

**CALIFORNIA COASTAL COMMISSION**

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



# Th10a

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180th Day:	N/A
Staff:	S. Vaughn-LB
Staff Report:	11/30/2017
Hearing Date:	12/14/2017

## STAFF REPORT: APPEAL - DE NOVO

**Application Number:** A-5-VEN-15-0038

**Applicant:** Dunes Development, LLC

**Agents:** Laurette Healey & Daniel Freedman

**Appellants:** 1) Coastal Commission Executive Director, 2) James Murez; and 3) Robin Rudisill, James McCullagh, Maripaz Maramba, Marie Pabianova, Kimmy Miller, Roxanne Brown, and Ilana Marosi

**Project Location:** 259 Hampton Drive, Venice, City of Los Angeles

**Project Description:** After-the-fact request for change of use of a tool engineering shop to a full-service restaurant. The applicant also proposes extensive renovation and major addition to the one-story, 1,658 sq. ft. structure resulting in a two-story, 2,831 sq. ft. restaurant with 500 sq. ft. of service floor area, 12 bicycle parking stalls, and no existing or proposed vehicle parking spaces on a 1,871 sq. ft. lot.

**Staff Recommendation:** Approval with Conditions

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## SUMMARY OF STAFF RECOMMENDATION

This is a De Novo hearing for an appeal of a local coastal development permit issued by the City of Los Angeles for a change of use and addition to a 1,658 sq. ft. structure to a 2,831 sq. ft. sit-down restaurant, including construction of a new second story. On July 14, 2016, the Commission found that a substantial issue exists with respect to the grounds on which the appeals have been filed. The grounds for the appeals were that the proposed development would adversely affect public access to the shoreline by exacerbating the parking shortage in Venice, and that the City's approval of the project was inconsistent with the certified Venice Land Use Plan (LUP) and it would prejudice the City's ability to prepare a certified LCP consistent with the Coastal Act.

The applicant is requesting after-the-fact approval for a change in use of a tool engineering shop to a full-service Restaurant. The existing building is currently occupied by a restaurant with sidewalk dining, even though its legally permitted use is a tool shop. The applicant is also proposing an extensive renovation and major addition to the existing structure as described above. The major issue regarding the proposed project concerns public access to the coast.

The proposed new restaurant would require a minimum of 13 vehicle parking spaces pursuant to the parking and public access policies set forth in the certified Venice LUP. The applicant contends that the proposed development would only require 11 vehicle parking spaces. The applicant does not propose any new vehicle parking spaces to support the demand of the proposed new restaurant. Rather the applicant asserts the maintained right to eight grandfathered parking credits (nonexistent parking spaces) and proclaims that 12 bicycle parking stalls and a traffic demand management plan would satisfy the parking requirement for the proposed restaurant. Given the extensive renovation and major addition proposed for the existing structure, any grandfathered parking credits associated with the permitted tool engineering shop would be forfeited and the proposed development would be required to conform to the current development standards, including the parking requirements, set forth in the certified LUP.

The project site is located three blocks from the beach and boardwalk in an area where the demand for parking far exceeds the parking supply. The competition for the limited amount of public parking in the vicinity of the project site has led to numerous requests for restricted “resident only” permit parking, and the cost of parking for a day at the beach can exceed twenty dollars. The Commission has denied the City’s applications for “resident only” permit parking based on adverse impacts to public access [Appeal Nos. [A-5-VEN-08-340](#), [A-5-VEN-08-341](#), [A-5-VEN-08-342](#), [A-5-VEN-08-343](#) & [A-5-VEN-08-344](#)]. Customers and employees of the proposed restaurant would vie for the existing parking in the vicinity of the project, which is already inadequate to meet the demand. The applicant’s proposal explicitly increases the intensity of the use of the site and offers no vehicle parking spaces to meet its demand, which is inconsistent with the parking requirements and public access policies of the certified LUP and the Coastal Act.

Staff recognizes the size constraints of the 1,871 sq. ft. lot and the difficulty of providing parking spaces on the site or on any other site nearby. In the absence of new parking spaces, however, a project that greatly increases the intensity of use of the site is inconsistent with the Coastal Act public access policies as well as the City’s certified LUP. In order to accommodate a restaurant use at the site, the applicant may use of the existing building in a manner that does not alter the site as significantly as proposed, or increase the intensity of use of the site so much that the applicant is no longer entitled to maintain the eight grandfathered parking credits associated with the legally permitted use of the site, which is a tool engineering shop. A scaled-down project, which does not significantly increase the intensity of the permitted use of the site, can be found to be consistent with the parking requirements and public access policies of the certified LUP and the Coastal Act. Therefore, staff recommends that the Commission approve a revised project that eliminates the proposed major addition (second floor) for which the applicant cannot provide the parking necessary to mitigate the impacts of the proposed development.

Staff recommends that the Commission **approve** a coastal development permit the proposed restaurant use with **six (6) special conditions**, including: **1) Permit Compliance**; **2) Revised Plans**; **3) Future Improvements**; **4) Post Development Runoff Plan**; **5) Construction best management practices (BMPs)** ; and **6) Deed Restriction**. The motion is on Page Four.

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### **APPENDICES**

Appendix A - Substantive File Documents

### **EXHIBITS**

Exhibit 1 – Project Location / Vicinity Map

Exhibit 2 – Project Plans, September 20, 2017

Exhibit 3 – Appeals

Exhibit 4 – Local Coastal Development Permit / DIR 2010-2932-SPP & ZA 2012-1770-CDP

Exhibit 5 – City of Los Angeles local CDP 84-005, June 21, 1984

Exhibit 6 – Letter from the Applicant, October 22, 2017

Exhibit 7 – Certificate of Occupancy Applications, 1969, 1986, & 1987 & Certificate of Occupancy, 1991

## I. MOTION AND RESOLUTION

**Motion:** *I move that the Commission **approve** Coastal Development Permit No. A-5-VEN-15-0038 pursuant to the staff recommendation.*

Staff recommends a **YES** vote. Passage of this motion will result in approval of the permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

**Resolution:**

*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. 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

This permit is granted subject to the following standard conditions:

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

### III. SPECIAL CONDITIONS

This permit is granted subject to the following special conditions:

1. **Permit Compliance.** Coastal Development Permit A-5-VEN-15-0038 authorizes the use of the existing one-story, 1,658 sq. ft. structure as a restaurant with a maximum of 400 sq. ft. of service floor area (not including a 44-inch wide path of travel from the front door to the restroom). Outdoor dining areas are not permitted. The existing structure can be renovated, however, the permittee shall maintain a minimum of 51% of the structure, including, but not limited to, the roof, all components of the perimeter walls, floor, façade, and foundation. The mass, volume and height of the structure shall not be increased. All development must occur in strict compliance with the special conditions and the revised plans required by Special Condition Two below. The permittee shall undertake development in accordance with the approved revised plans. Any proposed changes to the approved final plans shall be reported to the Executive Director. No changes to the project or 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. In the event that 51% of the existing structure is not maintained, or modifications to the structure exceed that shown in the approved plans, the applicant shall cease work at the site and apply for an amendment to this coastal development permit.
  
2. **Revised Plans**
  - A. PRIOR TO THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for the review and approval of the Executive Director, two (2) full-sized sets of final project plans drawn to scale that show development consistent with the requirements of Special Condition One. The final project plans shall verify the mass, volume and height of the existing structure. The final project plans shall highlight and include calculations of the amount of demolition (material removal and/or replacement) of the entire structure, including but not limited to: the roof, entire components of the interior and exterior walls, interior fixtures, floor, and foundation. The final project plans shall also highlight and include calculations of the amount of new materials and construction of the entire site. The final project plans shall include calculations and contrast the features of the remaining portions of the existing structure with that of all modifications to the structure and its interior. The final plans shall also include floor plans, path of travel, service floor area, kitchen, restroom, etc.
  
  - B. The permittee shall undertake development in accordance with the approved final plans. 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-approved amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.
  
3. **Future Permit Requirement.** This permit is only for the development described in coastal development permit (CDP) A-5-VEN-15-0038. Pursuant to Title 14 California Code of Regulations (CCR) Section 13253(b)(6), the exemptions otherwise provided in Public Resources Code (PRC) Section 30610(b) shall not apply to the development governed by CDP A-5-VEN-15-0038. Accordingly, any future improvements to this structure authorized by this permit shall require an amendment to CDP A-5-VEN-15-0038 from the Commission or shall require an additional CDP from the Commission or from the applicable certified local

government. In addition thereto, an amendment to CDP A-5-VEN-15-0038 from the Commission or an additional CDP from the Commission or from the applicable certified local government shall be required for any repair or maintenance identified as requiring a permit in PRC Section 30610(d) and Title 14 CCR Sections 13252(a)-(b).

- 4. Post-Development Runoff Plan.** PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit, for the review and written approval of the Executive Director, a final Post-Development Runoff Plan that demonstrates that the project complies with the following requirements:
- A. **Implement Source Control BMPs.** Appropriate and feasible long-term Source Control BMPs, which may be structural features or operational practices, shall be implemented to minimize the transport of pollutants in runoff from the development by controlling pollutant sources and keeping pollutants segregated from runoff. Use strategies such as covering outdoor storage areas; using efficient irrigation; proper application and clean-up of potentially harmful chemicals and fertilizers; and proper disposal of waste.
  - B. **Manage BMPs for the Life of the Development.** Appropriate protocols shall be implemented to manage BMPs (including ongoing operation, maintenance, inspection, and training) to keep the water quality provisions effective for the life of the development. The project shall comply with the following requirements:
    - 1. On a weekly basis, the applicant shall, sweep impervious surfaces to remove litter, sediment, and other debris.
    - 2. Washing-down of impervious surfaces is prohibited, unless these nuisance flows are diverted through an approved filter and do not contribute any additional pollutants to the runoff.
    - 3. The applicant shall use trash and recycling containers that, if they are to be located outside or apart from the principal structure, are fully enclosed and water-tight in order to prevent stormwater contact with waste matter which can be a potential source of bacteria, grease, and other pollutants in runoff.
    - 4. Wash down areas for restaurant equipment and accessories shall be self-contained, equipped with a grease interceptor (minimum capacity of 750 gallons), and properly connected to a sanitary sewer. If the wash area is to be located outdoors, it should be covered, paved, have primary containment, and be connected to the sanitary sewer. The grease interceptor shall be regularly maintained according to manufacturer's specifications to ensure maximum removal efficiencies.
  - C. **Site Plan and Narrative Description.** The Post-Development Runoff Plan shall include a site plan and a narrative description addressing, at a minimum, the following required components:
    - 1. A site plan, drawn to scale, showing the property boundaries, building footprint, runoff flow directions, relevant drainage features, structural BMPs, impervious surfaces, permeable pavements, and landscaped areas.
    - 2. Identification of pollutants potentially generated by the proposed development that could be transported off the site by runoff.
    - 3. An estimate of the proposed changes in (1) impervious surface areas on the site, including pre-project and post-project impervious coverage area and the percentage of

- the property covered by impervious surfaces; (2) the amount of impervious areas that drain directly into the storm drain system without first flowing across permeable areas; and (3) site coverage with permeable or semi-permeable pavements.
4. A description of the BMPs that will be implemented, and the Low Impact Development approach to stormwater management that will be used. Include a schedule for installation or implementation of all post-development BMPs.
  5. A description and schedule for the ongoing management of all post-development BMPs (including operation, maintenance, inspection, and training) that will be performed for the life of the development, if required for the BMPs to function properly.

The permittee shall undertake development in accordance with the approved Post-Development Runoff Plan, unless the Commission amends this permit or the Executive Director determines issues a written determination that no amendment is legally required for any proposed minor deviations.

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

- (a) No demolition or construction materials, debris, or waste shall be placed or stored where it may enter sensitive habitat, receiving waters or a storm drain, or be subject to wave, wind, rain, or tidal erosion and dispersion.
- (b) No demolition or construction equipment, materials, or activity shall be placed in or occur in any location that would result in impacts to environmentally sensitive habitat areas, streams, wetlands or their buffers.
- (c) Any and all debris resulting from demolition or construction activities shall be removed from the project site within 24 hours of completion of the project.
- (d) Demolition or construction debris and sediment shall be removed from work areas each day that demolition or construction occurs to prevent the accumulation of sediment and other debris that may be discharged into coastal waters.
- (e) All trash and debris shall be disposed in the proper trash and recycling receptacles at the end of every construction day.
- (f) The applicant shall provide adequate disposal facilities for solid waste, including excess concrete, produced during demolition or construction.
- (g) Debris shall be disposed of at a legal disposal site or recycled at a recycling facility. If the disposal site is located in the coastal zone, a coastal development permit or an amendment to this permit shall be required before disposal can take place unless the Executive Director determines that no amendment or new permit is legally required.
- (h) All stock piles and construction materials shall be covered, enclosed on all sides, shall be located as far away as possible from drain inlets and any waterway, and shall not be stored in contact with the soil.
- (i) Machinery and equipment shall be maintained and washed in confined areas specifically designed to control runoff. Thinners or solvents shall not be discharged into sanitary or storm sewer systems.
- (j) The discharge of any hazardous materials into any receiving waters shall be prohibited.
- (k) Spill prevention and control measures shall be implemented to ensure the proper handling and storage of petroleum products and other construction materials. Measures shall include a designated fueling and vehicle maintenance area with appropriate berms and protection to prevent any spillage of gasoline or related petroleum products or contact with runoff. The

area shall be located as far away from the receiving waters and storm drain inlets as possible.

- (l) Best Management Practices (BMPs) and Good Housekeeping Practices (GHPs) designed to prevent spillage and/or runoff of demolition or construction-related materials, and to contain sediment or contaminants associated with demolition or construction activity, shall be implemented prior to the on-set of such activity
- (m) All BMPs shall be maintained in a functional condition throughout the duration of construction activity.

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

## IV. FINDINGS AND DECLARATIONS

### A. PROJECT DESCRIPTION

The applicant requests after-the-fact approval for a change in use from a 1,658 sq. ft. tool engineering shop to a full-service sit-down restaurant. The applicant also proposes an extensive renovation and major addition to the existing structure including: significant alteration of the building's foundation in order to accommodate a subterranean housing unit for a new elevator and structural support for a new second floor, and a complete interior renovation. The proposed project would result in a two-story, 2,831 sq. ft. restaurant with 500 sq. ft. of service floor area. The proposal includes twelve new bicycle parking stalls but no vehicle parking or loading area.

The project site is located at 259 Hampton Drive in the North Venice subarea of the City of Los Angeles approximately three blocks from the beach and boardwalk. The 1,871 sq. ft. lot is designated as Limited Industry by the certified Venice Land Use Plan (LUP) ([Exhibit 1](#)). The surrounding neighborhood is comprised of residential, commercial, industrial and institutional uses. According to the City, the site is currently developed with a single-story 1,658 sq. ft. building operating as retail and food take-out uses with no physical vehicle parking spaces.

### Dual/Single Permit Jurisdiction

The proposed development is within the coastal zone of the City of Los Angeles. Section 30600(b) of the Coastal Act allows a local government to assume permit authority prior to certification of its Local Coastal Program. Under that section, the local government must agree to issue all permits



within its jurisdiction. In 1978 the City of Los Angeles chose to issue its own CDPs pursuant to this provision of the Coastal Act.

Within the areas specified in Section 30601 of the Coastal Act, which is known in the City of Los Angeles permit program as the Dual Permit Jurisdiction Area, the Act requires that any development that receives a local CDP also obtain such a permit from the Coastal Commission. Section 30601 requires a second CDP from the Commission on all lands located (1) between the sea and the first public road, (2) within 300 feet of the inland extent of a beach, or the sea where there is no beach, (3) on tidelands or submerged lands, (4) on lands located within 100 feet of a wetland or stream, or (5) on lands located within 300 feet of the top of the seaward face of a coastal bluff. Outside that area, the local agency's (City of Los Angeles) CDP is the only coastal development permit required, although all such permits are appealable to the Commission. Thus it is known as the Single Permit Jurisdiction Area.

The proposed development is not located within the Dual Permit Jurisdiction Area specified in Section 30601. Therefore, only a single coastal development permit is required from the City of Los Angeles, but that permit may be appealed to the Commission, as was the case with Coastal Development Permit No. ZA-2012-1770 issued by the City of Los Angeles for this development.

### **Project History**

On September 18, 2014, the Zoning Administration held a public hearing for Local CDP No. ZA-2012 – 1770 (Dunes Development, LLC). The Zoning Administration approved the project, which was then appealed by Ms. Ilana Marosi to the West Los Angeles Area Planning Commission (WLAAPC). On April 1, 2015, the WLAAPC held a combined public hearing for the local CDP and Specific Plan compliance case DIR 2010-2932 (Richard J. Gottlieb & Dunes, LLC). On May 18, 2015, the WLAAPC issued its determination approving Local CDP No. ZA 2012 – 1770 (ENV 2013 – 2592 – MND) and DIR 2010-2932 for a change of use of a 1,042 sq. ft. retail store to a 1,658 sq. ft. full service sit-down restaurant with 616 sq. ft. of service floor area ([Exhibit 4](#)). On June 5, 2015, the WLAAPC issued a corrected determination only for Local CDP No. ZA2012-1770.

The City's Notice of Final Local Action for Local CDP No. ZA 2012-1770 was received in the Coastal Commission's Long Beach Office on June 8, 2015, and the Coastal Commission's required twenty working-day appeal period was established. On June 29, 2015, Mr. James Murez submitted an appeal to the City's approval of the Local CDP ([Exhibit 3](#)). On July 6, 2015, Mr. James McCullagh, Ms. Maripaz Maramba, Ms. Marie Pabianova, Ms. Kimmy Miller, Ms. Roxanne Brown, Ms. Ilana Marosi, Ms. Robin Rudisill, and the Coastal Commission Executive Director submitted appeals of the City's local CDP ([Exhibit 3](#)).

The Commission had originally scheduled the substantial issue and de novo hearing for August 12, 2015. The staff report was published on July 23, 2015. At that time, Commission staff was recommending that the Commission determine a substantial issue exists with respect to the grounds on which the appeals were filed because, as approved by the City, the proposed restaurant would adversely affect the public's ability to access the coast in this area because the additional parking demands generated by the new restaurant were not adequately mitigated, thereby resulting in an increase in competition for the limited supply of public parking. Additionally, approval of development that exacerbates the parking shortage in Venice would prejudice the City's ability to prepare a certified LCP. At that time staff also recommended denial of the proposed project because

there was no requirement by the City or proposal by the applicant to adequately mitigate the increased demand for parking associated with the proposed restaurant.

After the July 23, 2015 staff report was published, the applicant requested on July 30, 2015 to postpone the agenda item August 12, 2015 Commission appeal hearing. Commission staff met with the applicant's representatives on July 24, 2015, February 2, 2016, and July 7, 2016 to discuss the feasibility of leasing existing off-site vehicle parking spaces to support the parking needs of the proposed restaurant. A new public hearing was scheduled for the appeal and the proposed project on July 14, 2016. During that hearing, the Commission determined that a substantial issue did exist with respect to the grounds on which the appeals were filed. At that time, the applicant was proposing a 2,798 sq. ft. restaurant with a service floor area between 995 sq. ft. and 1,140 sq. ft. Commission staff determined that, the applicant's proposal would typically require 25 vehicle parking spaces (see Commission staff report [A-5-VEN-15-0038, June 23, 2016](#)). The applicant disagreed with staff and asserted that it was only required to provide six vehicle parking spaces and proposed to do so by leasing them from St Joseph's Center, a church located about one block north of the project site. During the de novo phase of the hearing, staff informed the Commission that the proposal to lease parking from St. Joseph's Center was not a feasible alternative because any available parking in that lot was already being made available for beach goers at a price lower than that charged in the nearby County-operated beach parking lots; thus, the proposed use of St. Joseph's parking for a new use would result in adverse impacts to public access. Ultimately, on July 14, 2016 the Commission voted to continue the de novo phase of the hearing in order to allow the applicant to continue its search for a viable parking supply to support the demand of the proposed restaurant.

The applicant again met with Commission staff on June 27, 2017. During that meeting the applicant proposed to lease parking spaces from a commercial building located at 3100 Main Street in Santa Monica, two blocks from the project site and two blocks from the beach. The property at that address straddles the border of the Cities of Santa Monica and Los Angeles (Venice). The Venice portion of the property is located in the Single Permit Jurisdiction Area of the City of Los Angeles.

Commission staff reviewed the applicant's new proposal for leasing off-site parking and found that on June 21, 1984, the City of Los Angeles approved Local CDP No. 84-005 for the commercial building located at 3100 Main Street ([Exhibit 5](#)). Special Condition Eight of Local CDP No. 84-005 requires all excess "on-site parking [to be made] available to the general public [on weekends and holidays] at a rate no higher than half the normal weekday rate, but in no event more than the rate charged by the County of Los Angeles on public parking lots along the coast." As such, the parking proposed to be leased by the applicant was not a feasible alternative because doing so would adversely affect public access and would be inconsistent with the terms of the underlying CDP.

On October 22, 2017, the applicant sent its final proposal ([Exhibit 6](#)) to Commission staff and requested to be scheduled for the next available hearing. The applicant's current proposal is described above. The applicant no longer proposes to lease any off-site vehicle parking spaces to support the needs of the proposed restaurant and proposes no actual new physical vehicle parking spaces.

## B. PUBLIC ACCESS

Section 30212.5 of the Coastal Act states:

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

Section 30213 of the Coastal Act states:

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

Section 30252 of the Coastal Act states:

*The location and amount of new development should maintain and enhance public access to the coast by (1) facilitating the provision or extension of transit service, (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads, (3) providing nonautomobile circulation within the development, (4) **providing adequate parking facilities or providing substitute means of serving the development with public transportation**, (5) assuring the potential for public transit for high intensity uses such as high-rise office buildings, and by (6) assuring that the recreational needs of new residents will not overload nearby coastal recreation areas by correlating the amount of development with local park acquisition and development plans with the provision of onsite recreational facilities to serve the new development. [Emphasis added]*

Policy I.E.5 of the certified LUP states:

*Where **extensive renovation of and/or major addition to a structure is proposed and the affected structure is nonconforming** or there is another nonconforming structure on the site, or a project is proposed **that would greatly extend the life of a nonconforming structure** or that eliminates the need for the nonconformity, the following shall apply:*

***Unless the City finds that it is not feasible to do so, the project must result in bringing the nonconforming structure into compliance with the current standards of the certified LCP, unless in its nonconformity it achieves a goal associated with community character (i.e. the reuse and renovation of a historic structure) or affordable housing that could not be achieved if the structure conforms to the current standards of the certified LCP.** [Emphasis added]*

Policy II.A.1 of the certified LUP states:

*It is the policy of the City to provide increased parking opportunities for both beach visitors and residents of Venice, and improve summer weekend conditions with respect to Venice Beach parking and traffic control.*

Policy II.A.3. of the certified LUP states:

*The parking requirements outlined in the following table shall apply to all new development, **any addition and/or change of use**. The public beach parking lots and the Venice Boulevard median parking lots shall not be used to satisfy the parking requirements of this policy. **Extensive remodeling of an existing use or change of use which does not conform to the parking requirements listed in the table shall be required to provide missing numbers of parking spaces** or provide an in-lieu fee payment into the Venice Coastal Parking Impact Trust Fund for the existing deficiency. The Venice Coastal Parking Impact Trust Fund will be utilized for improvement and development of public parking facilities that improve public access to the Venice Coastal Zone. [Emphasis added]*

Restaurant, Night Club, Bar, and similar establishments and for the sale or consumption of food and beverages on the premises	1 space for each 50 square feet of service floor area (including outdoor service areas).
Manufacturing and Industrial Establishment, including Offices and other than incidental operations.	3 spaces; plus 1 space for each 350 square feet of floor area.

Policy II.A.4. of the certified LUP states:

*Any new and/or any addition to commercial, industrial, and multiple-family residential development projects within the Beach Impact Zone shall provide additional (in addition to parking required by Policy II.A.3) parking spaces for public use or pay in-lieu fees into the Venice Coastal Parking Impact Trust Fund.*

*Beach Impact Zone (BIZ) Parking Impact Trust Fund criteria:*

*a. Commercial and industrial projects in the BIZ shall provide **one additional parking space for each 640 square feet of floor area of the ground floor. Up to 50% of the total number of these additional parking spaces required in this section may be paid for in lieu of providing the spaces.** [Emphasis added]*

*b. Multiple family residential projects on the BIZ shall provide an additional parking space for each 1,000 square feet of floor area of the ground floor for multiple dwelling projects of three units or more. Up to 100% of the total number of these additional parking spaces required in this section may be paid for in lieu of providing the spaces. The recommended rates shall be established based upon the development cost study of the area.*

*c. All in-lieu fees shall be paid into the Venice Coastal Parking Impact Trust Fund to be administered by the City of Los Angeles Department of Transportation for improvements and development of public parking facilities that support public access to the Venice Coastal Zone.*

*d. In no event shall the number of BIZ parking spaces (over and above those spaces required by the parking requirements set forth in Policy II.A.3) required for projects of three or more dwelling units, or commercial or industrial projects, be less than one (1) parking space for*

*residential projects and two (2) parking spaces for commercial and industrial projects.*  
[Emphasis added]

*Implementation Strategies*

*The in lieu fee for a BIZ parking space shall be established in the (LIP) at a rate proportional to the cost of providing a physical parking space.*

The legally permitted use of the existing structure on the subject site is a 1,658 sq. ft. tool engineering shop. The parking requirement outlined in the certified LUP for such a use is: 3 spaces; plus 1 space for each 350 square feet of floor area, which yields eight parking spaces (3 spaces + (1,658 sq. ft./350 sq. ft./space) = 3 spaces + 4.7 spaces = 7.7 spaces ≈ 8 spaces).

The applicant asserts that the proposed project will maintain 95% of the existing exterior walls (although with potentially significant alterations/additions to support a second floor) and therefore a grandfathered parking credit of eight spaces associated with the site will be maintained. The applicant further asserts that the grandfathered parking credit coupled with the proposed 12 new bicycle parking spaces leaves an entitlement of 500 sq. ft. of service floor area for the proposed restaurant.

LUP Policy I.E.5 states, in part, that “*where extensive renovation of and/or major addition to a structure is proposed and the affected structure is nonconforming or... a project is proposed that would greatly extend the life of a nonconforming structure ... the following shall apply: unless the City finds that it is not feasible to do so, the project must result in bringing the nonconforming structure into compliance with the current standards of the certified LCP ...*”

The proposed project includes a new second story (i.e. “major addition”) and remodeling a tool engineering shop into a restaurant including an elevator with a subterranean housing unit (i.e. “extensive renovation”). The foundation and walls of the structure will need to be significantly modified in order to support a second story and an elevator shaft. The structure is proposed to be extensively renovated and enlarged in a manner that will significantly increase the bulk and scale of the structure. The proposed project, with the addition of a second story as well as a full remodel of the interior, would result in an entirely new development almost twice as large as the existing structure. As such, LUP Policy I.E.5 is applicable, as the proposal is both an extensive renovation of and a major addition. Therefore, the proposed new development would need to comply with the current standards of the LUP, including the parking standards, thereby forfeiting the grandfathered parking credits associated with the existing tool engineering shop.

The applicant’s current proposal includes a two-story, 2,831 sq. ft. structure with 500 sq. ft. of net service floor area, 372 net sq. ft. of paths of travel through dining areas, 578 net sq. ft. of bathroom/storage/other area, and 748 net sq. ft. of kitchen area, including 407 sq. ft. on the first floor and 290 sq. ft. on the second floor, which leaves 633 sq. ft. of the proposed structure unaccounted for. The latest plans do not account for areas in the kitchens designated as prep, counter, dish, stovetops, or ovens; those areas are not accounted for in any other calculation ([Exhibit 2](#)). Each of the omitted areas within the kitchens should be included in the kitchen calculations. Additionally, three areas in the kitchen designated as “Shelving” and “Back Counter” are designated as bathroom/storage/other on the latest plans. Those areas should also be included in the kitchen calculations. Moreover, at least four areas that could be designated as circulation or service floor area are designated as bathroom/storage/other and new outside areas on the proposed second floor do

not have any designation and could very easily become outside dining area by simply adding tables to empty spaces and moving “mechanical equipment” to other open outdoor spaces. As such, the calculations of designated areas on the latest submitted plans do not accurately or completely account for the amount of service floor area in the proposed structure development. As proposed by the applicant, the new 2,831 sq. ft. structure would break down into approximately 18% service floor area, 13% paths of travel, 26% kitchen area, 20% bathroom/storage/other area, and 23% of area unaccounted for.

Nevertheless, even using the calculations provided by the applicant, with 500 sq. ft. of service floor area, the proposed restaurant would be required to provide 13 physical vehicle parking spaces. The certified LUP requires 1 space for each 50 sq. ft. of service floor area and 1 BIZ space per 640 sq. ft. ((1 space/50 sq. ft. service floor area) + (1 BIZ space/640 sq. ft. of ground floor area) = (500 sq. ft. (1 space/50 sq. ft.)) + (1,658 sq. ft. (1 space/640 sq. ft.)) = 10 spaces + 3.1 spaces ≈ 13 spaces).

The applicant asserts that the proposed development is required to provide 11 vehicle parking spaces not 13. This error occurred in the applicant’s calculation of BIZ parking spaces. The applicant stated that the “applicable” ground floor area for BIZ Parking spaces is 918 sq. ft. The LUP, however, simply applies to ground floor area and does not include the concept of “applicable” ground floor area. In addition, it is unclear what criteria the applicant is using to arrive at the “applicable” ground floor area. The applicant is proposing to maintain 95% of the existing exterior walls (with potentially significant alterations/additions to support a second floor). As such, it can be reasonably concluded that the existing area of the ground floor will also be maintained at, or very near to its existing 1,658 sq. ft. in area, which would yield three BIZ spaces as described above, not one. In any case the *minimum* BIZ spaces that the certified LUP requires for commercial development is two spaces. Therefore, even if the ground floor was reduced by 740 sq. ft. in area, the certified LUP would still require two vehicle parking spaces to satisfy the BIZ parking requirement, not one, which would yield a total of 12 vehicle parking spaces, not 11.

In any event, regardless of whether the parking requirements are for 12 or 13 vehicle parking spaces, the applicant is proposing no new physical vehicle parking spaces. The applicant proposes to satisfy the parking demand for the proposed development by relying on eight grandfathered (nonexistent) parking space credits, 12 bicycle parking stalls, and a traffic demand management plan (TDM) which would provide incentives for employees to not drive personal vehicles to work. The applicable parking standards for the proposed development are the Coastal Act with the certified LUP used as guidance. There are no provisions in the Coastal Act or the certified LUP that explicitly allow the substitution of bicycle parking stalls and TDMs for actual physical parking spaces. In the past, the Commission has found that allowing bicycle parking stalls and TDMs to substitute *some* of the required vehicle parking spaces, when the majority of required vehicle parking spaces were provided on site, is consistent with the Coastal Act ([A-5-VEN-14-0011](#), [A-5-VEN-15-0025](#), [A-5-VEN-16-0041](#)). However, given that the proposed new development would forfeit all grandfathered parking credits and the applicant is proposing no new actual parking spaces, it would not be adequate mitigation of the identified impacts to replace a 12 or 13 parking space requirement with only bicycle parking and TDMs. The proposed project would result in a new 2,831 sq. ft. restaurant (as opposed to an existing 1,658 square foot structure) with no vehicle parking spaces to support the parking demand of the proposed restaurant.

The applicant has made several assertions regarding the proposed project ([Exhibit 6](#)) and staff’s prior recommendations to the Commission regarding its proposal. In summary, the applicant claims:

(1) the subject lot is very small (1,871 sq. ft.) and “code compliant” regulations (i.e. commercial kitchen, ADA, bike storage, and trash room requirements) “necessitate” a new second story in order to accommodate the new proposed restaurant; (2) the District Council Office and nearby neighbors did not oppose the proposed restaurant; (3) the applicant already paid \$250,000 of in-lieu parking fees to the City of Los Angeles in order to gain local approval of the project with no physical parking spaces to support the proposed restaurant; (4) Commission staff has rejected the applicant’s proposals of leasing off-site parking spaces to support the project; (5) Commission staff adopted the position that parking facilities available to the public cannot be used to satisfy parking demand requirements, effectively closing the door for shared parking options in Venice; (6) the proposed project has been allowed to “languish” despite the applicant’s willingness to make “accommodations” that go “well beyond” those of similar projects that have been approved; (7) the existing building has a Certificate of Occupancy for a take-out food restaurant and has been operating as such since 1991; (8) the applicant has reduced the proposed service floor area from 619 sq. ft. to 500 sq. ft. in order to remove the need of supplying any physical parking spaces; and (9) in the June 23, 2016 staff report, Commission staff made unfounded assertions that it was impractical to retain and reuse much of the existing building for the proposed restaurant. These claims are all addressed below.

### **Small Lot Size**

Given the applicant’s concerns regarding the small lot size, kitchen requirements, ADA requirements, bike storage requirements, and trash room requirements, a smaller restaurant (like the one that has been operating in the structure for several years) would be more appropriate for the site in order to comply with the requirements of the Coastal Act (i.e. protection of public access to the coast by providing adequate parking). If Coastal Act requirements cannot be met in concert with a commercial kitchen, ADA requirements, bike storage, and trash room requirements on the small lot, perhaps a restaurant, or at least a restaurant of the size and scale proposed by the applicant, is not appropriate for this specific site, as it cannot be found consistent with the Coastal Act as proposed. Also, a continuation of the legally permitted use (tool engineering shop), or other use with similar parking demands, is a feasible option.

### **Local Support**

On October 10, 2013, the City held a public hearing on the proposed project. Although there were some neighbors who spoke in favor of the project, support for the project is not universal. A representative from Council District 11 (Debbie Dyner-Harris) spoke at the City’s public hearing and indicated that noise and parking associated with the proposed restaurant raised concerns by the Council office and that the Council office is opposed to the use of in-lieu fees to satisfy parking requirements. Additionally, the City received at least three letters from neighbors who expressed opposition to the project and one Venice stakeholder, Ilana Marosi, opposed the project by filing an appeal of the local CDP to the WLAAPC. Moreover, the Commission received appeals of the local CDP from eight Venice stakeholders and the Commission’s Executive Director. The Commission’s prior public hearing on the appeal included testimony from several project opponents. Thus, there is local opposition to the project.

### **Parking In-Lieu Fees**

Although the LUP does call for a Venice Coastal Parking Impact Trust Fund program into which in-lieu parking fees may be paid, the Commission has not reviewed or certified one. In past appeals ([A-5-VEN-15-0002](#) & [A-5-VEN-15-0003](#)), the Commission has found that a substantial issue exists with the in-lieu fee of \$18,000 per parking space that the City charges to applicants who do not

provide actual parking spaces. The City has not shown that it has analyzed any data relating to the effectiveness of the Venice Coastal Parking Impact Trust Fund. However, a Venice In-Lieu Parking Fee Study released in July 2012 offers evidence that suggests that the \$18,000 per parking space in-lieu fee is considerably inadequate to mitigate the parking impacts of new development. The study shows that in 2012 a single parking space in similar areas throughout Southern California can cost a developer between \$25,000 - \$80,000 per space, depending on the location and type (above or below ground) of the parking structure. Additionally, because the City has not evaluated the Venice In-Lieu Parking Fee Study Program, the City has failed to prove that the program is working and it has not demonstrated that it has plans to actually build more parking spaces with the fees that it has collected. Furthermore, BIZ spaces can only substitute 50% of required BIZ parking with an in-lieu fee. Even applying the in-lieu fee program under the City's erroneous interpretation of the LUP, the applicant would still be required to provide two actual physical BIZ parking spaces, which it does not. In any case, the City does not have an LCP Implementation Plan (IP) under which to incorporate the in-lieu fee for standard or for BIZ parking spaces as is required by the LUP. Therefore, the in-lieu fee that the applicant paid to the City is not consistent with the certified LUP and should not be used to satisfy a parking demand. It does nothing to mitigate the adverse impacts of the proposed development. Although the applicant has paid \$250,000 as an in lieu parking fee, such fee is not required or allowed under the existing LUP and it does not satisfy Coastal Act requirements to protect public access.

### **Off-site Parking**

The applicant had previously proposed to lease off-site parking at two locations. The first location that the applicant proposed to lease off-site parking was from St. Joseph's Center. Staff did not support that proposal because the site is located approximately two to three blocks from the beach and the available parking in that lot has been used for public beach parking at a rate lower than that of the nearby County operated beach parking lots. Thus, valuable public beach parking would have been lost in favor of private restaurant parking. That proposal was also presented to the Commission and rejected by it at the July 2016 hearing, at which time the Commission continued the de novo portion of the hearing in order to give the applicant an opportunity to find a viable source to lease off-site parking. The second proposal the applicant presented to Commission staff was to lease off-site parking at 3100 Main Street in Santa Monica. As described above, leasing parking spaces at that site would not be consistent with the underlying coastal development permit governing that development and in any case would have also displaced public parking. As such, the applicant's two proposals to lease off-site parking are not consistent with the Coastal Act because neither option provides a viable source of parking that does not displace public beach parking. Commission staff still supports a shared parking option in Venice, but to date the applicant has not propose any viable shared parking options that could be found consistent with the Coastal Act.

### **Timing of Consideration of the Application**

The substantial issue and de novo hearings for the proposed project were originally scheduled for the Commission's August 2015 meeting, within 49 days that the appeals were filed. On July 30, 2015, after the original staff report was published, the applicant requested to postpone the original substantial issue and de novo hearing for the appeal. Commission staff met with the applicant's representatives on July 24, 2015, February 2, 2016, July 7, 2016, August 30, 2016, November 16, 2016, March 22, 2017, and June 27, 2017. Each time Commission staff met with the applicant's representatives, the project description had changed from the previous meeting. The applicant has twice requested the proposed project to be scheduled for the soonest possible hearing. While also taking into account the public interested in the proposed project, including the appellants, staff has



tried to accommodate the applicant's requests and schedule the hearing for the next local or semi-local hearing after the applicant has requested that this item be placed back on the Commission's agenda. Commission staff has, in good faith, worked with the applicant, specifically by participating in several meetings and numerous phone calls with the applicant and by scheduling both the substantial issue and de novo portions of the appeal as quickly as possible, given staffing constraints and geographic constraints. If the project appears to have been allowed to "languish," it is to a large degree because the applicant failed to provide staff with additional relevant information (i.e. new project plans and proposed leased off-site parking sites) in a timely manner or there were scheduling conflicts that could not be avoided (i.e. production schedule or the location of the next monthly Commission meeting). Also, the nature of the proposal (an appeal of a new restaurant near the beach with no new parking provided, and at odds with the policies of the certified Venice LUP and all precedents) has made it difficult for the applicant and staff to agree on a staff recommendation.

### **Certificate of Occupancy**

Three Certificate of Occupancy *applications* have been found in the City's on-line database ([Exhibit 7](#)). It is not clear if they were approved by the City.

1969 – Change of use from Tool Engineering to Same

1986 – Change of use from Retail to Retail

1987 – Change of use from Motorcycle Repair Shop to Take-Out Restaurant

One actual/approved Certificate of Occupancy, dated 1991, for Repair Shop to Take-Out Food Restaurant was discovered ([Exhibit 7](#)) in the City's data base. However, no Certificate of Occupancy or CDP for change of use from Tool Engineering to Retail or from Retail to Motorcycle Repair Shop has been recovered from the City's database or provided to staff. A CDP for change of use of the site from Repair Shop to Take-Out Food Restaurant has not been found on file with the City or the Coastal Commission or provided to staff. Therefore, the last legally permitted use is Tool Engineering (1969). Thus, although the subject site has been operating as retail and/or restaurant use without a CDP for approximately 30 years, and this use of the site is considered unpermitted development.

### **Square Footage Modifications**

The original project approved by the City was a 2,831 sq. ft. building with approximately 1,000 sq. ft. of service floor area. In August 2016, the applicant proposed a 2,831 sq. ft. building with 619 sq. ft. of service floor area. The applicant is now proposing a 2,831 sq. ft. building with 500 sq. ft. of service floor area. While the proposed structure itself has remained the same size, each new proposal included the manipulation of the floor plans, which increased the bathroom/storage/other, kitchen, and ADA aisle way areas (i.e., path of travel) and reduced the service floor area in order to reduce the amount of parking spaces that would be required to be provided to support the parking demand created by the proposed restaurant. While it is true that the applicant has reduced the amount of proposed service floor area over the last two and a half years, the proposed structure itself has essentially remained the same.

### **Reuse of the Structure**

The applicant originally proposed to demolish 48% of the exterior walls, 100% of the interior walls and fixtures, and the roof and to rebuild the entire first floor, construct a new elevator with a subterranean housing unit (significant alteration of the foundation), and an entirely new second floor. The original proposal allowed for a 2% margin of error for the exterior walls only, which would

need to be significantly augmented to support a second floor. The entire roof and interior of the structure, as well as at least part of the existing floor and foundation (for the new elevator) would also have to be demolished, augmented to support the elevator and addition, and rebuilt. While the applicant originally proposed to maintain 48% of the exterior walls, much more than 50% of the entire structure was proposed to be demolished. The Commission has repeatedly found that demolition of more than 50% of an entire structure in Venice should result in bringing the entire site into conformance with current development standards (as required by LUP Policy I.E.5). Furthermore, the existing development was built over 90 years ago, under remarkably different circumstances, including different building codes. While adaptive reuse of structures, including the existing structure, is possible, given the amount of demolition, new construction, and current building codes, is not completely “unfounded” or “speculative” that an additional 2% of the exterior walls could be demolished whether inadvertently or not, especially when considering that a wall is not just the studs supporting the wall, but all of the components - drywall, electrical, and otherwise, are considered part of a wall.

### **Protection of Parking that Supports Public Access to the Shoreline**

The applicant is trying to obtain a coastal development permit for a change in use from a tool engineering shop to a restaurant. A continuation of the legally permitted use, or a change in use to a use with a parking demand that is the same as the legally permitted use, would result in no new parking demand and no adverse impact to public access. The existing structure has a grandfathered parking credit of eight spaces, based on the parking demand of the legally permitted use. Therefore, a restaurant or other use in the existing structure, with no greater parking demand than the legally permitted use, would result in no increased parking demand and no adverse impact to public access.

Eight grandfathered parking space credits would yield 400 sq. ft. of service floor area (8 spaces X (1 space/50 sq. ft.)) in a restaurant, pursuant to the certified LUP parking table. However, in order for the applicant to maintain the eight grandfathered parking credits, the existing structure cannot undergo an extensive renovation or major addition (LUP Policy I.E.5), and the integrity of the existing structure must be maintained.

Therefore, in order for the proposed restaurant use to comply with Coastal Act access policies and the certified LUP’s parking requirements, it must not create any additional parking demand. A restaurant use with a demand of only eight parking spaces, similar to the restaurant that has been operating in the structure (minus the sidewalk dining), can be found to be consistent with Coastal Act access policies and the certified LUP’s parking requirements because there would be no adverse impacts to the surrounding parking supply. Therefore, staff recommends approval of a restaurant in the existing structure with revised plans that ensure that the parking demand of the proposed new use will not adversely affect parking that supports public access to the coast. The revised plans, required by Special Condition Two, require the elimination of the proposed major addition (second floor), and the maintenance of the existing structure.

[Special conditions](#) are imposed to ensure that the approved development is carried out in a manner consistent with the Chapter 3 policies of the Coastal Act.

[Special Condition 1](#) ensures the fundamental constitution of the structure is preserved so that the applicant can still claim the grandfathered parking credits under the certified LUP. It authorizes the reuse of the existing one-story, 1,658 sq. ft. structure as a restaurant with a maximum of 400 sq. ft. of service floor area and prohibits outdoor dining areas. It allows the existing structure to be

renovated in a manner that maintains a minimum of 51% of the structure, including, but not limited to, the roof, all components of the perimeter walls, floor, façade, foundation, mass, volume and height. It requires all development to occur in strict compliance with the special conditions and any proposed changes to the approved final plans shall be reported to the Executive Director

[Special Condition 2](#) requires the applicant to submit revised final plans in accordance with the approved project described in [Special Condition 1](#). [Special Condition 3](#) restricts future improvements and development of the site and requires the applicant to apply for an amendment to this CDP or a new CDP in the event future improvements or development is proposed for the site.

In conclusion, the primary concern with the applicant's proposal is adverse impacts to public parking that supports coastal access. In this case, the proposed two-story restaurant project does not comply with the regulations of the certified LUP or the Chapter 3 policies of the Coastal Act. The standard of review for the proposed project is the Coastal Act, however, the Commission has certified an LUP for Venice and the LUP may be used for guidance. The LUP sets forth extensive parking requirements for Venice which have been described in detail above. Additionally, public parking is explicitly called out in Section 30212.5 of Chapter 3 of the Coastal Act and in the Shoreline Access section of the certified Venice LUP. Many people (e.g., families) who visit the coast, and especially Venice Beach, travel long distances from inland areas and it is not practical for them to walk, ride bikes or take public transit. Once one arrives in Venice, then bike transportation is a viable option. But one must get there first, and public transportation options to get to Venice from inland areas are very limited. It is because of this reason that protecting the public parking supply to the coast is of significant importance. The project is located just three blocks from the beach and is a highly visited area with a very limited parking supply. Therefore, only as conditioned to avoid adverse impacts to public access can the proposed project be found consistent with the Coastal Act and the certified LUP.

### **C. MARINE RESOURCES/WATER QUALITY**

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 longterm 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.*

The proposed project is located near the coastal waters of the Pacific Ocean ([Exhibit 1](#)). Water from the project site will flow into the City of Los Angeles storm drain system ultimately draining to the Pacific Ocean. Beach closures occurring throughout Los Angeles County are typically attributed to polluted urban runoff discharging into the ocean through outfalls. As illustrated by these beach closures, polluted runoff negatively affects both marine resources and the public's ability to access coastal resources.

The standard of review for the proposed development is the Chapter 3 policies of the Coastal Act, including the aforementioned marine resource policies. The proposed project poses a potential source of pollution due to contaminated runoff generated at the site during construction phase and from the proposed restaurant uses. To mitigate potential impacts to marine resources caused by polluted runoff leaving the site, [Special Condition 4](#) requires the applicant provide a post development runoff control plan which incorporate best management practices (BMPs) into the project design aimed to reduce or prevent contaminants from running off the site and impacting nearby coastal waters and special water quality protection requirements typically required of restaurant uses for wash down areas for restaurant equipment and accessories to be self-contained, equipped with a grease interceptor and properly connected to a sanitary sewer.

Additionally, during grading and construction, the storage or placement of construction materials, debris, or waste in a location subject to erosion and dispersion or which may be discharged into coastal water via rain or wind would result in adverse impacts upon the marine environment that would reduce the biological productivity of coastal waters. For instance, construction debris entering coastal waters may cover and displace soft bottom habitat. Sediment discharged into coastal waters may cause turbidity, which can shade and reduce the productivity of foraging avian and marine species' ability to see food in the water column. In order to minimize adverse construction-related impacts upon marine resources, [Special Condition 5](#) requires the applicant comply with construction-related best management practices (BMPs) to ensure that construction materials, debris and waste does not enter receiving waters or be subject to dispersion and that prevent spillage and/or runoff of demolition or construction related materials and to contain sediment or contaminants associated with demolition or construction activities.

#### **D. DEED RESTRICTION**

To ensure that any prospective future owners of the property are made aware of the applicability of the conditions of this permit, the Commission imposes [Special Condition 6](#) requiring that the property owner record a deed restriction against the property, referencing all of the above Special Conditions of this permit and imposing them as covenants, conditions and restrictions on the use and enjoyment of the Property. Thus, as conditioned, this permit ensures that any prospective future owner will receive actual notice of the restrictions and/or obligations imposed on the use and enjoyment of the land in connection with the authorized development, including the risks of the development and/or hazards to which the site is subject, and the Commission's immunity from liability.

#### **E. LOCAL COASTAL PROGRAM**

Coastal Act section 30604(a) states that, prior to certification of a local coastal program (LCP), a coastal development permit can only be issued upon a finding that the proposed development is in conformity with Chapter 3 of the Act and that the permitted development will not prejudice the ability of the local government to prepare an LCP that is in conformity with Chapter 3. The Venice Land Use Plan was certified by the Commission on June 14, 2001 and is advisory in nature and may

provide guidance. The proposed development is not consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan for the area. Approval of the project as proposed will 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.

Only as conditioned with the imposed special conditions that require the project to avoid adverse impacts on public access and water quality can the proposed development be found to be consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan for the area. Approval of the project, with the imposed special conditions that require the project to avoid adverse impacts on public access and water quality, 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.

## **F. CALIFORNIA ENVIRONMENTAL QUALITY ACT**

Section 13096 Title 14 of the California Code of Regulations requires Commission approval of a coastal development permit application to be supported by a finding showing the application, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The Commission incorporates its findings on Coastal Act consistency at this point as if set forth in full. As discussed above, the proposed development, only as conditioned, is consistent with the Chapter 3 policies of the Coastal Act. Feasible mitigation measures, which will minimize all significant adverse environmental effects, have been required as special conditions.

As conditioned to minimize adverse impacts to coastal resources, including public access and water quality, there are no feasible alternatives or additional feasible mitigation measures available that would substantially lessen any significant adverse effect that the activity may have on the environment. Therefore, the Commission finds that the proposed project, as conditioned to mitigate the identified impacts, has no remaining significant environmental impacts, is the least environmentally damaging feasible alternative, and is consistent with the requirements of the Coastal Act to conform to CEQA.

## **G. UNPERMITTED DEVELOPMENT**

Development has occurred on the subject site without the benefit of the required coastal development permit consisting of a change of use of the structure from tool engineering shop to restaurant with an undefined amount of service floor area and sidewalk dining. A coastal development permit was not issued by the Commission or the City of Los Angeles to authorize the change in use. Any development activity conducted in the Coastal Zone without a valid coastal development permit, or which does not substantially conform to a previously issued permit, constitutes a violation of the Coastal Act.

The applicant is requesting after-the-fact authorization of the change in use at issue. Approval of this application pursuant to the staff recommendation, issuance of the permit, and the applicant's subsequent compliance with all terms and conditions of the permit will result in resolution of the above described violation going forward. Failure of the applicant to obtain issuance of the permit will result in the violation remaining on the site. In that case, the Commission's enforcement division will

consider its options to address said violation. In addition, failure to comply with the terms and conditions of this permit may result in the institution of enforcement action under the provisions of Chapter 9 of the Coastal Act.

Although development has taken place prior to submission of this permit application, consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Commission review and action on this permit does not constitute a waiver of any legal action with regard to the alleged violation, nor does it constitute an implied statement of the Commission's position regarding the legality of development, other than the development addressed herein, undertaken on the subject site without a coastal development permit.

## Appendix A

1. Venice In-Lieu Parking Fee Study, July 2012
2. [A-5-VEN-15-0038, Staff Report, July 23, 2015](#)
3. [A-5-VEN-15-0038, Staff Report, June 23, 2016](#)