

CALIFORNIA COASTAL COMMISSION

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



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STAFF REPORT: APPEAL – SUBSTANTIAL ISSUE AND DE NOVO

Local Government: City of Los Angeles

Local Decision: Claim of Exemption to Coastal Development Permit Requirement

Appeal Number: A-5-VEN-17-0009

Applicant: Ben Thomas

Agent: Gaines & Stacey, LLP

Appellants: Sue Kaplan, Lydia Ponce, Robin Rudisill, Celia Williams, Gabriel Ruspini, and Jed Pauker

Project Location: 668 Indiana Avenue, Venice, City of Los Angeles
(APN: 4239-008-017)

Project Description: Appeal of City of Los Angeles Local Coastal Exemption No. DIR-2017-522-CEX for a 2-story, 2,694 sq. ft. addition, 355 sq. ft. attached garage and 188 sq. ft. carport to a 1,020 sq. ft., 1-story single-family dwelling with detached garage. The foundation, framing and front façade of the existing structure will remain as is. The interior layout will be modified but the perimeter walls will remain as is except for the rear portion of the roof which will be modified for all necessary connections to new structure. The roof and siding will be replaced to match the new addition.

Staff Recommendation: Find Substantial Issue with City of Los Angeles Claim of Exemption and Deny Coastal Exemption

Important Hearing Procedure Note: The Commission will not take testimony on this “substantial issue” recommendation unless at least three commissioners request it. The Commission may ask questions 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 will follow, unless it has been postponed, 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 Appeal A-5-VEN-17-0009 has been filed because the locally approved development does not qualify for an exemption and requires a local coastal development permit from the City of Los Angeles. The City-approved development would retain 50 percent of the exterior of the existing home; however, it would also include an addition that is far larger than the existing home. Overall, the project would result in a 264 percent increase in the size of the structure – more than doubling its size – which constitutes a substantial redevelopment of the project site. This would result in the construction of what is, in practical effect, a new single-family residence ([Exhibit 4](#)), rather than an improvement to the existing home. Therefore, the proposed project does not qualify as an “improvement” to an “existing” home and is non-exempt “development” as defined in the Coastal Act. Commission Staff recommends that the Commission **deny the claim of exemption** and find that the proposed project requires a local coastal development permit, and return this matter to the City for processing. The **motions** to carry out the staff recommendation are on **pages 4 and 16**.

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APPENDICES

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EXHIBITS

[Exhibit 1 – Vicinity Map](#)

[Exhibit 2 – Photo of Site](#)

[Exhibit 3 – Appeal](#)

[Exhibit 4 – Architectural Plans](#)

I. MOTION AND RESOLUTION

Motion:

*I move that the Commission determine that Appeal No. A-5-VEN-17-0009 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-17-0009 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 Section 30610 of the Coastal Act and Sections 13250 and 13252 of the California Code of Regulations, and therefore Chapter 3 of the Coastal Act.*

II. APPELLANTS' CONTENTIONS

On March 21, 2017, the Commission received an appeal of Local Coastal Exemption DIR-2017-522-CEX from Sue Kaplan, Lydia Ponce, Robin Rudisill, Celia Williams, Gabriel Ruspini, and Jed Pauker ([Exhibit 3](#)). The City's Coastal Exemption approved a "Remodel (E) dwelling, add 2nd story 2,694 sq. ft. with roof deck add new attached 355 sq. ft. garage and 188 sq. ft. carport to existing 1,020 sq. ft. SFD. The foundation, framing and front façade of existing structure will remain as is. Interior of existing house will be modified but perimeter walls and roof lines will remain as is (except for the rear portion of the roof which will be slightly modified for all necessary connection to new structure) the roof modification will not exceed 20% of total sq. ft. of existing surfaces. The roof and siding of existing will be replaced to match new addition." The appeal contends that more than 50 percent of the structure will be demolished, that the mass and scale of the locally-approved project is inconsistent with the community character of the area and therefore is inconsistent with the Venice certified Land Use Plan (LUP) and the Chapter 3 policies of the Coastal Act, and that because the project will result in new development, the City is required to review the project for conformance with the Mello Act. For the reasons stated above, the appeal contends that the City-approved project does not qualify for an exemption and requires the review afforded through the coastal development permit process.

III. LOCAL GOVERNMENT ACTION

On December 10, 2015, the City of Los Angeles, Department of City Planning issued a Coastal Exemption (DIR 2015-4493-CEX) for a "3-story addition and renovation with new attached garage on existing 1-story single-family dwelling. Less than 50% of existing wall to remain.

Demo detached garage 20'2"x18'2". Demo by handwreck. Sewer cap is not required. The applicant name listed on the City's exemption is Liz Jun. The box checked on the City's exemption form is "Improvements to Existing Single-Family Residences."

The City forwarded a copy of the Coastal Exemption to the Coastal Commission's South Coast District Office on February 1, 2016. On March 1, 2016, the claim of exemption was appealed to the Commission's South Coast District Office (A-5-VEN-16-0025). On March 18, 2016, the applicant waived the 49-day rule for hearing an appeal. On May 10, 2016, the applicant withdrew their claim of exemption (DIR 2015-4493-CEX), which was the subject of appeal A-5-VEN-16-0025. On April 25, 2016 and May 23, 2016, the applicant and the agent at the time met with Commission staff to clarify what types of development qualified for a Coastal Exemption and potential options as they moved forward with the proposed project.

During this time, the Los Angeles Department of Building and Safety has issued several permits for projects at 668 Indiana Avenue (See Table 1). One request for a permit for a "3 story addition & renovation with (N) attached garage on existing 1 story single family dwelling" (15014-10000-02554) is currently in progress, pending the clearance of a claim of exemption request or the issuance of a local coastal development permit.

Table 1: Los Angeles Department of Building and Safety Permit History of 668 Indiana Avenue.

Application/ Permit #	Type	Status	Work Description
15014-10000-02554	Bldg-Addition	Verifications in Progress 2/23/2016	3 story addition & renovation with (N) attached garage on existing 1 story single family dwelling.
16014-20000-05142	Bldg-Addition	Reviewed by Supervisor 11/30/2016	Remodel (E) dwelling, add 2 nd story with roof deck, add new attached garage and carport
16016-20000-20648	Bldg-Alter/Repair	Issued 8/31/2016	Kitchen/bathroom (2) remodel for residential buildings (no structural changes). Replace drywall (no new walls added) for single family dwelling. Voluntary installation of insulation in (E) single family dwelling. Re-roof with Class A or B material weighing less than 6 pounds per sq. ft. over new solid sheathing. For residential rood replacement > 50% of the total roof area, apply Cool Roof Product labeled and certified by Cool Roofing Rating Council (CRRC). Cool Roof may be required for non-residential buildings per Title 24, Part 6, Section 149(b).
15019-10000-03464	Bldg-Demolition	Application Submittal 9/18/2015	DPI & Posting-of detached garage
15019-10000-04662	Bldg-Demolition	PC Info Complete 12/24/2015	Demo detached garage 20' 2" x 18' 2". Demo by handwreck. Sewer cap is not required.
16041-20000-31074	Electrical	Issued 8/31/2016	200 AMP service upgrade and rewire
16044-20000-10151	HVAC	Issued 8/31/2016	Install split system, ducts and gas line

Application/ Permit #	Type	Status	Work Description
04042-90000-16302	Plumbing	Permit Finaled 6/7/2004	Install EQ Valve
16042-20000-18314	Plumbing	Issued 8/31/2016	Repipe and new water heater

On February 9, 2017, the City of Los Angeles, Department of City Planning issued a Coastal Exemption (DIR-2017-522-CEX) ([Exhibit 3](#)) for “*Remodel (E) dwelling, add 2nd story 2,694 sq. ft. with roof deck add new attached 355 sq. ft. garage and 188 sq. ft. carport to existing 1,020 sq. ft. SFD. The foundation, framing and front façade of existing structure will remain as is. Interior of existing house will be modified but perimeter walls and roof lines will remain as is (except for the rear portion of the roof which will be slightly modified for all necessary connection to new structure) the roof modification will not exceed 20% of total sq. ft. of existing surfaces. The roof and siding of existing will be replaced to match new addition.*” The applicant name listed on the City’s exemption is Ben Thomas. The box checked on the City’s exemption form is “Improvements to Existing Single-Family Residences.”

The City forwarded a copy of the Coastal Exemption to the Coastal Commission’s South Coast District Office on February 21, 2017, and, at that time, Coastal Commission staff established the twenty working-day appeal period for the local action. On March 21, 2017, the appellants submitted the appeal to the Commission’s South Coast District Office. The appeal of the City’s action was determined to be valid because it was received prior to the expiration of the twenty working-day period in which any action by the City of Los Angeles can be appealed to the Commission. On March 22, 2017, a Notification of Appeal was sent to the Los Angeles Department of City Planning and the applicant, notifying each party of the appeal of DIR-2017-522-CEX, and the decision was stayed pending Commission action on the appeal.

IV. APPEAL PROCEDURES

Section 30600(b) of the Coastal Act provides that prior to certification of its Local Coastal Program (LCP), a local jurisdiction may, with respect to development within its area of jurisdiction in the coastal zone and consistent with the provisions of Sections 30604, 30620 and 30620.5, establish procedures for the filing, processing, review, modification, approval or denial of a coastal development permit. Pursuant to this provision, the City of Los Angeles developed a permit program in 1978 to exercise its option to issue local coastal development permits and exemptions. Sections 13301-13325 of Title 14 of the California Code of Regulations provide procedures for issuance and appeals of locally issued coastal development permits. Section 30602 of the Coastal Act allows *any* action by a local government on a coastal development permit application evaluated under Section 30600(b) to be appealed to the Commission, and Section 30625 makes clear that claims of exemption are among the appealable actions.

After a final local action on a local CDP application (or permit exemption), the local government is required to notify the Coastal Commission within five working 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 providing 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. In this case, Commission staff recommends a finding of **substantial issue**. 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 approved project’s conformity with Chapter 3 of the Coastal Act. However, the Chapter 3 policies of the Coastal Act do not apply if the project is exempt from permitting requirements pursuant to Section 30610 of the Coastal Act and Sections 13250 and 13252 of the California Code of Regulations. Accordingly, for appeals of coastal exemption determinations such as this, the Commission’s role is to determine whether there is factual and legal support for the local government’s exemption determination. If there is no substantial issue with regard to the propriety of the exemption determination, then there is also no substantial issue with regard to Chapter 3 conformity because those policies do not apply to exempt development. If the Commission decides that there is no substantial issue with the exemption determination—and thus Chapter 3—the action of the local government becomes final.

If, however, the Commission finds that a substantial issue exists with respect to the locally-approved project’s conformity with Section 30610 of the Coastal Act and Sections 13250 and 13252 of the California Code of Regulations, then the local coastal development permit decision is voided and the Commission typically continues the public hearing to a later date in order to review the claim of exemption as a de novo matter. [Cal. Pub. Res. Code §§ 30621 and 30625.] The standard of review for the de novo portion of an appeal is the same as described above—consistency with Chapter 3, as determined by analyzing consistency with Section 30610 of the Coastal Act and Sections 13250 and 13252 of the California Code of Regulations. Should the Commission deny the claim of exemption and determine that a coastal development permit is required, then the Chapter 3 policies of the Coastal Act are the standard of review if the applicant applies for, and the local jurisdiction considers, the permit. [Cal. Pub. Res. Code § 30625.]

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 hearing. 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 AREAS

Section 30601 of the Coastal Act provides details regarding the geographic areas where applicants must also obtain a coastal development permit from the Commission in addition to obtaining a local coastal development permit from the City. These areas are considered Dual Permit Jurisdiction areas. Coastal zone areas outside of the Dual Permit Jurisdiction areas are considered Single Permit Jurisdiction areas. Pursuant to Section 30600(b) of the Coastal Act, the City of Los Angeles has been granted the authority to approve or deny coastal development permits in both jurisdictions, but all of the City's actions are appealable to the Commission. The proposed project site is located within the Single Permit Jurisdiction Area.

In 1978, relying on section 30600(b) of the Coastal Act, the City adopted procedures for the City to issue coastal development permits. The Commission approved those procedures and authorized the City to issue coastal development permits and exemption determinations. Chapter 3 of the Coastal Act is the standard of review for the review of permits because section 30604(a) provides that Chapter 3 is the standard of review when issuing a permit prior to certification of a local coastal program, and exemptions must meet the requirements of Coastal Act section 30610 and sections 13250, 13252, or 13253 of the Commission's regulations. While the Commission certified the City's Land Use Plan for the Venice area in 2001, the Commission did not delegate authority to the City to issue permits pursuant to section 30600.5(b) of the Coastal Act because the City did not adopt proper ordinances to issue permits under its LUP as required by section 30600.5(f) of the Coastal Act. Thus, the City is still issuing permits under the procedures it adopted pursuant to section 30600(b) of the Coastal Act and must use Coastal Act provisions, rather than its Land Use Plan, as the standard of review. The Commission uses the same standards when reviewing city actions on appeal

VI. FINDINGS AND DECLARATIONS – SUBSTANTIAL ISSUE

A. PROJECT LOCATION AND DESCRIPTION

The project site is located in the Oakwood subarea at 668 Indiana Avenue within the City of Los Angeles Single Permit Jurisdiction Area, about 0.7-mile inland of the beach ([Exhibit 1](#) and [Exhibit 2](#)). The lot area is 5,280 square feet and is designated for multi-family residential use according to the Venice certified LUP. The Oakwood neighborhood is comprised of an amalgam of new and old one-to-two story buildings with a maximum height of 25 feet for flat roofs and 30 feet for varied rooflines; roof access structures are typically permitted to extend 10 feet above the flat roof height limit. Within the 600 block of Indiana Avenue, the residential buildings range in size from 357 sq. ft. (610-614 Indiana Avenue) to 12,638 sq. ft. (619 Indiana Avenue) and the average residential building size is 2,308 square feet. In addition, these buildings range in number of residential units from single-family to over five (5) units on a single lot (619 Indiana Avenue).

Currently, the proposed project site is occupied by a 1,020 square foot, one-story single family residence and detached garage. The Los Angeles County Tax Assessor records indicate that the existing single-family home at 668 Indiana Avenue was constructed in 1945.

The City of Los Angeles did retain copies of plans for this project when it was deemed exempt from permit requirements, and submitted the project plans along with the coastal exemption to the Commission's South Coast Office on February 21, 2017 ([Exhibit 4](#)). According to the plans submitted by the City, the scope of work includes: (1) the construction of a two-story (maximum height of 25 feet), 2,694 square foot addition to the rear of the existing single-family residence; (2) "the foundation, framing and front façade of the existing structure will remain as is"; and (3) the interior layout of the existing house will be modified but the exterior walls as well as the roof lines will remain as is, except for the rear portion of the existing structure which will be slightly modified to accommodate for the necessary connections between the existing and new structures ([Exhibit 4](#)). The scope of work on the City-approved plans, adds that the "modification will not exceed 20% of the total square footage of the existing surfaces" ([Exhibit 4](#)). New foundational elements and load bearing walls are proposed on portions of the lot where none exist currently, while the existing foundation and perimeter walls will remain intact. The roof deck will be enclosed by 36 inch-high railings. The existing detached garage is proposed to be demolished; however, three parking spaces will be maintained on-site: two in a new attached garage and one in a new carport.

The plans also state that the roofing material (i.e. shingles) and siding material will be replaced so that the proposed addition and the existing structure match aesthetically. The applicant maintains that all underlying material, such as studs, framing, and most of the drywall, will not be removed during this process. Also, additional structural support (beams) that may be added when the existing interior walls are removed will not result in the demolition of any of the existing structural elements (except some drywall).

The proposed project will result in a new 3,714 square foot, two-story, 25-foot high, single-family residence with an attached 355 square foot garage and 188 square foot carport. Overall, the proposed project will result in an approximately 264 percent increase in the square footage of the structure (299 percent increase if the non-habitable garage space is included).

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. As described above, in the case of appeals of coastal exemptions (Section 30625(a) of the Coastal Act), this standard requires the Commission to determine if there is factual and legal support for the local government's decision that the development can be authorized without a coastal development permit pursuant to Section 30610 of the Coastal Act and its implementing regulations.

The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. Section 13115(b) of the Commission's regulations 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 has 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 of 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.

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 Section 30610 of the Coastal Act and Section 13250 of the California Code of Regulations for the reasons set forth below.

C. SUBSTANTIAL ISSUE ANALYSIS

The grounds for this appeal are that the project is not an improvement to an existing structure and is therefore non-exempt “development” as defined in the Coastal Act. The appellants claim that a coastal development permit should therefore have been required.

Section 30600(a) of the Coastal Act requires that anyone wishing to perform or undertake any development within the coastal zone shall obtain a coastal development permit. Development is broadly defined by Section 30106 of the Coastal Act, which states:

“Development” means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z’berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511).

Construction, reconstruction, demolition, or alteration of the size of any structure in the coastal zone is development that requires a coastal development permit, unless the development qualifies as development that is authorized without a coastal development permit.

Coastal Act Section 30610 Developments authorized without permit, states:

*Notwithstanding any other provision of this division, **no coastal development permit shall be required** pursuant to this chapter for the following types of development and in the following areas:*

*(a) **Improvements to existing single-family residences**; provided, however, that the commission shall specify, by regulation, those classes of development which involve a risk of adverse environmental effect and shall require that a coastal development permit be obtained pursuant to this chapter....*

(d) Repair or maintenance activities that do not result in an addition to, or enlargement or expansion of, the object of those repair or maintenance activities; provided, however, that if the commission determines that certain extraordinary methods of repair and maintenance involve a risk of substantial adverse environmental impact, it shall, by regulation, require that a permit be obtained pursuant to this chapter.

14 Cal. Code Regs, Section 13250 Improvements to Existing Single-Family Residences, states:

(a) For purposes of Public Resources Code Section 30610(a) where there is an existing single-family residential building, the following shall be considered a part of that structure:

- (1) All fixtures and other structures directly attached to a residence;*
- (2) Structures on the property normally associated with a single-family residence, such as garages, swimming pools, fences, and storage sheds; but not including guest houses or self-contained residential units; and*
- (3) Landscaping on the lot.*

Additionally, the Commission typically requires fifty percent of the structure to be maintained in order for a project to qualify as an improvement to *an existing structure*. This is supported by 14 Cal. Code Regs, Section 13252 Repair and Maintenance Activities That Require a Permit, which states:

(b) Unless destroyed by natural disaster, the replacement of 50 percent or more of a single family residence, seawall, revetment, bluff retaining wall, breakwater, groin or any other structure is not repair and maintenance under Section 30610(d) but instead constitutes a replacement structure requiring a coastal development permit.

The grounds for this appeal are that the project is not exempt development as defined in the Coastal Act and, as such, the applicant must obtain a coastal development permit for the proposed development. Specifically, the appeal asserts that the development does not qualify as an improvement to an existing residence, and is thus not exempt per Section 13250. The applicant is

proposing to retain 50 percent of the existing structure, which in some cases would mean that the addition would be considered an improvement to an “existing” home, rather than redevelopment of the site. In this case, however, despite the fact that less than 50 percent of the existing structure will be demolished, the project cannot be considered an improvement to an existing structure because of the size of the addition and overall scope of the project. Rather, it constitutes substantial redevelopment of the site resulting in what is, in effect, a new single-family residence.

The proposed project does not qualify for an exemption under Coastal Act Section 30610(a). Coastal Act Section 30610(a) allows *improvements* to existing single-family residences without a coastal development permit. In many cases, improvements to buildings include modest additions. Although the Coastal Act and its implementing regulations do not define “improvement,” the regulations acknowledge that “improvements” generally include additions that result in an increase of at least up to 10 percent of internal floor area of an existing home. (see 14 Cal. Code Regs § 13250(b)(4).) However, provisions of the Coastal Act acknowledge that relatively large additions to existing structures really constitute new development, rather than improvements to existing structures. (See Pub. Res. Code § 30212: project constitutes “new development” if it increases the floor area, height, or bulk of a structure by more than 10 percent.) The regulations also state that the replacement of 50 percent or more of a single family residence constitutes a replacement structure, rather than repair or maintenance.

Accordingly, although the Coastal Act and its regulations do not explicitly limit the size of additions that qualify as “improvements” to “existing” homes—except if those homes are in specific locations (14 Cal. Code Regs 13250(b)(4))—it does acknowledge that there are limits to what can be considered an improvement to an existing home, rather than what is, in reality, a redeveloped home. The Commission need not decide what, exactly, the dividing line is between additions that qualify as improvements to existing homes versus ones that constitute new development or redevelopment. Here, the proposed project is clearly not an improvement to an existing home, as it would more than double the size of the existing structure (264 percent increase of square footage) and gut the interior of the existing structure. This scope of work and size of addition constitutes substantial redevelopment of the site, resulting in what is, for all practical purposes, a new residence.

As proposed, the project will result in an approximately 264 percent increase in the total square footage of the structure (299 percent increase if the non-habitable garage space is included). Furthermore, the footprint of the building on the 5,280 square foot lot would also more than double as a result of the project – increasing from 1,020 square feet to approximately 2,972 square feet (see Table 2). The proposed plans also indicate that the interior of the existing single-family residence will be remodeled, and all bedrooms and full bathrooms in this area of the house will be removed. As proposed, after the remodel the original 1,020 square feet of the house will only include a new kitchen, a living room, a dining room, and a powder room. All five (5) bedrooms, including a master suite, four (4) full bathrooms, a second living room, a family room, and a wine cellar will be located in the proposed new 2,694 square feet. In addition, the proposed project also includes a 355 square foot attached garage.

Overall, the proposed scope of work is outside the normally accepted parameters of what constitutes an improvement to an existing single-family residence, and rather constitutes the substantial redevelopment of the project site, resulting in what is effectively a new single-family residence. Therefore, a coastal development permit is required.

Table 2: Comparison of Existing Structure versus Proposed Structure

Structure Component	Existing Structure	Proposed Change	Proposed Final Project	Percentage Increase
Square footage	1,020	2,694*	3,714	264%
Footprint (sq. ft.)	1,020	1,952	2,972	191%
Height (ft.)	13' 4"	16' 8"	30	125%
# of Stories	1	1	2	100%

*only includes habitable space/proposed attached garage space not included

Other issues raised by the appeal, such as claims that the city’s Mello Act determinations are improper and that the home will be out of character with the neighborhood, are not proper bases for appeal but would be relevant to a coastal development permit application processed by the City. That process should consider other development standards, including the size, mass, and scale of the structure, and parking and setback requirements. The City could also conduct a Mello analysis after determining the property history. The legally required process to address these issues is the coastal development permit application process, which the City is responsible for administering.

Therefore, the appeal raises a substantial issue as to conformity with the Chapter 3 policies of the Coastal Act because the development, which did not obtain a CDP, was erroneously processed as an exemption and has not yet been reviewed for conformity with the Chapter 3 policies of the Coastal Act.

Finally, in a letter dated November 3, 2016, and resubmitted as part of this appeal, the appellants assert that Commission staff gave advice on the manner in which the proposed development might be made to comply with coastal regulations, directly in contradiction to section 30335.1 of the Coastal Act. The appellants claim that “Staff worked with the Applicant to change the implementation of the law to fit the project, rather than changing the project to fit the law” ([Exhibit 3](#)). Although this is not a valid ground for an appeal, per section 30602, the following clarification is meant to assist appellants in understanding this issue. Generally, and in the case of this project, staff assists applicants with the procedures surrounding the Coastal Act and with the understanding of its policies. As stated previously, on April 25, 2016 and May 23, 2016, the applicant and agent (at the time) met with Commission staff to clarify the procedures for moving forward with the application, which by necessity required a discussion of what types of development qualified for a Coastal Exemption and potential options (such as obtaining a local coastal permit) as they moved forward with the proposed project. At the time, staff indicated that additions to existing single-family residences typically qualify for exemptions from coastal development permits. Additionally, appellants misconstrue section 30335.1, which does not require Commission staff to provide only procedural, non-substantive, assistance to the City or to applicants for permits. Rather, section 30335.1 does not prohibit the Commission or its staff from coordinating with or working with applicants, but only limits the Commission staff’s ability to assist applicants and other interested parties during the public hearing when the Commission is scheduled to act on a pending matter. Any other reading of the provision would both do a disservice to the public and greatly hinder the Commission staff’s ability to do its job, which includes providing assistance to applicants with matters pending before the Commission.

Applying the five factors listed in the prior section clarifies that the appeal raises “a substantial issue” with respect to the Coastal Act’s exemption provisions and therefore with Chapter 3 of the Coastal Act. The appeal thus meets the substantiality standard of Section 30625(b)(1).

The first factor is the degree of factual and legal support for the local government’s decision that the development is exempt from CDP requirements. The City used detailed plans in its determination to issue a coastal exemption for this project. According to the plans approved by the City, the scope of work includes the construction of a two-story, 2,694 square foot addition and attached 355 square foot garage to the rear of the existing single-family residence with an interior remodel. The scope of work and accompanying demolition plans also show less than 50 percent of the existing house being demolished, removed, or modified. However, in this case, the amount of demolition is not determinative of whether the project qualifies as an improvement to an existing home or whether it qualifies as new development. In many circumstances, a proposed addition would be considered an “improvement” to an existing residential unit; however, this project will increase the size of the existing house from 1,020 square feet to 3,714 square feet— far more than double the size of the existing house. The proposed plans also indicate that the interior of the existing single-family residence will be almost completely remodeled, and all bedrooms and full bathrooms in this area of the house will be removed. As proposed, after the remodel the original 1,020 square feet of the house will only include a new kitchen, a living room, a dining room, and a powder room. All five (5) bedrooms, including a master suite, four (4) full bathrooms, a second living room, a family room, and a wine cellar will be located in the proposed new 2,694 square feet. In addition, the proposed project also includes a 355 square foot attached garage.

The locally approved development would result in the substantial redevelopment of the project site resulting in what is effectively a new 3,714 square foot, two-story single-family residence. Such a large addition and renovation does not constitute an improvement to an existing home and requires a coastal development permit under section 30610 of the Coastal Act and the Commission’s regulations, as noted above. The City staff did retain copies of the plans for the proposed development and provided them to Commission staff to review in order to determine whether the City properly determined that the proposed development was exempt. While this provided factual support for the City’s determination that the project would involve demolition of less than 50 percent of the existing home, the City’s exemption decision did not have adequate legal support. The City made its exemption decision on December 10, 2015, more than a month after the Commission found substantial issue on an exemption determination for a project similar to this one where a very large addition was proposed to a modest-sized home. (See A-5-VEN-16-0081; Commission found Substantial Issue on November 3, 2016). The City should have been guided by the Commission’s decision on that matter, as required by Coastal Act section 30625(c). The proposed project, which would more than double the size of the structure, is not an improvement to an existing structure, but rather is the construction of a new single-family residence. Therefore, the Coastal Commission finds that the City did not have an adequate degree legal support for its exemption determination.

The second factor is the extent and scope of the development as approved or denied by the local government. The extent and scope of the locally approved development is clear because there are City-approved plans available to determine the scope ([Exhibit 4](#)). Based on the project description and plans, the City was able to determine that less than 50 percent of the existing single-family residence would be removed during this project, which in many cases does not

exceed the limitation to be eligible for a coastal exemption. However, in this case, it is not a question of the amount of demolition, but whether this project constitutes new development due to the size of the addition and the sizable extent and scope of the project. The proposed project will more than double the size of the existing house, and as proposed, the original 1,020 square feet of the house will only include a new kitchen, a living room, a dining room, and a powder room. All five (5) bedrooms, including a master suite, four (4) full bathrooms, a second living room, a family room, and a wine cellar will be located in the proposed new 2,694 square feet. In addition, the proposed project would demolish the existing detached garage and construct a new 355 square foot attached garage. The project will result in a new 3,714 square foot, two-story single-family residence with attached 355 square foot garage. So while the full extent and scope of the City-approved project was reviewed by the City, the Coastal Commission finds that the project, as proposed, will result in the substantial redevelopment of the project site, resulting in the construction of what is effectively a new single-family residence.

The third factor is the significance of the coastal resources affected by the decision. However, this factor is directly tied to the Chapter 3 policies of the Coastal Act, which, as stated in previous sections, are not relevant when considering appeals of coastal exemptions. Rather, in the case of appeals of coastal exemptions, the Commission must determine if there is factual and legal support for the local government's decision that the development can be authorized without a coastal development permit pursuant to Section 30610 of the Coastal Act and Section 13250 of the California Code of Regulations. If the Commission determines that the City erred in their review of the coastal exemption and a coastal development permit is required, the project will be subject to review with consistency with Chapter 3 policies (and/or any relevant local coastal plan policies). Here, the primary coastal resource that could be affected by the locally approved project is community character, which is significant in Venice. If the project is returned to the City for a coastal development permit, the proposed development would be reviewed for consistency with the character of the surrounding area. Although not directly relevant to the resolution of this appeal, it is worth noting that the erosion of community character is a cumulative issue, and the City's cumulative exemption of numerous large-scale remodel and demolition projects has a significant impact on Venice's visual character. See, e.g., staff reports dated 1/28/16 and 3/24/16 for Appeal No. A-5-VEN-16-0005.

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. Issuing exemptions for proposed projects like these that result in the construction of new larger residences circumvents the coastal development permit process and its requirement for public participation, and sets a bad precedent. As discussed above, significant adverse impacts to coastal resources would potentially occur if the City's coastal exemption process is inappropriately used to avoid the coastal development permit process, during which time the proposed development would be reviewed for consistency with the character of the surrounding area. Avoiding this process for development of large homes that may affect coastal resources would set a bad precedent. The perhaps over-generous use of the City's coastal exemption process in order to avoid obtaining a coastal development permit for new development is a recurring problem. [See California Coastal Commission meeting agenda for 4/14/16.]

The final factor is whether the appeal raises local issues, or those of regional or statewide significance. Although this appeal raises specific local issues, potentially exempting projects from the coastal development process that are not exempt pursuant to policies of the provisions

of the Coastal Act will have potential negative and cumulative impacts to the coast if other local governments in the coastal zone apply their exemption authority in a similar manner. New structures must be properly reviewed through the local coastal development permit process and monitored by the City in order to protect coastal resources. Properly interpreting the scope of the exemptions contained in Coastal Act 30610 and its implementing regulations is unquestionably an issue of statewide significance. Therefore, the City's approval does raise issues of statewide significance.

In conclusion, the central issue for the appeal is whether the development constitutes an improvement to an existing home, and is therefore exempt from CDP requirements, or whether it constitutes the redevelopment of the project site, and therefore requires a local CDP. Because the evidence does not support exempting the proposed project from Coastal Act permitting requirements, the Commission finds that appeal A-5-VEN-17-0009 raises a substantial issue relative to Section 30610 of the Coastal Act and Section 13250 of the California Code of Regulations. Accordingly, Coastal Exemption No. A-5-VEN-17-0009 will be suspended upon the Commission's rejection of the motion that the appeal raises no substantial issue.

VII. MOTION AND RESOLUTION – DE NOVO

Motion:

*I move that the Commission **approve** Claim of Exemption No. A-5-VEN-17-0009 for the development proposed by the applicant*

Staff recommends a **NO** vote. Failure of this motion will result in denial of the *claim of exemption* 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 **denies** the Claim of Exemption for the proposed development on the ground that the development is not exempt from the permitting requirements of the Coastal Act and adopts the findings set forth below.*

VII. FINDINGS AND DECLARATIONS – DE NOVO

A. PROJECT DESCRIPTION

The proposed project as documented on the project plans provided by the City of Los Angeles, is the construction of a 2,694 sq. ft. addition with 355 sq. ft. attached garage and 188 square foot carport to a 1,020 sq. ft., 1-story single-family dwelling with detached garage on a 5,280 square foot residentially-zoned lot in the Oakwood subarea of Venice, Los Angeles ([Exhibit 4](#)). The foundation, framing and front façade of the existing structure will remain as is. The interior layout will be modified but the perimeter walls will remain as is except for the rear portion of the roof which will be modified for all necessary connections to new structure. The roof and siding will be replaced to match the new addition. The exiting detached garage is proposed to be

demolished. The proposed project would result in a new 3,714 square foot, two-story, 25-foot high, single family residence with an attached 355 square foot garage and 188 square foot carport.

B. COASTAL DEVELOPMENT PERMIT REQUIREMENTS

Section 30600(a) of the Coastal Act requires that anyone wishing to perform or undertake any development within the coastal zone shall obtain a coastal development permit. Development is broadly defined by Section 30106 of the Coastal Act, which states:

“Development” means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to, subdivision pursuant to the Subdivision Map Act (commencing with Section 66410 of the Government Code), and any other division of land, including lot splits, except where the land division is brought about in connection with the purchase of such land by a public agency for public recreational use; change in the intensity of use of water, or of access thereto; construction, reconstruction, demolition, or alteration of the size of any structure, including any facility of any private, public, or municipal utility; and the removal or harvesting of major vegetation other than for agricultural purposes, kelp harvesting, and timber operations which are in accordance with a timber harvesting plan submitted pursuant to the provisions of the Z’berg-Nejedly Forest Practice Act of 1973 (commencing with Section 4511).

Construction, reconstruction, demolition, or alteration of the size of any structure in the coastal zone is development that requires a coastal development permit, unless the development qualifies as development that is authorized without a coastal development permit.

Coastal Act Section 30610 provides, in part:

*Notwithstanding any other provision of this division, **no coastal development permit shall be required** pursuant to this chapter for the following types of development and in the following areas:*

*(a) **Improvements to existing single-family residences**; provided, however, that the commission shall specify, by regulation, those classes of development which involve a risk of adverse environmental effect and shall require that a coastal development permit be obtained pursuant to this chapter....*

(d) Repair or maintenance activities that do not result in an addition to, or enlargement or expansion of, the object of those repair or maintenance activities; provided, however, that if the commission determines that certain extraordinary methods of repair and maintenance involve a risk of substantial adverse environmental impact, it shall, by regulation, require that a permit be obtained pursuant to this chapter.

Section 13252 of the Commission’s regulations provide, in relevant part:

(b) Unless destroyed by natural disaster, the replacement of 50 percent or more of a single family residence, seawall, revetment, bluff retaining wall, breakwater, groin or any other structure is not repair and maintenance under Section 30610(d) but instead constitutes a replacement structure requiring a coastal development permit.

The grounds for this appeal are that the project is not exempt development as defined in the Coastal Act and, as such, the applicant must obtain a coastal development permit for the proposed development. Specifically, the appeal asserts that the development does not qualify as an improvement to an existing residence, and is thus not exempt per Section 13250. The applicant is proposing to retain 50 percent of the existing structure, which in some cases would mean that the addition would be considered an improvement to an “existing” home, rather than redevelopment of the site. In this case, however, despite the fact that less than 50 percent of the existing structure will be demolished, the project cannot be considered an improvement to an existing structure because the project would increase the total habitable square footage of the single-family residence by approximately 264 percent. This large increase in the size of the structure, which would more than double its size, is not considered an improvement to an existing structure, but would in fact result in what is effectively a new residential structure, thereby requiring a coastal development permit.

The proposed project does not qualify for an exemption under Coastal Act Section 30610(a). Coastal Act Section 30610(a) allows *improvements* to existing single-family residences without a coastal development permit. In many cases, improvements to buildings include modest additions. Although the Coastal Act and its implementing regulations do not define “improvement,” the regulations acknowledge that “improvements” generally include additions that result in an increase of at least up to 10 percent of internal floor area of an existing home. (see 14 Cal. Code Regs § 13250(b)(4).) However, provisions of the Coastal Act acknowledge that relatively large additions to existing structures really constitute new development, rather than improvements to existing structures. (See Pub. Res. Code § 30212: project constitutes “new development” if it increases the floor area, height, or bulk of a structure by more than 10 percent.) The regulations also state that the replacement of 50 percent or more of a single family residence constitutes a replacement structure, rather than repair or maintenance.

Accordingly, although the Coastal Act and its regulations do not explicitly limit the size of additions that qualify as “improvements” to “existing” homes—except if those homes are in specific locations (14 Cal. Code Regs 13250(b)(4))—it does acknowledge that there are limits to what can be considered an improvement to an existing home, rather than what is, in reality, a redeveloped home. The Commission need not decide what, exactly, the dividing line is between additions that qualify as improvements to existing homes versus ones that constitute new development or redevelopment. Here, the proposed project is clearly not an improvement to an existing home, as it would more than double the size of the existing structure (264 percent increase of square footage) and gut the interior of the existing structure. This scope of work and size of addition constitutes substantial redevelopment of the site, resulting in what is, for all practical purposes, a new residence.

As proposed, the project will result in an approximately 264 percent increase in the total square footage of the structure (299 percent increase if the non-habitable garage space is included); more than doubling the size of the residence. Furthermore, the footprint of the building on the 5,280 square foot lot would also more than double as a result of the addition – increasing from 1,020 square feet to approximately 2,972 square feet (see Table 3). The proposed plans indicate that the interior of the existing single-family residence will be remodeled, and all bedrooms and full bathrooms in this area of the house will be removed. In addition, as proposed, the original 1,020 square feet of the house will only include a new kitchen, a living room, a dining room, and a powder room. All five (5) bedrooms, including a master suite, four (4) full bathrooms, a second living room, a family room, and a wine cellar will be located in the proposed new 2,694 square feet. The proposed development would also include a new 355 square foot attached garage. Since the proposed project by itself will be far larger than the existing structure, this development cannot be considered an improvement to an existing home.

Table 3: Comparison of Existing Structure versus Proposed Structure

Structure Component	Existing Structure	Proposed Change	Proposed Final Project	Percentage Increase
Square footage	1,020	2,694*	3,714	264%
Footprint (sq. ft.)	1,020	1,952	2,972	191%
Height (ft.)	13' 4"	16' 8"	30	125%
# of Stories	1	1	2	100%

*only includes habitable space/proposed attached garage space not included

For the reasons previously stated, the proposed project also does not qualify for an exemption under Coastal Act Section 30610(d). Coastal Act Section 30610(d) allows for repair and maintenance activities on existing single family residences so long as the repair and maintenance does not result in an addition to, or enlargement or expansion of, the single family home. The proposed project is for a much larger single-family residence.

While the current project is proposing to remove less than 50 percent of the existing structure, in this case, the question of demolition is not dispositive. Because the proposed project would significantly increase the size of the structure, it constitutes a substantial redevelopment of the project site rather than an improvement to a single-family residence. In past actions, the Commission has found that substantial redevelopment of a project in the Venice coastal zone is not exempt under any section or provision of the Coastal Act or the Commission’s Regulations and requires a coastal development permit. Therefore, because the proposed project would result in the substantial redevelopment of the project site rather than an improvement to an existing home, resulting in what is effectively a new single-family residence, the project is not exempt development. As such, the applicant must obtain a coastal development permit for the proposed development.

Coastal Act Section 30600 Coastal Development Permit; Procedures Prior to Certification of Local Coastal Program, states:

(a) Except as provided in subdivision (e), and in addition to obtaining any other permit required by law from any local government or from any state, regional, or local agency, any person as defined in Section 21066, wishing to perform or

undertake any development in the coastal zone, other than a facility subject to Section 25500, shall obtain a coastal development permit.

(b) (1) Prior to certification of its local coastal program, a local government may, with respect to any 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. Those procedures may be incorporated and made a part of the procedures relating to any other appropriate land use development permit issued by the local government.

(2) A coastal development permit from a local government shall not be required by this subdivision for any development on tidelands, submerged lands, or on public trust lands, whether filled or unfilled, or for any development by a public agency for which a local government permit is not otherwise required.

(c) If prior to certification of its local coastal program, a local government does not exercise the option provided in subdivision (b), or a development is not subject to the requirements of subdivision (b), a coastal development permit shall be obtained from the commission or from a local government as provided in subdivision (d).

(d) After certification of its local coastal program or pursuant to the provisions of Section 30600.5, a coastal development permit shall be obtained from the local government as provided for in Section 30519 or Section 30600.5.

Pursuant to Section 30600(b) of the Coastal Act, the City of Los Angeles has opted to issue its own coastal development permits prior to certification of a Local Coastal Program (LCP). The proposed project site is located within the *Single Permit Jurisdiction Area*. For the reasons discussed in detail above, the proposed project constitutes substantial redevelopment of the project site, resulting in a new two-story, 3,714 square foot single-family residence with attached 355 square foot garage which is not exempt under any policy or provision of the Coastal Act or the Commission's Regulations. Therefore, the proposed project requires a local coastal development permit, processed by the City of Los Angeles. The appellants have expressed various concerns regarding the alleged inconsistencies between the proposed project's mass, scale and character with that of the surrounding community – in addition to other social and architectural concerns. Other development standards including the size, mass, and scale of the structure, parking requirements and potential access issues, and a Mello Act analysis may be reviewed by the City of Los Angeles through its coastal development permit application process.

Because the evidence does not support exempting the proposed project from Coastal Act permitting requirements, *Coastal Exemption No. A-5-VEN-17-0009* is denied.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

1. City of Los Angeles Certified Land Use Plan for Venice (2001)
2. Appeal File A-5-VEN-16-0005
3. California Coastal Commission Meeting Agenda 4/14/16