

**CALIFORNIA COASTAL COMMISSION**

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**F15d**

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Hearing Date:	05/12/2017

**STAFF REPORT: APPEAL – SUBSTANTIAL ISSUE**

**Appeal Number:** A-5-VEN-17-0012

**Applicant:** City of Los Angeles

**Agent:** Gary Lam, Project Manager  
James Tibbetts, Environmental Specialist II

**Local Government:** City of Los Angeles

**Local Decision:** Approval with Conditions

**Appellants:** Coastal Commission Executive Director

**Project Location:** 3503 & 3507 Via Dolce, Venice, City of Los Angeles,  
(APN: 4225-013-901)

**Project Description:** Appeal of City of Los Angeles Local Coastal Development Permit No. 16-02 approved with conditions for the construction of Via Dolce pocket park including hardscaping, benches, picnic tables, a playground, a bike rack, a 36-inch high split rail fence, an irrigation system, park signs, replacement of an existing sidewalk, and a native vegetation restoration area on a vacant 6,300 sq. ft. canal-fronting parcel.

**Staff Recommendation:** Substantial Issue

**IMPORTANT HEARING PROCEDURE NOTE**

The Commission will not take testimony in the “substantial issue” recommendation unless at least three commissioners request it. The Commission may ask question of the applicant, any aggrieved person, the Attorney General or the executive director prior to determining whether or not to take testimony regarding whether the appeal raises a substantial issue. If the Commission takes testimony regarding whether the appeal raises a substantial issue, testimony is generally and at the discretion of the Chair limited to 3 minutes total per side. Only the applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify during

this phase of the hearing. Others may submit comments in writing. If the Commission finds that the appeal raises a substantial issue, the de novo phase of the hearing for a subsequent Commission meeting, during which the Commission will take public testimony.

## **SUMMARY OF STAFF RECOMMENDATION**

The staff recommends that the Commission determine that a **substantial issue exists** with respect to the grounds on which the appeal has been filed for the following reason: the project, as approved by the City of Los Angeles, is inconsistent with the Public Access and Recreation policies of Chapter 3 of the Coastal Act and the certified Venice Land Use Plan (LUP). The applicant proposes to construct a pocket park on a vacant lot between the first public road and the inland extent of the sea (Grand Canal). There is currently an unimproved path that runs across the project site on the east bank of Grand Canal. The existing path connects the improved accessways that run along the canal bank to the north and the south of the site. The certified Venice LUP identifies the existing accessway as part of a network of official coastal accessways throughout Venice. The City-approved project would install landscaping across the existing path making it impassable and essentially eliminating a designated public accessway. Therefore, as approved by the City, the project is inconsistent with the public access and recreation policies of Chapter 3 of the Coastal Act and the certified Venice LUP.

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## APPENDICES

Appendix A - Substantive File Documents

## EXHIBITS

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

[Exhibit 2 – Local CDP 16-02 including City-Approved Project Plans](#)

[Exhibit 3 – Appeal](#)

[Exhibit 4 – LUP Coastal Access Map \(Grand Canal\)](#)

[Exhibit 5 - City Response Letter](#)

## I. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE

**Motion:** *I move that the Commission determine that Appeal No. A-5-VEN-17-0012 raises **NO Substantial Issue** with respect to the grounds on which the appeal has been filed under § 30602 of the Coastal Act.*

Staff recommends a **NO** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

**Resolution:**

*The Commission hereby finds that Appeal No. A-5-VEN-17-0012 presents A **SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed under § 30602 of the Coastal Act regarding consistency with Chapter 3 policies of the Coastal Act.*

## II. APPELLANT’S CONTENTIONS

The City-approved local coastal development permit (CDP) authorizes the construction of the Via Dolce pocket park including hardscaping, benches, picnic tables, a playground, a bike rack, a 36 in. high split rail vegetation fence around the vegetated area, an irrigation system, park signs, replacement of an existing sidewalk, and a native vegetation restoration area.

The appeal was filed by the Executive Director of the Coastal Commission ([Exhibit 3](#)) and contends the following:

The City-approved park improvement project would eliminate an existing designated public accessway on the east bank of Grand Canal. The City-approved plan for the pocket park indicates that landscaping would be installed on the accessway, thus obstructing its use and making the existing trail impassable. The accessway, which is currently open for public use, is designated and mapped as an official accessway by the certified Venice LUP (Exhibit 19b – Coastal Access Map). Elimination of the accessway is inconsistent with the public access and recreation policies of the certified Venice LUP and the Coastal Act ([Exhibit 3](#)).

## III. LOCAL GOVERNMENT ACTION

On June 29, 2016, the City of Los Angeles, Department of Public Works held a public hearing for Local CDP 16-02 (City of Los Angeles) for the project. On February 16, 2017, the City of Los Angeles, Department of Public Works issued a determination letter approving the project. The City’s Notice of Final Local Action for the local CDP was received in the Coastal Commission’s Long Beach Office on March 3, 2017, and the Coastal Commission’s required twenty working-day appeal period was established. On April 3, 2017, one appeal was received from the Executive Director ([Exhibit 3](#)). No other appeals were received prior to the end of the appeal period on April 3, 2017.

#### IV. APPEAL PROCEDURES

Section 30600(b) of the Coastal Act provides that prior to certification of its 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 CDPs. Sections 13301-13325 of Title 14 of the California Code of Regulations provide procedures for issuance and appeals of locally issued CDPs. Section 30602 of the Coastal Act allows *any* action by a local government on a CDP 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 CDP 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.] As provided under section 13318 of Title 14 of the California Code of Regulations, the appellant must conform to the procedures for filing an appeal as required under section 13111 of Title 14 of the California Code of Regulations, including the specific grounds for appeal and a summary of the significant question raised by the appeal.

The action currently before the Commission is to find whether there is a “substantial issue” or “no substantial issue” raised by the appeal of the local approval of the proposed project. Sections 30621 and 30625(b)(1) of the Coastal Act require a *de novo* hearing of the appealed project unless the Commission determines that no substantial issue exists with respect to the grounds for appeal.

Commission staff recommends a finding of **substantial issue**. If the Commission decides that the appellant’s contention raise no substantial issue as to conformity with Chapter 3 of the Coastal Act, the action of the local government becomes final. Alternatively, if the Commission finds that a substantial issue exists with respect to the conformity of the action of the local government with the Chapter 3 policies of the Coastal Act, the local CDP is voided and the Commission typically continues the public hearing to a later date in order to review the CDP as a *de novo* matter. [Cal. Pub. Res. Code §§ 30621 and 30625.] 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.

If there is no motion from the Commission to find no substantial issue, it will be presumed that the appeal raises a substantial issue and the Commission will schedule the *de novo* phase of the public hearing on the merits of the application at a subsequent Commission meeting. A *de novo* public hearing on the merits of the application uses the Chapter 3 policies of the Coastal Act. The certified Venice LUP is used as guidance. Sections 13110-13120 of Title 14 of the California Code of Regulations further explain the appeal hearing process.

If the Commission decides to hear arguments and vote on the substantial issue question, those who are qualified to testify at the hearing, as provided by Section 13117 of Title 14 of the California Code of Regulation, will have three minutes per side to address whether the appeal raises a substantial issue. The only persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicant, persons who opposed the application before

the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. The Commission will then vote on the substantial issue matter. It takes a majority of Commissioners present to find that the grounds for the appeal raise no substantial issue.

## **V. SINGLE/DUAL PERMIT JURISDICTION AREA**

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 any development which receives a local CDP permit also obtain a second (or “dual”) CDP from the Coastal Commission. The Commission's standard of review for the proposed development in the *Dual Permit Jurisdiction* area is the Chapter 3 policies of the Coastal Act. For projects located inland of the areas identified in Section 30601 (i.e., projects in the *Single Permit Jurisdiction*), the City of Los Angeles local CDP is the only CDP required. The proposed project site is located within the *Dual Permit Jurisdiction Area*. The City's application (5-16-0352) for the Coastal Commission dual permit was received on April 18, 2016. The application was deemed incomplete on May 18, 2016 because a local CDP had not been obtained at that time. The status of the City's dual permit application is pending on the outcome of appeal A-5-VEN-17-0012.

## **VI. FINDINGS AND DECLARATIONS – SUBSTANTIAL ISSUE**

### **A. PROJECT LOCATION & DESCRIPTION**

The project is located at 3503 & 3507 Via Dolce (two lots on a shared parcel), Venice, in the City of Los Angeles, Los Angeles County ([Exhibit 1](#)). The site is a vacant, approximately 6,300 sq. ft. lot that abuts Grand Canal and is approximately 950 ft. from the sandy beach. The nearest public access to Grand Canal, which represents the inland extent of the sea, is an improved sidewalk that leads from Via Dolce to Grand Canal and connects to an improved sidewalk to the north along the canal and an unimproved path to the south along the canal-adjacent border of the subject lot ([Exhibit 1](#)). South of the site begins a row of canal-fronting residences. The City-owned lots are zoned Two Family Residential Waterways (RW2-1) by the City of Los Angeles Municipal Code, and are designated Low Medium II Residential by the certified Venice LUP. On May 20, 2009, the City of Los Angeles Board of Recreation and Park Commissioners approved a resolution that transferred title of the property from the Department of General Services to the Department of Recreation and Parks to be dedicated as park property in perpetuity.

The City-approved local CDP is for the construction of a pocket park including hardscaping, benches, picnic tables, a playground, a bike rack, a 36 inch-high split rail fence, an irrigation system, park signs, replacement of an existing sidewalk, and a native vegetation restoration area ([Exhibit 2](#)). City-approved vegetation would eliminate the existing public accessway that crosses the site along the east bank of Grand Canal.

### **B. FACTORS TO BE CONSIDERED IN SUBSTANTIAL ISSUE ANALYSIS**

Section 30625(b)(1) of the Coastal Act states that the Commission shall hear an appeal of a local government action carried out pursuant to Section 30600(b) unless it finds that no substantial issue exists as to conformity with Chapter 3 of the Coastal Act. The term “substantial issue” is not defined in the Coastal Act or its implementing regulations. Section 13115(b) of the Commission's regulation simply indicates that the Commission will hear an appeal unless it “finds that the appeal raises no significant question.” In previous decisions on appeals, the Commission had been guided by the following factors:

1. The degree of factual and legal support for the local government’s decision that the development is consistent or inconsistent with the relevant provisions of the Coastal Act;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of the coastal resources affected by the decision;
4. The precedential value of the local government’s decision for future interpretations if its LCP; and,
5. Whether the appeal raises local issues, or those of regional or statewide significance.

Even when the Commission chooses not to hear an appeal, appellants nevertheless may obtain judicial review of the local government’s coastal permit decision by filing petition for a writ of mandate pursuant to Code of Civil Procedure, Section 1094.5.

Staff is recommending that the Commission find that **a substantial issue exists** with respect to whether the local government action conforms to the provisions of Chapter 3 of the Coastal Act for the reasons set forth below.

### C. SUBSTANTIAL ISSUE ANALYSIS

As stated in Section IV of this report, the grounds for an appeal of a CDP issued by the local government prior to certification of its LCP are the project’s conformity with Chapter 3 policies of the Coastal Act. Any local government CDP issued or denied prior to certification of its LCP may be appealed to the Commission. The Commission shall hear an appeal unless it determines that no substantial issue exists as to conformity with Chapter 3 policies of the Coastal Act.

Section II of this staff report outlined the appellant’s contentions regarding the project. Concerns raised by the appellant include the City-approved project’s consistency with sections 30210, 30211, and 30212 of the Coastal Act. There is no certified LCP for this area of the City of Los Angeles; however, there is a certified LUP. As such, the Coastal Act is the standard of review for this CDP, although the certified LUP may be used as guidance.

The Commission’s standard of review for determining whether to hear the appeal is only whether the appeal raises a substantial issue as to conformity with Chapter 3 of the Coastal Act. Cal. Pub. Res. Code § 30625(b)(1); 14 C.C.R. § 13321. The Commission’s decision will be guided by the factors listed in the previous section of this report (B. Factors to be Considered in Substantial Issue Analysis).

This appeal raises a substantial issue as to conformity with Chapter 3 of the Coastal Act (Cal. Pub. Res. Code §§ 30200-30265.5).<sup>1</sup> The Notice of Decision for Local CDP No. 16-02 issued by the City of Los Angeles Department of Public Works states that the City applied the policies of Chapter 3 of the Coastal Act and concluded, in part, that the development, as proposed and conditioned by the City, would be consistent with Chapter 3 of the Coastal Act and will not prejudice the ability of the City to prepare an LCP for the Venice Coastal Zone ([Exhibit 2](#)).

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<sup>1</sup> Unless otherwise indicated, all subsequent statutory references are to sections within the Coastal Act. Cal. Pub. Res. Code §§ 30000 *et seq.*

A substantial issue exists with respect to the proposed project's conformance with Chapter 3 of the Coastal Act, and with the approval of the Local CDP No. 16-02, because the City-approved project is not consistent with the public access and recreation policies of Chapter 3 of the Coastal Act because it would eliminate an existing public accessway.

**Certified Venice LUP Policy II.C.1., states:**

***General Non-Vehicular Coastal Access Policy.** Pedestrian and bicycle access ways are identified on Exhibit 19. Pedestrian Access and Bicycle Trails shall be developed, protected and maintained, and new development adjacent to the coast and coastal waterways shall be required to provide public access in a manner that is consistent with the policies of the Coastal Act. A network of pedestrian and bicycle routes shall be developed, enhanced and maintained to provide linkages within residential neighborhoods and between visitor-serving commercial areas and coastal recreational access points, transit routes, existing and projected parking facilities, and areas of historical significance to facilitate circulation of visitors within the heavily congested areas in Venice. Implementation Strategies – Public Works Projects: To enhance pedestrian access, improvements should establish and reinforce pedestrian connections between Ocean Front Walk, existing walk streets, the Venice Canals, Grand Canal and Ballona Lagoon, West Washington Boulevard, and street that were part of the original Kinney Canal. Private Developments: Development standards in this LUP and the LIP for the walkways along the canals, lagoon, and designated walk streets shall focus on preserving pedestrian orientation by preserving the walkways and limiting height and types of development permitted adjacent to the walkways.*

**Certified Venice LUP Policy II.C.2., states:**

***Grand Canal Pedestrian Access.** The three existing public rights-of-way from the Grand Canal to Strongs Drive and Pacific Avenue shall be improved and appropriately signed. South of Washington Boulevard, the public walkways that provide public pedestrian access along both sides of Grand Canal shall be improved and appropriately signed.*

**Coastal Act Section 30210, states:**

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

**Coastal Act Section 30211, states:**

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



**Coastal Act Section 30212(a), states:**

*New development projects. (a) Public access from the nearest public roadway to the shoreline and along the coast shall be provided in new development projects except where: (1) it is inconsistent with public safety, military security needs, or the protection of fragile coastal resources, (2) adequate access exists nearby, or, (3) agriculture would be adversely affected. Dedicated accessway shall not be required to be opened to public use until a public agency or private association agrees to accept responsibility for maintenance and liability of the accessway.*

The issues of public access and recreation are important and substantial issues. Sections 30210, 30211, and 30212 of the Coastal Act require protection and enhancement of public access and recreation in the coastal zone. Especially in areas that are between the first public road and the sea or the inland extent of the sea, as is the case with the subject development. As such, the Commission has carefully reviewed projects like the City-approved development. The City-approved park would eliminate an existing designated public accessway on the east bank of Grand Canal and disrupt the continuity of the existing and future public accessway along the canal, which is contrary to Venice certified LUP Policies II.C.1 and II.C.2 and to Sections 30210, 30211, and 30212 of the Coastal Act. The City has failed to acknowledge the existence of the subject accessway and how its action would eliminate it or to provide any justification for such an action.

Only with careful review of the project can the Commission ensure that public access and recreation opportunities are protected. If it finds that a substantial issue exists, the Commission will have the opportunity to review and act on the project at the subsequent de novo hearing. Therefore, the Commission finds that a substantial issue exists with respect the proposed project's conformance with Chapter 3 of the Coastal Act.

Applying the five factors listed in the prior section clarifies that the appeal raises “a substantial issue” with respect to Chapter 3 of the Coastal Act, and therefore, does meet the substantiality standard of Section 30265(b)(1), because the nature of the proposed project and the local government action are not consistent with policies of Chapter 3 of the Coastal Act.

The first factor is the degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the relevant provisions of the Coastal Act. The City-approved development eliminates an existing designated public accessway, which is directly contrary to the public access and recreation policies of the certified Venice LUP and Chapter 3 of the Coastal Act. The City failed to provide any justification for why this accessway would be closed or to provide mitigation for the loss of the public accessway. The City submitted a letter in response to the appeal, dated April 17, 2017 and received by the South Coast office on April 18, 2017 ([Exhibit 4](#)). In the letter, the City states “the project DOES NOT install any landscaping within the Coastal Access Way.” However, the City's plans show 48 one-gallon barrels of pickleweed to be planted directly over the northwestern portion of the designated accessway (Esplanade). The Esplanade is the City-owned right-of-way along Grand Canal. The planting of pickleweed (or any vegetation) in this location would eliminate the public's ability to access the path heading south along the canal in this area. It would also disrupt the contiguous path along the east bank of the canal in this area. The plans also show the proposed vegetation adjacent to the paved accessway to the north of the site, which eliminates the possibility for connecting the paved accessway to that heads north along the canal with the existing unpaved accessway that heads

south along the canal. Instead of cutting off and impeding access along the canal, the City park improvement project should connect the north and southbound paths as part of its restoration and in carrying out of the public access policies of the certified LUP. Therefore, the Coastal Commission finds that the City provided no factual or legal support for its decision.

The second factor is the extent and scope of the development as approved or denied by the local government. The City-approved development eliminates an existing designated public accessway that is directly adjacent to the inland extent of the sea. As described below, the development will affect significant coastal resources. Public access to the shoreline is a fundamental principle of the Coastal Act, and the extent and scope of the development as approved by the City is not consistent with the public access and recreation policies of Chapter 3 of the Coastal Act.

The third factor is the significance of the coastal resources affected by the decision. The project site is located between the first public road and the inland extent of the sea. As approved by the City, an existing designated public accessway would be eliminated. Sections 30210, 30211, and 30212 of the Coastal Act protect public access and recreational opportunities to the coast, including the inland extent of the sea. Likewise, Venice LUP Policies II.C.1 and II.C.2, which may be used as guidance, explicitly protect public access to and along the Grand Canal and other Venice canals. Public coastal access is one of the most significant coastal resources identified in the Coastal Act. Therefore, the Commission finds that the coastal resources affected by the development are significant.

The fourth factor is the precedential value of the local government's decision for future interpretations of its LCP. The City does not currently have a certified LCP for the Venice area. However, the City does have a certified LUP, which guides the manner in which development should take place in Venice. The certified LUP identifies the affected path as a portion of a larger network of public accessways to and along the canals throughout Venice. The City's action directly contradicts policies of the certified LUP. The coastal resource affected by the City-approved development is significant. As such, the City is obliged to acknowledge and adhere to the policies in its certified LUP and the relevant policies of the Coastal Act. This project, as proposed and conditioned by the City, eliminates an existing designated public accessway to and along the Grand Canal, in contravention of the policies of the certified LUP. Therefore, the Commission finds that the City's action sets a bad precedent that prejudices the ability of the City to prepare an LCP that is in conformity with Chapter 3 of the Coastal Act.

The final factor is whether the appeal raises local issues, or those of regional or statewide significance. Public access and recreation to the coast are both local and statewide issues. The City has a certified LUP that guides the manner in which development should take place in Venice. The City's action is not consistent with the certified LUP or with the public access and recreation policies of the Coastal Act. Although the particular accessway here serves only the local area, it is part of a larger improved coastal access system, and allowing the City to permit development that directly contradicts the certified LUP and the public access and recreation policies of the Coastal Act would set a bad statewide precedent. In addition, Venice is one of the top tourist destinations for coastal visitors in the state, and reducing access in this location along the Grand Canal will impact not just local residents, but also visitors from the region, state, and beyond. Therefore, the Commission finds that the City's action does raise issues of statewide significance.

In conclusion, the issues raised by the appeal relate to public access and recreation, which are fundamental principles protected by the Coastal Act. Therefore, the Commission finds that the appeal raises a substantial issue as to conformity with Chapter 3 policies of the Coastal Act.

## **Appendix A**

1. Certified Venice Land Use Plan, November 14, 2000