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RECEIVED
South Coast Region

DEC 7 2007

Date: December 6, 2007

California Coastal Commission
South Coast District Office
200 Oceangate, 10th Floor
Long Beach, CA 90802-4416

CALIFORNIA
COASTAL COMMISSION

W13b

ATTN: Charles Posner, Coastal Program Analyst

**Re: VENICE SLUICE GATE REPLACEMENT PROJECT
State Permit A-5-VEN-07-397
APPEAL TO LOCAL COASTAL DEVELOPMENT PERMIT APPLICATION 06-07
AGENDA ITEM W13b**

Dear Mr. Posner:

The City disagrees with the contentions of the appellant in the above-cited matter (A-5-VEN-07-397) and requests that the Coastal Commission find, contrary to staff's recommendation, that the appeal does NOT raise any substantial issue.

The appellant contends that the local permit did not include a clear delineation between the portion of the project under the City's local permit jurisdiction and the portion of the project within the Commission's original jurisdiction (wetlands and submerged lands) in the Canal.

The bypass was designed and locally permitted in consultation with Coastal Commission Staff. Defining the proportion of the proposed project that lies within each jurisdiction is irrelevant, as it was determined from the onset that a dual permit, involving State Coastal Commission review, was required. The entire project lies within the Dual jurisdiction zone, whereby both local and state Coastal Development Permits are required. None of the project will be constructed on tidelands, submerged lands, or public trust lands. A portion of the project will be on the City right-of-way known as "Grand Canal," which contains but does not consist entirely of tidelands. **The project lies entirely outside of the tideland area.** Based upon the project plan drawings submitted with the local application, the bypass pipeline would be constructed along the Esplanade, a concrete sidewalk that borders the west bank of the Grand Canal. To allow for pedestrian access, the pipeline will be placed along the sidewalk's edge. The pipe will rest on untreated wood timbers, supported partially by the existing sidewalk



**AGENDA ITEM W13b
VENICE SLUICE GATE REPLACEMENT PROJECT****HEARING December 12, 2007
State Permit A-5-VEN-07-397**

and partially supported by posts, to be placed along the outer margin of the sidewalk. The pipe will cantilever out over the edge of the sidewalk, extending over the canal bank, to avoid potential disturbance of emergent wetland vegetation along the Canal. The upper portion of the bank is disturbed, predominantly bare, ground. Vegetation in the project area is almost entirely non-native plant species. Native wetland vegetation should not be substantially affected; however, prescribed mitigations in the MND and conditions in the local coastal permit require replacement of any native plant species disturbed by the project.

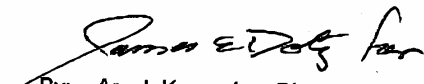
Even if a portion of the project were to lie within the Commission's sole jurisdiction, it does not make sense to argue (as staff seems to do) that this is grounds for the Commission to exert sole jurisdiction over the entire project. Staff does not provide any logical basis for this argument. This is a dual permit and an application to the Commission is forthcoming, therefore **the Coastal Commission will have permit authority over the project even if the appeal is not heard.**

The City Engineer's local Permit granting authority is based upon authority granted to the City of Los Angeles by the Coastal Commission under the *California Coastal act of 1976*. The Los Angeles City Council subsequently delegated this authority to the City Engineer under the *Los Angeles Municipal Code* (Sec. 12.2.2 et seq.). The local permit was issued in conformance with Chapter 3 of the *Coastal Act*. The local process has been followed to the point of permit issuance, completed on September 24, 2007, where no appeals were filed during the established, 10-day, local permit appeal period. A state permit application will be submitted within two weeks of this letter.

If you have any questions, please contact William Jones at (213) 485-5760.

Sincerely,

Gary Lee Moore, P.E.
City Engineer



By: Ara J. Kasparian, Ph.D
Manager
Environmental Management Group

GLM/AJK/JD/wj:wj-m692-vsg.doc

Cc: Sean Zahedi, WCED; Jin Hwang, WCED.

W13B

RECEIVED
South Coast Region

California Coastal Commission
Att: Coastal Commissioners
Re: Appeal No. A5-VEN-07-397

12/7/2007

DEC 7 2007

CALIFORNIA
COASTAL COMMISSION

Honorable Commissioners,

The Coastal Commission has mischaracterized my contentions of appeal found on Page 2 under APPELLANT'S CONTENTIONS.

I DID NOT CONTEND ANY VIOLATION OF THE BROWN ACT AS THE COASTAL COMMISSION CLAIMS.

I DID CONTEND THAT THE COASTAL COMMISSION VIOLATED ARTICLE 2.5 OF CHAPTER 4 OF THE CALIFORNIA COASTAL ACT REQUIRING DUE PROCESS OF LAW. DUE PROCESS MUST PRECEDE THE CALIFORNIA CODE OF REGULATIONS GOVERNING APPEALS AND THE COASTAL COMMISSION HAS DISREGARDED THE MOST IMPORTANT FUNCTION OF THE COASTAL ACT, DUE PROCESS. FURTHERMORE THE COMMISSION HAS DISREGARDED ITS OBLIGATION UNDER THE CALIFORNIA COASTAL ZONE MANAGEMENT PLAN IN THIS SAME RESPECT.

THE PERMIT IS THEREFORE INVALID AND CANNOT BE APPROVED LEGALLY BY THE COASTAL COMMISSION UPON APPEAL.

SHOULD THE COMMISSION ACCEPT THE STAFF RECOMMENDATION IT WILL INTENTIONALLY VIOLATE THE CALIFORNIA COASTAL ACT.

Additionally I add the contention to the appeal that the **DEVELOPMENT IN QUESTION IS LOCATED IN A SEISMIC HAZARD ZONE SUBJECT TO LIQUIFACTION AS DETERMINED BY THE STATE GEOLOGIST AND THEREFORE REQUIRES A REVIEW CONSISTANT WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT WHICH REQUIRES EITHER A MITIGATED NEGATIVE DECLARATION OR AN ENVIRONMENTAL IMPACT REPORT.**

Furthermore no proof of ownership of the site has been provided in an accessous parcel map. Lastly, to allow for the widest possible public participation in the matter the hearing should be opened and continued to Southern California. It should be noted that the new application for Coastal Development Permit engendered by the this Appeal is not time restricted so that there is no reason whatsoever that application for Coastal Development Permit should be considered for hearing outside the Southern California area that is directly affected by the proposed permit.

Sincerely,

John Davis

John Davis

Also, the application for CDP is incomplete in that no soil or geology report is appervant.

P.O. 10152

Marina del Rey Ca. 90295

CALIFORNIA COASTAL COMMISSION

South Coast Area Office
200 Oceangate, Suite 1000
Long Beach, CA 90802-4302
(562) 590-5071

W13b

Appeal Filed: 11/1/2007
49th Day: 12/20/2007
180th Day: N/A
Staff: Charles Posner-LB
Staff Report: 11/20/2007
Hearing Date: December 12, 2007
Commission Action:

**STAFF REPORT: APPEAL/SUBSTANTIAL ISSUE**

LOCAL GOVERNMENT: City of Los Angeles
LOCAL DECISION: Approval with Conditions
APPEAL NUMBER: A5-VEN-07-397
APPLICANT: City of Los Angeles Department of Public Works
AGENT: Sean Zahedi, Project Manager
APPELLANT: John Davis
PROJECT LOCATION: 3500-3900 Grand Canal Esplanade (Venice Sewage Pumping Plant), Venice, City of Los Angeles, Los Angeles County.

PROJECT DESCRIPTION: Appeal of City of Los Angeles Local Coastal Development Permit No. 06-07 approved for the replacement of a damaged sluice gate within the City of Los Angeles sanitary sewer system, including the installation of a 980-foot long temporary above-ground sewer bypass pipe (with portable pumps) along the west bank of Grand Canal, between Hurricane Street and Driftwood Street.

SUBSTANTIVE FILE DOCUMENTS:

1. City of Los Angeles certified Land Use Plan for Venice, 6/12/2001.
2. City of Los Angeles Local Coastal Development Permit No. 06-07.
3. Coastal Development Permit Application 5-06-236 (City of LA – Sluice Gate Repair).
4. Coastal Development Permit 5-01-257/A5-VEN-01-279 (City of LA - Ballona Lagoon).
5. Coastal Development Permit 5-01-289/A5-VEN-01-280 (City of LA – Grand Canal)
6. Coastal Development Permit 5-95-152 & amendments (City of LA - Ballona Lagoon).
7. Coastal Development Permit 5-91-584 & amendments (City of LA – Venice Canals).
8. City of Los Angeles Mitigated Negative Declaration for the Venice Pumping Plant Sluice Gate Replacement Project (CEQA), SCH No. 2005121076, 6/14/2007.
9. Biota of the Ballona Region, Los Angeles County, by Ralph W. Schreiber, 1981.

SUMMARY OF STAFF RECOMMENDATION

The staff recommends that the Commission, after public hearing, determine the appeal raises **a substantial issue** with respect to the grounds on which the appeal has been filed because the local coastal development permit does not include clear delineation between the portion of the project approved within the City's permit jurisdiction and the portion of the project proposed within the Commission's area of original jurisdiction (wetlands and submerged lands in Grand Canal). **The motion to carry out the staff recommendation is on Page Five.**

I. APPELLANT'S CONTENTIONS

City of Los Angeles Local Coastal Development Permit No. 06-07, approved by the Board of Public Works on September 4, 2007, has been appealed by John Davis (Exhibit #5).

The grounds for the appeal filed by John Davis are:

- The local coastal development permit authorizes development on submerged lands (Grand Canal) within the Commission's area of original jurisdiction where the City has no permit jurisdiction.
- The City violated the Brown Act because the City Engineer is not empowered to act on coastal development permit applications.

II. LOCAL GOVERNMENT ACTION

On September 4, 2007, the City of Los Angeles City Engineer held a public hearing and approved City of Los Angeles Local Coastal Development Permit No. 06-07 for the proposed replacement of a damaged sluice gate in the Venice Pumping Station located on the west bank of Grand Canal at Hurricane Street in Venice (Exhibit #6). The City established a ten-day appeal period, which passed without an appeal.

On October 3, 2007, the Commission's South Coast District office in Long Beach received the City's Notice of Final Local Action (dated September 24, 2007) for Local Coastal Development Permit No. 06-07, and the Commission's required twenty working-day appeal period commenced. The appeal by John Davis was received in the Commission's South Coast District office in Long Beach on November 1, 2007, the last day of the appeal period (Exhibit #5). No other appeals were received.

Because the proposed project is located in the City and Commission's "Dual Permit Jurisdiction" area (see Section IV on Page Three) and also within the Commission's area of original jurisdiction (submerged lands and wetlands), the City has submitted a separate coastal development permit application to the Commission for the proposed development (Coastal Development Permit Application 5-06-236). If possible, the public hearings and actions for both the de novo portion of this appeal (if the Commission finds that a substantial issue exists) and Coastal Development Permit Application 5-06-236 will be combined and scheduled for concurrent action at the same future Commission meeting in Southern California.

III. APPEAL PROCEDURES

Section 30600(b) of the Coastal Act provides that prior to certification of its Local Coastal Program (LCP), a local jurisdiction may, with respect to development within its area of jurisdiction in the coastal zone and consistent with the provisions of Sections 30604, 30620 and 30620.5, establish procedures for the filing, processing, review, modification, approval or denial of a coastal development permit. Pursuant to this provision, the City of Los Angeles developed a permit program in 1978 to exercise its option to issue local coastal development permits.

Sections 13301-13325 of Title 14 of the California Code of Regulations provide procedures for issuance and appeals of locally issued coastal development permits. Section 30602 of the Coastal Act allows *any* action by a local government on a coastal development permit application evaluated under Section 30600(b) to be appealed to the Commission. The standard of review for such an appeal is the Chapter 3 policies of the Coastal Act. [Cal. Pub. Res. Code §§ 30200 and 30604.]

After a final local action on a local coastal development permit application, the Coastal Commission must be noticed within five days of the decision. After receipt of such a notice which contains all the required information, a twenty working-day appeal period begins during which any person, including the applicant, the Executive Director, or any two members of the Commission, may appeal the local decision to the Coastal Commission. [Cal. Pub. Res. Code § 30602.]

Any appeal of the local action is then analyzed to determine if a substantial issue exists as to the approved project's conformity with Chapter 3 of the Coastal Act (Sections 30200-30265.5). [Cal. Pub. Res. Code § 30625(b)(1).] Unless the Commission finds that the appeal raises no substantial issue, the Commission then holds a public hearing in which it reviews the coastal development permit as a de novo matter. [Cal. Pub. Res. Code §§ 30621 and 30625.]

At this point, the Commission may decide that the appellant's contentions raise no substantial issue as to conformity of the approved project with Chapter 3 of the Coastal Act, in which case the action of the local government stands. Or, the Commission may find that a substantial issue exists with respect to the conformity of the action of the local government with Chapter 3 of the Coastal Act if it finds that the appeal raises a significant question regarding consistency with the Chapter 3 policies of the Coastal Act. If the Commission finds that a substantial issue exists, then the hearing will be continued as a de novo permit request. Section 13321 of the Coastal Commission regulations specifies that de novo actions will be heard according to the procedures outlined in Sections 13114 and 13057-13096 of the Commission's regulations.

IV. DUAL PERMIT JURISDICTION

The proposed development involves two distinct and separate types of coastal development permit jurisdiction: the City's and Commission's "*Dual Permit Jurisdiction*" area and the Commission's "*Original Jurisdiction*" area.

Section 30601 of the Coastal Act states:

Prior to certification of the Local Coastal Program and, where applicable, in addition to a permit from local government pursuant to subdivision (b) or (d) of Section 30600, a coastal development permit shall be obtained from the Commission for any of the following:

- (1) Developments between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is the greater distance.

- (2) Development not included within paragraph (1) located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, stream or within 300 feet of the top of the seaward face of any coastal bluff.
- (3) Any development which constitutes a major public works project or a major energy facility.

Within the areas specified in Section 30601, which is known in the City of Los Angeles permit program as the *Dual Permit Jurisdiction* area, the Coastal Act requires that the development which receives a local coastal development permit also obtain a “dual” coastal development permit from the Coastal Commission. For projects located inland of the areas identified in Section 30601 (*Single Permit Jurisdiction*), the City of Los Angeles local coastal development permit is the only coastal development permit required.

The proposed development is partially located in the waterway and on the banks of Grand Canal (Exhibit #4). Grand Canal is an extension of the sea, connected to the Pacific Ocean by Ballona Lagoon and the Marina del Rey entrance channel (Exhibit #2). The portion of the proposed project situated on canal banks above the submerged area of the canal is within the coastal zone area of the City of Los Angeles that has been designated in the City’s permit program as the “*Dual Permit Jurisdiction*” area pursuant to Section 13307 of the California Code of Regulations.

Section 30519 of the Coastal Act states:

(a) Except for appeals to the commission, as provided in Section 30603, after a local coastal program, or any portion thereof, has been certified and all implementing actions within the area affected have become effective, the development review authority provided for in Chapter 7 (commencing with Section 30600) shall no longer be exercised by the commission over any new development proposed within the area to which the certified local coastal program, or any portion thereof, applies and shall at that time be delegated to the local government that is implementing the local coastal program or any portion thereof.

(b) Subdivision (a) shall not apply to any development proposed or undertaken on any tidelands, submerged lands, or on public trust lands, whether filled or unfilled, lying within the coastal zone, nor shall it apply to any development proposed or undertaken within ports covered by Chapter 8 (commencing with Section 30700) or within any state university or college within the coastal zone; however, this section shall apply to any development proposed or undertaken by a port or harbor district or authority on lands or waters granted by the Legislature to a local government whose certified local coastal program includes the specific development plans for such district or authority.

The areas specified in Section 30519(b) are known as the Commission’s *Original Jurisdiction* area. The proposed project is also partially located seaward of the mean high tide line of Grand Canal within the Commission’s area of *Original Jurisdiction*. Pursuant to Section 30519 of the Coastal Act, any development located within the Commission’s area of original jurisdiction requires a coastal development permit from the Commission.

In this case, the required “dual” Coastal Commission coastal development permit application and the required coastal development permit application for development proposed within the Commission's area of original jurisdiction have been combined into one application which the City has submitted for Commission review and action (Coastal Development Permit Application 5-06-236). The Commission's standard of review for the proposed development in both the *Dual Permit Jurisdiction* area and within its area of original jurisdiction is the Chapter 3 policies of the Coastal Act. The certified Venice LUP is advisory in nature and may provide guidance.

In regards to this appeal, if the Commission finds that a substantial issue exists in regards to the City's approval of the Local Coastal Development Permit No. 06-07, the subsequent de novo action on the local coastal development permit will also be combined with the required “dual” Coastal Commission coastal development permit application (Coastal Development Permit Application 5-06-236). The matter will not be referred back to the local government.

On the other hand, if the Commission finds that no substantial issue exists in regards to the City's approval of the local coastal development permit, then the local coastal development permit approved by the City will be final, and the Commission will act on the required “dual” Coastal Commission coastal development permit as a separate agenda item (Coastal Development Permit Application 5-06-236).

In order to minimize duplication, Commission staff intends to combine the de novo permit action for this appeal (if the Commission finds that a substantial issue exists) and Coastal Development Permit Application 5-06-236 into one staff report and one hearing for concurrent Commission action. If the Commission finds that a substantial issue exists, staff will schedule a combined hearing at a future Commission meeting in Southern California.

V. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

The staff recommends that the Commission determine that **a substantial issue exists** with respect to whether the local government's approval of the project is consistent with the provisions of Chapter 3 of the Coastal Act (commencing with Section 30200), pursuant to PRC Section 30625(b)(1).

Staff recommends a **NO** vote on the following motion:

MOTION: *“I move that the Commission determine that Appeal No. A-5-VEN-07-397 raises **no** substantial issue with respect to conformity of the local approval with the policies of Chapter 3 of the Coastal Act.”*

Failure of the motion will result in a de novo hearing on the application and adoption of the following resolution and findings. A majority of the Commissioners present is required to pass the motion.

Resolution to Find Substantial Issue for Appeal A-5-VEN-07-397

The Commission hereby finds that Appeal No. **A-5-VEN-07-397** presents a substantial issue with respect to conformity of the local government approval with the Chapter 3 policies of the Coastal Act.

VI. FINDINGS AND DECLARATIONS FOR SUBSTANTIAL ISSUE

The Commission hereby finds and declares:

A. Project Description

The development approved by City of Los Angeles Local Coastal Development Permit No. 06-07 involves the City Department of Public Work's proposed replacement of a damaged sluice gate in the Venice Sewage Pumping Station located on the west bank of Grand Canal at Hurricane Street in Venice (Exhibit #2). The proposed project includes the installation of a 980-foot long temporary above-ground sewer bypass pipe (with portable pumps) along the west bank of Grand Canal, between Hurricane Street and Driftwood Street (Exhibit #3). The southern end of the temporary bypass pipeline, which would be in place for about four months, is located at an existing manhole within Grand Canal (Exhibit #4). The certified Venice LUP designates Grand Canal project as an Environmentally Sensitive Habitat Area (ESHA).

B. Grand Canal

The Venice Canals are a unique cultural, historic and scenic resource of Southern California. The canals, which were created out of marshland as part of the "Venice of America" subdivision in 1905, provide a sense of character and history for the Venice community. They also provide public access, recreation, and wildlife habitat. The canals, along with adjacent Ballona Lagoon, support some of the last remaining pockets of coastal wetland habitat in Los Angeles County.

The canals system fell into disrepair in the 1920s, and many of the original canals were filled by the City in 1927. The residents in the area have been attempting to restore the remaining canals since the 1960s. The Venice Canals located north of Washington Boulevard have already been rehabilitated (see Coastal Development Permit 5-91-584 & amendments). The section of Grand Canal located south of Washington Boulevard is a remnant of an original tidal lagoon (Ballona Lagoon), and is the only segment of the remaining canals that has yet to be rehabilitated.

Grand Canal is an integral part of the larger Venice Canals/Ballona Lagoon wetlands system and the Ballona Creek watershed. Grand Canal is connected to the northern end of Ballona Lagoon (Exhibit #2). Seawater enters the wetlands system through tidal gates which control the flow from the Marina del Rey entrance channel into Ballona Lagoon. The seawater then flows through Ballona Lagoon and into Grand Canal to another set of tidal gates located beneath Washington Boulevard. Grand Canal is the only hydrologic connection between Ballona Lagoon and the canals located north of Washington Boulevard (Exhibit #1).

As stated above, the certified Venice LUP designates the wetland habitat in Grand Canal as an Environmentally Sensitive Habitat Area (ESHA). Unfortunately, the wetland habitat in Grand Canal (i.e., salt marsh, sidebanks, mudflats, and marine habitat) is negatively affected by the canal's proximity to human activity, urban runoff, abundance of invasive non-native vegetation, and the scattered isolated pocket nature of the wetlands. Despite this, Grand Canal provides habitat for a variety of benthic invertebrates, fish and shorebirds [See Grand Canal Wetland Enhancement Assessment, by Michael Josselyn, PhD, February 24, 1998.].

California hornshells are the dominant epifaunal organisms, although it is expected that polychaetes and mulluscs live in the mud bottom of the canal. Seven species of fish have been documented and are known to inhabit the canals: Topsmelt is the most abundant species, followed by California killifish, bay pipefish, longjaw mudsuckers, halibut, arrow goby, and diamond turbot. Fish eating birds such as pelicans, egrets and green herons are often seen foraging at the water's edge. Willets, dowitchers and dabbling ducks also forage on the mud banks, while domesticated ducks are attracted by food and water left by nearby human residents. Grand Canal is a critical habitat area for the brown pelican and California least tern, Sterna antillarum browni. No other Federal or State listed endangered species are known to inhabit or to visit the Venice Canals.

Grand Canal is located approximately one mile north of the Venice Beach California least tern colony, one of the largest and most productive colonies of California least terns remaining in the state (Exhibit #1). The California least tern, Sterna antillarum browni, is a Federal and State listed endangered species. The least tern is migratory and generally arrives in the project area each year in early April, and departs in early autumn. Least terns capture small fish for their newly hatched chicks in the nearby ocean, wetlands, lagoons, and canals. These fish include northern anchovies, gobies, topsmelt, various surf perch, killifish, mosquitofish, and other lagoon and estuarine fish species.

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. The neighborhood is located about four blocks from Venice Beach, one of the most popular visitor destinations in Los Angeles. Most of the residences front on the canals and are accessed from the rear by alleys which run behind the homes. Public walkways, which are currently severely damaged or completely deteriorated, run along both sides of the canal and separate the private residences from the canal. The Venice Canals system is a popular visitor destination in Southern California.

C. Substantial Issue Analysis

As stated in Section III of this report, the grounds for an appeal of a coastal development permit issued by the local government prior to certification of its Local Coastal Program (LCP) are the Chapter 3 policies of the Coastal Act. Any such local government coastal development permit may be appealed to the Commission. The Commission shall hear an appeal unless it determines that the local government action raises no substantial issue as to conformity with Chapter 3 policies of the Coastal Act. In this case, staff has recommended that a substantial issue does exist in the local government's approval of the project.

The appeal raises two issues. The first issue is the question of permit jurisdiction. The second issue involves an assertion that the City Engineer's issuance of a coastal development permit violates the provisions of the Brown Act.

First, the appeal asserts that Local Coastal Development Permit No. 07-07 authorizes development on submerged lands within the Commission's area of original jurisdiction. In fact, part of the proposed project involves the placement of a temporary sewer bypass pipeline along the west bank of Grand Canal for a four-month period. This temporary bypass pipeline originates in a manhole within Grand Canal. Grand Canal is a submerged tidal channel within the Commission's area of original jurisdiction. Pursuant to Coastal Act Section 30519, any

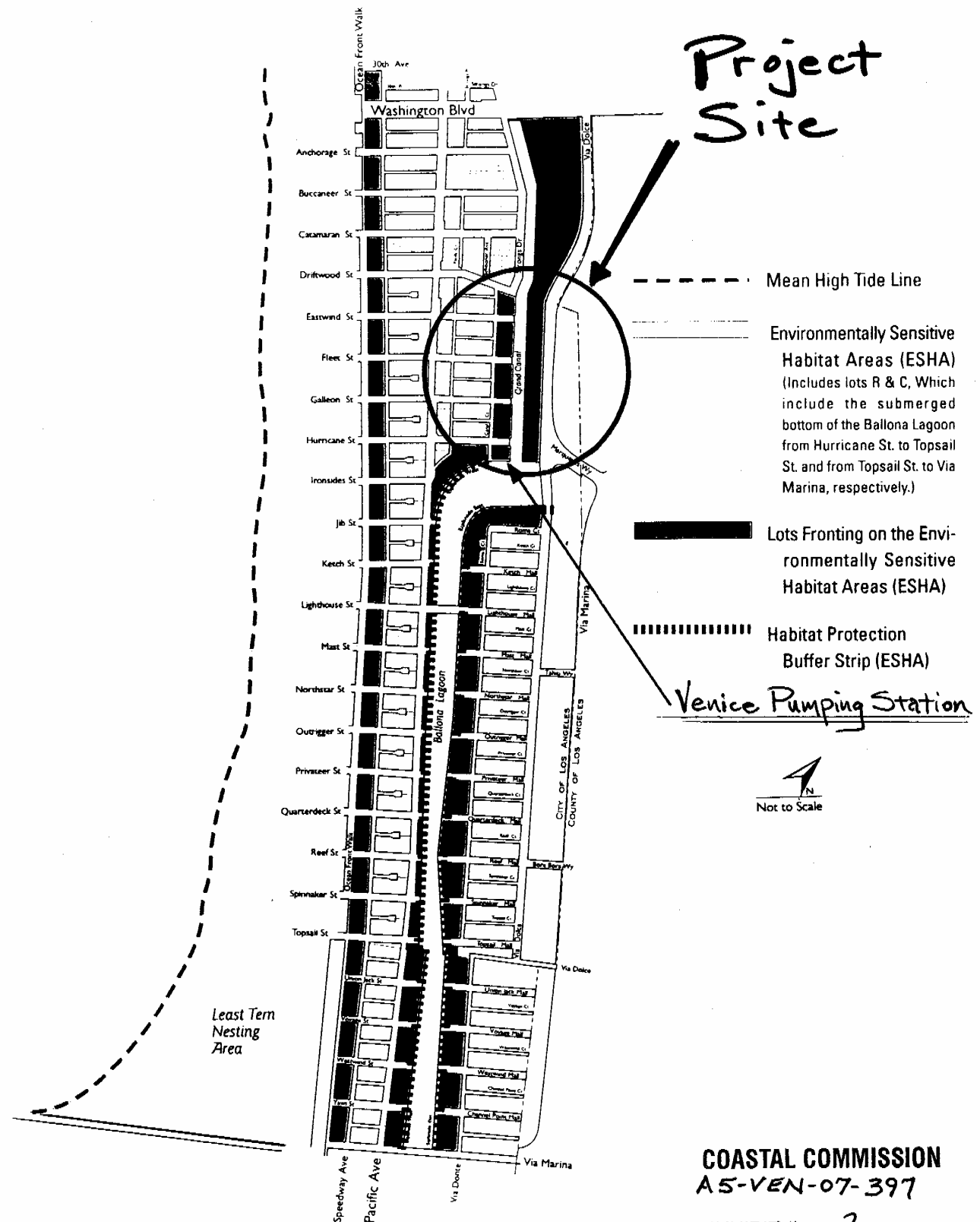
development located within the Commission's area of original jurisdiction requires a coastal development permit from the Commission. The City has no permit jurisdiction in the Commission's area of original jurisdiction. Therefore, a substantial issue exists with regard to the City's approval of a local coastal development permit that authorizes development within the Commission's area of original jurisdiction.

Because of the importance of the marine resources in Grand Canal, and the public accessways along both banks, the Commission will carefully review the proposed project when it acts on the de novo portion of the appeal and the dual permit application. Only with careful review of the proposed project can the Commission ensure that marine resources and public access to the coast are adequately protected from the impacts of the proposed development. If it finds that a substantial issue exists, the Commission will have the opportunity to review and act on the proposed project at the subsequent de novo hearing. Therefore, the Commission finds that a substantial issue exists with respect to the appeal and with the approval of Local Coastal Development Permit No. 06-07.

The appeal filed by John Davis also asserts that the proposed project violates the Brown Act. Consistency with the Brown Act, which regulates open public meeting of local governments' legislative bodies, is not the standard of review for an appeal of a local coastal development permit issued by the City pursuant to Section 30600(b) of the Coastal Act. . The standard of review for an appeal of a local coastal development permit issued by the City pursuant to Section 30600(b) of the Coastal Act is conformity with Chapter 3 of the Coastal Act. This contention does not raise an issue in regards to consistency of the local decision with the policies of Chapter 3. The City of Los Angeles issues local coastal development permits without a certified LCP pursuant to Section 30600(b) of the Coastal Act (See Section III on Page Four). Local Coastal Development Permit No. 06-07 was approved under Section 30600(b) of the Coastal Act. In regards to the Brown Act, it is not the Commission's role to resolve conflicts over compliance with these laws. The Commission has a limited appellate authority/jurisdiction as defined by Section 30625(b). The Commission is not a judicial body of general jurisdiction, as its review is limited to assessing conformity with Chapter 3. The Brown Act and the California Environmental Quality Act are not within Chapter 3. The appellant John Davis has recourse in the State courts of general jurisdiction. The Commission does note, however, that the Brown Act, Cal. Gov't Code §§ 54950-963, does not apply to State agencies. Cf. Cal. Gov't Code §§ 54951 (defining "local agency" for purposes of the Brown Act) and 54952 (defining "legislative body" for purposes of the Brown Act).

VENICE, CA





LUP
Exhibit 22c

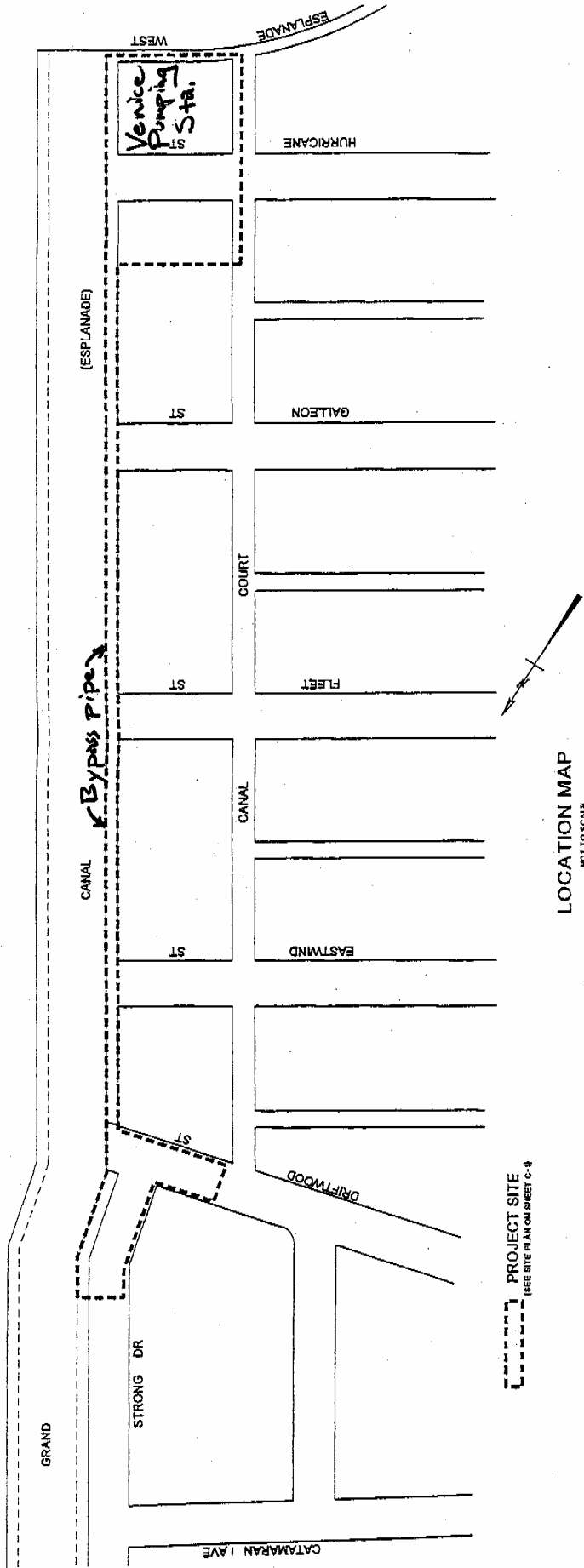
Environmentally Sensitive Habitat Areas

COASTAL COMMISSION
A5-VEN-07-397

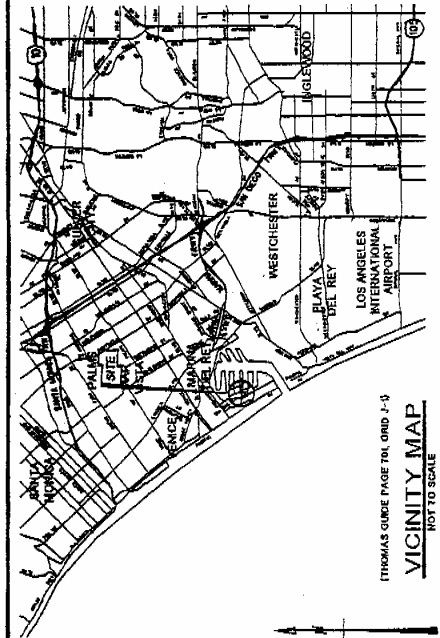
EXHIBIT # 2
PAGE 1 OF 1

BUREAU OF ENGINEERING
DEPARTMENT OF PUBLIC WORKS
CITY OF LOS ANGELES

VENICE PUMPING PLANT SLUICE GATE REPLACEMENT



PROJECT SITE
(SEE SITE PLAN ON SHEET C-8)



WASTEWATER CONVEYANCE ENGINEERING DIVISION

WAYNE A. LAWSON, P.E.
DIVISION ENGINEER

PROJECT TEAM

WASTEWATER CONVEYANCE ENGINEERING DIVISION	WASTEWATER CONVEYANCE CONSTRUCTION DIVISION	STRUCTURAL ENGINEERING DIVISION	GEOTECHNICAL ENGINEERING DIVISION	SURVEY DIVISION
HARSHAD SHAJI, P.E. GROUP MANAGER	SOMSAK SASNAKUL, P.E. GROUP MANAGER			
SEAN ZAHEDI, P.E. PROJECT MANAGER				
W.O. SANGALANG, P.E. PROJECT ENGINEER				
REGINALD CANTRELL CAUD GROUP MANAGER				

COASTAL COMMISSION
A5-VEN-07-397

EXHIBIT # 3
PAGE 1 OF 1

CALIFORNIA COASTAL COMMISSION

SOUTH COAST DISTRICT OFFICE

200 OCEANGATE, 10TH FLOOR

LONG BEACH, CA 90802-4416

VOICE (562) 590-5071 FAX (562) 590-5084

NOV 1 2007

CALIFORNIA
COASTAL COMMISSION

APPEAL FROM COASTAL PERMIT DECISION OF LOCAL GOVERNMENT

Please Review Attached Appeal Information Sheet Prior To Completing This Form.

SECTION I. Appellant(s)

Name: John A. Davis

Mailing Address: P.O. Box 10152

City: Marina del Rey Zip Code: 90295 Phone: N/A

SECTION II. Decision Being Appealed

1. Name of local/port government:
City of Los Angeles
2. Brief description of development being appealed: Venice Pumping Plant
Development on ~~Public Trust Lands~~, Coastal Commission
Original Jurisdiction, formerly submerged lands of
California of a sewage project
3. Development's location (street address, assessor's parcel no., cross street, etc.):
only Venice given on permit, no street
address.
4. Description of decision being appealed (check one.):
☒ Approval; no special conditions
☒ Approval with special conditions:
☐ Denial

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

TO BE COMPLETED BY COMMISSION:

APPEAL NO: A5-VEN-07-397

DATE FILED: 11/1/07

DISTRICT: Long Beach / South Coast Dist.

COASTAL COMMISSION
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CALIFORNIA COASTAL COMMISSION
RE: APPEAL OF COASTAL DEVELOPMENT PERMIT NO. 06-07

There are two reasons the Coastal Commission cannot approve or disapprove of the aforesaid Coastal Development Permit.

FIRST, the development in question is sited on formerly submerged lands of the State of California and therefore the Constitution requires the State Lands Commission to control such lands. The California Coastal Commission has exclusive jurisdiction over public trust lands and therefore the City may not issue permits. The U.S. Supreme Court Decision *Summa v the California Coastal Commission* is not applicable to the State exercising its Constitutional mandate regarding formerly submerged lands over lands that are owned by the State even if the State is successor in title to lands that were once under Mexican Land Grants. *Summa v Coastal Commission* was decided solely to prevent the State from imposing its claim to public trust lands on private parties and not on the State itself.

The Site of Development is a Public Trust Land of the State of California as it was formerly submerged.

SECOND the City Engineer is not empowered under State Law to take action to approve or disapprove Coastal Development Permits.

California Public Resources Code Division 20, California Coastal Act Chapter Four Article 2.5, Fairness and Due Process prohibit the California Coastal Commission and or the City of Los Angeles to legislate and or approve of legislation that is in direct contradiction with the California Public Meetings Act, (Ralph M. Brown Act).

An ordinance approved by the City of Los Angeles cannot extinguish the Brown Act.

A City of Los Angeles Ordinance that is approved by the California Coastal Commission in regard to issuing Coastal Developments locally cannot extinguish the Brown Act.

The City Engineer does not meet the criteria of an entity that is empowered pursuant to the Brown Act to take action to approve or deny a Coastal Development Permit.

Appeals to an legislative body that is empowered to act within the constraints of the Brown Act of Coastal Development Permits issued by the City of Los Angeles Engineer does not cure the original illegal issuance of such permits.

The Coastal Commission upon appeal is not empowered under Chapter Four Article 2.5 of the California Coastal Act to approve or deny a Coastal Development Permit that was issued by the City Engineer when it was not empowered under the Brown Act to take such action.

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The City Engineer has stated in writing that "the Brown Act does not allow nor prevent the City Engineer from.....issuing coastal permits." ATTACHMENT 1, page two at line 18.

The City Engineers statement is FALSE.

THE CITY ENGINEER IS NOT A LEGSLATIVE BODY AND CANNOT THEREFORE MAKE A COLLECTIVE DECISION TO ISSUE A COASTAL DEVELOPMENT PERMIT MADE BY A MAJORITY OF THE MEMBERS OF A LEGSLATIVE BODY, A COLLECTIVE COMMITMENT OR PROMISE BY A MAJORITY OF THE MEMBERS OF A LEGISLATIVE BODY WHEN SITTING AS A BODY OR ENTITY UPON A MOTION, PROPOSAL, RESOLUTION, ORDER, OR ORDINANCE. See PRC 54952.6

Public Resources Code 54950.5. This chapter shall be known as the Ralph M. Brown Act.

54952. As used in this chapter, "legislative body" means:

(a) The governing body of a local agency or any other local body created by state or federal statute.

(b) A commission, committee, board, or other body of a local agency, whether permanent or temporary, decision making or advisory, created by charter, ordinance, resolution, or formal action of a legislative body. However, advisory committees, composed solely of the members of the legislative body which are less than a quorum of the legislative body are not legislative bodies, except that standing committees of a legislative body, irrespective of their composition, which have a continuing subject matter jurisdiction, or a meeting schedule fixed by charter, ordinance, resolution, or formal action of a legislative body are legislative bodies for purposes of this chapter.

54952.2. (a) As used in this chapter, "meeting" includes any congregation of a majority of the members of a legislative body at the same time and place to hear, discuss, or deliberate upon any item that is within the subject matter jurisdiction of the legislative body or the local agency to which it pertains.

54952.6. As used in this chapter, "action taken" means a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or a negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance.

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213-847-8786
<http://eng.lacity.org>

March 30, 2005

Mr. John Davis
P.O. Box 10152
Marina del Rey, CA 90295

Attachment 1
Page 1

Dear Mr. Davis:

This letter is in response to your correspondence to Ms. Valerie Lynne Shaw, President of the Board of Public Works, asserting that the City Engineer's review of Coastal Development Permit application No. 05-01 (for a sculpture to be placed in Windward Circle) violates state law, specifically the Coastal Act, Brown Act and the Environmental Quality Act.

The California Coastal Act of 1976 is set forth in the State Public Resources Code (PRC), Division 20 (Sections 30000 - 30900). The Act describes the policies and general procedures whereby the development and use of the State's coastline is controlled through the issuance of Coastal Development Permits. The City of Los Angeles issues Coastal Development Permit for most developments in the Coastal Zone under the authority of the PRC Section 30600(b) and Section 12.20.2 of the Los Angeles Municipal Code.

Chapter 1, Article 2, § 12.20.2 of the municipal code, gives the City Engineer the authority to approve, conditionally approve or disapprove any application for a coastal development permit under the provisions of the California Coastal Act of 1976. The municipal code also establishes procedural requirements.

A "notice of intent" must be posted "at a conspicuous place, easily read by the public and as close as possible to the site of the proposed development a notice that an application has been made for a Coastal Development Permit. Such notice shall contain specific information as to the nature of the proposed development and be in a form as prescribed for that purpose." (municipal code section 12.20.2 E) This notice was posted on street lighting posts along Windward Circle, one on each of the five blocks formed by the intersecting streets, on February 14, 2005.

"To the extent possible, any Permit application for Development within the Coastal Zone shall be processed in accordance with established policies and procedures of a permit granting authority in conformance with the provisions of this Code. For those projects for which no hearing would otherwise be required by law, the appropriate City agency shall notify by mail, at least ten (10) days prior to the hearing the following:

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Attachment 1
Page 2

- (a) those persons whose names appear on the list of property owners within 100 feet of the boundary of the site of the proposed development;
- (b) an occupant of all residences, including apartments, within 100 feet of the boundary of the site of the proposed development. This requirement can be met by mailing such notice to "occupant" of the subject residence.
- (c) those persons known or thought to have a particular interest in the application and
- (d) all other persons requesting notice.

At the public hearing, all interested persons shall be afforded a reasonable opportunity to testify and present evidence." (municipal code section 12.20.2 F)

The Notice of Public Hearing was mailed on February 17, 2005 to all owners and occupants of property within 100 feet of Windward Circle and all parties known to have a particular interest in the project. The mailing list was based upon the latest records of the Los Angeles County Assessor and the City Engineer. Based on the requirements stated in the municipal code, the public hearing for the proposed project was adequately noticed.

The Ralph M. Brown Act was enacted in 1961 to assure government is conducted in the open. Also known as the "Open Meetings Law", the law is found in Government Code Section 54950-54961. Although you assert that the City Engineer's actions violated the Brown Act, the act does not allow nor prevent the City Engineer from conducting a public hearing and issuing coastal permits. The Brown Act does set minimum standards for providing public access to and involvement in governmental actions. The coastal permit process laid out in the Municipal Code, which includes a 10-day advance public notice, complies with the minimum standards of the Brown Act.

The California Environmental Quality Act identifies a list of classes of projects which do not have a significant effect on the environment and which are therefore do not require the preparation of an environmental document. These categorical exemptions include minor alteration of existing public facilities (Class 1) and minor public or private alterations to the condition of land, water and/or vegetation (Class 4). The proposed placement of a sculpture within the Windward Circle median island is "categorically exempt" project.

Should you have further questions, please contact Ara Kasparian of my staff at (213) 847-8815.

Sincerely,

Gary Lee Moore

Gary Lee Moore, P.E.
City Engineer

cc: Ms. Valerie Lynne Shaw, President of the Board of Public Works
Ms. Ellen Stein, Vice-President of the Board of Public Works

COASTAL COMMISSION

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CITY ENGINEER

1149 S. BROADWAY, SUITE 700
LOS ANGELES, CA 90015-2213

<http://eng.lacity.org>

ISSUANCE DATE: September 24, 2007
PERMIT: 06-07

NOTICE OF PERMIT ISSUANCE
Venice Pumping Plant Sluice Gate Replacement
CDP06-07

Please take notice that the above referenced Local Coastal Development Permit (CDP) 06-01 was issued on September 24, 2007, pursuant to a public hearing held on September 4, 2007, and a Notice of Decision on September 14, 2007. This notice is also following the expiration of the mandatory ten (10) day appeal period in which no appeals were filed.

The applicant should sign one (1) copy of the permit and return it to the:

Bureau of Engineering
Environmental Management Group
1149 South Broadway, 6th Floor
Los Angeles, CA 90015
ATTN: William Jones, Environmental Specialist II

A period of twenty (20) days must expire from the date this notice is received by the California Coastal Commission before this permit will become effective. The development is in the dual jurisdictional area and will require an additional permit from the California Coastal Commission, South Coast Area. An application for a State Coastal Development Permit and all appropriate file material are required.

If you have any questions regarding the Local Coastal Development Permit, please contact William Jones at (213) 485-5760.

Sincerely,

Gary Lee Moore, P.E.
City Engineer

By: Ara J. Kasparian, Ph.D.
Manager
Environmental Management Group

GLM/AJK/JD/wj:CDP06-07-vsg-nopi-ltr.doc

Attachment: Coastal Development Permit
cc: California Coastal Commission with

1. Coastal Development Permit
2. Notice of Decision
3. Final Staff Report
4. Application

**FINAL LOCAL
ACTION NOTICE**

RECEIVED

REFERENCE #

APPEAL PERIOD

10/3/07

CDP 06-07

11/1/07

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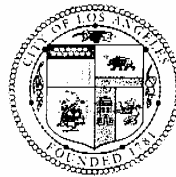
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LOS ANGELES, CA 90015-2213

<http://eng.lacity.org>

COASTAL DEVELOPMENT PERMIT

(Under authority of Sec. 30600(b) of the California Coastal Act of 1976)

PROJECT TYPE: (X) Public () Private

APPLICATION NUMBER: 06-07 (Revised 2007)

NAME OF PROJECT: VENICE PUMPING PLANT
SLUICE GATE REPLACEMENT

NAME OF APPLICANT: Bureau of Engineering, Wastewater Program

DEVELOPMENT LOCATION: Venice

DEVELOPMENT DESCRIPTION: The proposed project is to rehabilitate and/or replace an aging, damaged sluice gate that threatens the efficient and safe conveyance of sanitary sewer flows into the wastewater collection system. The existing sluice gate is located within the Venice (Sewage) Pumping Plant (VPP). The gate is used to control the flow of wastewater through the plant; an effectively functioning gate allows plant operators to manage the volume and speed of wastewater through the system. The existing gate is badly corroded and is incapable of being operated effectively. A new gate is intended to enhance the efficiency and safe operation of the plant.

The proposed action requires installation of temporary sewage pumping equipment at two existing maintenance holes, with a temporary above-ground sewage pipeline connecting them, to divert wastewater flows around the Venice Pumping Plant (VPP), while the degraded internal sluice gate is replaced. This rehabilitation project would require the temporary pumping equipment to be in operation for about one month; however, considering setup and disassembly, the pipeline and equipment would be in place for up to four months. The project will further require closure of one intersection (Driftwood Street and Strongs Drive) and one street segment (Hurricane Street, from Grand Canal Esplanade to Canal Court).

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PAGE 2 OF 7

Upon installation of a new sluice gate within the plant, all temporary equipment would be removed and the area would be restored to its previous condition, including revegetation (using native species prescribed in the Venice Local Coastal Plan, Venice Specific Plan and consistent with the Venice Canals Rehabilitation Plan and the Ballona Lagoon Enhancement Plan) along the western bank of the Grand Canal Esplanade (between Driftwood Street in the north and Hurricane Street in the south).

Construction is scheduled to last twelve months. The total duration of the temporary bypass is expected to not exceed four months- consisting of 1.5 months of set up time, with one month of sewer bypassing, followed by 1.5 months of disassembly.

I. FINDINGS: In keeping with the findings and recommendations set forth in the adopted staff report incorporated herein by reference, the City of Los Angeles finds that:

- (a) That, whereas the proposed development will not significantly affect the public access, recreation, marine environment, land resources, or industrial development, the development is in conformity with Chapter 3 of the California Coastal Act of 1976.
- (b) That, whereas the development is in conformity with the Venice Community Plan; and whereas the proposed project will not prevent access to the shore; therefore, the proposed development will not prejudice the ability of the City of Los Angeles to implement a Local Coastal Plan that is in conformity with Chapter 3 of the California Coastal Act of 1976.
- (c) That, as evidenced in the staff report on this development, the Interpretative Guidelines established by the Coastal Commission dated August 14, 1978 and any subsequent amendments thereto have been reviewed, analyzed, and considered in the light of the individual project in making this determination, and the decision of the permit granting authority has been guided by any applicable decision of the Coastal Commission.
- (d) That, as evidenced in the staff report on this project, the decision of the permit granting authority has been guided by any applicable decision of the California Coastal Commission pursuant to Section 30525 of the Public Resources Code.

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- (e) That, whereas the City on June 14, 2007, prepared a Mitigated Negative Declaration, which indicated that Installation of the temporary pumping equipment and pipeline is expected to result in noise impacts and disturbance of vegetation. In order to reduce the potential of any accidental spill reaching the Grand Canal waterway and to remain consistent with the environmentally sensitive land use planning designation for the area, mitigation measures were crafted to ensure that any impacts are reduced to a less than significant level. An MND was previously issued for this project in December of 2005; however, after Council approved the original document, the construction approach was changed to that described herein. The revised and recirculated MND entirely supersedes the earlier MND and has been prepared in accordance with the California Environmental Quality Act (CEQA), Public Resources Code §21000 et seq., and the CEQA Guidelines, California Code of Regulations (CCR) 15000 et seq. The revised MND has been circulated for public review and comment (from June 14, 2007 until July 16, 2007). No comments were received within the prescribed comment period. Nevertheless, one mitigation measure (BIO4/HYD04/LUP04) was modified, based upon late comments received from one state agency- the Regional Water Quality Control Board. Aside from that point, the MND underwent no revisions subsequent to public circulation and no significant impacts are anticipated from the project following implementation of the identified mitigation measures. The California Environmental Quality Act, as provided in the California Environmental Quality Act, available for imposition by this authority under the power granted to it which would substantially lessen any adverse impact that the development, as finally permitted may have on the environment.
- (f) Pursuant to a public hearing held on September 4, 2007, at the Venice-Abbot Kinney Memorial Branch Library (501 S. Venice Boulevard, Venice, CA 90291), in the Community of Venice., permit application number 06-07 was approved with conditions.

II. The following conditions of approval are the original conditions as specified in the project's California Environmental Quality Act Mitigation Monitoring Program:

- (a) All construction-impacted vegetation along the western Grand Canal bank (down slope from the temporary bypass pipeline and pumping equipment) would be replaced (in accordance with those species identified in the Venice Local Coastal Program/LUP, Venice Canals Rehabilitation Plan, Ballona Lagoon Enhancement Plan, and Appendix B of the Venice Specific Plan) and non-native species would be eradicated during the replanting process.

- (b) The revegetation plan would be evaluated and approved by the City's Bureau of Engineering, Environmental Management Division.
- (c) Replacement vegetation would be maintained for two- to three-years by the City and its contractors (to ensure species establishment and survival).
- (d) Locate pumps along with suction and discharge manifolds, in an asphaltic concrete-bermed containment area.
- (e) All suction and discharge piping outside of the containment area will be double contained with the containment pipe sloped to the maintenance holes or to the bermed containment area.
- (f) Valved, collection pockets will be provided at low points along the 980-ft discharge line to drain any leakage in the containment pipe. If leakage occurs, the sewage will be collected in suitable containers for disposal. Prior to the start of construction, the Contractor will submit a storm water pollution prevention plan in accordance with the California Stormwater Quality Association Stormwater Best Management Practice (BMP) Handbook to ensure the most appropriate BMPs are implemented for the specific methods of construction. Acceptable sediment control BMPs include sediment traps (SE-3), gravel bag-berms (SE-6) or sandbag barriers (SE-8).
- (g) All sewer bypass pump equipment would be placed as far away from occupied residences as possible and would be entirely insulated with acoustical shielding to reduce noise generation to a less than significant level in conformance with City of Los Angeles thresholds.
- (h) The City would evaluate noise and vibration levels in selecting the sewer bypass pump equipment and, all else being equal concerning a balance of cost and performance, would utilize equipment with the lowest noise and vibration generation levels. An acoustical barrier system, with walls 24 feet in height, will be required to completely surround the by-pumps at both sites, and be positioned as close as possible to the pumps (2 feet in above calculations) with no gaps or openings in the walls.

COASTAL COMMISSION

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III. The proposed development is subject to the following conditions imposed pursuant to the California Coastal Act of 1976:

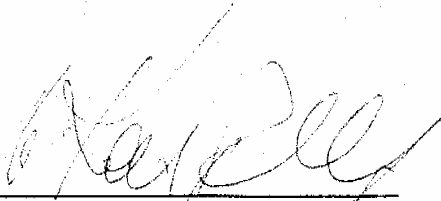
- (a) Notice of Receipt and Acknowledgment: The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the City Engineer's office.
- (b) Expiration. If development has not commenced, the permit will expire two years from the permit date as reported from the Coastal 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.
- (c) Interpretation. Any questions of intent or interpretation of any condition will be resolved by the City Engineer.
- (d) Assignment. The permit may be assigned to any qualified person, provided assignee files with the City Engineer an affidavit accepting all terms and conditions of the permit.
- (e) Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the City Engineer and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.
- (f) Other approvals: Because of the location of the project within the dual zone, a Coastal Development Permit must be obtained from the State Coastal Commission.

IV. Issued: September 25, 2007, pursuant to local government authority as provided in Chapter 7 of the California Coastal Act of 1976. This permit may not be assigned to another person except as provided in Section 13170, Coastal Commission Rules and Regulations.

V. This permit shall not become effective until the expiration of 20 working days after a COPY of this permit has been received by the Regional Commission, upon which copy all permittees or agent(s) authorized in the permit application have acknowledged that they have received a copy of the permit and have accepted its contents, unless a valid appeal is filed within that time. The acknowledgement should be returned within ten (10) working days following issuance of the permit but in any case prior to commencement of construction. If the acknowledgement has not been returned within the time for commencement of construction under

Section 13156(g), the executive director shall not accept any application for the extension of the permit.

By:


Ara J. Kasparian, Ph.D., Manager
Environmental Management Group

IX. I, Sean Zahedi, Project Manager, Sanitary Engineer, Wastewater Conveyance Engineering Division, permittee/agent, hereby acknowledge receipt of permit number 06-07 and have accepted its content:

COASTAL COMMISSION

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