

CALIFORNIA COASTAL COMMISSION

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Staff Report: 12/22/2005
Hearing Date: January 11, 2006
Commission Action:

**STAFF REPORT: REGULAR CALENDAR****APPLICATION NUMBER:** 5-05-392**APPLICANTS:** Gary & Cindi Wells **AGENT:** Richard S. Kolbu, Architect**PROJECT LOCATION:** 3819 Via Dolce (Lot 18, Block 6, Silver Strand Tract), Venice, City of Los Angeles, Los Angeles County.**PROJECT DESCRIPTION:** Construction of a three-level, 33-foot high (above the elevation of the City Esplanade), 4,170 square foot single-family residence with an attached two-car garage on a vacant canal-fronting lot.

Lot Area	3,436 square feet
Building Coverage	1,568 square feet
Pavement Coverage	910 square feet
Landscape Coverage	958 square feet
Parking Spaces	4
Zoning	RW2-1
Plan Designation	Multi-family Res/Low Medium II - Waterway
Maximum Height	33 feet above grade of Esplanade

LOCAL APPROVAL: City of Los Angeles Specific Plan Project Adjustment & Permit Compliance, Case No. DIR-2004-7656, 9/13/2005.**SUMMARY OF STAFF RECOMMENDATION**

See Page Two for the motion to APPROVE WITH CONDITIONS the coastal development permit. The conditions would limit the building height to thirty feet (above the elevation of the Esplanade) within sixty feet of the Esplanade consistent with the standards contained in the certified Land Use Plan (LUP) for Venice. The proposed project includes the provision of a six hundred square foot permeable yard in the setback area between the structure and the City Grand Canal Esplanade, as required. The recommended conditions are necessary to protect the bird flyway and the environmentally sensitive habitat area (ESHA) of Grand Canal, situated in front of the site (Exhibit #2). The Grand Canal/Ballona Lagoon waterway support a number of fish, bird and invertebrate species, including the State and Federally listed endangered California least tern. The Commission has engaged in a long effort to protect the ESHA provided by the Venice waterways, while allowing owners of the lots that exist along the banks appropriate use of their properties. The Commission has attempted to protect the ESHA by imposing standards to protect water quality, limiting heights of structures, and most importantly, by imposing setbacks from the ESHA.

The applicant disagrees with the staff recommendation. Instead, the applicant is proposing a 33-foot high structure that does not conform to the height limit set forth in the certified Venice LUP. The applicant points to the fact that the proposed project is lower in height than most of the other Commission-approved homes along the east bank of Grand Canal, and that the additional three feet would enable the provision of a sloped roof instead of a flat, thirty-foot high roof.

SUBSTANTIVE FILE DOCUMENTS:

1. Certified Land Use Plan for Venice, City of Los Angeles, 6/14/2001.
2. Venice Specific Plan, City of Los Angeles Ordinance No. 172897.
3. Coastal Commission Regional Interpretive Guidelines for Los Angeles County, 1980.
4. Biota of the Ballona Region, Los Angeles County Natural History Museum Foundation, Edited by Ralph W. Schreiber, 1981.
5. Avifauna of the Venice Canals by Charles T. Collins, Ph.D., 1986.
6. Coastal Development Permit P-7-23-76-8463 (Lumbléau).
7. Coastal Development Permits 5-87-657, 5-87-658 & 5-87-659 (Schaffel).
8. Coastal Development Permits 5-87-965 (Laughlin) & 5-87-966 (Kirkhof).
9. Coastal Development Permits 5-87-967 thru 969 (Strand Associates).
10. Coastal Development Permit 5-93-150 (Nichols).
11. Coastal Development Permit Amendments 5-95-019-A1 thru A5.
12. Coastal Development Permit A-5-VEN-01-280/5-01-289 (LA City: Grand Canal Rehab).
13. Coastal Development Permits 5-01-118 thru 5-01-123 (Lee: 3601-3705 Grand Canal Venice).
14. Coastal Development Permit 5-98-193 (Frye: 3515 Via Dolce, Venice).
15. Coastal Development Permit A5-VEN-01-272/5-00-351 (Elster: 3511 Via Dolce, Venice).
16. Coastal Development Permit Application 5-03-109 (Hoff: 3819 Via Dolce).

STAFF RECOMMENDATION:

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

MOTION

"I move that the Commission approve with special conditions Coastal Development Permit 5-05-392 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 Conditions

1. Permit Compliance

All development must occur in strict compliance with the proposal as set forth in the application, subject to any special conditions. Any deviation from the approved plans must be submitted for review by the Executive Director to determine whether an amendment to this coastal development permit is required.

2. Revised Plans

A. **PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT**, the applicant shall submit revised plans to the Executive Director for review and approval. The project plans shall be revised to incorporate the following revisions to the project:

- (i) **Building Height.** All heights shall be measured from the elevation of the fronting right-of-way: the City Grand Canal Esplanade east bank sidewalk. The height of the structure shall not exceed thirty feet (30') within sixty horizontal feet (60') of the inland side of the Esplanade (City right-of-way). Beyond sixty horizontal feet, one foot in additional height is permitted for each two additional horizontal feet, up to a maximum building height of 38 feet. [Note: *The inland side of the Esplanade is also the applicant's western (canal-side) property line.*] No portion of any structure (including roof access structures, penthouse, roof deck railings and architectural features) shall exceed the thirty-foot height limit within sixty horizontal feet of the inland side of the Esplanade, except that chimneys, exhaust ducts, ventilation shafts and other similar devices essential for building function may exceed the specified height limit by five feet.

- (ii) **Building Setback.** In order to provide a setback for public access, visual quality, and to protect the biological productivity of the canals, an average setback of fifteen feet (15'), but not less than ten feet (10') at any point, shall be maintained in the front yard adjacent to the canal property line. The setback area may be used as a private yard consistent with the terms of part (iii) of this condition below.
- (iii) **Permeable Yard Area.** In order to provide a setback for access, visual quality, and to protect the water quality and biological productivity of the canals, an uncovered and permeable yard area totaling no less than six hundred (600) square feet shall be maintained in the front yard area between the structure and the canal property line (as generally shown on **Exhibit #4 of the 12/22/05 staff report**). A minimum ten-foot front yard setback at all points, with a required fifteen-foot setback average, shall provide the required permeable front yard area on the forty-foot wide lot. Uncovered means that no building extensions, including stairs and balconies, shall be placed in or over the required permeable front yard area with the exception of a permeable deck. The precise boundaries of the area that must remain as an uncovered and permeable yard area will be described and depicted in the exhibit attached to the Notice of Intent to Issue Permit (NOI) that the Executive Director issues for this coastal development permit. The total combined height of any deck, deck railings, garden walls and/or fences situated within the required permeable front yard area shall not exceed six feet (6') above the elevation of the adjacent public walkway (the City Grand Canal Esplanade east bank sidewalk).

PRIOR TO ISSUANCE, BY THE EXECUTIVE DIRECTOR, OF THE NOTICE OF INTENT FOR THIS COASTAL DEVELOPMENT PERMIT, and prior to recording of the deed restriction required by **Special Condition Nine** below, the applicant shall provide a site plan, subject to the approval of the Executive Director, which complies with all of the above terms of this condition and clearly identifies the exact location, dimensions and precise boundaries of the required permeable yard area. Once the Executive Director approves the site plan, that site plan will be included as an exhibit to the Notice of Intent that the Executive Director issues for this coastal development permit.

- (iv) **Landscaping.** A landscape plan for the site shall be prepared and submitted to the Executive Director for review and approval. The landscape plan shall be consistent with the following requirements:
- a) The landscape plan shall include a plant list and map showing the type, size and location of all plant materials that will be used, the irrigation system, topography of the site, and a schedule for installation of plants.
 - b) 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 utilized on the property. 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.

- c) All landscaping shall be maintained by the applicant or successor(s)-in-interest in good growing condition through-out the life of the project, and whenever necessary, shall be replaced with new plant materials which conform to the requirements of this condition to ensure continued compliance with the landscape plan.
 - (v) **Lighting.** No lighting associated with the project shall significantly impact adjacent environmentally sensitive habitat in the Grand Canal waterway and Ballona Lagoon. All lighting within the development shall be directed and shielded so that light is directed away from the canal and Ballona Lagoon.
 - (vi) **Drainage.** All drainage and runoff from the developed site shall be directed away from Grand Canal and into the City stormwater system (Via Dolce). During construction of the proposed project, no runoff, site drainage or dewatering shall be directed from the site into the canal.
- B. The permittee shall undertake development in accordance with the final plans approved by the Executive Director. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

3. City Grand Canal Esplanade

Through the acceptance of this coastal development permit, the applicant acknowledges and agrees that the City Grand Canal Esplanade, the walkway situated between the site of the proposed development and the waters of Grand Canal, is a public sidewalk. The permittee and all successors in interest to the applicant shall not encroach onto or over the Grand Canal Esplanade right-of-way (as shown on **Exhibit #4 of the 12/22/05 staff report**) or otherwise interfere with the public's use of the Grand Canal Esplanade either during or subsequent to construction of the proposed project.

4. Parking

The applicant shall provide and maintain a minimum of three off-street parking spaces on the project site: two spaces in the garage and one uncovered area for guest parking on the driveway apron. Vehicular access to the site shall be taken only from Via Dolce.

5. Protective Canal and Esplanade Protection – Water Quality

Prior to the commencement of construction, the applicant shall erect and maintain for the entire period of construction a six-foot high fence along the inland edge of the City Grand Canal Esplanade. The construction fence shall be highly visible material. In addition, the applicant shall place fiber liners and sandbags along the base of the fence to prevent siltation in the canal. No site preparation, grading or construction shall occur until the fence is constructed and the sandbags and liners are placed along the inland edge of the City Grand Canal Esplanade. No stock piling, storage, grading, construction, runoff, or trash disposal shall occur on the City Grand Canal Esplanade at any time. All

construction equipment and materials shall be stored and managed in a manner to prevent dispersal and to minimize the potential of pollutants to enter the canal.

6. Project Staging and Construction

The use of any property other than the project site for project staging, equipment and material storage, or other use, is not permitted by this coastal development permit and shall not occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required. Any use of the City Grand Canal Esplanade, which abuts the western side of the site, is specifically prohibited.

7. Future Improvements

This coastal development permit is only for the development described in Coastal Development Permit 5-05-392. 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. Accordingly, any future development on the site, including landscaping, improvements to the single-family residence and other development authorized by this permit, including but not limited to repair and maintenance identified as requiring a permit in Public Resources Code Section 30610(d) and Title 14 California Code of Regulations Section 13252(a)-(b), shall require an amendment to Coastal Development Permit 5-05-392 from the Commission or shall require an additional coastal development permit from the Commission or from the applicable certified local government.

8. Assumption of Risk

By acceptance of this coastal development permit, the applicant/landowner acknowledges and agrees: (i) that the site may be subject to hazards from seismic events, liquefaction, floods and from the existence of subsurface hazardous substances; (ii) to assume the risks to the permittee and the property that is the subject of this permit of injury and damage from such hazards and/or injuries 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/or injuries; 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 or activities.

9. Deed Restriction

PRIOR TO THE ISSUANCE OF THE 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 governed by this permit a deed restriction, in a form and content acceptable to the Executive Director: (1) indicating that, pursuant to this coastal development 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 governed by this coastal development 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 coastal development permit shall continue to restrict the use and enjoyment of the subject property so long as either this coastal development permit or the development it authorizes, or any part, modification, or amendment thereof, remains in existence on or with respect to the subject property.

IV. Findings and Declarations

The Commission hereby finds and declares:

A. Project Description

The applicant proposes to construct a three-level (two-stories plus basement), 4,170 square foot single-family residence on a vacant 3,436 square foot canal-fronting lot (See Exhibits). The top of the roof of the proposed structure reaches 33 feet above the elevation of the fronting right-of-way, the City Grand Canal Esplanade east bank sidewalk (Exhibit #5). The proposed two-car garage, located in the basement, would be accessed from Via Dolce, a public street (Exhibit #4).

The proposed project is situated on the east bank of Grand Canal in Venice, about one hundred feet north of Ballona Lagoon (Exhibit #2). Grand Canal is situated about 1,500 feet inland of the beach (Exhibit #1). The project site is one of the last vacant lots on either bank of Grand Canal. The abutting lot to the south is a vacant County-owned lot, over which pedestrians gain access to the public sidewalk (City Esplanade) that runs along the east bank of Grand Canal (Exhibit #3). The subject site also abuts the inland edge of the City Esplanade right-of-way (Exhibit #4). Both banks of Grand Canal, inland of the sidewalks, are lined with two and three-story single family residences and multi-unit residential buildings.

On July 9, 2003, the Commission approved Coastal Development Permit 5-03-109 (Hoff) for a new single-family residence on the project site. A condition of Coastal Development Permit 5-03-109 limited the height of the approved house to thirty feet, measured from the elevation of the sidewalk (Grand Canal Esplanade) that runs along Grand Canal. That permit expired on July 9, 2005, prior to being issued.

B. Description of Grand Canal

The project site is situated at the southern end of Grand Canal, on the east bank, where the canal connects to the deeper and wider Ballona Lagoon (Exhibit #2). The two thousand foot long section of Grand Canal located south of Washington Boulevard is a remnant of an original tidal lagoon (Ballona Lagoon). The canal's bottom and banks, for the most part, are comprised of soft sand and mud. Native wetland vegetation competes along the banks with introduced weeds and escaped cultivars. The certified Venice Land Use Plan (LUP) designates both

Ballona Lagoon and Grand Canal as an Environmentally Sensitive Habitat Area (ESHA - Exhibit #2).

The canals located north of Washington Boulevard were created out of marshland as part of the "Venice of America" subdivision in 1905, about the same time that the land near the banks of Grand Canal was subdivided into small parcels for beach cottages. Sidewalks were constructed along the banks of all of the Venice Canals, including Grand Canal, in the early 1900s. The Venice Canals are now a unique cultural, historic and scenic resource of Southern California, and they provide the Venice community with a sense of character and history. These waterways also provide habitat for wildlife and opportunities for public access and recreation. The Venice Canals and Ballona Lagoon support some of the last remaining pockets of coastal wetland habitat in Los Angeles County.

Unlike the canals located north of Washington Boulevard, which are man-made canals that were dredged out of the Ballona Marsh in the early 1900s, the section of Grand Canal south of Washington Boulevard is a remnant of an original tidal lagoon (Ballona Lagoon). Many years ago, prior to the adoption of the California Coastal Act of 1976, a five-foot diameter sewer pipe was placed beneath the Grand Canal channel at a depth of about ten feet. Public accessways and street drains were also constructed along both banks of the canal prior to the adoption of the Coastal Act.

The original "Venice of America" canals system became stagnant and fell into disrepair in the early 1920s. In 1927, the City filled many of the original canals. The residents in the area have been attempting to restore the remaining canals since the 1960s. The Venice Canals located north of Washington Boulevard were rehabilitated in 1993 (see Coastal Development Permit 5-91-584 & amendments). The segment of Grand Canal south of Washington Boulevard is the only segment of the remaining canals that has not yet been rehabilitated.

The Grand Canal neighborhood located south of Washington Boulevard is a residential community consisting of multi-family and single family homes located along the open waterway. A few commercial properties exist on the east bank near Washington Boulevard. The neighborhood is located about two blocks inland of Venice Beach, one of the most popular visitor destinations in Southern California. Most of the residences front on the canals and are accessed from the rear by streets and alleys that run behind the homes. Public walkways, sections of which are damaged or completely deteriorated, still exist along both sides of Grand Canal. These sidewalks separate the private residences from the waterway.

Grand Canal and the rest of the Venice Canals are part of the Ballona Lagoon seawater system. Ballona Lagoon is connected to the southern end of Grand Canal (Exhibit #2). The northern Venice Canals are connected to Grand Canal (the segment south of Washington Boulevard) by five three-foot diameter pipes that pass beneath the Washington Boulevard bridge. The pipes have slide gates on the north side of Washington Boulevard, which are operated by the City of Los Angeles to allow flushing of the Venice Canals. All of the water in the Venice Canals, except for discharges from stormdrains and other sources, originates in the Marina del Rey entrance channel and must pass through Ballona Lagoon and Grand Canal before it reaches the furthest northern reaches of the canals system. The water from the canals is also discharged through the same tide gates during outgoing tides.

C. Community Character

The Commission has recognized in both prior permit and appeal decisions that the Venice Canals are a unique coastal resource [e.g. Coastal Development Permit 5-91-884 (City of Los Angeles)]. In 1980, the Commission adopted the Regional Interpretive Guidelines for Los Angeles County which included specific building standards for the various Venice neighborhoods, including the Grand Canal neighborhood situated south of Washington Boulevard. These building standards, which apply primarily to density, height, parking and protection of water quality, reflect conditions imposed in a series of permits heard prior to 1980. The Commission has consistently (in nearly all cases) applied these density, height and parking standards to development in the Venice coastal zone in order to protect public access to the beach and to preserve the special character of the neighborhoods.

In 1999, the Los Angeles City Council adopted a proposed Land Use Plan (LUP) for Venice and submitted it for Commission certification as part of the City's effort to develop a certified Local Coastal Program (LCP) for Venice. On November 14, 2000, the Commission approved the City's proposed LUP for Venice with suggested modifications. The Los Angeles City Council accepted the Commission's suggested modifications, and the Commission officially certified the Venice LUP on June 14, 2001.

The policies and building standards contained in the certified Venice LUP reflect the Commission's prior actions in the area, the Commission's 1980 Interpretive Guidelines, and the existing character of each Venice neighborhood. The Commission-certified LUP for Venice, however, also contains some updated and revised building standards for the various Venice neighborhoods, including the Grand Canal neighborhood situated south of Washington Boulevard where the proposed project is situated. The policies and building standards set forth in the certified Venice LUP reflect the Commission's prior actions along all of the Venice Canals and the unique character of the canals neighborhoods.

The Venice LUP contains two building standard revisions (different than the City's proposed LUP standards) that the Commission suggested in 2000 and certified in 2001 for the Grand Canal neighborhood situated south of Washington Boulevard. The two revisions affected the building height limit and the front yard setback requirement (from the canal property line). First, the Commission's action resulted in the lowering of the City's proposed height limit from 38 feet to thirty feet for development along Grand Canal (within sixty feet of the Esplanade). The height limit was lowered in order to protect the bird flyways that exist over the Venice waterways. The Venice Canals neighborhood north of Washington Boulevard, and the lots abutting Ballona Lagoon, had had a thirty-foot height limit imposed by the Commission since in late 1970s [Coastal Commission Regional Interpretive Guidelines for Los Angeles County, 1980]. Presently, all of the lots fronting the Venice waterways have the thirty-foot height limit set forth in the certified Venice LUP.

In regards to the front yard setback requirement, the Commission's action certifying the LUP resulted in a fifteen-foot average (ten-foot minimum) setback from the canal property line. The certified LUP requires that the front yard setback area be maintained as a permeable yard area. The certified LUP applies the same setback rule to all canal-fronting lots, whether north or south of Washington Boulevard.

Although the standard of review for the proposed development is the Chapter 3 policies of the Coastal Act, the Commission-certified LUP for Venice now provides specific guidance for the Commission's interpretation of the relevant Chapter 3 policies. Special conditions are imposed on coastal development permits to ensure that proposed development is approved only if found to be consistent with the Coastal Act. In order to mitigate the identified impacts, the appropriate special conditions have also been applied to this coastal development permit.

The certified LUP policies carry out the requirements of Coastal Act Sections 30251 and 30253 to protect the scenic and visual qualities of the Venice Canals neighborhoods.

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....

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.

Certified Venice LUP Policy I.A.7.a, which is applicable to the project site located on the east bank of Grand Canal, states:

- **Policy I. A. 7. Multi-family Residential - Low Medium II Density.** *Accommodate the development of multi-family dwelling units in the areas designated as "Multiple Family Residential" and "Low Medium II Density" on the Venice Coastal Land Use Plan (Exhibits 9 through 12). Such development shall comply with the density and development standards set forth in this LUP.*

a. Ballona Lagoon (Grand Canal) East Bank

Use: Two units per lot including duplexes

Density: One unit per 1,500 square feet of lot area

Grand Canal Esplanade: The Esplanade (City right-of-way) shall be maintained and improved in order to provide for continuous public pedestrian access along the Grand Canal waterway.

Grand Canal Buffer/Setback: In order to provide a setback for public access, visual quality, and to protect the biological productivity of the canals, an average setback of 15 feet, but not less than 10 feet, shall be maintained in the front yard adjacent to the canal property line.

Yards: Minimum side yard of 3 ½ feet. An open, permeable yard of at least 450 square feet for a 30-foot wide lot, and at least 600 square feet for a 40-foot wide lot, shall be maintained between the canal property line and the front of any structure. A minimum 10-foot front yard setback, with a required 15-foot setback average, shall provide the required permeable front yard area. No building extensions, including stairs and balconies, shall be placed in or over the required permeable front yard area with the exception of permeable decks. The total combined height of any deck, deck railings, garden walls and/or fences situated within the required permeable front yard area shall not exceed 6 feet above the elevation of the adjacent public walkway.

Height: Not to exceed 30 feet within 60 horizontal feet of the inland side of the Esplanade (City right-of-way). Beyond 60 horizontal feet, one foot in additional height is permitted for each two additional horizontal feet to a maximum height of 38 feet. No portion of any structure (including roof access structures, roof deck railings and architectural features) shall exceed the 30-foot height limit within 60 horizontal feet of the inland side of the Esplanade (City right-of-way). Notwithstanding other policies of this LUP, chimneys, exhaust ducts, ventilation shafts and other similar devices essential for building function may exceed the specified height limit in a residential zone by five feet. (See LUP Policy I.A.1 and LUP Height Exhibits 13-16).

Fill: No fill shall be permitted in Grand Canal.

In order to protect public access, community character and visual quality in the Grand Canal neighborhood situated south of Washington Boulevard where the proposed project is situated, the Commission has consistently limited residential density and structural height, and has required the provision of yard areas and structural setbacks from Grand Canal [e.g. Coastal Development Permits 5-98-193 (Frye), 5-01-118 through 5-01-123 (The Lee Group) & Coastal Development Permit 5-03-109 (Hoff)]. The Venice LUP provides specific Commission-certified development standards to which development must conform in order to be found to be consistent with the Chapter 3 policies of the Coastal Act.

Residential Density

In order to protect public access to the shoreline and to preserve the character of the Marina Peninsula neighborhood and the Grand Canal neighborhood situated south of Washington Boulevard, the Commission has consistently limited residential density on lots less than four thousand square feet in area to a maximum of two units. The certified Venice LUP limits residential density on the project site to two units per lot [LUP Policy I.A.7.a]. The applicant proposes to construct one single-family residence on the 3,436 square foot lot. Therefore, the proposed project conforms to the Commission's density limit for the site, the density limit of the certified Venice LUP. The proposed density does not conflict with any Chapter 3 policies of the Coastal Act.

The following section of the staff report addresses the issue of building height, in relation to both the community character policies of the Coastal Act and the marine resource policies. The proposed development's yard area and setback issues are addressed in a subsequent section.

D. Building Height

The proposed 33-foot high structure does not conform to the thirty-foot height limit set forth in the certified Venice LUP. Building height and bulk can affect the scenic and visual qualities of coastal areas, as well as natural resources. In prior actions, the Commission and the City have both consistently limited the height of structures in order to preserve the character of the Venice area. In addition, the Commission has found that Ballona Lagoon and the Venice Canals are sensitive habitat areas that must be protected from negative impacts associated with development (e.g. shading and encroachments towards ESHAs). Development immediately adjacent to Ballona Lagoon and the Venice Canals has been limited to a height of thirty feet (within sixty feet of the Esplanade) in order to protect the waterways from a canyon effect created by taller buildings, protect air space for bird flyways, provide better visibility along the waterways, reduce shading effects, and to enhance public recreation opportunities [Coastal Development Permit 5-00-018 (Orenstein)].

Certified Venice LUP Policy IV.A.2 requires that uses adjacent to the canals, like the proposed project, shall be implemented in a manner to protect the biological productivity of marine resources. Venice LUP Policy IV.A.2 states:

- **Policy IV. A. 2. Permitted Uses.** *Uses permitted in or adjacent to the canals shall be implemented in a manner to protect the biological productivity of marine resources and maintain healthy populations of marine organisms. Such uses as open space, habitat management, controlled nature study and interpretation, and passive public recreation use of walkways for birdwatching, photography, and strolling shall be encouraged and promoted.*

Certified Venice LUP Policy I.A.7.a limits the height on the project site as follows:

Height: Not to exceed 30 feet within 60 horizontal feet of the inland side of the Esplanade (City right-of-way). Beyond 60 horizontal feet, one foot in additional height is permitted for each two additional horizontal feet to a maximum height of 38 feet. No portion of any structure (including roof access structures, roof deck railings and architectural features) shall exceed the 30-foot height limit within 60 horizontal feet of the inland side of the Esplanade (City right-of-way). Notwithstanding other policies of this LUP, chimneys, exhaust ducts, ventilation shafts and other similar devices essential for building function may exceed the specified height limit in a residential zone by five feet. (See LUP Policy I.A.1 and LUP Height Exhibits 13-16).

These certified LUP policies carry out the following habitat protection policies of the Coastal Act by protecting natural resource areas against significant habitat disruptions.

Section 30240 of the Coastal Act states:

- (a) Environmentally sensitive habitat areas shall be protected against any significant disruption of habitat values, and only uses dependent on such resources shall be allowed within such areas.
- (b) Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas shall be sited and designed to prevent impacts which

would significantly degrade such areas, and shall be compatible with the continuance of such habitat areas.

Section 30230 of the Coastal Act states:

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

Section 30231 of the Coastal Act states:

The biological productivity and the quality of coastal waters, streams, wetlands, estuaries, and lakes appropriate to maintain optimum populations of marine organisms and for the protection of human health shall be maintained and, where feasible, restored through, among other means, minimizing adverse effects of waste water discharges and entrainment, controlling runoff, preventing depletion of ground water supplies and substantial interference with surface water flow, encouraging waste water reclamation, maintaining natural vegetation buffer areas that protect riparian habitats, and minimizing alteration of natural streams.

In 1981, the Commission engaged the Los Angeles County Museum of Natural History Foundation to prepare a report addressing the biota of the Ballona Region [Biota of the Ballona Region, Los Angeles County Natural History Museum Foundation (Schreiber, 1981)]. The report discussed the conflict between tall buildings and the use of the adjacent habitat areas by birds. Tall buildings have been found to be inconsistent with the continued viability of adjacent areas as bird habitat. In response to this study and in order to protect against a "canyon effect" which could negatively impact bird flight and foraging patterns, the Commission established a thirty-foot height limit for structures adjacent to the Venice waterways (i.e. Ballona Lagoon and the canals).

The Commission has limited development along the canals north of Washington Boulevard to a maximum height of thirty feet since the late 1970s [Coastal Commission Regional Interpretive Guidelines for Los Angeles County, 1980]. The thirty-foot height limit was also applied to the properties along Grand Canal south of Washington Boulevard when the Commission certified the Venice LUP in 2001. The thirty-foot height limit set forth in the certified Venice LUP applies to all development within sixty horizontal feet of the inland side of the Esplanade (City right-of-way). Some of the Commission's usual exceptions to height limits in Venice, such as roof deck railings and roof access structures, are not allowed within sixty horizontal feet of the inland side of the Esplanade because such structures over the thirty-foot height limit would intrude further into the bird flyway and cone of vision.

The proposed project has a height of 33 feet at the top of the sloped roof (Exhibit #5). If the Commission limits the building's height to thirty feet, the applicant asserts that it would have to be designed with a flat roof. The applicant is requesting Commission approval for an additional three feet above the height limit in order to allow for the proposed sloped roof instead of a flat roof.

The staff is recommending that this project, and all others along the Venice waterways, be limited to a maximum of thirty feet in height so as to not contribute to the "canyon effect." The canyon effect, which results when rows of tall structures exist along both sides of a narrow street or waterway, could negatively impact bird flight and foraging patterns on Grand Canal. Therefore, the proposed project should be redesigned in order to minimize the "canyon effect" and to conform to the thirty-foot height limit set forth in the certified LUP. The permit is conditioned to limit the roof height of the proposed single-family residence to a maximum of thirty feet above the elevation of the City Grand Canal Esplanade east bank sidewalk. No portion of the structure is permitted to exceed thirty feet in height above the elevation of the Grand Canal Esplanade sidewalk (within sixty horizontal feet of the inland side of the Esplanade), except for chimneys, ducts and ventilation shafts which are limited to 35 feet.

The applicant objects to the thirty-foot height limit, pointing to the fact that the most of the houses along the east bank of Grand Canal exceed thirty feet in height. As a consequence of inconsistent rulings regarding building height limits over the years, many of the existing homes along Grand Canal do exceed the thirty-foot height limit set forth by the certified LUP, although some do conform. The structures situated south of the project on the east bank, and directly across the canal on the west bank, all conform to the thirty-foot height limit.

Along the east bank of Grand Canal, between Driftwood Street and Ballona Lagoon, there are nineteen privately owned lots, eighteen of which have been developed with single-family residences (Exhibit #3). The Commission has approved all eighteen residences on the east bank of Grand Canal. Of the eighteen approved residences, eleven were conditioned to restrict the height limit to 36 feet, five were proposed and approved with a height of 35 feet, and one was proposed at thirty feet and conditioned to allow a maximum of 38 feet for a roof access structure. In 2002, subsequent to the certification of the Venice LUP, the Commission approved a new forty-foot tall house on the east bank (the eighteenth), even though the certified LUP sets forth a height limit of thirty feet [Coastal Development Permit A5-VEN-01-272/5-00-351 (Elster)]. The Elster project site is the northernmost single-family residence approved on the east bank of Grand Canal. All heights are measured from the elevation of the Esplanade that runs along Grand Canal.

Along the west bank, the Commission in 2001 approved six new single-family residences proposed and approved with a maximum height of thirty feet [Coastal Development Permits 5-01-118 through 5-01-123 (The Lee Group: 3601-3705 Grand Canal Esplanade, Venice)].

In this case, the proposed project site is situated at the southern end of Grand Canal, near Ballona Lagoon. The existing development between the project site and the lagoon (one single-family residence and the Venice Pump Station) does not exceed thirty feet in height. Birds flying from the Ballona Lagoon to Grand Canal have to pass the project site. The proposed 33-foot high structure would have a greater adverse impact on the bird flyway than a thirty-foot high building. Therefore, in order to conform to the habitat protection policies of the Coastal Act, and to conform to the Venice LUP height limit, the permit is conditioned to limit the project height to thirty feet within sixty horizontal feet of the inland side of the Esplanade. Revised plans must be submitted for approval. Only as conditioned to limit the height of the structure is the proposed project consistent with the habitat protection policies of the Coastal Act and the certified LUP for Venice. As conditioned, the scenic and visual qualities of the area will not be negatively impacted by the proposed project.

E. Marine Resources and Water Quality - Building Setback and Yard Area

The Commission has found that Ballona Lagoon and the Venice Canals are sensitive habitat areas that must be protected from negative impacts associated with development. The Venice Canals are located up stream from Ballona Lagoon, within the Ballona Wetlands system. The introduction of urban runoff, including pesticides, garden fertilizers, and runoff from impervious surfaces, can reduce the water quality of the canals which directly impacts the biological productivity of the system. The Ballona Wetlands system is habitat for many species of marine biota, including the state and federally listed endangered least tern. Section 30240, 30230 and 32031 of the Coastal Act protect sensitive habitat and marine resources from the negative effects of urban runoff.

In order to protect the biological productivity of the Venice Canals and Ballona Lagoon, the Commission has consistently conditioned projects along the waterways to provide building setbacks and maintain large permeable front yard areas as a buffer between the waterways and the buildings. The setbacks and permeable yard areas enhance public access, provide an area for percolation to protect the water quality and biological productivity of the canals, and protect community character by maintaining a comparable scale between buildings in the area. The Commission's requirements are consistent with the recommendations of the Santa Monica Bay Restoration Project Action Plan to reduce non-point source pollutants.

Commission-approved development adjacent to the Venice Canals has been consistently required to provide an open and permeable yard (at least 450 square feet for a thirty-foot wide lot, and at least 600 square feet for a forty-foot wide lot) between the canal property line and the front of any structure. A minimum ten-foot front yard setback, with a required fifteen-foot setback average on any lot provides the required permeable front yard area.

Certified Venice LUP Policy I.A.7.a states:

Grand Canal Buffer/Setback: In order to provide a setback for public access, visual quality, and to protect the biological productivity of the canals, an average setback of 15 feet, but not less than 10 feet, shall be maintained in the front yard adjacent to the canal property line.

Yards: Minimum side yard of 3 ½ feet. An open, permeable yard of at least 450 square feet for a 30-foot wide lot, and at least 600 square feet for a 40-foot wide lot, shall be maintained between the canal property line and the front of any structure. A minimum 10-foot front yard setback, with a required 15-foot setback average, shall provide the required permeable front yard area. No building extensions, including stairs and balconies, shall be placed in or over the required permeable front yard area with the exception of permeable decks. The total combined height of any deck, deck railings, garden walls and/or fences situated within the required permeable front yard area shall not exceed 6 feet above the elevation of the adjacent public walkway.

No building extensions, including stairs and balconies, are permitted to be placed in or over the required permeable front yard area with the exception of permeable decks. The certified Venice LUP includes this permeable yard and setback requirement for all development proposed along Grand Canal and the other Venice Canals.

The proposed single-family residence, on the forty-foot wide lot, provides a fifteen-foot front yard setback and the required six hundred square foot uncovered and permeable yard area between the canal property and the front of the proposed house (Exhibit #4). In order to further protect marine resources and water quality, the conditions of the permit require the applicant to erect a protective fence and silt barrier on the canal-side of the property during construction to prevent any runoff from entering the canal. In addition, no drainage or runoff shall be directed from the site into Grand Canal, either during construction or subsequent to completion of the project. Only as conditioned is the proposed project is consistent with the marine resource and habitat protection policies of the Coastal Act and the certified LUP for Venice.

The Commission has consistently required that applicants record the permeable yard area requirement on the property deeds to ensure continuous and ongoing protection of coastal resources and compliance with the requirement. In order to ensure that the required permeable yard areas area maintained as required, the applicant is required in this case to record the permeable yard area requirement on the deed for the lot subject to this action.

F. Public Access and Recreation

One of the basic goals stated in the Coastal Act is to maximize public access and recreation along the coast. The proposed project is conditioned to conform with the following Coastal Act policies which 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 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.

The certified Venice LUP contains the following policies that specifically protect the existing Grand Canal public trail system:

Policy II. C. 2. Grand Canal Pedestrian Access. *The three existing public rights-of-way from the Grand Canal to Strongs Drive and Pacific Avenue shall be improved*

and appropriately signed. South of Washington Boulevard, the public walkways that provide public pedestrian access along both sides of Grand Canal shall be improved and appropriately signed.

Policy II. C. 4. Venice Canals. *The Venice Canals Walkways have been fully rehabilitated and shall be maintained for public access. The Department of Transportation shall provide signs on Venice Boulevard which direct the public to the Venice Canals Historic District and the existing Venice Canals Walkways.*

A public sidewalk currently exists on the canal bank between the project site and the waters of Grand Canal. The existing sidewalk is part of the Grand Canal Esplanade, a City right-of-way. The Grand Canal Esplanade provides public access and recreational opportunities along both banks of Grand Canal. The Coastal Act and the policies of the Venice LUP protect public access along Grand Canal.

In order to ensure that the proposed project will not negatively affect the public's right to access the existing walkway along Grand Canal, Special Condition Three prohibits any interference with the public's use of the sidewalk. As conditioned, the Commission finds that the proposed project is consistent with the public access and recreation policies of the Coastal Act.

G. Parking

The Commission has consistently found that a direct relationship exists between residential density, the provision of adequate parking, and the availability of public access to the coast. Section 30252 requires that new development should maintain and enhance public access to the coast by providing adequate parking facilities.

Section 30252 of the Coastal Act states, in part:

The location and amount of new development should maintain and enhance public access to the coast by... (4) providing adequate parking facilities....

Many of the older developments in the high density Marina Peninsula residential area and the Grand Canal neighborhood situated south of Washington Boulevard where the proposed project is situated do not provide adequate on-site parking. There is also a lack of on-street public parking due to the use of many of the beach area's streets as pedestrian-only walk streets. As a result, there is a parking shortage in the area and public access has been negatively impacted at times by the lack of available parking for beach goers. Guests and residents of the area often occupy the limited amount of public parking in the area that may be available for the general public. This situation has limited the public's ability to access the Marina Peninsula beaches. The beach is located about 1,500 feet west of Grand Canal.

To mitigate this problem, the Commission has consistently conditioned new development within the Marina Peninsula area and the Grand Canal neighborhood situated south of Washington Boulevard to provide two parking spaces per residential unit and provide additional on-site parking for guests. All residential parking must be provided on the site. Private parking areas are not permitted on public rights-of-way. The parking policies contained in the Venice LUP include these requirements.

The applicant proposes to provide four on-site parking spaces: two spaces in the garage and two uncovered area for guest parking on the driveway apron. Vehicular access to the site is taken only from Via Dolce (Exhibit #4). The proposed on-site parking spaces for the proposed single-family residence provide an adequate parking supply. Therefore, the proposed project conforms to the certified LUP and the Commission's parking standards for the area for single-family residences.

The permit is conditioned to ensure the continued provision of at least three on-site parking spaces. A parking deficiency would reduce the availability of on-street parking for beach goers, and as a result, reduce the ability of the public to access the coast. The Commission finds that, only as conditioned to ensure the continued provision of adequate on-site parking, is the proposed project consistent with the public access policies of the Coastal Act.

H. Hazards

Developments located in or near waterways like the Venice Canals have the potential for damage caused by flooding. Additionally, the Venice Canals area is subject to potential liquefaction resulting from a seismic event. No development in or near the water can be guaranteed to be safe from hazard. The project area was once used for oil production which resulted in the spilling of unknown quantities of petroleum. Therefore, the site may have been contaminated by these spills. The Commission has no information regarding the current status of the soils and groundwater beneath the project site.

The Coastal Act states that new development must minimize risks to life and property.

Section 30253 of the Coastal Act states, in part:

New development shall:

- (1) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.
- (2) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

The proposed project will not contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area, will not require protective devices that would substantially alter natural landforms along bluffs and cliffs, and is consistent with section 30253 of the Coastal Act.

Since no development in or near the water can be guaranteed to be safe from hazard, the Commission routinely imposes conditions for assumption of risk in areas at high risk from hazards. The condition ensures that the applicant understand and assume the potential hazards associated with development. In 1999, the Commission imposed such a condition on Coastal Development Permit 5-98-156 (City of Long Beach) for the Queensway Bay Development. In 2001, the Commission imposed such a condition on Coastal Development

Permit 5-00-484 (City of Los Angeles) for the demolition of the Damson Oil Facility on Venice Beach.

Therefore, by acceptance of this coastal development permit, the applicant/landowner acknowledges and agrees: (i) that the site may be subject to hazards from seismic events, liquefaction, floods and from the existence of subsurface hazardous substances; (ii) to assume the risks to the permittee and the property that is the subject of this permit of injury and damage from such hazards and/or injuries 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/or injuries; 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 or activities.

I. 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. As proposed, the proposed development is not consistent with Chapter 3 of the Coastal Act and with the certified Venice LUP. As conditioned, however, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified Venice LUP. 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.

J. 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.

A feasible alternative to the proposed project exists: a single-family residence that conforms to the height limit and all other requirements of the Venice LUP.

The proposed project, as conditioned, has been found consistent with the Chapter 3 policies of the Coastal Act. The project, if revised consistent with the recommended conditions of approval, is a feasible alternative which would substantially lessen the significant adverse impact which the activity may have on the environment. Therefore, 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 project as conditioned can be found consistent with the requirements of the Coastal Act to conform to CEQA.