

CALIFORNIA COASTAL COMMISSION

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Appeal Filed: 7/11/2005
Sub. Issue Hrg: 8/09/2005
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Staff: CP-LB
Staff Report: 12/22/2005
Hearing Date: January 11, 2006
Commission Action:

**STAFF REPORT: APPEAL - DE NOVO**

LOCAL GOVERNMENT: City of Los Angeles

LOCAL DECISION: Approval with Conditions

APPEAL NUMBER: A-5-VEN-05-259

APPLICANT: City of Los Angeles Department of Public Works

APPELLANTS: James Murez, John Davis, and Coastal Commission Executive Director, Peter Douglas

PROJECT LOCATION: Northwest corner of intersection of North Venice Boulevard and Abbot Kinney Boulevard, Venice, City of Los Angeles.

PROJECT DESCRIPTION: Vacate a 4,500 square foot portion of the public right-of-way.

SUBSTANTIVE FILE DOCUMENTS:

1. City of Los Angeles certified Land Use Plan for Venice, 6/14/2001.
2. City of Los Angeles Local Coastal Development Permit No. 04-01.
3. City of Los Angeles Street Vacation File No. VAC-E1400779 (Council File No. 01-2183).
4. Coastal Development Permit 5-90-664 & amendments (Caltrans & City of Los Angeles).
5. Coastal Development Permit Application 5-05-343 (Dos Coronas, 1656 Abbot Kinney).

SUMMARY OF STAFF RECOMMENDATION

On August 9, 2005, the Commission, after public hearing, determined that a substantial issue exists with respect to the City's approval of the local coastal development permit for the proposed right-of-way vacation because it could adversely affect coastal resources and public access to the shoreline along North Venice Boulevard, a major coastal access route.

For the De Novo portion of the appeal, staff is recommending that the Commission **APPROVE** a coastal development permit for the City's proposed vacation because, as conditioned, it will not adversely affect coastal resources and public access to the shoreline. The portion of the public right-of-way that the City proposes to vacate does not currently support public access or recreation. The recommended special condition of approval will ensure that the vacated property will remain available for public use in the event that the City determines in the future that the property is needed for a public purpose. **See Page Two for the motion.**

STAFF RECOMMENDATION:

The staff recommends that the Commission adopt the following resolution to **APPROVE** the coastal development permit application with a special condition:

MOTION: *"I move that the Commission approve with a special condition Coastal Development Permit A-5-VEN-05-259 per the staff recommendation."*

Staff recommends a **YES** vote which would result in the adoption of the following resolution and findings. An affirmative vote by a majority of the Commissioners present is needed to pass the motion.

I. Resolution: Approval with Conditions

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

II. Standard Conditions

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 this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. Special Condition

1. Right of Defeasance

Coastal Development Permit A-5-VEN-05-259 authorizes the City of Los Angeles to vacate, subject to defeasance, the portion of the public right-of-way situated at the northwest corner of the intersection of North Venice Boulevard and Abbot Kinney Boulevard, as shown on **Exhibit #3 of the staff report dated 12/22/2005**. Pursuant to that right, if the City of Los Angeles determines that the vacated property is needed for a public purpose (e.g., street widening, public transportation, sidewalk, bicycle lane, etc.) the property shall revert to public right-of-way in order to provide for the public purpose identified by the City. Any development of the vacated property shall require a coastal development permit issued by the Commission or its successor agency.

IV. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description

The proposed project is the City's vacation of a 4,500 square foot portion of the public right-of-way situated at the northwest corner of the intersection of North Venice Boulevard and Abbot Kinney Boulevard (Exhibit #3). The portion of the Abbot Kinney Boulevard right-of-way being vacated is five feet deep and about ninety feet long. The portion of the North Venice Boulevard right-of-way being vacated is much larger, about forty feet deep and about 95 feet long. The area proposed by the City to be vacated is situated between the existing public sidewalk and the abutting corner lot (1656 Abbot Kinney Blvd.). The City and owner of the abutting lot state that the owner of that lot holds fee title to the area over which the City's right-of-way will be vacated, and the vacation will involve abandonment of a City easement. The area surrounding the proposed project, in addition to the two public streets, is a mix of residential and commercial uses in one and two-story buildings.

No physical development of the property is proposed as part of this permit application. The owner of the abutting lot (Dos Coronas, LLC) has requested that the City vacate the portion of the right-of-way so that it, as the underlying landowner, can be permitted to improve the vacated area and continue to use it as a private parking lot to serve its two-story, 4,696 square foot office building on its adjoining lot (1656 Abbot Kinney Blvd.). Coastal Development Permit Application 5-05-343 (Dos Coronas, LLC) has been filed for the proposed parking lot improvements and landscaping (Exhibit #4).

B. Project History

The City considers the portion of the North Venice Boulevard right-of-way being vacated as excess land that became unnecessary for public use in the early 1990s when the State Department of Transportation (Caltrans) realigned North and South Venice Boulevard (within the existing Venice Boulevard right-of-way) and eliminated portions of a widened median strip that was a relic of the old streetcar system. The project design, including landscaping, was the

result of a series of community meetings and agreements between the City of Los Angeles, which was accepting ownership of the street, and several government agencies (e.g., Caltrans, Coastal Commission and the Coastal Conservancy). The general public and non-government groups (Venice Action Committee) were also involved in formulating the plan for the Venice Boulevard right-of-way. The plan identified both interim and permanent public parking in the right-of-way, ten-foot wide sidewalks, and median landscaping that included large street trees (sycamores) to mark the "Gateway to Venice."

On September 13, 1990, the Commission approved Coastal Development Permit 5-90-664 for the public works project. Coastal Development Permit 5-90-664 addressed primarily the issue of the preservation of public parking within the Venice Boulevard right-of-way (both within the median and along the sides of the right-of-way). During that project, the roadways and medians were realigned leaving some of the outside portions of the right-of-way undeveloped (i.e., the right-of-way area beyond/outside of the paved street and sidewalk). Coastal Development Permit 5-90-664 requires that certain portions of the undeveloped Venice Boulevard right-of-way (but not the site subject to this appeal) be preserved for public parking so that the project would not result in any net loss of the public parking that supports coastal access. The Commission's approval of Coastal Development Permit 5-90-664 did not include a comprehensive landscape plan for the entire Venice Boulevard right-of-way.

On October 18, 2002, at the request of the abutting landowner, the Los Angeles City Council conditionally approved the street vacation, finding that the area to be vacated is not needed for present or prospective public use (Street Vacation File No. VAC-E1400779/Council File No. 01-2183). The City Council's action approving the vacation, however, did not include a local coastal development permit approval for the vacation. In a letter dated October 2, 2003, Commission staff reminded the City that the vacation of a public right-of-way falls within the Coastal Act's definition of "development," and therefore requires a coastal development permit.

In 2004, the City of Los Angeles Department of Public Works began processing a local coastal development permit for the proposed right-of-way vacation at the northwest corner of intersection of North Venice Boulevard and Abbot Kinney Boulevard (Exhibit #3). On December 17, 2004, the City of Los Angeles Bureau of Engineering (Public Works Department) held a public hearing for Local Coastal Development Permit No. 04-01 to approve the City's proposed vacation. On May 2, 2005, the City of Los Angeles Bureau of Engineering issued a Notice of Decision approving Local Coastal Development Permit No. 04-01 and incorporating the conditions of the City Council's 2002 approval of the vacation.

James Murez and Steve Freedman appealed the City's May 2, 2005 approval of the local coastal development permit to the City of Los Angeles Board of Public Works. On June 27, 2005, the Board of Public Works denied the appeal and upheld the approval of Local Coastal Development Permit No. 04-01 for the vacation.

On July 11, 2005, James Murez appealed the City's approval of Local Coastal Development Permit No. 04-01 to the Coastal Commission (Appeal A-5-VEN-05-259). John Davis and the Executive Director filed appeals on July 27, 2005. On August 9, 2005, the Commission, after public hearing, determined that a substantial issue exists with respect to the City's approval of the local coastal development permit for the proposed right-of-way vacation because it could adversely affect coastal resources and public access to the shoreline along North Venice Boulevard, a major coastal access route.

C. Substantial Issues

As stated above, the Commission has determined that a substantial issue exists with respect to the City's approval of the local coastal development permit for the proposed right-of-way vacation. The finding of substantial issue reaffirms that the local coastal development permit approval is stayed and indicates the Commission's position that the action merits closer Commission scrutiny with a de novo action on the permit. The Commission is concerned that the vacation of the right-of-way could adversely affect coastal resources and public access to the shoreline along North Venice Boulevard, a major coastal access route. North Venice Boulevard provides direct vehicular and pedestrian access to Venice Beach and public beach parking lots (Exhibit #2). Some segments of the Venice Boulevard right-of-way also provide public parking that supports coastal recreation (See Coastal Development Permit 5-90-664).

The grounds for the appeal for which the Commission determined that there exists a substantial issue are:

- The City's proposed vacation of a part of this public right-of-way could adversely affect coastal resources and/or public access to the shoreline. For example, this segment of public right-of-way may be used to provide additional public parking, enhanced transit service or for a future expansion of the existing street system.
- The right-of-way may also provide an area for landscaping to enhance the visual resources of the area and to improve air quality.
- The City's proposed vacation of a part of this public right-of-way may violate policies of the certified Venice LUP (Policies I.C.9 and V.A.5) applicable to public rights-of-way, thus setting a bad precedent.

The opponents of the City's proposed vacation assert the following:

- The intersection of North Venice Boulevard and Abbot Kinney Boulevard, referred to by the Coastal Conservancy as "the Ceremonial Gateway to Venice," should be retained in public ownership and landscaped in order to enhance the visual quality of the streetscape.
- The City's action sets a bad precedent as the vacation of any portion of the North Venice Boulevard right-of-way would lead to additional vacations where the right-of-way abuts other properties along the street, thus significantly reducing the public area available for street trees and other landscaping (i.e., a domino effect).
- The large street trees (sycamore) that are already growing within the public right-of-way may be removed if their canopies extend beyond the right-of-way when they reach maturity. Therefore, the width of the right-of-way should not be reduced by any vacations.
- The City's action violates the landscaping plan approved by Coastal Commission Coastal Development Permit 5-90-664, which was issued to the State Department of Transportation for the realignment of Venice Boulevard in the early 1990s.

- The City's action violates the provisions of the certified Land Use Plan (LUP) for Venice that relate to the visual enhancement of Venice Boulevard (the Ceremonial Gateway to Venice) and the surrounding area.
- The City's action violates several provisions of the Coastal Act, including Sections 30251, 30254, 30253(5) and 30604.

D. Public Access and Recreation

The standard of review for the proposed project is the Chapter 3 policies of the Coastal Act. The certified Venice Land Use Plan (LUP) may provide guidance. One of the basic goals stated in the Coastal Act is to maximize public access and recreation along the coast. The proposed project, as conditioned, will conform with the following Coastal Act policies that protect and encourage public access and recreational use of coastal areas.

Section 30210 of the Coastal Act states:

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

Section 30211 of the Coastal Act states:

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

Section 30212.5 of the Coastal Act states:

Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.

Section 30213 of the Coastal Act states, in part:

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

Section 30223 of the Coastal Act states:

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

The following policy of the certified Venice LUP reserves the use of public rights-of way for public transportation use, but allows uses that do not interfere with coastal access, transportation and visual quality.

- **Policy I. C. 9. Public Rights-of-Way.** *Public rights-of-way in the Venice Coastal Zone shall be reserved for public transportation uses including use by private vehicles, pedestrians and bicyclists. Uses that do not interfere with coastal access, transportation and visual quality may be permitted, subject to a discretionary review by means of a coastal development permit. Vacations of public rights-of-way shall not be permitted in the area between the first public road and the sea, Ballona Lagoon or any canal except for public purposes consistent with all applicable local, state and federal laws.*

Commission staff has reviewed the proposed project and has concluded, as has the City, that the right-of-way area proposed to be vacated does not currently support public access and recreational opportunities (e.g., public parking). The project site is not identified as a public parking area by Coastal Development Permit 5-90-664, as are several other segments of the Venice Boulevard right-of-way. The proposed vacation area does not include the area currently occupied by the public sidewalk (along North Venice and Abbot Kinney Boulevards) that does comprise part of the coastal public access system in Venice. Therefore, the proposed project would not adversely affect or interfere with public parking, the public sidewalk, or any other existing public access facilities.

The project site abuts the private nine-stall parking lot that serves a two-story commercial office building [Coastal Development Permit P-74-3323 (Sarfo)]. One question is whether the vacated area should be used for public parking or private parking (or perhaps, only for landscaping). As public right-of-way, the site could potentially provide additional public parking (about nine parking spaces) in an area that is deficient in parking facilities. It is impractical, because of management and liability issues, to create a new fourteen-stall parking lot that is partly private and partly public.¹ The parking area has only one entrance and one exit (two existing curb cuts).

In any case, the creation of additional off-street parking, even private parking, would increase the number of parking spaces in the neighborhood and benefit coastal access. Therefore, the proposed vacation (and subsequent improvement of the site as a private parking area as proposed by a separate coastal development permit) would not adversely affect coastal access or recreation.

Other potential uses of the vacated right-of-way area include landscaping, enhanced transit service (e.g. a bus stop) or a future expansion of the existing street system. Even though the City has determined that it does not currently need the vacated right-of-way areas for any public use, this could change in the future. The applicant has agreed to the proposed right-of-way vacation being conditional upon the City's limited right of defeasance (Exhibit #10, p.2). Therefore, in order to ensure that the right-of-way area is available in the future, should the City determine that it is needed for a public purpose; Commission approval of the City's proposed vacation is subject the following condition (Right of Defeasance):

¹ Coastal Development Permit Application 5-05-343 (Dos Coronas, LLC) proposes the improvement of the project site as a landscaped, fourteen-stall parking lot which would serve an office building (Exhibit #4).

Coastal Development Permit A-5-VEN-05-259 authorizes the City of Los Angeles to vacate, subject to defeasance, the portion of the public right-of-way situated at the northwest corner of the intersection of North Venice Boulevard and Abbot Kinney Boulevard, as shown on **Exhibit #3 of the staff report dated 12/22/2005**. Pursuant to that right, if the City of Los Angeles determines that the vacated property is needed for a public purpose (e.g., street widening, public transportation, sidewalk, bicycle lane, etc.) the property shall revert to public right-of-way in order to provide for the public purpose identified by the City. Any development of the vacated property shall require a coastal development permit issued by the Commission or its successor agency.

As conditioned, the City's right of defeasement would apply to the entire right-of-way area being vacated, or that portion which the City determines is needed for a public purpose. The owner of the abutting property is requesting that the City's right of defeasement be limited to only the area that remains between the existing curblines of North Venice Boulevard and the edge of the new parking lot being proposed by Coastal Development Permit Application 5-05-343 (Exhibit #4). As proposed by Coastal Development Permit Application 5-05-343, the parking lot plan would leave about eighteen feet of sidewalk and landscaping between the proposed edge of the parking lot pavement wall and the existing curb, enough space for one new vehicular lane and a sidewalk. A limited right of defeasement may not allow for a particular public use in the future, so the right of defeasement applies to the entire area to be vacated.

E. Visual Resources

A substantial issue exists in regards to the proposed project because the City's proposed vacation of a part of this public right-of-way may limit the ability of the City to use the right-of-way to provide landscaping that would beautify the intersection, improve air quality and enhance visual resources. Section 30251 of the Coastal Act protects visual resources and requires that development be designed to enhance visual quality, where feasible.

Section 30251 of the Coastal Act states:

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

Section 30253(5) of the Coastal Act states:

New development shall: (5) Where appropriate, protect special communities and neighborhoods which, because of their unique characteristics, are popular visitor destination points for recreational uses.

The following policy of the certified Venice LUP addresses the visual quality of streetscapes in the Venice coastal zone.

- **Policy V. A. 5. Streetscapes.** *Streetscape improvements throughout the Venice Coastal Zone shall be maintained and enhanced to enhance pedestrian activity and contribute to a high quality of life and visual image for residents and visitors. Public and private developments within the Venice Coastal Zone shall be required to include elements that will contribute to and enhance streetscape improvements in accordance with a Venice Coastal Zone streetscape plan.*

The proposed project is located at a prominent Venice intersection on a major coastal access route (Venice Boulevard). The intersection of North Venice Boulevard and Abbot Kinney Boulevard is referred to by the Coastal Conservancy as “the Ceremonial Gateway to Venice.” The sycamore trees growing in planters within the existing public sidewalk would not be affected by the proposed project. Several palms are growing within the area that the City proposes to vacate.

Opponents of the proposed project assert that the entire right-of-way should be retained in public ownership and landscaped in order to enhance the visual quality of the streetscape. The opponents are also concerned that the City’s proposed vacation of part of the right-of-way sets a bad precedent as the vacation of any portion of the North Venice Boulevard right-of-way would lead to additional vacations where the right-of-way abuts other properties along the street, thus significantly reducing the public area available for street trees and other landscaping (i.e., a domino effect). The City, however, has not identified this portion of the right-of-way as needed for any public purpose, including landscaping. Other vacation proposals will be evaluated on their own merits. There is no coastal development permit requirement that requires the City to maintain the project site or the intersection with any specific landscape plan or as the “the Ceremonial Gateway to Venice. Therefore, the City’s proposed vacation of part of the right-of-way would not violate any landscaping plan approved by Coastal Commission, including any provision of Coastal Development Permit 5-90-664, which was issued to the State Department of Transportation for the realignment of Venice Boulevard in the early 1990s.

It is a matter of public importance, however, that the visual resources of the site be considered and protected. Landscaping on the site enhances the visual quality of the intersection, and it should continue to do so. The underlying landowner of the area that would be vacated (Dos Coronas, LLC) proposes to landscape part of the project site with a several trees and a parkway along North Venice and Abbot Kinney Boulevards (Exhibit #4). A requirement to install and maintain the proposed landscaping on the site can be imposed on the landowner when the Commission acts on the development plan proposed by Coastal Development Permit Application 5-05-343 (Dos Coronas, LLC). Therefore, the City’s proposed vacation of the right-of-way does not in any way preclude the maintenance of landscaping that would enhance visual resources consistent with Sections 30251 and 30253 of the Coastal Act and the policies of the certified Venice LUP. The proposed project will not adversely affect visual resources, and as conditioned, is consistent with the Chapter 3 policies of the Coastal Act.

F. Local Coastal Program

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal development permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program which conforms with Chapter 3 policies of the Coastal Act:

- (a) Prior to certification of the Local Coastal Program, a coastal development permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200). A denial of a Coastal Development Permit on grounds it would prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200) shall be accompanied by a specific finding which sets forth the basis for such conclusion.

The City of Los Angeles does not have a certified Local Coastal Program for the Venice area. The City of Los Angeles Land Use Plan (LUP) for Venice was effectively certified on June 14, 2001. The proposed project, as conditioned, conforms to the proposed Venice LUP. The proposed project, as conditioned, is also consistent with the Chapter 3 policies of the Coastal Act. Therefore, the Commission finds that approval of the proposed development, as conditioned, will not prejudice the City's ability to prepare a Local Coastal Program consistent with the policies of Chapter 3 of the Coastal Act, as required by Section 30604(a).

G. California Environmental Quality Act (CEQA)

Section 13096 Title 14 of the California Code of Regulations requires Commission approval of a coastal development permit application 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 proposed project, as conditioned, has been found consistent with the Chapter 3 policies of the Coastal Act. All adverse impacts have been minimized by the recommended conditions of approval and there are no feasible alternatives or additional feasible mitigation measures available which would substantially lessen any significant adverse impact which the activity may have on the environment. Therefore, the Commission finds that the proposed development can be found consistent with the requirements of the Coastal Act to conform to CEQA.