
CALIFORNIA COASTAL COMMISSION

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



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Filed: 9/19/16
Approved: 12/8/16
Staff: Z. Rehm-LB
Staff Report: 4/21/17
Hearing Date: 5/12/17

STAFF REPORT: REVISED FINDINGS

Application Number: A-5-VEN-16-0083

Applicant: Lighthouse Brooks LLC

Agents: Ramin Kolah; Steven Nazemi; McCabe & Company; Manatt, Phelps and Phillips LLP.

Project Location: 742-748 Brooks Avenue (Lot Nos. 38 & 39, Tract 8415)
Venice, City of Los Angeles, Los Angeles County
(APN Nos. 4239-013-028 & 4239-013-040).

Project Description: Demolition of duplex and triplex on two residential parcels; subdivision to create four residential parcels; and construction of four approximately 2,500 sq. ft. three-story, 30-foot high single family homes, each including approximately 660 sq. ft. two-car garage topped by second story accessory living quarters and roof deck.

Commissioners on Prevailing Side: Bochco, Diaz, Howell, Kinsey, Lueveno, McClure, Mitchell, Turnbull-Sanders, Uranga

Staff Recommendation: Adopt the revised findings.

Note: To accurately reflect the Commission's action, staff's modifications to the November 23, 2016 Staff Recommendation are shown herein as ~~strike through~~ and **bold underline** text. Because the Commission's action differed from the staff recommendation on the de novo portion of the staff report, but not the substantial issue portion, revised findings have been prepared only on the de novo portion, beginning on page 22 of this report.

SUMMARY OF STAFF RECOMMENDATION COMMISSION ACTION

Staff is recommending that the Commission adopt the following revised findings in support of the Commission's action on December 8, 2016 to approve Coastal Development Permit A-5-VEN-16-0083.

The Coastal Commission's Acting Executive Director and a group of 43 Venice residents have appealed a City of Los Angeles decision granting a coastal development permit with conditions to Lighthouse Brooks LLC for demolition of a duplex and a triplex on two residential parcels; subdivision to create four residential parcels; and construction of four approximately 2,500 sq. ft. three-story single family homes, each including approximately 660 sq. ft. two-car garage topped by second story accessory living quarters and roof deck. The City of Los Angeles approved Local Coastal Development Permit ZA-2013-383-CDP-MEL on October 23, 2013 but did not immediately report its final action to the Coastal Commission as required by the Coastal Act and the Commission's regulations. Pursuant to applicable law, the locally-issued permit was therefore of no force or effect. The City issued the required notice to the Commission nearly three years later, on August 19, 2016. The City issued building permits for "construction of new single family small lot subdivision factory built home" and "accessory living quarters with two car garage and roof deck" on May 26, 2016. Construction began in August 2016 and continued intermittently through October despite repeated directives from the Commission's planning staff and enforcement division for the property owner to stop work until a valid coastal development permit is obtained.



The structural elements of the four homes consist of 20 modular units assembled by crane (four homes x three stories + four detached two-story garages and accessory living quarters). The City-approved height is 30 feet, as measured from the centerline of Brooks Avenue, which is the maximum height for structures with sloped roofs (in this case the sloped roof features a horizontal wave design at a 1:6 pitch). The front yard setback referenced in the plans approved by the local coastal development permit is ten feet plus a seven foot street dedication, but the applicant indicates the plans have been revised and the as-built structures are set back 15-to-19

feet from the sidewalk. The rear yard setback is five feet, the side setbacks are zero feet in the center of the four parcels, and five feet at the side ends.

The development approved by the City and partially constructed by the property owner without the benefit of a valid coastal development permit is **was** not visually compatible with the surrounding development, which consists primarily of one-story single family homes (including three successive one-story homes to the east, two successive one-story homes to the west, and five successive one-story homes across the street. **However,** there are **also** several two-story and three-story homes in the vicinity of the proposed homes, ~~but those structures are sited on individual parcels rather than on four narrow parcels side-by-side, those structures are not as massive as viewed cumulatively from the sidewalk, and they feature articulation including varied and stepped back rooflines.~~ The Venice community – including the beach, the boardwalk, the canals, and the eclectic architectural styles of the neighborhoods – is one of the most popular visitor destinations in California. **To avoid adversely impacting the character of the Community, the applicant proposed to revise the plans to provide greater articulation, less massing along the front façade between structures, and additional vegetation. The Commission found that** approval of the proposed development would **not** establish a precedent for massive, unarticulated development that would adversely affect the special community of Venice and would prejudice the ability of the City of Los Angeles to prepare a certified Local Coastal Program for Venice.

~~Staff recommends that the Commission take two actions. First, staff recommends that **In its action on December 8, 2016,** the Commission ~~find~~ **found** that the appeals of the City-approved coastal development permit raise a substantial issue with respect to the project's conformity with the Chapter 3 policies of the Coastal Act. ~~Second, staff recommends that~~ However, the Commission conducted ~~ed~~ a de novo review and ~~deny~~ **approved** a coastal development permit for the project because ~~it is not~~ **the applicant proposed design changes to ensure that the development will be** visually compatible with the character of the surrounding area and would **not** adversely affect the special community of Venice, which is a popular visitor destination point for recreational uses.~~

~~The motion and resolution to find that a substantial issue exists is on page five of this report. The motion and resolution to deny the coastal development permit are on page 22 of this report.~~

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APPENDICES

Appendix A – Substantive File Documents

EXHIBITS

Exhibit 1 – Vicinity Map

Exhibit 2 – City Approved Plans

Exhibit 3 – As Built/Proposed Plans

Exhibit 4 – Historic Photos of Oakwood, Venice

Exhibit 5 – Appellants’ Streetscape Analysis

Exhibit 6 – Applicant’s Streetscape and Neighborhood Analysis

Exhibit 7 – City of Los Angeles Approval

Exhibit 8 – Example Notice of Permit Issuance; Notice of Appeal Period; Notice of Effectiveness

Exhibit 9 – Letter from Coastal Commission Staff Directing Applicant to Stop Work

Exhibit 10 – Notice of Violation of California Coastal Act

Exhibit 11 – Appeals

I. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE

Motion:

I move that the Commission determine that Appeal No. A-5-VEN-16-0083 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 CDP 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 affirmative vote of a majority of the Commissioners present.

Resolution:

The Commission hereby finds that Appeal No. A-5-VEN-16-0083 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. APPELLANTS' CONTENTIONS

The Coastal Commission's Acting Executive Director and a group of 43 Venice residents¹ have appealed a City of Los Angeles decision granting a coastal development permit with conditions to Lighthouse Brooks LLC for demolition of a duplex and a triplex on two residential parcels; subdivision to create four residential parcels; and construction of four approximately 2,500 sq. ft. three-story single family homes, each including approximately 660 sq. ft. two-car garage topped by second story accessory living quarters and roof deck. The appeals are included in **Exhibit 11**.

The appellants contend that the City-approved development is not consistent with the Chapter 3 policies of the Coastal Act and is not consistent with the standards of the City of Los Angeles certified Land Use Plan for the Venice area. Additionally, the Venice appellants contend that the City of Los Angeles did not adequately review the project for consistency with the Mello Act (California Government Code Section 65590), that the City did not include the demolition of the two residential structures in its project description; and that Coastal Commission staff should not have accepted the City's Notice of Permit Issuance and started the applicable appeal period 34 months after the permit was approved. All appellants contend that the City-approved development is not consistent with the character, mass, and scale of the surrounding area and would adversely affect the character of the Venice community, which is a significant coastal resource. Finally, the appellants contend that approval of the project would prejudice the City's ability to prepare a certified Local Coastal Program for Venice.

¹ Jenni Hawk; Jessica Montagne; Amanda Malko; Robert Malko; John Castillo; Smith Cho; Sarah Luntz; Josh Pollack; Nicholas Mele; Jin Ah Park; Jonathan Ward; Rebecca Freise; Laura Stoland; Ira Rosenblatt; Ellen Korak; Antoinette Reynolds; Gerry Katzman; Kate Arneson; Erik Arneson; Lori Sadel; Eduardo Guedea; Josh Crews; Sabrina Hill; Jacob Boston; Nathan Stefanelli; Michael Boyle; Vincent Furrie; Leslie Demos; Ted Demos; Mark Frick; Paula Matisse; Janis Jones; Edward Dabbs; Cleotilde Barbo; Coburn Hawk; Marianne Shell; Noel Gould; George Gineris; Robin Rudisill; Peter Rudisill; Kelly Adams; James Adams; and Sean Longstreet

III. PROJECT HISTORY

The applicant (Lighthouse Brooks LLC) purchased Lot Nos. 38 & 39, Tract 8415 in Venice, City of Los Angeles from DBB-CCI Investments LLC on December 14, 2012. At the time, the two residential parcels supported two structures (a duplex and a triplex) with five residential units. On September 12, 2012, two months before the applicant purchased the property, the Los Angeles Housing Department determined that two of the five units were affordable rental units, based on information provided by the previous property owner.

On February 12, 2013, the applicant applied to the City for a local coastal development permit and a Mello Act review to demolish the structures, subdivide the parcels, and construct four single-family homes. The applicant held meetings with interested community members at the site on March 16, 2013 and April 6, 2013. The community members expressed varying concerns related to height, mass, and scale of the initial design, as well as the potential loss of the two affordable rental units. The applicant indicates that it modified the plans in response to the community concerns by increasing the setback of the homes from 10 feet as originally proposed to 15-to-19 feet. On June 18, 2013, the Venice Neighborhood Council passed a motion (9 yes, 0 no, 3 abstain) in opposition to the project: “the VNC opposes the project as presented based upon the fact that the design appears not to meet the intent of the SLSO design guidelines with 2 very large 3-story structures, which are out of scale with the neighborhood. The applicant was given the option to alter the design and chose to continue with the plans. Further, we believe the Planning Department needs to evaluate the issue of removing affordable housing.”

On October 23, 2013, the City of Los Angeles Zoning Administrator approved Local Coastal Development Permit ZA-2013-383-CDP-MEL for “the construction of four single family dwellings on four lots, in conjunction with Parcel Map AA-2012-2949-PMLA-SL” (**Exhibit 7**). The City’s determination letter accompanying the approval indicates that no one in opposition to the project attended the public hearing on the local coastal development permit. It does not indicate whether any changes to the plans were proposed as a result of the community concerns or the Venice Neighborhood Council motion in opposition, and the plans associated with the city approval indicate that the structures are set back 10 feet without variation. Page four of the determination letter contains a disclaimer regarding appeal procedures, which includes, in relevant part:

Provided no appeal has been filed by the above-noted date, a copy of the permit will be sent to the California Coastal Commission. Unless an appeal is filed with the California Coastal Commission before 20 working days have expired from the date the City’s determination is deemed received by such Commission, the City’s action shall be deemed final.

The Commission did not receive a copy of the City’s local coastal development permit (or Notice of Permit Issuance) following the City’s approval, which the City is required to provide within five working days pursuant to California Code of Regulations Section 13331. **Exhibit 8** includes an example notice the City would send the Commission after issuing a permit, the notice the Commission would send the City and the applicant following receipt of a valid notice of permit issuance, and the notice the Commission would send the City and the applicant following expiration of the relevant appeal period; in this case no notices were provided by either party and the Commission appeal period was not initiated, thus the local coastal development permit was not effective and was not a valid authorization of the proposed development.

The referenced parcel map was approved with Mitigated Negative Declaration ENV-2012-2950 on October 23, 2013. The parcel map was recorded as Parcel Map No. 2012-2949 in the Los Angeles County Recorder's Office on August 3, 2015. On May 12, 2016, the Los Angeles Department of City Planning approved DIR-2016-1678-VSO (Venice Specific Plan Sign-off) for "construction of a three-story SFD + detached two-car garage with accessory use and roof deck above" at 742 Brooks Avenue, and issued similar Venice Sign Offs for homes on the other three newly created residential parcels (DIR-2016-1678-VSO for a home at 744 Brooks Avenue; DIR-2016-1701-VSO for a home at 746 Brooks Avenue; DIR-2016-1680-VSO for a home at 748 Brooks Avenue).

On October 3, 2014, the City of Los Angeles Department of Building and Safety (LADBS) issued Building Permit No. 14019-30000-01435 to "demo five-unit apartment by hand wrecking to clear lot. Sewer cap and fence required." The demolition was completed in February 2015 and the LADBS issued Building Permit No. 16010-10000-00774 for "construction of new single family small lot subdivision factory built home" and Building Permit No. 16010-10000-01141 for "accessory living quarters with two car garage and roof deck" on May 26, 2016. Construction of the four homes began in early August 2016.

Coastal Commission staff were notified of the project in August 2016 by nearby residents and by the Los Angeles Times after construction ruptured a water main and caused a sinkhole in the public street and after a contractor employed by the applicant was murdered at the site. Commission staff visited the site on August 8, 2016 and provided a letter to the applicant's representatives and the Los Angeles Department of City Planning on August 11, 2016 (**Exhibit 9**). The letter indicated that there was no valid coastal development permit for demolition or new construction on the property, that development undertaken without the benefit of valid coastal development permit constituted a violation of the Coastal Act, that all work on the property must cease until a valid coastal development permit is obtained, and that the City should rescind all building permits issued for the property.

Development of the modular units and accessory structures on the property continued without the benefit of a valid coastal development permit throughout the month of August. Coastal Commission enforcement staff issued the applicant a Notice of Violation of the California Coastal Act on September 6, 2016 (**Exhibit 10**) and communicated with the applicant's representatives by phone on September 9, September 19, and September 30, 2016, in each instance directing the applicant to cease development until a valid coastal development permit is obtained. Development of the modular units and accessory structures on the property continued without the benefit of a valid coastal development permit throughout the month of September. The Commission's enforcement staff communicated with the City on September 21, 2016, again requesting that the City revoke building permits and stop work on the property. The City has not revoked the building permits, but the applicant has ceased work on the property in October and November, except for the installation of weatherproofing materials to prevent damage to the structures during rain events. The City has not issued a Certificate of Occupancy and the homes have not been sold or occupied.

On August 19, 2016 the Commission received a Notice of Permit Issuance for Local Coastal Development Permit ZA-2013-383-CDP-MEL, dated August 16, 2016, nearly three years after the local coastal development permit was approved. Commission staff initiated the required 20

working-day appeal period. On September 19, 2016, the Coastal Commission's Acting Executive Director and Jenni Hawk et al submitted separate appeals of the City's approval of the local coastal development permit (**Exhibit 11**). No other appeals were received prior to the end of the appeal period on September 19, 2016. On October 11, 2016, the applicant waived the 49-day hearing requirement for appeals of locally issued coastal development permits.

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

After a final local action on a local coastal development permit application, the Coastal Commission must be noticed within five days of the decision. [Cal. Pub. Res. Code § 30620.5(c).] 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.] If proper notice is not provided, the local permit has no legal force or effect. [14 Cal. Code Regs § 13315.] 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 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 appellants' contentions 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 coastal development permit is voided and the Commission holds an additional hearing to review the coastal development permit as a de novo matter. [Cal. Pub. Res. Code §§ 30621 and 30625.] Section 13321 of Title 14 of the California Code of 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 de novo hearing will follow. A de novo public hearing on the merits of the application uses the Chapter 3 policies of the Coastal Act. The certified Venice Land Use Plan (LUP) is used as guidance in the de novo phase of the appeal. 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 the California Code of Regulations, 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 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 coastal development permit also obtain a second (or “dual”) coastal development permit from the Coastal Commission. 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 coastal development permit is the only coastal development permit required. The subject project site on appeal herein is located within the *Single Permit Jurisdiction Area*. The Commission's standard of review for the appeal is the Chapter 3 policies of the Coastal Act.

VI. SUBSTANTIAL ISSUE HEARING – FINDINGS AND DECLARATIONS

A. PROJECT LOCATION AND DESCRIPTION

The project site for the City-approved development is located in a residential neighborhood designated Multi Family Residential (Low Medium II) by the Venice Land Use Plan and zoned RD1.5-1 by the Los Angeles Municipal Code. The site is two approximately 5,000 square foot residential parcels within the Oakwood subarea, approximately $\frac{3}{4}$ of a mile inland of the public beach (**Exhibit 1**). The Oakwood neighborhood and the subject block are characterized primarily by one-story and two-story homes of varying architectural styles (often featuring two detached units per residential parcel), with several one-story and two-story multi-unit apartment structures, and several three-story structures.

The City-approved development is demolition of a duplex and a triplex on two residential parcels; subdivision to create four residential parcels; and construction of four approximately 2,500 square foot three-story single family homes. Each home would include an approximately 660 square foot two-car garage with tandem parking, topped by second story accessory living quarters and roof deck. The living quarters and roof deck would be accessed from a stairway

within an approximately 400 square foot courtyard connecting each main residence to each accessory structure (**Exhibit 2**). The demolition has already occurred and the structural elements of the four homes consisting of 20 modular units have been assembled by crane (four homes times three modular stories plus four detached two-story garages featuring accessory living quarters above). The City-approved height is 30 feet, as measured from the centerline of Brooks Avenue, which is the maximum height for structures with sloped roofs (in this case the sloped roof features a horizontal wave design at a 1:6 pitch). The front yard setback approved by the local coastal development permit is 10 feet (plus a seven foot street dedication) for an effective setback of 17 feet from the sidewalk. The rear yard setback is five feet, the side setbacks are zero feet in the middle of the parcels, and five feet at the ends.

The four homes would be sited on four newly designated parcels subject to Parcel Map No. 2012-2949, which has been recorded in Los Angeles County Recorder's Office. Parcel A and Parcel D (the easternmost and westernmost parcels on the ends) are each 21.5 feet wide by 123 feet deep, with area of 2,646 square feet. Parcel B and Parcel C, in the middle, are each 18.5 feet wide by 123 feet deep, with area of 2,277 square feet. The City of Los Angeles Small Lot Subdivision Ordinance (a component of the Los Angeles Municipal Code not certified by the Coastal Commission) allows for small residential parcels (like the two approximately 5,000 square foot parcels on the subject site) to be subdivided into even smaller parcels in order to encourage density, and provides for reduced parking and setback standards compared to what would be required with four residential units on two lots. The parcel map was approved by reference within the City of Los Angeles local coastal development permit subject to this appeal.

The City-approved coastal development permit plans do not identify drainage, landscaping, or fencing. After the appeals were filed, the applicant provided plans (**Exhibit 3**) identifying drainage devices on the roof and water catchment devices in the yards, low and moderate water use plant species and trees, and fencing up to six feet high at the side yards. The revised plans are also different from City-approved coastal development permit plans in that the two middle homes have been stepped back two feet further and the side homes have been stepped forward two feet. The legal setbacks for all four homes are now proposed to be eight feet, although including the seven foot street dedication, the effective setbacks from the sidewalk would be 15-to-19 feet (as opposed to a uniform 17 feet in the plans approved by the local coastal development permit subject to the appeal). The revised plans also include changes to exterior partition walls and balconies. In the substantial analysis, the Commission cannot consider these changes to the plans because they were not subject to the local government's action.

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 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 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

Some of the appellants assert the City's noticing and public hearing procedures were not consistent with the City's municipal code and were in violation of the Coastal Act. Additionally, the appellants argue that the City's approval did not comply with Government Code Section 65590 (the Mello Act of 1982). The appellants argue that the Venice LUP contains standards for implementation of the Mello Act which the City of Los Angeles ignored. They contend that the certified Venice LUP contains policies requiring replacement of affordable housing units if low or moderate income units are demolished or converted to high income units and that the applicants' study and the City's findings which concluded that it was not feasible to provide affordable housing on-site or off-site were inadequate.

The California Legislature amended the Coastal Act to remove some specific policies related to the Commission's direct authority to protect affordable housing in the Coastal Zone.

Section 30604 of the Coastal Act, as amended, contains the following policies:

(f) The commission shall encourage housing opportunities for persons of low and moderate income. In reviewing residential development applications for low- and moderate-income housing, as defined in paragraph (3) of subdivision (h) of Section 65589.5 of the Government Code, the issuing agency or the commission, on appeal, may not require measures that reduce residential densities below the density sought by an applicant if the density sought is within the permitted density or range of density established by local zoning plus the additional density permitted under Section 65915 of the Government Code, unless the issuing agency or the commission on appeal makes a finding, based on substantial evidence in the record, that the density sought by the applicant cannot feasibly be accommodated on the site in a manner that is in conformity with Chapter 3 (commencing with Section 30200) or the certified local coastal program.

(g) The Legislature finds and declares that it is important for the commission to encourage the protection of existing and the provision of new affordable housing opportunities for persons of low and moderate income in the coastal zone.

These Chapter 7 policies require the Commission to encourage cities and property owners to provide affordable housing opportunities, but they have not been interpreted as a basis for the Commission to mandate the provision of affordable housing through its regulatory program. In 1982, the legislature codified Government Code Section 65590 (the Mello Act), requiring local governments to protect and increase the supply of affordable housing in the Coastal Zone.

The City of Los Angeles has struggled to implement the Mello Act in its segments of the Coastal Zone, and especially in Venice. The City's initial regulatory program for Mello compliance was challenged by a 1993 lawsuit brought by displaced low income tenants at 615 Ocean Front Walk, where the City approved a new development with no replacement affordable housing. That lawsuit resulted in a 2001 settlement agreement between the aggrieved parties, the Venice Town Council et al, and the City of Los Angeles². Since 2001, the City has been regulating development through its Interim Administrative Procedures for Complying with the Mello Act.

Also in 2001, the Commission certified the Venice Land Use Plan, which contains specific policies encouraging the protection of existing affordable housing units and the construction of new affordable housing units in Venice.

Policy I. A. 9. Replacement of Affordable Housing, states:

Per the provisions of Section 65590 of the State Government Code, referred to as the "Mello Act", the conversion or demolition of existing residential units occupied by persons and families of low or moderate income shall not be permitted unless provisions have been made for replacement of those dwelling units which result in no net loss of affordable housing in the Venice Community in accordance with Section 65590 of the State Government Code (Mello Act).

Policy I. A. 10. Location of Replacement Housing, states:

The replacement units shall be located in one or more of the following areas, listed in order of priority: 1) on the site of the converted or demolished structure; 2) within the site's Venice coastal subarea; 3) within the Venice Coastal Zone; 4) within the Venice Community Plan area east of Lincoln Boulevard; and, 5) within a three mile radius of the affected site.

Other policies of the certified Venice Land Use Plan require affordable housing units to be replaced at a 1:1 ratio, offer displaced residents priority for new units, provide density bonuses allowing for affordable units to exceed the floor area ratio zoned for a given lot, and allow for the provision of fewer parking spaces that required if a development contains affordable units.

Government Code Section 65590(b) (Mello Act) is referenced as an exception to the preceding Venice Land Use Plan Policies. Section 65590(b) states:

² No. B091312. Second Dist., Div. Seven. Jul 31, 1996. Venice Town Council Inc. et al., Plaintiffs and Appellants, v. City of Los Angeles et al., Defendants and Respondents

The requirements of this subdivision for replacement dwelling units shall not apply to the following types of conversion or demolition unless the local government determines that replacement of all or any portion of the converted or demolished dwelling units is feasible, in which event replacement dwelling units shall be required:

- (1) The conversion or demolition of a residential structure which contains less than three dwelling units, or, in the event that a proposed conversion or demolition involves more than one residential structure, the conversion or demolition of 10 or fewer units.*

As part of its Interim Procedures for Complying with the Mello Act, the City developed a worksheet to assist applicants who propose demolition or conversion of affordable housing units in the Coastal Zone. The “Advisory Notice and Screening Checklist” which the applicant completed through the Los Angeles Department of City Planning Review has three steps which serve to determine whether replacement affordable housing units may be required. For the subject application, the applicant indicated in Steps One and Two that the demolition of the pre-existing duplex and triplex would include the demolition of existing residential units. In Step Three, the applicant identified the proposed project as a small new housing development, which the worksheet identifies as automatically exempt from the requirement to provide inclusionary housing units. The applicant appears to have conflated what are actually two distinct scenarios: demolishing existing housing units and constructing new housing in place vs. constructing new housing where in a location which did not previously support housing.

Additionally, the City findings in its approval of Parcel Map AA-2012-2949-PMLA-SL indicate: “The project is not consistent with the special requirements for low and moderate income housing units in the Coastal Zone as mandated by California Government Code Section 65590 (Mello Act). The proposed project does not qualify for the Small New Housing exemption from the Mello Act. Furthermore, in a memo dated September 27, 2012, the Los Angeles Housing Department determined that the project would involve the demolition of two affordable housing units. Therefore, the applicant/owner/developer is required to provide inclusionary affordable dwelling units on-site or within the Coastal Zone.”

Nonetheless, the applicant completed a feasibility study for potential replacement of two affordable rental units. The Los Angeles Department of City Planning accepted the feasibility study and determined that it would be economically infeasible for the applicant to provide replacement affordable rental units through its findings in approval of combined Local Coastal Development Permit/Mello Act Review ZA-2013-383-CDP-MEL; October 23, 2013.

While the appellants raise issues related to the City’s compliance with the Mello Act, the Coastal Commission has no jurisdiction to alter the City’s Mello Act determinations. The Government Code makes it clear that it is the responsibility of the local government to implement Section 65590. Therefore, the appellant’s contentions regarding the City’s Mello Act determination do not raise a substantial issue because the Commission does not have jurisdiction to review those contentions.

As indicated in Section III: Project History, on August 19, 2016 the Coastal Commission received a Notice of Permit Issuance for ZA-2013-383-CDP-MEL, dated August 16, 2016,

nearly three years after the local coastal development permit was approved. Public Resources Code Section 30620.5(c) and 14 California Code of Regulations Section 13315 require the local government to provide this notice within five working days of its action, and 14 California Code of Regulations Section 13315 states that “[u]nless the local government provides such notification to the commission, the permit issued by the local government shall be of no force and effect.” Accordingly, the local permit was not effective until the City issued the permit, provided the Commission with proper notice, and either the Commission’s appeal period ran or the Commission reached a final decision on a submitted appeal. Here, Commission staff initiated the required 20 working-day appeal period after receiving proper notice of the City’s action on August 19, 2016. On September 19, 2016, the Coastal Commission’s Acting Executive Director and a group of 43 Venice residents identified as Jenni Hawk et al submitted separate appeals of the City’s approval of the local coastal development permit (**Exhibit 11**) within 20 working days of the date the City provided the notice of final local action to the Commission’s South Coast District office in Long Beach.

While one group of appellants has requested that the local coastal development be revoked and the City of Los Angeles be reprimanded for its action to approve the permit, the appellants have not provided any additional evidence indicating that the City violated its municipal code through its noticing or hearing procedures. The appellants’ assertion that the City did not include the demolition of the duplex and the triplex in the project description for ZA-2013-383-CDP-MEL is true, but the demolition was described on page 6 and page 9 of the City’s findings in its combined local coastal development permit and Mello Act review. The appellants’ concerns appear to be primarily related to the City’s ongoing struggle to implement the Mello Act and preserve affordable housing in the Coastal Zone, which the Commission does not have jurisdiction to review. The Commission’s substantial issue analysis is limited to the conformity of the action of the local government with the Chapter 3 policies of the Coastal Act.

Both appeals contend that the City-approved development is not consistent with Sections 30251 and 30253 of the Coastal Act because the mass and scale of the structures are not consistent with the character of the Oakwood subarea of Venice. Additionally, the group of residents’ appeal identifies the four unit Small Lot Subdivision development as a “hostile takeover” which threatens not only the visual resources but the social fabric of the community.

Section 30251 of the Coastal Act states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Section 30253(e) of the Coastal Act states:

New development shall...

(e) where appropriate, protect special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses.

Sections 30251 and 30253 of the Coastal Act require permitted development to be visually compatible with the character of surrounding areas and require protection of communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses. The Venice community – including the beach, the boardwalk, the canals, and the eclectic architectural styles of the neighborhoods – is one of the most popular visitor destinations in California. According to the Venice Chamber of Commerce, 16 million people visit annually, drawn by the unique characteristics of the area including “the Pacific Ocean, Boardwalk vendors, skaters, surfers, artists, and musicians.”³ Venice was the birthplace of The Doors and The Lords of Dogtown and its unique characteristics attracted myriad artists and musicians from the Beat Generation to the poets and street performers who people still travel to Venice to see.

The Oakwood subarea (of which the subject property is in the center) is located approximately $\frac{3}{4}$ of a mile inland of the beach and was developed almost entirely with one story homes and apartments in the early 20th century (a duplex and triplex were constructed on the subject site in 1910). The City of Los Angeles SurveyLA Historic Resources Report for the Venice Community Plan Area identifies Oakwood as “the area bounded by Dewey Street to the northwest, Lincoln Boulevard to the northeast, California Avenue to the southeast, Electric Avenue to the southwest, and Hampton Drive to the west, evolved as an African-American enclave across multiple generations of ethnic migration to Southern California.” The report continues: “the population of African-Americans in Venice tripled between 1910 and 1920 as blacks arrived to work as manual laborers, service workers, and servants to wealthy white residents. Some of the earliest black residents of Venice settled in the area because they were hired as employees of Abbot Kinney.”

Development patterns in the Oakwood neighborhood and Venice as a whole changed in the mid-20th century as more apartment buildings were developed to support greater density in an increasingly racially and culturally diverse area. **Exhibit 4** features photos of the Oakwood neighborhood in the 1960s and 1970s. In her book “Ghost Town: A Venice California Life” Pat Hartman writes about growing up in the rear unit of an Oakwood parcel in 1978:

Between us and the street are a small yard and the front house, tiny and storybook cute. Our back wall is separated from the alley by a paved parking area and a high chain link fence with gates. This apartment has three bedrooms, and the ones upstairs are exactly like it. The building is typical Southern California crackerbox, smeared outside with pinkish tan stucco. Inside, it somehow has the feel of a house. The stove and refrigerator are ancient and massive. The kitchen and bathroom counters are not Formica, but good old ceramic tiles with plenty of space for germs in the grout lines. And according to Marnie, we have a ghost: a dealer who was murdered when the place was a dooper hangout. And we’re only six blocks from the Pacific Ocean.

Today, the Oakwood neighborhood is characterized primarily by one-story and two-story homes of varying architectural styles (often including two detached residential units per parcel), with

³ Venice Chamber of Commerce website. < <http://venicechamber.net/visitors/about-venice/>>

several one-story and two-story multi-unit apartment structures, and some three-story structures. The four proposed three-story homes and two-story rear units subject to this appeal are constructed along the south side of a very long block (approximately 1,000 feet distance between 7th Avenue and Lincoln Boulevard). The long block is flat and entirely residential with an approximately 34-foot wide street featuring public parking on each side, and five-foot wide sidewalks fronting structures set back 10-to-30 feet. According to Los Angeles County Assessor data, the 700 and 800 blocks of Brooks Avenue feature homes constructed in each decade from the 1910s through the 2010s. The smallest structure is a 572 square foot one-story bungalow and the largest structure is a 7,168 square foot, two-story, seven unit apartment building. The appellants contend that the City-approved development is not consistent with the Chapter 3 policies of the Coastal Act and the standards of the Venice Land Use Plan because it is out of scale and not in keeping with the community character of the Oakwood subarea of Venice.

The protection of community character is a significant issue for the residents of Venice and the people of California. Venice has a unique blend of style and scale of residential buildings, historical character, walk streets, diverse population, as well as expansive recreation areas and attractions. These features make Venice a popular destination for both residents and tourists. As a result of its unique coastal districts, Venice is a coastal resource to be protected. As a primarily residential community, existing and ongoing residential development is a significant factor in determining Venice's community character. The continued change in the residential character of the Venice community, especially in the Oakwood and Milwood subareas, has been a cause of public concern over the years.

During the March 2014 Commission meeting, a group of Venice residents raised objections to the coastal development permit waiver process that was facilitating rapid demolition and construction of single family homes in the City of Los Angeles, particularly in the Oakwood and Milwood areas of Venice. Many residents expressed concerns over the lack of public review and public input in permit decisions, and urged the Commission to preserve community character of Venice, which is identified as a special coastal community by the certified Land Use Plan. Since 2014, the Commission has declined to authorize waivers of permit requirements for new residential projects in Venice, in hopes that project applicants and the City of Los Angeles would address public concerns regarding cumulative impacts of new residential development through the local coastal development permit process and the LCP development process. Additionally, since 2014, the Commission has reviewed residential development in Venice on a case-by-case basis with a goal of preserving the scale of residential neighborhoods and discouraging massive proposals that are out of character with surrounding development.

Both the appellants and the applicant have submitted streetscape analyses, which are included within **Exhibit 5** and **Exhibit 6**. The appellants indicate that there are 39 one story structures, 13 two-story structures, and 2 two-and-a-half story structures along both sides of the subject block. The appellants also provided data identifying lot sizes and unit sizes for every parcel on both sides of the subject block and an analysis which concludes that the proposed homes and detached structures subject to this appeal are taller and more massive, and sited on smaller parcels, than the vast majority of other residential structures on the block. Additionally, the appellants contend that the proposed structures are not articulated enough and their uniform architecture and substantial massing is out of character with other structures on the subject block (**Exhibit 5**).

In contrast, the applicant argues that there are many other three-story structures within ½ mile of the subject site and that the subject block is characterized by structures of varying heights, including modern, three-story structures. Specifically, the applicant identifies modern two-story and three-story structures on the same side of the block to the east and the west of the subject site, several of which have been approved by the Coastal Commission and the City of Los Angeles in the previous five years (**Exhibit 6**).

Aside from a different interpretation of what qualifies as a two-and-a-half story structure vs a three-story structure, the two analyses do not contradict one another. The appellants correctly point out that the majority (approximately 75%) of the structures on each side of the subject block are one-story, including the three residential structures on either side of the subject property and all five residential structures directly across the street. The applicant correctly points out that several two-story and three-story structures have been approved in the previous five years and contribute to the character of the block [see 5-13-1213-W (Walters); 5-12-281-W (Misakyan); 5-11-015-W (Jimenez); and 5-07-418-W (McVeary), all of which were waivers of coastal development permit requirements issued by the Executive Director, and were not subject to public hearings before the City or the Commission]. The applicant is also correct that there are three-story structures on other blocks within ½ mile of the subject site, but those blocks have different street widths, different prevailing setbacks, different lot size characteristics, and different development patterns than the subject block. Many of the three-story structures identified by the applicant are not in the Oakwood subarea, but rather in other subareas of Venice which have different building standards identified in the City's zoning code and the certified Land Use Plan.

When the Commission certified the Venice Land Use Plan (LUP) in 2001, it considered the potential impacts that development could have on community character and adopted residential building standards to ensure development was designed with pedestrian scale and in compatibility with surrounding development. Given the specific conditions surrounding the subject site and the eclectic development pattern of Venice, it is appropriate to use the certified LUP policies as guidance in determining whether or not the subject development is consistent with Coastal Act Sections 30251 and 30253. In this case, the certified Venice Land Use Plan echoes the priority expressed in Coastal Act for preservation of the nature and character of unique residential communities and neighborhoods.

Policy I. E. 1, General, states:

Venice's unique social and architectural diversity should be protected as a Special Coastal Community pursuant to Chapter 3 of the California Coastal Act of 1976.

Policy I. E. 2. Scale, states, in part:

New development within the Venice Coastal Zone shall respect the scale and character of the community development. Buildings which are of a scale compatible with the community (with respect to bulk, height, buffer and setback) shall be encouraged. All new development and renovations should respect the scale, massing, and landscape of existing residential neighborhoods...

Policy I. E. 3. Architecture, states:

Varied styles of architecture are encouraged with building facades which incorporate varied planes and textures while maintaining the neighborhood scale and massing.

Policy I. A. 1, Preserve Stable Single Family Residential Neighborhoods, states, in part:

Ensure that the character and scale of existing single-family neighborhoods is maintained and allow for infill development provided that it is compatible with and maintains the density, character, and scale of the existing development...

Through its approval of Case Number ZA-2013-383-CDP-MEL, the City of Los Angeles did not make findings specific to height, mass, or scale indicating whether or not the development was in character with the surrounding area. The City found: “the proposed project is located within a well-developed existing residential area. The building and infrastructure capable of supporting it have been in place for many years. The existing dwelling on the site is not a new development, since it was permitted and built in 1910. Neighboring residential uses are of a similar age. The proposed dwelling will be four new small single family dwellings. No deviations from the Municipal Code have been requested with respect to building height, parking, yards or lot coverage or any other provisions. The request entails the demolition current dwellings and its replacement with four new dwelling. Abutting uses include apartment buildings.”

The findings in the City approval include a section identified as “Previous related actions in the area,” but none of the four referenced actions were subject to a local coastal development permit. Three of the referenced actions relate to parcel map approvals and one is a Director’s Sign-off, an administrative action. Section 4 of the City’s findings references an approved project at 720 and 722 Brooks Avenue, also referenced by the applicant and identified earlier in this section: Waiver of coastal development permit requirements No. 5-07-418-W (McVeary) included demolition of a single family home and construction of two 30-foot high single family homes on one residential parcel with six on-site parking spaces.

A substantial difference between that project and the City-approved development which the Acting Executive Director and 43 Venice residents have appealed is the fact that the development on these appeals spans two residential parcels, which the applicant proposes to subdivide into four residential parcels and develop with four massive, nearly identical homes side-by-side. The other three story homes on the subject block were each constructed on one residential parcel. In two cases, Small Lot Subdivisions were approved by the City, but those were each for two structures on one lot, not four structures on two lots. In one of those cases the structures were developed front to back in order to reduce massing from the street, rather than side-by-side with zero side yard setbacks as the subject application proposes. In another case at 804 Brooks Avenue, 5-11-015-W (Jimenez), the City and the Executive Director approved construction of a new 25-foot high single family home in the front portion of a residential parcel that already had a residential unit at the rear. Finally, the Commission recently found that the City’s approval of two single family homes on a single residential parcel at 672 Brooks Avenue (one block west of the subject site) raised no substantial after that project was appealed [see: A-5-VEN-15-0059 (Kamdar)]. That project included a Small Lot Subdivision, but the two homes were developed front to back and the street-fronting home was two-stories and 23-feet high.

Another substantial difference between the City-approved development and other homes of similar size approved nearby is the subject development does not feature substantial articulation, as called for by the development standards of the Venice Land Use Plan. Policy I.E.3 of the Land Use Plan indicates that “varied styles of architecture are encouraged with building facades which incorporate varied planes and textures while maintaining the neighborhood scale and massing.” The sloped roof has been designed to meet the minimum requirement for an extra five feet of building height beyond the twenty-five feet permitted for flat roofs in the Oakwood subarea, but the City-approved development is not articulated except for the third level balcony. It consists of four massive structures side-by-side, with rectangular door openings at each level.

The design of the four structures is nearly identical, and cumulatively, they represent a wall set back the minimal distance from the sidewalk (the applicant indicates that the design has been modified to provide differentiation of two of the four homes, but that design is not identified in the local coastal development permit subject to this appeal). Both the approved 10 foot setback (effectively 17 feet including the street dedication) and the as-built 15-to-19 foot setbacks are less than the setbacks of the adjacent structures to the east and to the west. The third story has been set back the minimum five-feet in order to gain an additional five feet over the twenty-five foot height limit, but aside from that element, the façade of the four homes is not varied and landscaping is not called out. The zero foot setbacks between the two homes are out of character with the block, where no other homes feature such a design, and are out of character in Venice generally. Additionally, the four structures at the rear alley form a similar wall when viewed cumulatively. The accessory structures at the rear are not as high or as massive as those at the front, but they are visible from Brooks Avenue and contribute to the substantial massing of the proposed project, which effectively includes eight structures on two existing residential parcels.

Analyzed cumulatively, the homes and accessory units are not consistent with Coastal Act Section 30251 because they will not be visually compatible with the character of surrounding areas. The project would not be consistent with Venice Land Use Plan Policy 1.E.2 because it would not respect the scale, massing, and landscape of existing residential neighborhoods. The scale and massing of the existing block, and the Oakwood neighborhood, is one-story and two-story single family homes and one-story and two-story multi-unit structures. The City’s approval of four massive three-story structures adjacent to a trifecta of one-story structures on either side and one-story structures across the street is not consistent with Section 30251 or Policy 1.E.2 because it is not visually compatible with the character of the surrounding area. Additionally, the project is not consistent with Coastal Act Section 30253 because it does not protect the character of the Venice community which is a popular visitor destination points for recreational uses. Nor is the development consistent with Land Use General Policy 1.E.1 because it would not protect the unique social and architectural diversity of Venice, which is identified as a Special Coastal Community. Approval of this development would set a precedent for out of scale development in Venice, and additional development of this type (massive structures side-by-side with minimal articulation and lack of architectural diversity) would adversely affect the community character of Venice, which is a popular destination point specifically for its unique characteristics.

Additionally, the City-approved development is not consistent with Coastal Act Section 30231 and with previous Commission-approved projects in Venice because the plans do not identify any drainage, landscape, or low impact development features.

Section 30231 of the Coastal Act states:

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

In order to preserve visual resources and to ensure consistency with the water quality requirements of Coastal Act Section 30231, the Commission has required drought tolerant, non-invasive landscaping and drip or microspray irrigation to minimize water usage, and has required drainage devices to maximize stormwater infiltration. The Commission has also reviewed fence height, required trees to be replaced in order to enhance visual resources, and avoid adverse impacts to community character. The City-approved local coastal development permit does not include findings or plans to ensure drainage, landscaping, and fencing are consistent with Coastal Act policies, although the applicant submitted revised plans identifying these features after the appeal was filed.

Only with careful review of the City-approved project can the Commission ensure that community character is preserved and visual resources are protected. If the Commission 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. 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).

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 included the majority of its findings within the first section of its report titled: “The development is in conformity with Chapter 3 of the California Coastal Act of 1976.” The City’s findings do not reference any specific Coastal Act policies but appear to relate to Coastal Act Section 30250, which requires new development to be located within existing developed areas. The City made no findings in relation to the development’s consistency with Coastal Act Sections 30251 and 30253, related to visual resources and community character. The City referenced the Municipal Code and the Venice Specific Plan, which are not the standard of review and which the Commission declined to certify as an Implementation Plan amendment in 2000. The findings make no reference to the Venice Land Use Plan, which is a certified document and may be used as guidance to determine consistency with the Chapter 3 policies of the Coastal Act. The City references other development in Venice approved by the City and by the Commission, but does not analyze the subject development in relation to the previously approved development. Additionally, the City approved plans do not identify any drainage, landscape, or low impact development features that the Commission has previously required in developed areas to ensure consistency with the water quality requirements of Coastal Act Section 30231. Finally, the applicant has completed the majority of the development without the benefit of a valid coastal development permit and has changed the plans throughout the development process, such that they are no longer consistent with the City-approved coastal development

permit. Therefore, the City's approval is not consistent with Coastal Act Sections 30231, 30251, and 30253 and does not include adequate factual and legal support to justify its decision.

The second factor is the extent and scope of the development as approved or denied by the local government. The existing development is a duplex and a triplex on two residential parcels. The City-approved development authorizes the demolition of those structures, subdivision of the parcels, and construction of four homes and four accessory structures. The scope is greater than that of the surrounding development, which is comprised primarily of one-story single family homes. The locally approved project would have adverse impacts to visual resources and community character. The scope of the four homes would be more massive than any other development on the subject block, including approximately 10,000 square feet of living space and additional vehicle parking area.

The third factor is the significance of the coastal resources affected by the decision. The City-approved project, and others like it that could be approved in the future, would adversely affect the character of the Oakwood neighborhood of Venice, which is a unique coastal community, because it is not consistent with the surrounding development pattern. Additionally, the project has the potential to negatively and cumulatively impact the biological productivity and water quality of nearby coastal resources because specific landscaping, drainage, and construction best management practices have not been required. Therefore, the development would significantly adversely affect coastal resources.

The fourth factor is the precedential value of the local government's decision for future interpretations of its Local Coastal Program (LCP). The City does not currently have a certified LCP but it does have a certified Land Use Plan. The City-approved development is not consistent the residential building standards related to scale, mass, and architectural diversity set forth in the certified Land Use Plan. Additionally, the project is not consistent with previous Commission actions in the area, which have not authorized massive three- story homes with minimal setbacks and minimal articulation in an area with primarily one-story single family homes and some two-story and three-story residential structures. Thus, the project, as approved with conditions, raises a substantial issue with regard to the project's conformity with the certified Land Use Plan. Approval of a project that is not consistent with the standards of the Land Use Plan would set a precedent for other projects that are not consistent with the Land Use Plan and would prejudice the City's ability to prepare a certified LCP for Venice.

The final factor is whether the appeal raises local issues, or those of regional or statewide significance. This appeal raises specific local issues, but Venice is one of the most popular visitor destinations in the state making its preservation as an eclectic community with a unique character a statewide issue. Therefore, the City's approval does raise issues of statewide significance.

In conclusion, the primary issue for the appeals is potential adverse impacts to visual resources and community character. In this case, the City-approved project is not in conformity with the Chapter 3 policies of the Coastal Act and therefore, the Commission finds that the appeals raise a substantial issue as to conformity with the Chapter 3 policies of the Coastal Act.

VII. MOTION AND RESOLUTION – DE NOVO REVIEW REVISED FINDINGS

Motion:

I move that the Commission approve Coastal Development Permit No. A-5-VEN-16-0083 for the development proposed by the applicant.

I move that the Commission adopt the revised findings proposed by staff in support of the Commission's action on December 8, 2016 to approve Coastal Development Permit No. A-5-VEN-16-0083.

Staff recommends a NO vote. Failure of this motion will result in denial of the permit and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Staff recommends a YES vote. Passage of the motion will result in the adoption of revised findings as set forth in this staff report. The motion requires a majority vote of the members from the prevailing side present at the December 8, 2016 hearing, with at least three of the prevailing members voting. Only those Commissioners on the prevailing side of the Commission's action are eligible to vote on the revised findings.

The Commissioners on the prevailing side are: Bochco, Diaz, Howell, Kinsey, Lueveno, McClure, Mitchell, Turnbull-Sanders, and Uranga.

Resolution:

The Commission hereby denies a coastal development permit for the proposed development on the grounds that the development will not conform with the policies of Chapter 3 of the Coastal Act and will 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 would not comply with the California Environmental Quality Act because there are feasible mitigation measures or alternatives that would substantially lessen the significant adverse impacts of the development on the environment.

The Commission hereby adopts the findings set forth below for the approval of Coastal Development Permit No. A-5-VEN-16-0083 on the grounds that the findings support the Commission's decision made on December 8, 2016 and accurately reflect the reasons for it.

VIII. STANDARD CONDITIONS

- 1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.**
- 2. Expiration. If development has not commenced, the permit will expire two years from the date 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 permittee to bind all future owners and possessors of the subject property to the terms and conditions.**

IX. SPECIAL CONDITIONS:

- 1. Submittal of Revised Final Plans. PRIOR TO ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the applicant shall submit, for review and approval of the Executive Director, two sets of final plans, including detailed elevations, which shall be in substantial conformance with the plans dated October 18, 2016, revised to include the following modifications:**

- Reduce height of top floor privacy walls to balcony height;**
- Utilize neutral color palette as shown in the rendering attached hereto; and**
- Modify door of middle units to include additional glass and remove diamond shape**

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 amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required.

- 2. Construction Responsibilities, Water Quality Control Measures and Debris Removal. By acceptance of this permit, the permittee agrees that the approved development shall be carried out in compliance with the following BMPs:**
 - 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.
- n. During construction of the project, no runoff, site drainage or dewatering shall be directed from the site into any street, alley or storm drain, unless specifically authorized by the California Regional Water Quality Control Board.

The permittee shall undertake development in accordance with the approved plan. Any proposed changes to the approved final plan shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that no amendment is required.

- 3. Landscape and Irrigation. By acceptance of the permit, the permittee agrees, on behalf of all future successors and assigns, that:**
- a. Vegetated landscaped areas shall consist of native plants or non-native drought tolerant plants, which are non-invasive. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.calipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a “noxious weed” by the State of California or the U.S. Federal Government shall be utilized within the property. All plants shall be low water use plants as identified by California Department of Water Resources (See: <http://www.water.ca.gov/wateruseefficiency/docs/wucols00.pdf>).**
 - b. Use of reclaimed water for irrigation is encouraged. If using potable water for irrigation, only drip or microspray irrigation systems may be used. Other water conservation measures shall be considered, such as weather based irrigation controllers.**
- 4. Permit Compliance. The permittee shall undertake development in accordance with the approved final plans, specifically including the site plan, landscaping plan, and irrigation and drainage plan. 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 Coastal Development Permit No. A-5-VEN-16-0083 unless the Executive Director determines that no amendment is legally required.**

X. FINDINGS AND DECLARATIONS – DE NOVO REVIEW

A. PROJECT LOCATION AND DESCRIPTION

The findings included in Section VI, Subsection A are incorporated by reference.

~~If~~ **Because** the Commission ~~finds~~ **found** 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 coastal development permit is voided and the Commission may consider alternative project designs or mitigation measures in its de novo review.

The applicant is proposing demolition of a duplex and triplex on two residential parcels; subdivision to create four residential parcels; and construction of four approximately 2,500 square foot three-story single family homes, each including approximately a 660 square foot two-car garage topped by second story accessory living quarters and roof deck. The applicant has identified several changes to the City-approved plans, which include identification of drainage devices on the roof and water catchment devices in the yards, low and moderate water use plant species and trees, and fencing up to six feet high at the side yards. The revised plans (**Exhibit 3**) also proposed to step the middle two homes back two feet further and step the two end homes two feet forward. The legal setbacks for all four homes are now proposed to be eight feet, although the effective setbacks from the sidewalk would be 15-to-19 feet. The revised plans also include changes to some exterior partition walls and balconies. **The applicant proposes that the**

design will be further modified to reduce the height of top floor privacy walls, utilize a more neutral color palate, change the shape of the doors on the middle units, and plant a California Sycamore tree in each front yard. This is an after-the fact review of the application for a coastal development permit. As such, the Commission considers the proposed development as if it has not yet occurred.

B. PROJECT HISTORY

The findings included in Section III are incorporated by reference.

C. DEVELOPMENT - VISUAL RESOURCES

Section 30251 of the Coastal Act states:

The scenic and visual qualities of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to protect views to and along the ocean and scenic coastal areas, to minimize the alteration of natural land forms, to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas. New development in highly scenic areas such as those designated in the California Coastline Preservation and Recreation Plan prepared by the Department of Parks and Recreation and by local government shall be subordinate to the character of its setting.

Section 30253(e) of the Coastal Act states:

*New development shall...
(e) where appropriate, protect special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses.*

Sections 30251 and 30253 of the Coastal Act require permitted development to be visually compatible with the character of surrounding areas and require protection of communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses. The Venice community – including the beach, the boardwalk, the canals, and the eclectic architectural styles of the neighborhoods – is one of the most popular visitor destinations in California. According to the Venice Chamber of Commerce, 16 million people visit annually, drawn by the unique characteristics of the area including “the Pacific Ocean, Boardwalk vendors, skaters, surfers, artists, and musicians.”⁴ Venice was the birthplace of The Doors and The Lords of Dogtown and its unique characteristics attracted myriad artists and musicians from the Beat Generation to the poets and street performers people still travel to Venice to see.

The Oakwood subarea (of which the subject property is in the center) is located approximately ³/₄ of a mile inland of the beach and was developed almost entirely with one story homes and apartments in the early 20th century (a duplex and triplex were constructed on the site in 1910). The City of Los Angeles SurveyLA Historic Resources Report for the Venice Community Plan

⁴ Venice Chamber of Commerce website. < <http://venicechamber.net/visitors/about-venice/>>

Area identifies Oakwood as “the area bounded by Dewey Street to the northwest, Lincoln Boulevard to the northeast, California Avenue to the southeast, Electric Avenue to the southwest, and Hampton Drive to the west, evolved as an African-American enclave across multiple generations of ethnic migration to Southern California.” The report continues: “the population of African-Americans in Venice tripled between 1910 and 1920 as blacks arrived to work as manual laborers, service workers, and servants to wealthy white residents. Some of the earliest black residents of Venice settled in the area because they were hired as employees of Abbot Kinney.”

Development patterns in the Oakwood neighborhood and Venice as a whole changed in the mid-20th century as more apartment buildings were developed to support greater density in an increasingly racially and culturally diverse area. **Exhibit 4** features photos of the Oakwood neighborhood in the 1960s and 1970s. In her book “Ghost Town: A Venice California Life” Pat Hartman writes about growing up in the rear unit of an Oakwood parcel in 1978:

Between us and the street are a small yard and the front house, tiny and storybook cute. Our back wall is separated from the alley by a paved parking area and a high chain link fence with gates. This apartment has three bedrooms, and the ones upstairs are exactly like it. The building is typical Southern California crackerbox, smeared outside with pinkish tan stucco. Inside, it somehow has the feel of a house. The stove and refrigerator are ancient and massive. The kitchen and bathroom counters are not Formica, but good old ceramic tiles with plenty of space for germs in the grout lines. And according to Marnie, we have a ghost: a dealer who was murdered when the place was a doper hangout. And we're only six blocks from the Pacific Ocean.

Today, the Oakwood neighborhood is characterized primarily by one-story and two-story homes of varying architectural styles (often including two detached residential units per parcel), with several one-story and two story multi-unit apartment structures, and some three-story structures. The four proposed three-story homes and rear units subject to this de novo review are constructed along the south side of a very long block (approximately 1,000 feet distance between 7th Avenue and Lincoln Boulevard). The long block is flat and entirely residential with an approximately 34-foot wide street featuring public parking on each side, and five-foot wide sidewalks fronting structures set back 10-to-30 feet. According to Los Angeles County Assessor data, the 700 and 800 blocks of Brooks Avenue feature homes constructed in each decade from the 1910s through the 2010s. The smallest structure is a 572 square foot one-story bungalow and the largest structure is a 7,168 square foot, two-story, seven unit apartment building.

The protection of community character is a significant issue for the residents of Venice and the people of California. Venice has a unique blend of style and scale of residential buildings, historical character, walk streets, diverse population, as well as expansive recreation areas and attractions. These features make Venice a popular destination for both residents and tourists. As a result of its unique coastal districts, Venice is a coastal resource to be protected. As a primarily residential community, existing and ongoing residential development is a significant factor in determining Venice’s community character. The continued change in the residential character of the Venice community, especially in the Oakwood and Milwood subareas, has been a cause of public concern over the years.

During the March 2014 Commission meeting, a group of Venice residents raised objections to the coastal development permit waiver process that was facilitating rapid demolition and

construction of single family homes in the City of Los Angeles, particularly in the Oakwood and Milwood areas of Venice. Many residents expressed concerns over the lack of public review and public input in permit decisions, and urged the Commission to preserve community character of Venice, which is identified as a special coastal community by the certified Land Use Plan. Since 2014, the Commission has declined to authorize waivers of permit requirements for new residential projects in Venice, in hopes that project applicants and the City of Los Angeles would address public concerns regarding cumulative impacts of new residential development through the local coastal development permit process and the LCP development process. Additionally, since 2014, the Commission has reviewed residential development in Venice on a case-by-case basis with a goal of preserving the scale of residential neighborhoods and discouraging massive proposals that are out of character with surrounding development.

Project opponents and the applicant submitted separate streetscape analyses, which are included within **Exhibit 5** and **Exhibit 6**. The project opponents indicate that there are 39 one story structures, 13 two-story structures, and 2 two-and-a-half story structures along both sides of the subject block. They provided data identifying lot sizes and unit sizes for every parcel on both sides of the subject block and an analysis which concludes that the proposed homes and detached structures subject to this de novo review are taller and more massive, and sited on smaller parcels, than the vast majority of other residential structures on the block. Additionally, the project opponents contend that the proposed structures are not articulated enough and their uniform architecture and substantial massing is out of character with other structures on the subject block (**Exhibit 5**).

In contrast, the applicant argues that there are many other three-story structures within ½ mile of the subject site and that the subject block is characterized by structures of varying heights, including modern, three-story structures. Specifically, the applicant identifies modern two-story and three-story structures on the same side of the block to the east and the west of the subject site, several of which have been approved by the Coastal Commission and the City of Los Angeles in the previous five years (**Exhibit 6**).

Aside from a different interpretation of what qualifies as a two-and-a-half story structure vs a three-story structure, the two analyses do not contradict one another. The appellants correctly point out that the majority (approximately 75%) of the structures on each side of the subject block are one-story, including the three residential structures on either side of the subject property and all five residential structures directly across the street. The applicant correctly points out that several two-story and three-story structures have been approved in the previous five years and contribute to the character of the block [see 5-13-1213-W (Walters); 5-12-281-W (Misakyan); 5-11-015-W (Jimenez); and 5-07-418-W (McVeary), all of which were waivers of coastal development permit requirements issued by the Executive Director, and were not subject to public hearings before the City or the Commission]. The applicant is also correct that there are three-story structures on other blocks within ½ mile of the subject site, but those blocks have different street widths, different prevailing setbacks, different lot size characteristics, and different development patterns than the subject block. Many of the three-story structures identified by the applicant are not in the Oakwood subarea, but rather in other subareas of Venice which have different building standards identified in the City's zoning code and the certified Land Use Plan. **Nevertheless, the proposed three-story structures are not drastically different than some of the other structures in the neighborhood.**

When the Commission certified the Venice Land Use Plan (LUP) in 2001, it considered the potential impacts that development could have on community character and adopted residential building standards to ensure development was designed with pedestrian scale and in compatibility with surrounding development. Given the specific conditions surrounding the subject site and the eclectic development pattern of Venice, it is appropriate to use the certified LUP policies as guidance in determining whether or not the subject development is consistent with Coastal Act Sections 30251 and 30253.

In this case, the certified Venice Land Use Plan echoes the priority expressed in Coastal Act for preservation of the nature and character of unique residential communities and neighborhoods.

Policy I. E. 1, General, states:

Venice's unique social and architectural diversity should be protected as a Special Coastal Community pursuant to Chapter 3 of the California Coastal Act of 1976.

Policy I. E. 2. Scale, states, in part:

New development within the Venice Coastal Zone shall respect the scale and character of the community development. Buildings which are of a scale compatible with the community (with respect to bulk, height, buffer and setback) shall be encouraged. All new development and renovations should respect the scale, massing, and landscape of existing residential neighborhoods...

Policy I. E. 3. Architecture, states:

Varied styles of architecture are encouraged with building facades which incorporate varied planes and textures while maintaining the neighborhood scale and massing.

Policy I. A. 1, Preserve Stable Single Family Residential Neighborhoods, states, in part:

Ensure that the character and scale of existing single-family neighborhoods is maintained and allow for infill development provided that it is compatible with and maintains the density, character, and scale of the existing development...

The project subject to this de novo review is the demolition of five residential units on two residential parcels, which the applicant proposes to subdivide into four residential parcels and develop with four ~~massive~~ **large**, nearly identical homes side-by-side. ~~This project would be unique in the history of the subject block, and unique to the Oakwood subarea of Venice.~~

The applicant references two homes approved by the City and the Executive Director at 720 and 722 Brooks Avenue through waiver of coastal development permit requirements No. 5-07-418-W (McVeary) for demolition of a single family home and construction of two 30-foot high single family homes on one residential parcel with six on-site parking spaces. Those two homes and two other projects featuring three-story homes on the subject block were each constructed over a single residential parcel. In two cases, Small Lot Subdivisions were approved by the City, but those were each for two structures on one lot, not four structures on two lots. In one of those

cases the structures were developed front to back in order to reduce massing from the street, rather than side-by-side with zero side yard setbacks as the subject application proposes. In another case at 804 Brooks Avenue, 5-11-015-W (Jimenez), the City and the Executive Director approved construction of a new 25-foot high single family home in the front portion of a residential parcel that already had a residential unit at the rear. Finally, the Commission recently found that the City's approval of two single family homes on a single residential parcel at 672 Brooks Avenue (one block west of the subject site) raised no substantial after that project was appealed [see: A-5-VEN-15-0059 (Kamdar)]. That project included a Small Lot Subdivision, but the two homes were developed front to back and the street-fronting home was two-stories and 23-feet high. In no case in Oakwood has the Commission approved new homes with zero foot setbacks between them, as the applicant requests at the subject site.

Another ~~substantial~~ difference between the development subject to this de novo review and other homes of similar size approved nearby is the subject development does not feature substantial articulation, as called for by the development standards of the Venice Land Use Plan. **However, the applicant has revised the original plans to provide articulation in the form of step backs to the front façades and less massing along the front balconies.** Policy I.E.3 of the Land Use Plan indicates that "varied styles of architecture are encouraged with building facades which incorporate varied planes and textures while maintaining the neighborhood scale and massing." The sloped roof which has been designed to meet the minimum requirement for an additional five feet of building height beyond the twenty-five feet permitted for flat roofs in the Oakwood subarea, ~~but the subject development is not articulated except for the third level balcony.~~ It consists of four **large massive** structures side-by-side, **two of which are stepped back four feet,** with rectangular door openings at each level. The design of the four proposed homes and four proposed accessory units is nearly identical, **but not drastically different from other projects previously approved in the same neighborhood.**

Although the applicant has revised the proposed setbacks from those originally approved by the local coastal development, the four units are still proposed side-by-side with limited articulation or open space between them. Two of the units have been moved forward two feet closer to the sidewalk and two have been moved two feet back; this design does not substantially change the cumulative massing of the four 30-foot high structures. The front setbacks are now proposed to be eight feet (plus a seven foot street dedication to the City) for an effective setback of 15-to-19 feet from the sidewalk. This setback is less than that of the one-story structures to the east and to the west (see image on page 2 of this report). Thus, the proposed development will not only have the effect of four connected three-story buildings towering over the adjacent one-story buildings on either side, but it will be closer to the sidewalk **in some sections.** The third story has been set back the minimum five-feet in order to gain an additional five feet over the twenty-five foot height limit, but aside from that element, the façade of the four homes is not varied. The zero foot setbacks between the homes are ~~out of character with~~ **unusual for** the block, where no other homes feature such a design, and ~~are out of character~~ **unusual** in Venice generally, **although there are other examples of small lot subdivisions with zero foot setbacks elsewhere in Venice.** Additionally, the four structures at the rear alley form a similar wall when viewed cumulatively. The accessory structures at the rear are not as high or as massive as those at the front, but they are visible from Brooks Avenue and contribute to the substantial massing of the proposed project, which effectively includes eight structures on two existing residential parcels.

Analyzed cumulatively, the eight structures (four homes and four accessory units) are not consistent with Coastal Act Section 30251 because they will not be visually compatible with the character of surrounding areas. The project would not be consistent with Venice Land Use Plan Policy 1.E.2 because it would not **is not substantially visually distinct from other structures on Brooks Avenue or Lincoln Boulevard with** respect the scale, massing, and landscape of existing residential neighborhoods. The scale and massing of the existing block, and the Oakwood neighborhood, is **primarily** one-story and two-story single family homes and one-story and two-story multi-unit structures. **However, about 10 percent of buildings on the block are three stories.** Four massive three-story structures adjacent to a trifeeta of one-story structures on either side and one-story structures across the street would not be consistent with Section 30251 or Policy 1.E.2 because such massing and scale would not be visually compatible with the character of the surrounding area.

The project is not consistent with Coastal Act Section 30253 because it does not **protect** **detract from** the character of the Venice community which is a popular visitor destination points for recreational uses. Nor is the development **consistent** **in conflict** with Land Use General Policy 1.E.1 because it would not **protect** **detract from** the unique social and architectural diversity of Venice, which is identified as a Special Coastal Community. **While** the scope of the four homes would be more massive than any other development on the subject block, including approximately 10,000 square feet of living space and additional vehicle parking area, **it is not larger than other small lot subdivisions and multi-parcel projects that have been approved in Venice.** Approval of this development would **not** set a precedent for out of scale development in Venice, **as each project is unique and must be considered in the context of its specific location and facts.** and additional development of this type (massive structures side by side with minimal articulation and lack of architectural diversity) would adversely affect the community character of Venice, which is a popular destination point specifically for its unique characteristics. This appeal raises specific local issues, but Venice is one of the most popular visitor destinations in the state making its preservation as an eclectic community with a unique character a statewide issue. **With the modifications to the façade and the fencing and landscaping proposed by the applicant, this specific project will not adversely affect the community character of the special coastal community of Venice.**

In conclusion, the Commission finds that, ~~even~~ as modified by the applicant to step back the two middle structures and step up the two outer structures, and to remove exterior partition walls, the project is not consistent with the visual resources and community character policies of the Coastal Act. Venice community members provided the applicant with specific comments and additional suggestions on the project design as it related to community character during meetings on March 16, 2013 and April 6, 2013, which the applicant ~~chose not to implement~~ **partially implemented** in the final design. The Venice Neighborhood Council provided the applicant and the City with comments through its June 18, 2013 motion and written findings in opposition to the project as it was proposed, specifically indicating that the applicant was given the option to alter the design, which the applicant chose ~~not to do~~ **to partially do**. Following the two appeals of the City-approved project, Coastal Commission staff advised the applicant by phone and in writing that development of the project must cease until a valid coastal development permit is obtained. The applicant chose to continue building and making improvements to the structures without the benefit of a coastal development permit for nearly two months; **however the applicant did cease development before the structures were completely constructed and has**

proposed design modifications to ensure consistency with the visual resources, community character, and biological productivity policies of the Coastal Act.

In meetings with the applicant and their representatives on October 11, 2016 and November 9, 2016, Coastal Commission staff advised the applicant that the development subject to this de novo review did not appear to be consistent with the Chapter 3 policies of the Coastal Act or with previous Commission-approved projects in the area, and requested that the applicant consider alternative designs, or at least acknowledge whether alternative designs were feasible given the modular design of the structures. The applicant indicated on November 15, 2016 that alternative designs, including the removal of the third story, the repositioning of multiple structures to provide greater setbacks and articulation, or the removal of one or more of the structures in their entirety, is economically infeasible because doing so would cost approximately \$1.2 million to deconstruct and reconstruct the homes, and an additional \$2.5 million of the applicant's investment could be lost if the homes were reduced in size. The applicant indicated that the modular nature of the homes made them simpler to install on-site, but once installed they cannot easily be deconstructed or repositioned without compromising the architectural design and structural stability of each home. In that response, the applicant suggested that the design could be further modified to reduce the height of top floor privacy walls, utilize a more neutral color palate, change the shape of the doors on the middle units, and plant a California Sycamore tree in each front yard. **The applicant is now proposing to make these changes. The applicant also noted that the homes are environmentally friendly because they require less energy use to produce.**

The Commission finds that, **although** all of the applicant's most recent proposed changes are cosmetic in nature and would not reduce the size, mass, and scale of the development or make it architecturally compatible **they do make the development align more closely with the neighborhood character, and the development is therefore not out of character** with the neighborhood scale and massing. The applicant has indicated that it is infeasible to modify the development and has not provided any alternatives that would bring the project into conformity with the visual resources and community character policies of Chapter 3 of the Coastal Act. The Coastal Act's requirement to site and design new development in a manner that is compatible with the character of surrounding areas does not contain a limitation stating that its restriction applies only to the extent economically feasible. Further, in cases such as this where the Commission is considering issuing a permit for a project that has already been substantially constructed without the benefit of a required coastal development permit, it analyzes the project's consistency with Chapter 3 as if no development has occurred yet. Therefore, the alleged economic infeasibility of redesigning the as-built project is not relevant to the Commission's analysis of whether this project complies with Chapter 3 policies, and the Commission is not constrained to consider only whether modifications of the existing, as-built project are feasible. Moreover, the Commission is limited in its quasi-judicial de novo review of the applicant's proposed development and it is unworkable in this instance to attempt to design a new project through the imposition of alternatives which the applicant has not proposed, nor would it make sense for the Commission to impose special conditions which would effectively require construction of a different project. **However, because the applicant has proposed changes to the project to ensure its consistency with Coastal Act policies, the Commission imposes Special Condition 1 requiring the applicant to submit two sets of final plans, including detailed elevations, which shall be in substantial conformance with the plans dated October 18, 2016, revised to include the following modifications:**

- **Reduce height of top floor privacy walls to balcony height;**
- **Utilize neutral color palette as shown in the rendering attached hereto; and**
- **Modify door of middle units to include additional glass and remove diamond shape**

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 amendment to this coastal development permit unless the Executive Director determines that no amendment is legally required. Therefore, because the project is not **the Commission finds that as modified by the applicant the project is** consistent with Coastal Act Section 30251 and Section 30253, ~~and cannot be made consistent through the imposition of special conditions, the project must be denied.~~

D. PUBLIC ACCESS AND RECREATION

Section 30252 of the Coastal Act states, in part:

The location and amount of new development should maintain and enhance public access to the coast by:

(4) providing adequate parking facilities or providing substitute means of serving the development with public transportation.

The Commission has consistently found that the provision of adequate parking to serve the demand generated by new development is necessary to maximize public access to the coast. Residential development is subject to minimum standards which are imposed in order to encourage residents to park their vehicles on their own property, while leaving public parking spaces along the public streets available for guests, coastal visitors, and members of the general public. When residential development does not provide adequate parking to satisfy the demand generated by residents, public access to the coast may be adversely impacted because residents store their private vehicles on public streets and prevent coastal visitors and members of the public from parking their vehicles and accessing the coast.

As proposed to include four sets of tandem parking spaces to serve the four proposed single family residences, the project meets the minimum parking standards set forth in the certified Venice Land Use Plan, which the Commission may use as guidance (two parking spaces for each single family residence). If the development were classified as a multi-family structure over two residential parcels (rather than four single family resident over four residential parcels), then two guest parking spaces would be required. Additionally, if the rear accessory structures (which are detached from each of the single family homes and include bedrooms, bathrooms, and indoor/outdoor recreational area but not kitchens), were classified as second units, then up to eight additional parking spaces would be required to serve those units. In previous cases where multiple residential units were proposed in Venice, and where accessory structures were proposed at the rear of one or more residential parcels, the Commission has required some applicants to provide additional parking spaces, in excess of the two parking spaces per dwelling unit identified as the minimum required by the Venice Land Use Plan. **However, in this case each dwelling unit provides the required number of vehicle parking spaces. Cumulatively, the dwelling units will not increase demand for residential parking or beach parking; thus**

the eight proposed parking spaces to serve four dwelling units is consistent with the public access and recreation policies of the Coastal Act.

As identified in previous sections of this report, the proposed structures are not ~~adequately~~ **substantially** set back from Brooks Avenue or from the rear alley. The 15-to-19 foot front yard setbacks and zero foot side setbacks are not consistent with those of the ~~surrounding~~ **immediately adjacent** residential structures and the 30-foot high mass of the homes fronting the street is ~~not adequately articulated to mitigate for the~~ **could contribute to a** towering effect they ~~have~~ over the subject sidewalk. The character of the neighborhood includes wide sidewalks and structures setback up to 30 feet from the street, which is one reason Venice has been designated as a special coastal community in the Venice Land Use Plan and is one of the most popular visitor serving destinations in California. The character of the popular Venice neighborhoods, including the Oakwood neighborhood, is renowned as one of mixed architectural styles constructed between the 1920s and the present day, but which is developed at a pedestrian scale which makes it popular with coastal visitors interested in walking and sight-seeing. Walking and sight-seeing in the Coastal Zone are popular recreational uses protected under the public access and recreation sections of the Coastal Act.

In this case, the applicant has indicated that site constraints do not allow for additional parking spaces to be provided **at the rear**. ~~In previous sections of this report,~~ **However, while** the Commission has identified the proposed residential structures as ~~overly massive and out of scale~~ **consistent** with the surrounding development, **in order to preserve the pedestrian scale of the sidewalk which is popular with recreational users including coastal visitors, the Commission imposes Special Condition 4 requiring the permittee to undertake development in accordance with the approved final plans, specifically including the site plan, landscaping plan, and irrigation and drainage plan.** Additionally, the Commission has found that the applicant's proposed setbacks are not adequate as approved by the City of Los Angeles in violation of the Land Use Plan policies and would adversely affect the pedestrian scale that makes Venice a popular destination for recreational uses. If the applicant reduced the mass of the structures and provided greater setbacks from Brooks Avenue and the rear alley, it would be feasible to provide additional parking. In any case, the Commission has found that the project is inconsistent with the visual resources and community character policies of the Coastal Act and the parking spaces are proposed within four of the structures which have been identified as contributing to the out-of-scale design of the proposed development. The Commission finds that approval of the development as ~~proposed would not be~~ **conditioned is** consistent with Sections 30252 of the Coastal Act as it relates to parking and public access and recreation.

E. WATER QUALITY

As originally submitted by the applicant and approved by the City of Los Angeles, the proposed project was not consistent with Coastal Act Section 30231, which 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 City approved development was not consistent with Section 30231 of the Coastal Act because the site plan did not call out drainage devices and the permit conditions did not require construction best management practices to prevent discharge of construction debris into coastal waters. The City-approved development did not include a landscape plan or requirement for drought tolerant, non-invasive landscaping. The City-approved development did not include features or requirements for minimizing irrigation or infiltrating stormwater.

The applicant has submitted revised plans. The revised landscape plan features primarily drought tolerant, non-invasive plant species, although some moderate water use plant species are proposed. The drainage plan features gutters and downspouts which direct water to rain catchment devices. A drip or microspray irrigation system is not called out. The revised plans do not identify construction best management practices and the majority of the construction has already taken place without the benefit of a valid coastal development permit, so it is not clear whether or not impacts to water quality occurred during construction.

The Commission finds that the proposed development, as proposed, does not conform with Sections 30231 of the Coastal Act regarding protection of water quality to promote biological productivity. The applicant ~~could~~ **has agreed to** modify the project ~~or~~ **and** the Commission ~~could impose~~ **imposes** conditions to bring the project into conformity with Section 30231; **specifically, Special Condition 2 requires the applicant to carry out construction best management practices to protect and enhance water quality and biological productivity. To ensure that the development does not adversely impact water quality or biological productivity throughout its expected life, the Commission also imposes Special Condition 3 requiring that vegetated landscaped areas shall consist of native plants or non-native drought tolerant plants, which are non-invasive. No plant species listed as problematic and/or invasive by the California Native Plant Society (<http://www.CNPS.org/>), the California Invasive Plant Council (formerly the California Exotic Pest Plant Council) (<http://www.calipc.org/>), or as may be identified from time to time by the State of California shall be employed or allowed to naturalize or persist on the site. No plant species listed as a “noxious weed” by the State of California or the U.S. Federal Government shall be utilized within the property. All plants shall be low water use plants as identified by California Department of Water Resources (See: <http://www.water.ca.gov/wateruse/efficiency/docs/wucols00.pdf>). Additionally, the use of reclaimed water for irrigation is encouraged. If using potable water for irrigation, only drip or microspray irrigation systems may be used. Other water conservation measures shall be considered, such as weather based irrigation controllers. Only as modified and conditioned does the Commission find that the project is consistent with Section 30231 of the Coastal Act.** however, the proposed development cannot be found consistent with other sections of the Coastal Act, and therefore must be denied.

F. UNPERMITTED DEVELOPMENT

Unpermitted development has occurred at the project site subject to this coastal development permit application. Any non-exempt 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.

Development is defined by Coastal Act Section 30106, 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).

Coastal Act Section 30600 states, in part:

(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.

Coastal Act Section 30600 states that development within the Coastal Zone requires a coastal development permit. Coastal Act Section 30106 states that development includes the erection of any solid material or structure, grading and removing of materials, and any change in the intensity of land. The demolition of the existing duplex and triplex represents development. The subdivision of two residential parcels into four residential parcels represents development. And the construction of four single family homes and four accessory structures represents development. As detailed in Section III: Local Government Actions and Project History, the development occurred without a valid coastal development permit. Any non-exempt development activity, which applies in this case, conducted in the Coastal Zone without a valid coastal development permit constitutes a violation of the Coastal Act. The applicant is seeking after-the-fact approval of the development through this Coastal Development Permit Application No. A-5-VEN-16-0083.

~~Denial of the Permit Would Not Constitute a Taking.~~

~~Denial would not constitute a taking because there is adequate area on the two parcels (approximately 10,000 square feet) to provide residential development with reduced mass, greater articulation, and greater architectural diversity than what the applicant has proposed. The applicant can apply for a permit to develop another project and achieve an economic use of the property. Although the applicant claims that it will suffer an economic loss if it is required to modify or remove the project, this is not the correct analysis for a takings claim here. Any~~

~~alleged taking must be analyzed from the perspective of the site as it existed prior to the unpermitted development. *LT WR, LLC v. California Coastal Commission* (2007) 152 Cal.App.4th 770, 797 (“the Commission properly reviewed the application as though the unpermitted development had not occurred.”). Here, there is no evidence that the Commission would deny a smaller, more articulated project that is more in conformity with the character of the neighborhood. Indeed, it has approved permits for many dozens of homes in Venice over the past few years. The fact that the applicant may now lose money because it proceeded with unpermitted development and may now have to remove or modify this development is simply irrelevant in a takings analysis. Furthermore, the applicant already had structures on the property before it demolished those buildings, and those structures could have provided a viable economic use of the property.~~

~~The Applicant Has No Vested Right to Its Unpermitted Development.~~

~~The applicant’s vested rights argument is without merit. The applicant’s letter cites the case *Anderson v. City of La Mesa* (1981) 118 Cal.App.3d 657, 660 as holding that a “permit later determined to have been issued in violation of an applicable regulation does not, as a matter of law, prevent a property owner from obtaining such vested right.” However, *Anderson* involved a situation where a city had properly issued a final building permit and had inspected the house six times before it discovered that the home was built in a manner that violated the zoning code. Here, the City of L.A.’s coastal development permit was not properly issued and never became final because it was not reported to the Commission as required by law. Pub. Res. Code § 30620.5(c), 14 Cal. Code Regs § 13315 (“[u]nless the local government provides [proper] notification to the commission, the permit issued by the local government shall be of no force and effect.”). By operation of law, the applicant never had a validly issued coastal development permit and therefore could not have obtained a vested right in reliance on it. See *Aveo Community Developers, Inc. v. South Coast Regional Com.* (1976) 17 Cal.3d 785, 791–798 (initial grading pursuant to a grading permit, but without a building permit, did not give developer a vested right to complete construction of the development); *Arviv Enterprises, Inc. v. South Valley Area Planning Com.* (2002) 101 Cal.App.4th 1333, 1348–50 (existing permits for certain development did not create vested right to proceed with additional, unpermitted development); *Pettitt v. City of Fresno* (1973) 34 Cal.App.3d 813, 818–824 (use permit issued in violation of zoning ordinance did not prevent city from later enforcing the zoning ordinance or create vested right to maintain the permitted use).~~

~~Vested rights do not lie in this case because the city’s coastal development permit did not comply with the law existing at the time it was purportedly issued—specifically, it did not comply with the Coastal Act and Coastal Commission regulations that required the permit to be sent to the Commission for an appeal period. Applicant’s letter cites no law holding that a person can obtain vested rights in reliance on a permit that was never final or validly issued. Although the present situation is unfortunate, the applicant was not without a way to prevent the current situation from occurring. As the applicant’s letter acknowledges, the city informed the applicant that, before its coastal development permit would be final, the city would need to send notice of the permit to the Coastal Commission, and the Commission would begin a 20 day appeal period. The applicant’s letter implicitly acknowledges that the applicant never checked back with the city to make sure that this notice was provided.~~

~~Latches Does Not Bar the Commission’s Denial of the Permit.~~

~~The laches argument is flawed because the Coastal Commission has not caused an unreasonable delay in its administrative action. The Commission received notice of the City of Los Angeles final action on August 23, 2016, immediately initiated the 20 working day appeal period, accepted two appeals, and promptly scheduled a public hearing within two months of the end of the appeal period. The Commission is charged with determining whether or not the proposed development is consistent with the Chapter 3 policies of the Coastal Act, not whether the applicant will suffer an economic loss as a result of the City's actions between 2012 and 2016, which the Commission had no involvement in. In analogous circumstances, a court of appeal held that the Commission's inaction in discovering and enforcing a permit violation over a period of nearly two decades did not prevent the Commission from addressing the violation after it was discovered. *Feduniak v. California Coastal Commission* (2007) 148 Cal.App.4th 1346. Here, the delay in finalizing the applicant's permit is due to the City of Los Angeles's inaction, not the Commission's inaction. Thus, laches does not apply to bar the Commission from promptly undertaking its legal duty to consider the applicant's permit.~~

~~The Commission Cannot Be Estopped From Enforcing the Coastal Act in This Situation.~~

~~The estoppel argument also relates to the City's failure to follow proper procedures, which may result in economic loss to the applicant. The Commission is not estopped from carrying out its required analysis of the appealed project's consistency with the Chapter 3 policies of the Coastal Act. The case *City of Long Beach v. Mansell* (1970) 3 Cal.3d 462, 492 is not to the contrary. As the Court described in that case, estoppel can occur "[w]henver a party has, by his own statement or conduct, intentionally and deliberately led another to believe a particular thing true and to act upon such belief, he is not, in any litigation arising out of such statement or conduct, permitted to contradict it." *Id.* at 488-89. But here, the Commission has never intentionally or deliberately led the applicant to believe that its city issued permit was valid. Indeed, the Commission itself did not find out about the city permit until very recently, and when it did, it promptly informed both the city and applicant that the permit was invalid because it had never been reported to the Commission. The city's actions cannot estop the Commission from carrying out its separate legal duties under the Coastal Act.~~

~~The facts in *Mansell* demonstrate how unusual it is for estoppel to lie against a public agency. There, the relevant public agencies had misled thousands of homeowners for a period of many decades. Under these highly unusual circumstances, the Court chose to use its equitable powers to estop the agencies from taking a new position that would cause massive litigation and potentially divest thousands of homeowners of their property. These facts are fundamentally unlike the facts in the present case, which involves one property owner who argues that he had been misled by an agency other than the Commission for a period of three years. This is not the type of unusual situation in which courts will find estoppel against public agencies.~~

~~This is especially true given the "well-established proposition that an estoppel will not be applied against the government if to do so would effectively nullify 'a strong rule of policy, adopted for the benefit of the public . . .'" *Id.* at 493 (quoting *County of San Diego v. Cal. Water etc. Co.* (1947) 30 Cal.2d 817, 829-830. Courts apply this rule with particular force in the context of land use permitting:~~

~~In the area of permits and zoning laws, . . . the courts have expressly or by necessary implication consistently concluded that the public and community interest in preserving the community patterns established by zoning laws outweighs the injustice that may be incurred by the individual in relying upon an invalid permit to build issued in violation of zoning laws.~~

~~Pettitt v. City of Fresno (1973) 34 Cal.App.3d 813, 820. As the court explained,~~

~~In the field of zoning laws, we are dealing with a vital public interest—not one that is strictly between the municipality and the individual litigant. All the residents of the community have a protectable property and personal interest in maintaining the character of the area as established by comprehensive and carefully considered zoning plans in order to promote the orderly physical development of the district and the city and to prevent the property of one person from being damaged by the use of neighboring property in a manner not compatible with the general location of the two parcels.~~

~~Id. at 822-23. These concerns are present here. Any harm to the applicant in this case must be subordinate to the public interest in upholding the Coastal Act and protecting the character of the community.~~

~~A court rejected a similar estoppel argument involving the Coastal Commission in the case Feduniak v. California Coastal Commission (2007) 148 Cal.App.4th 1346. There, the Commission ordered a landowner to remove a small golf course built by a prior owner on their property in violation of conditions imposed by the Commission. The landowner claimed that the Commission was estopped from ordering removal of the golf course because the Commission had not inspected the site for ten years or enforced its conditions for eighteen years. The court refused to estop the Commission from enforcing its permit conditions, holding that: 1) the Commission's mere inaction for a number of years was insufficient to demonstrate that the Commission had constructive notice of the violation; 2) the Commission did not intend that the landowner rely on its failure to enforce the permit, and the landowner could not reasonably have believed that the Commission so intended its regulatory inaction; and 3) the public's strong interest in protecting coastal resources and enforcing the law outweighed the landowners' interest in using their unpermitted golf course.~~

~~Similarly here, there is no evidence that the Commission knew or should have known about the unpermitted development any earlier; the applicant may not rely on the Commission's prior inaction to estop it from taking action now; and the public's interest in enforcing the Coastal Act outweighs any monetary damage suffered by the applicant. In sum, the applicant's estoppel argument is without merit.~~

Although unpermitted development has taken place prior to the 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. Review of this permit application does not constitute a waiver of any legal action with regard to the alleged violations nor does it constitute an admission as to the legality of any development undertaken on the site without a coastal development permit. The Commission's enforcement division will consider all options to address the unpermitted development. **In this case, the Commission's after-the-fact approval of the development subject to the application, as modified by the special conditions of the permit, will resolve all unpermitted development.**

G. LOCAL COASTAL PROGRAM

Section 30604(a) of the Coastal Act provides that the Commission shall issue a coastal development permit only if the project will not prejudice the ability of the local government having jurisdiction to prepare a Local Coastal Program (LCP) which conforms with Chapter 3 policies of the Coastal Act:

Prior to certification of the Local Coastal Program, a Coastal Development Permit shall be issued if the issuing agency, or the Commission on appeal, finds that the proposed development is in conformity with the provisions of Chapter 3 (commencing with Section 30200) of this division and that the permitted development will not prejudice the ability of the local government to prepare a Local Coastal Program that is in conformity with the provisions of Chapter 3 (commencing with Section 30200).

The City of Los Angeles does not have a certified Local Coastal Program for the Venice area. The City of Los Angeles Land Use Plan (LUP) for Venice was effectively certified on June 14, 2001. The Commission's standard of review for the proposed development is the Chapter 3 policies of the Coastal Act. The certified Venice LUP is advisory in nature and may provide guidance.

As ~~proposed~~ **conditioned**, the proposed development is ~~not~~ consistent with the policies of Chapter 3 of the Coastal Act and is ~~not~~ consistent with the certified Land Use Plan for the area. The City of Los Angeles is in the process of preparing a Local Coastal Program for the Venice area. Approval of the project, as ~~proposed~~ **approved by the City of Los Angeles**, would 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. **However, as modified by the applicant and conditioned by the Commission to enhance visual resources and preserve community character, approval of the project 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.** ~~In particular, approving four three-story, massive homes on two lots with only a 15 to 19 foot setback from the roadway and zero to five foot side setbacks would modify the character of the neighborhood, thereby making it more difficult for the City to adopt an LCP that preserves and protects the existing community character. Protecting community character is a classic cumulative impacts issue, and this project—especially when considered in combination with other past, current and probable future projects that seek to maximize height, density, and mass—would prejudice the City's ability to prepare and adopt an LCP that protects the community's existing character. Therefore, the Commission denies the proposed development, consistent with the provisions of Section 30604 (a) of the Coastal Act. As conditioned, the proposed development is consistent with Chapter 3 of the Coastal Act and with the certified Land Use Plan for the area.~~

H. 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 City is the lead agency for CEQA compliance and adopted a Mitigated Negative Declaration for the project (ENV-2012-2950-MND).

As conditioned to preserve community character, prevent adverse impacts to public access to the nearby beach, and enhance water quality, there are no remaining significant impacts that the project has on the environment. Thus, 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, will not have any significant impacts on the environment within the meaning of CEQA, is the least environmentally damaging feasible alternative, and is consistent with the requirements of the Coastal Act to conform to CEQA.

~~The proposed project has been found to be inconsistent with the Chapter 3 policies of the Coastal Act because the proposed structures would adversely affect visual resources and would be inconsistent with the community character. The adverse impacts have not been avoided or minimized to the greatest extent feasible. There are alternative measures available that would further reduce or eliminate adverse effects to visual resources and community character. The applicant could construct less massive, more articulated single family homes with greater setbacks on the two existing residential lots, or up to eight much smaller units on four subdivided lots, but the cumulative size, mass, and scale of any development would need to be found consistent with the Chapter 3 policies of the Coastal Act and the certified Land Use Plan for the area. There is adequate area on the two parcels (approximately 10,000 square feet) to provide residential development with reduced mass, greater articulation, and greater architectural diversity than what the applicant has proposed. Therefore, the Commission denies the proposed project because of the availability of environmentally preferable alternatives.~~

~~In any event, CEQA does not apply to private projects that public agencies deny or disapprove. Pub. Res. Code § 21080(b)(5). Accordingly, because the Commission denied the proposed project, it is not required to adopt findings regarding mitigation measures or alternatives.~~

Appendix A – Substantive File Documents

1. City of Los Angeles certified Land Use Plan for Venice (2001)
2. City of Los Angeles Record for ZA-2013-383-CDP-MEL (Lighthouse Brooks LLC)
3. Waiver of Coastal Development Permit Requirements 5-13-1213-W (Walters)
4. Waiver of Coastal Development Permit Requirements 5-12-281-W (Misakyan)
5. Waiver of Coastal Development Permit Requirements 5-11-015-W (Jimenez)
6. Waiver of Coastal Development Permit Requirements 5-07-418-W (McVeary)
7. Appeal No. A-5-VEN-15-0059 (Kamdar)