughout the duration of construction activity.
- 5. Construction Staging Plan.** PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit for review and approval of the Executive Director a construction staging plan that does not utilize any public sidewalks, parking lots, or public streets for construction staging areas. The construction staging shall not take place on any sandy areas or beach.
- 6. Water Quality Standards.** With the acceptance of this permit the applicant agrees to comply with all applicable City of Santa Monica water quality requirements as required under the City's Municipal Code that are in effect at the time of approval of this permit.
- 7. Assumption of Risk, Waiver of Liability and Indemnity.** By acceptance of this permit, the applicant acknowledges and agrees (i) that the site may be subject to hazards from flooding, sea level rise, erosion and wave uprush; (ii) to assume the risks to the applicant and the property that is the subject of this permit of injury and damage from such hazards in connection with this permitted development;(iii) to unconditionally waive any claim of damage or liability against the Commission, its officers, agents, and employees for injury or damage from such hazards; and (iv) to indemnify and hold harmless the Commission, its officers, agents, and employees with respect to the Commission's approval of the project against any and all liability, claims, demands, damages, costs (including costs and fees incurred in defense of such claims), expenses, and amounts paid in settlement arising from any injury or damage due to such hazards.



## **8. Waiver of Right to Future Shoreline Protective Device.**

- A.** By acceptance of this permit, the permittee acknowledges that the development authorized by this permit – including demolition of the existing single-family residence and construction of a new single-family residence, attached ADU, garage, foundations, and patio – constitutes new development under the Coastal Act and is therefore not entitled to a shoreline protective device under Section 30235 of the Coastal Act. Thus, by acceptance of this permit, the permittee hereby waives, on behalf of themselves and all successors and assigns, any rights to construct such shoreline protective devices to protect the development approved pursuant to CDP No. 5-21-0715.
- B.** By acceptance of this Permit, the permittee further agrees, on behalf of themselves and all successors and assigns, that they are required to remove all or a portion of the development authorized by the permit, and restore the site, if: (1) the City or any other government agency with legal jurisdiction has issued a final order, not overturned through any appeal or writ proceedings, determining that the structures are currently and permanently unsafe for occupancy or use due to damage or destruction from sea level rise, flooding, shallow groundwater levels, wave uprush, or other hazards related to coastal processes, and that there are no feasible measures that could make the structure suitable for habitation or use without the use of shoreline protective devices; (2) essential services to the site (e.g., utilities, roads) can no longer feasibly be maintained due to the coastal hazards listed above; (3) removal is required pursuant to LUP policies for sea level rise adaptation planning; or (4) the development requires new and/or augmented shoreline protective devices that conflict with relevant LUP or Coastal Act policies.

**9. After-the-Fact Permit Fee.** PRIOR TO THE ISSUANCE OF THIS PERMIT, the applicant shall pay the balance of the application fee for an after-the-fact permit, which equals \$10,974.

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

or amendment thereof, remains in existence on or with respect to the subject property.

**11. Future Development.** This permit is only for the development described in CDP 5-21-0715. Pursuant to Title 14 California Code of Regulations Section 13250(b) (6), the exemptions otherwise provided in Public Resources Code Section 30610(a) shall not apply to the development governed by Coastal Development Permit No. 5-21-0715. Accordingly, any future improvements to the single-family residence and/or ADU authorized by this permit shall require an additional CDP from the Commission or from the applicable certified local government. In addition, an amendment to CDP 5-21-0715 from the Commission or an additional CDP from the Commission or applicable certified government shall be required for any repair and maintenance identified as requiring a permit in Public Resources Section 30610(d) and Title 14 California Code of Regulations Sections 13252(a)-(b).

## FINDINGS AND DECLARATIONS

### A. PROJECT DESCRIPTION, LOCATION, AND STANDARD OF REVIEW

The applicant is proposing to demolish a 1,406 sq. ft. single-family residence and attached accessory unit that were constructed prior to passage of the Coastal Act, and to construct an approximately 40-ft high (above the existing natural grade line), 4,447 sq. ft. single-family residence with a 638 sq. ft. attached accessory dwelling unit, a new driveway and curb cut, a 707 sq. ft., three-car attached garage, second-floor, ocean-facing deck, and roof deck on two tied lots totaling 4,998 sq. ft. ([Exhibit 2](#)). Non-invasive, drought tolerant landscaping is proposed for the project. The proposed project received an Approval-in-Concept from the City of Santa Monica Planning Department on September 12, 2022.

The existing structure on the subject site was originally constructed as a single-family residence in 1911. In 1949, a building permit was approved for the addition and conversion of 300 sq. ft. of living space to an accessory use ([Exhibit 4](#)). Building records show that the current structure consists of a 1,106 sq. ft. single-family residence and a 300 sq. ft. attached accessory unit.

The project site consists of two rectangular shaped, tied lots<sup>2</sup> totaling 4,998 sq. ft. ([Exhibit 3](#)) located approximately 35 ft. inland from the inland extent of the sandy beach and is approximately 0.15 miles north of the Santa Monica Pier ([Exhibit 1](#)). The project site is located within a row of residentially developed lots and public beach parking lots. The residential structures range from 1,184 sq. ft. to 5,875 sq. ft. in size, with the average structure totaling 2,797 sq. ft. The lot sizes range from 2,500 sq. ft. to 5,000 sq. ft with the most frequently occurring lot size as 2,500 sq. ft. The proposed 40-ft high

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<sup>2</sup> The existing structure was built over the lot line of the two legal lots; there is no evidence that the lots were formally merged or consolidated.

4,447 sq. ft. single-family residence with a 638 sq. ft. accessory dwelling unit is of a similar mass and scale to other properties in the project vicinity. Therefore, the proposed project is compatible with the community character of the area. The project site is designated in the Santa Monica certified LUP as Low Density Multiple Residential.<sup>3</sup> The lots are designated as R2-BCH (Multi-Family Residential) in the City's uncertified zoning code. The proposed development (a single-family residence with an ADU) is permitted on the subject site, per the certified LUP and the uncertified City zoning code. To ensure the development is maintained as proposed, the Commission imposes **Special Condition 1**, which requires all current and future owners to maintain two separate units onsite. Therefore, the proposed project, as conditioned, also complies with the above certified LUP policies and the proposed development standards and will not prejudice certification of the LCP.

The Land Use Plan (LUP) for Santa Monica was effectively certified on September 15, 1992, upon the City's adoption of the Commission's suggested modifications, excluding the area west of Ocean Avenue and Neilson Way (Beach Overlay District). The project site is in the Beach Overlay District. The City does not yet have a certified Implementation Plan. Therefore, the Chapter 3 policies of the Coastal Act are the standard of review.

The project site is located approximately 35 ft. inland from the beach, between the first public access road and the sea. The site fronts Ocean Front Walk, a 20 ft. wide pedestrian promenade. Directly west of the promenade is an approximately 16 ft. wide bicycle path, which runs along the sandy beach. The nearest vertical public access to the beach is available via a public parking lot approximately 80 feet south of the project site. The certified LUP does not include setback requirements for this subarea of Santa Monica. However, the proposed project does comply with the uncertified zoning code's setback requirements, including a front yard setback of 20-feet, a rear yard setback of 15 feet from the centerline of the walk street (Ocean Front Walk), and side yard setbacks of 8 feet each. The residential structure will be set back 5 feet from the property line in the rear yard on the first and third floor, with a 3 ft. rear deck projection on the second floor, adjacent to Ocean Front Walk.

The proposed development includes a new glass railing on the roof deck along the ocean fronting side of the project site. Glass railing systems, walls or wind screens are known to have adverse impacts upon a variety of bird species. Birds are known to strike these glass walls causing their death or stunning them, which exposes them to predation. To ensure bird strike prevention, **Special Condition 3** requires that the applicant use a material for the glass railing that is designed to prevent creation of a bird strike hazard, and to submit revised plans reflecting the requirements of this condition.

The City's uncertified zoning code requires two parking spaces per dwelling unit for single-unit dwellings, one parking space for ADUs, and one guest parking space, for a

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<sup>3</sup> The project site is in Subarea 1a and is included in the Proposition S Beach Overlay District that was deferred from certification.

total of four parking spaces.<sup>4</sup> The proposed project includes the construction of a three-car parking garage, a driveway that can accommodate one uncovered guest parking space, and a new curb cut, which would be accessed from Palisades Beach Road. The remaining curb length is approximately 15.5 ft. long, which could accommodate one compact street parking space. The applicant has indicated that there is no other alternative than to provide the required on-site parking. However, given that the existing curb cut currently allows for one street parking space and the proposed curb cut would still allow for one street parking space, the project is not expected to adversely impact public street parking spaces. Furthermore, the project would accommodate four onsite parking spaces, including two covered and one uncovered parking space for the single-family residence and one covered parking space for the ADU, consistent with the local parking standards.

The Commission finds that, with the proposed parking and setbacks, the development would not have any new adverse impacts on public access to the coast or to nearby recreational facilities. Thus, the proposed development conforms to Sections 30210, 30211, and 30212 of the Coastal Act.

Storage or placement of construction materials, debris, or waste in a location subject to erosion and dispersion or which may be discharged into coastal water via rain or wind would result in adverse impacts upon the marine environment that would reduce the biological productivity of coastal waters. For instance, construction debris entering coastal waters may cover and displace soft bottom habitat. Sediment discharged into coastal waters may cause turbidity, which can shade and reduce foraging avian and other marine species' ability to see food in the water column. In order to avoid adverse construction-related impacts upon marine resources, the Commission imposes **Special Conditions 4-6**, which ensure compliance with safe construction practices, staging of materials, and water quality standards as outlined by the City of Santa Monica.

The proposed project has the potential to adversely impact the water quality of the nearby Pacific Ocean. Much of the pollutants entering the ocean come from land-based development. The Commission finds that it is necessary to minimize, to the extent feasible within its jurisdiction, the cumulative adverse impacts on water quality resulting from incremental increases in impervious surface associated with additional development. In order to address post construction water quality impacts, the applicant has submitted a drainage and runoff control plan that minimizes impacts to water quality the proposed project may have after construction. Roof and surface runoff will be managed onsite through the use of catch basins to direct water flow to the municipal storm drain system. The Commission imposes **Special Condition 2** to ensure that the applicant adheres to the drainage plan dated January 28, 2021.

The applicant has proposed that all landscaping will consist of low water use and non-invasive plants. In order to ensure that any onsite landscaping minimizes the use of

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<sup>4</sup> [9.28.060 Off-Street Parking \(qcode.us\)](https://www.qcode.us)

water and the spread of invasive vegetation, the Commission imposes **Special Condition 2**, which includes landscape controls that require that all vegetated landscaped areas shall only consist of native plants or non-native drought tolerant plants, which are non-invasive. Thus, as conditioned, the Commission finds that the proposed project is consistent with Sections 30230, 30231 and 30232 of the Coastal Act.

### **Sea Level Rise**

Section 30253 of the Coastal Act requires that new development minimize risks to life and property in hazardous areas, including areas subject to flooding. New development must also not significantly contribute to erosion or destruction of the site or surrounding area, or require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs. The proposed project raises potential hazards concerns related to the project site's location on an oceanfront lot, as well its location in a low-lying area that is inherently vulnerable to flooding.

The State of California has undertaken significant research to understand how much sea level rise to expect over this century and to anticipate the likely impacts of such sea level rise. On November 7, 2018, the Commission adopted a science update to its Sea Level Rise Policy Guidance. This document provides interpretive guidelines to ensure that projects are designed and built in a way that minimizes sea level rise risks to the development and avoids related impacts to coastal resources, consistent with Coastal Act Section 30253. These guidelines state, "to comply with Coastal Act Section 30253 or the equivalent LCP section, projects will need to be planned, located, designed, and engineered for the changing water levels and associated impacts that might occur over the life of the development." The most recent projections in the statewide sea level rise guidance indicate that sea levels in this area may rise between 5.5 feet and 6.8 feet by the year 2100, though there is a risk of much more significant sea level rise depending on various uncertainties, including the dynamics of ice sheet loss.<sup>5</sup> The projection is given in a range largely because researchers cannot know exactly how much greenhouse gases we will continue to emit over the coming decades – large-scale curtailment of greenhouse gas emissions would keep sea level rise towards the lower end of the projections, while business as usual emissions scenarios would result in the higher end of the projections.

The Coastal Act also strongly discourages shoreline protective devices to protect oceanfront development because such structures generally cause adverse impacts to coastal resources and can constrain the ability of the shoreline to respond to dynamic coastal processes resulting in a reduction and/or loss of public beach area with no increase of the landward extent of the beach. In general, shoreline protection devices

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<sup>5</sup> This range of sea level rise reflects the low emissions scenario and high emissions scenario for a site located within the Santa Monica NOAA tide gauge and a medium-high risk aversion. According to the updated OPC guidance, the medium-high risk aversion scenario should be used when determining a residential structure's vulnerability to sea level rise hazards.

are not attractive, can detract from a natural beach experience, and adversely impact scenic public views. Shoreline protective devices can also prevent the natural inland migration of public lands (whether submerged lands, tidelands, or public state lands) in areas where they are not adjacent to adjudicated property lines.

In order to analyze the project site for sea level rise impacts consistent with the Coastal Commission's Sea Level Rise Guidance, staff first followed the methodology outlined in the OPC's 2018 Sea level Rise document to establish a projected sea level range for the new development. The 2018 OPC guidance uses NOAA tide gauges, a projected project lifespan, and risk aversion scenario to estimate a sea level rise range. The sea level rise analysis assumed a 75-year projected lifespan for the project, consistent with the Commission's Sea Level Rise Policy Guidance for residential development.

According to the 2018 OPC update, the projected sea level rise range for the project site is tied to the Santa Monica NOAA Tide Gauge. This tide gauge estimates a range between 5.5 and 6.8 feet of sea level rise by 2100 (which falls within the 75-year projected lifespan for the project). With regard to the risk-aversion scenario, both the Commission's Sea Level Rise Policy Guidance and the OPC documents recommend a medium-high risk scenario for residential developments. Under a 75-year projected lifespan, a medium-high risk scenario, and the project's location within the Santa Monica NOAA tide gauge, staff estimated 6.8 feet of sea level rise within the project vicinity.

Under an estimated 6.6-foot sea level rise and 100-year storm scenario, the project site is not anticipated to be subject to coastal erosion, wave uprush, or coastal flooding; however, as discussed, coastal areas are dynamic environments, and it is difficult to predict with certainty how any particular project site will be impacted.

The project, which includes the demolition of an existing single-family residence and attached accessory unit and construction of a single-family residence and attached accessory dwelling unit, constitutes new development. As such, the new single-family residence and attached accessory dwelling unit is not entitled to shoreline protection. Therefore, the Commission imposes **Special Condition 8** to require the applicant to acknowledge that the development approved by this permit- including the single-family home, attached ADU, garage, foundations, and patio- is not entitled to shoreline protection, and to waive any rights to future shoreline protection that it might have under existing law. In addition, the applicant would be required to remove the approved development if the City or any other government agency with legal jurisdiction has issued a final order, not overturned through any appeal or writ proceedings, determining that the structures are currently and permanently unsafe for occupancy or use due to coastal hazards and that there are no measures that could make the structures suitable for habitation or use without the use of bluff or shoreline protective devices. In addition,

the public trust boundary may migrate landward in response to rising sea levels.<sup>6</sup> If the public trust boundary does migrate landward and encompasses the development approved under CDP No. 5- 21-0715, the development would need to be removed pursuant to **Special Condition 8**.

Given the dynamic nature of coastal beaches, as well as the long-term uncertainty of sea level rise models, it is important that the risks of developing on this beachfront lot are borne by the applicant who will benefit from the private development, and not the public. In addition, the proposed development is located in an area where dynamic and unpredictable coastal hazards exist that could adversely impact the development should the applicant's predictions of flooding and sea level rise prove to be inaccurate. Therefore, the Commission also imposes **Special Condition 7**, which requires the applicant to assume the risk of development within an area with a known vulnerability to coastal hazards, including, but not limited to, coastal flooding. Finally, to ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes **Special Condition 8**, requiring that the property owners record a deed restriction against the property, referencing all the Special Conditions of this permit.

In further consideration of the hazardous project location, the Commission shall regulate future development by imposing **Special Condition 11**, which requires an amendment to Coastal Development Permit (CDP) No. 5-21-0715, or an additional CDP, for any future development on the site including actions that would otherwise be exempt from permit conditions.

As proposed by the applicant and conditioned by the Commission, the project can be found to be consistent with Section 30253 of the Coastal Act with regard to coastal hazards.

The project has been designed and conditioned to be consistent with the relevant Coastal Act Chapter 3 policies. However, the project's location adjacent to the beach may cause adverse impacts to coastal views and public access. Section 13250 of Title 14 of the California Code of Regulations (CCR) states that internal floor area additions that are less than 10 percent of the current structure's floor area, and, in this location, height increases of less than 10 percent of the current structure's height, are exempt from permit requirements. However, for the residences adjacent to Ocean Front Walk, even minimal increases in height or floor area have the potential to impact public beach access routes or close off view corridors from public viewing areas. Therefore, the Commission imposes **Special Condition 11**, requiring the applicant to submit a new CDP application or amendment application for any future improvements, even those

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<sup>6</sup> The Public Trust boundary separates tidelands, submerged lands, and navigable waterways protected for public use from privately owned lands. For more information on public trust lands, visit <https://www.slc.ca.gov/public-engagement/>.

improvements that would normally be exempt from permit requirements under Section 13250 of the Title 14 CCR.

On September 12, 2022, the City of Santa Monica – the lead agency for the purposes of CEQA- determined that the proposed development is categorically exempt under Section 15303(a), which exempts construction of a single-family residence in a residential zone from CEQA requirements. The Commission’s regulatory program for reviewing and granting CDPs has been certified by the Resources Secretary to be the functional equivalent of CEQA. (14 CCR § 15251(c).) Section 13096 of Title 14 of the California Code of Regulations requires Commission approval of Coastal Development Permit applications to be supported by findings showing the approval, as conditioned, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

As discussed above, the proposed development, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act. As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect, individual or cumulative, that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA. Pursuant to Section 30604(a) of the Coastal Act, approval of the project, as conditioned, will not prejudice the ability of the local government to prepare an LCP that is in conformity with the provisions of Chapter 3 of the Coastal Act.

## **B. DEVELOPMENT**

The development is located within an existing developed area and, as conditioned, will be compatible with the character and scale of the surrounding area, has been designed to assure structural integrity, and will avoid cumulative adverse impacts on public access. Therefore, the Commission finds that the development, as conditioned, conforms with Sections 30250, 30251, 30252, 30253 and the public access provisions of the Coastal Act.

## **C. PUBLIC ACCESS**

As conditioned, the proposed development will not have any new adverse impact on public access to the coast or to nearby recreational facilities. Thus, as conditioned, the proposed development conforms with Sections 30210-30214, Sections 30220-30224, and 30252 of the Coastal Act.



## **D. WATER QUALITY**

The proposed development has a potential for a discharge of polluted runoff from the project site into coastal waters. The development, as proposed and as conditioned, incorporates design features to minimize the effect of construction and post-construction activities on the marine environment. These design features include, but are not limited to, the appropriate management of equipment and construction materials, reducing runoff through the use of permeable surfaces, the use of non-invasive drought tolerant vegetation to reduce and treat the runoff discharged from the site, and for the use of post-construction best management practices to minimize the project's adverse impact on coastal waters. Therefore, the Commission finds that the proposed development, as conditioned, conforms with Sections 30230 and 30231 of the Coastal Act regarding the protection of water quality to promote the biological productivity of coastal waters and to protect human health.

## **E. DEED RESTRICTION**

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes **Special Condition 10** requiring that the property owner record a deed restriction against the property, referencing all of the above Special Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, this permit ensures that any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land in connection with the authorized development, including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

## **F. HAZARDS**

Development adjacent to the ocean or bay is inherently hazardous. Development which may require a protective device in the future cannot be allowed due to the adverse impacts such devices have upon, among other things, public access, visual resources and shoreline processes. To minimize the project's impact on shoreline processes, and to minimize risks to life and property, the development has been conditioned to: require an appropriate set-back from the water; require a drainage and runoff control plan to direct, treat, and minimize the flow of water offsite; prohibit construction of protective devices (such as a seawall) in the future; and to require that the landowner and any successor-in-interest assume the risk of undertaking the development. As conditioned, the Commission finds that the development conforms to Section 30253 of the Coastal Act.

## **G. UNPERMITTED DEVELOPMENT**

Violations of the Coastal Act have occurred on the subject site, including but not necessarily limited to demolition of interior and exterior portions of the house without the

benefit of the necessary coastal development permit. Any non-exempt development activity conducted in the coastal zone without a valid coastal development permit, or which does not substantially conform to a previously issued permit, constitutes a violation of the Coastal Act, which is the case here.

As explained above, the applicant is proposing to demolish the current structure and has requested after-the-fact approval of the demolition activity described above that has already occurred, and construct a single-family residence with an attached ADU and attached garage. Upon issuance of this permit, the subsequent performance of the work authorized by the permit in compliance with all of the terms and conditions of the permit will result in resolution of the demolition activity violation described above.

Although development has taken place prior to submission of this permit application, consideration of the permit application by the Commission has been based solely on consistency of the proposed development with the policies of Chapter 3 of the Coastal Act. Commission review and action on this permit does not constitute a waiver of any legal action with regard to the alleged violations (or any other violations).

## **H. AFTER-THE-FACT PERMIT FEE**

Pursuant to Section 13055 of the Commission's regulations (Division 5.5, Title 14, California Code of Regulations), after-the-fact applications are subject to additional fees equaling up to 5 times the total fee that would apply to a regular application. This fee can be reduced by the Executive Director when it is determined that either: the ATF 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 ATF permit. The first criterion for reduction has been met; therefore, the Executive Director has authorized an after-the-fact fee of 2 times the total permit fee for this project. The Commission imposes **Special Condition 9**, which requires the applicant to pay the After-the-Fact Permit Fee prior to issuance of the permit.

## **I. LOCAL COASTAL PROGRAM (LCP)**

Coastal Act section 30604(a) states that, prior to certification of a local coastal program ("LCP"), a coastal development permit can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that is in conformity with Chapter 3. A Land Use Plan (LUP) for the City of Santa Monica was effectively certified on September 15, 1992. However, the City of Santa Monica does not have a certified LCP. Consequently, the standard of review is the Coastal Act, and the City's LUP is used as guidance. The proposed development is consistent with Chapter 3 of the Coastal Act and with the certified LUP for the area. Approval of the project will not prejudice the ability of the local government to prepare a Local Coastal Program for this area that is in conformity with the provisions of Chapter 3.

## **J. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

As discussed above, the proposed development, as conditioned, is consistent with the Chapter 3 policies of the Coastal Act. As conditioned, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect, individual or cumulative, that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned, is the least environmentally damaging feasible alternative and can be found consistent with the requirements of the Coastal Act to conform to CEQA.

## **APPENDIX A – SUBSTANTIVE FILE DOCUMENTS**

1. Coastal Development Permit Application No. 5-21-0715 and associated file documents