

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
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W18a

Appeal Filed:	4/21/17
49th Working Day:	6/30/17
Staff:	J. Phelps
Staff Report:	5/18/17
Hearing Date:	6/7/17

STAFF REPORT: APPEAL- NO SUBSTANTIAL ISSUE

APPEAL NUMBER: A-4-VNT-17-0013

APPLICANT: Kancal Properties, LLC

APPELLANT: Marc Benezra

LOCAL GOVERNMENT: County of Ventura

LOCAL DECISION: Approval with Conditions of Planned Development Permit PL15-0150

PROJECT LOCATION: 3289 Ocean Drive, Ventura County (APN: 206-0-226-010)

PROJECT DESCRIPTION: Demolition of an existing 2,208 square foot, 25 foot tall triplex and construction of a new 5,684 square foot, 28 foot tall two-family dwelling with 898 square feet of garage space, and 799 square feet of deck space.

STAFF RECOMMENDATION: No Substantial Issue

MOTION & RESOLUTION: Page 5

NOTE: This is a substantial issue only hearing. Testimony will be taken only on the question of whether the appeal raises a substantial issue. Generally, and at the discretion of the Chair, testimony is limited to 3 minutes total per side. Please plan your testimony accordingly. Only the applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify. Others may submit comments in writing. If the Commission determines that the appeal does raise a substantial issue, the *de novo* phase of the hearing will occur at a future Commission meeting during which it will take public testimony.

SUMMARY OF STAFF RECOMMENDATION

The Commission's role at the "substantial issue" phase of an appeal is to decide whether the appeal of the local government action raises a substantial issue with respect to the grounds on which the appeal was filed, which can include a claim that the approved development is not in conformity with the applicable provisions of the certified Local Coastal Program (LCP) or with the public access policies of the Coastal Act (Pub. Res. Code §§30210-14). Staff recommends that the Commission, after public hearing, determine that **no substantial issue exists** with respect to the grounds on which the subject appeal has been filed. The motion and resolution for a "no substantial issue" finding is found on **page 5**.

The subject planned development permit (PDP) was approved by the County of Ventura Planning Director on February 25, 2016. This action was then appealed to both the Planning Commission and Board of Supervisors of Ventura County by Marc Benezra. Ultimately, the Board of Supervisors upheld the Planning Commission's action, thereby approving PDP No. PL15-0150 for the demolition of an existing triplex, and construction of a two-family dwelling at 3289 Ocean Drive. The project is located on a 0.09-acre parcel within a residentially developed neighborhood in the Hollywood Beach area of the County of Ventura, near the City of Oxnard.

The subject appeal submitted by the appellant did not include any specific allegation of the approved development's inconsistency with any specific policy or provision of the certified County of Ventura LCP or the public access policies of the Coastal Act. As such, the Executive Director determined the appeal to be patently frivolous pursuant to Public Resources Code Section 30620(d). Within five working days of the receipt of the Executive Director's frivolous appeal determination, the appellant submitted the \$300.00 filing fee for filing of the frivolous appeal, as required pursuant to Public Resources Code Section 30620(d). Accordingly, the Commission is required to hold a Substantial Issue hearing to determine whether the frivolous appeal raises a substantial issue regarding the project's conformance with the County of Ventura's certified LCP.

The subject appeal contains information relating to compliance with Government Code Section 65590, known as the Mello Act. However, the certified County of Ventura LCP does not contain any policies or provisions relating to the Mello Act or affordable housing. The County of Ventura General Plan, which is not part of the certified LCP, does contain policies relating to the preservation of low to moderate income housing within the County. As such, the County conducted an analysis in order to comply with Section 65590, and determined that in the subject case, the Mello Act is not triggered. The Coastal Act makes it clear that it is the responsibility of the local government to implement Section 65590 and that the Commission has no jurisdiction to review a local government's Mello determinations. (Pub. Res. Code § 30011.) Therefore, the appellant's contentions regarding the County's Mello Act determination do not raise a substantial issue with regard to the approved project's consistency with the policies and provisions of the County of Ventura certified LCP, or the public access policies of the Coastal Act, because the Commission does not have jurisdiction to review those contentions. Furthermore, the preservation of low-cost housing in the coastal zone has been removed from the Coastal Act by the California State Legislature. Accordingly, the Commission no longer has authority to review the impact of proposed development projects on low-cost housing in the coastal zone. As such, the appellant's contentions regarding the Mello Act raise no substantial issue with regard to the approved project's consistency with the policies and provisions of the County of Ventura certified LCP, or the public access policies of the Coastal Act.

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EXHIBITS

Exhibit 1.	Vicinity Map
Exhibit 2.	Aerial Photo
Exhibit 3.	Project Plans
Exhibit 4.	Appeal by Marc Benezra
Exhibit 5.	Final Local Action Notice

I. APPEAL JURISDICTION AND PROCEDURES

A. APPEAL PROCEDURES

The Coastal Act provides that after certification of a local government's Local Coastal Program (LCP), the local government's actions on Coastal Development Permit applications for development in certain areas and for certain types of development may be appealed to the Coastal Commission. Local governments must provide notice to the Commission of their coastal development permit actions. During a period of ten working days following Commission receipt of a notice of local permit action for an appealable development, an appeal of the action may be filed with the Commission.

1. Appeal Areas

Approvals of CDPs by cities or counties may be appealed if the development authorized is to be located within the appealable areas, which include the areas between the sea and the first public road paralleling the sea; within 300 feet of the inland extent of any beach or of the mean high tide line of the sea where there is no beach, whichever is greater; on state tidelands; or along or within 100 feet of natural watercourses and lands within 300 feet of the top of the seaward face of a coastal bluff. (Coastal Act Section 30603(a)). Any development approved by a County that is not designated as a principal permitted use within a zoning district may also be appealed to the Commission irrespective of its geographic location within the Coastal Zone. (Coastal Act Section 30603(a)(4)). Finally, developments that constitute major public works or major energy facilities may be appealed to the Commission. (Coastal Act Section 30603(a)(5)).

In this case, the project site is located on Ocean Drive, in the County of Ventura, near the City of Oxnard (Exhibits 1-2). The Post LCP Certification Permit and Appeal Jurisdiction map certified for the County of Ventura indicates that the appeal jurisdiction for the area extends between the first public road and the sea, which includes the subject property. As such, the County's planned development permit for the subject project is appealable to the Commission.

2. Grounds for Appeal

The available grounds for an appeal of a local government approval of development are limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in the Coastal Act. (Coastal Act Section 30603(b)(1)).

3. Substantial Issue Determination

Section 30625(b) of the Coastal Act requires the Commission to hear an appeal unless the Commission determines that no substantial issue exists with respect to the grounds on which the appeal was filed. When Commission staff recommends that no substantial issue exists with respect to the grounds of the appeal, the Commission will hear arguments and vote on the "substantial issue" question. A majority vote of the Commissioners present is required to determine that an appeal raises no substantial issues and that the Commission will therefore not review the merits of the appeal *de novo*. If the Commission determines that no substantial issue exists, then the local government's coastal development permit action will be considered final.

4. De Novo Permit Hearing

Should the Commission determine that a substantial issue exists, the Commission will consider the CDP application de novo. The applicable test for the Commission to apply in a de novo review of the project is whether the proposed development is in conformity with the certified Local Coastal Program and, if the development is between the sea and the first public road paralleling the sea, the public access and recreation policies of the Coastal Act. (Coastal Act Section 30604(b) & (c)).

B. LOCAL GOVERNMENT ACTION AND FILING OF APPEAL

The project that is the subject of this appeal was approved by the County of Ventura Planning Director on February 25, 2016. The action by the Planning Director was appealed to the County of Ventura Planning Commission by Marc Benezra within the local appeal period, on March 3, 2016. On December 1, 2016 the Planning Commission approved the subject project. This action was then appealed to the County of Ventura Board of Supervisors by Marc Benezra within the local appeal period, on December 6, 2016. The appeal was denied and the permit for the project was approved by the Board of Supervisors on March 21, 2017. The County's Notice of Final Action for the project was received by Commission staff on March 24, 2017 (Exhibit 5). Commission staff provided notice of the ten working day appeal period, which began on March 25, 2017 and ended on April 10, 2017. Marc Benezra filed the subject appeal on April 7, 2017, during the Commission's appeal period (Exhibit 4). After reviewing the appeal, the Commission's Executive Director determined the appeal to be patently frivolous pursuant to Public Resources Code Section 30620(d) because the subject appeal did not include any specific allegation of the approved development's inconsistency with any specific policy or provision of the certified County of Ventura LCP or the public access policies of the Coastal Act. In accordance with PRC Section 30620(d), Commission staff sent a letter to the appellant on April 13, 2017 to notify him of the Executive Director's determination that the appeal is frivolous and that the appeal cannot be filed unless a filing fee in the amount of \$300 is provided within five working days of the appellant's receipt of the Executive Director's determination letter. On April 21, 2017, the appellant submitted the \$300 filing fee for Commission filing and review of the frivolous appeal. Accordingly, Commission staff notified the County, the applicant, and all interested parties that were listed on the appeal and requested that the County provide its administrative record for the permit. The administrative record was received on May 2, 2017. Pursuant to Section 30621(a) of the Coastal Act, a hearing on an appeal must be set no later than 49 working days after the date on which the appeal was filed with the Commission, which would be June 30, 2017. Finally, according to Section 30625(a), the applicant can waive that time limit.

II. STAFF RECOMMENDATION FOR SUBSTANTIAL ISSUE

MOTION: *I move that the Commission determine that Appeal No. A-4-VNT-17-0013 raises NO substantial issue with respect to the grounds on which the appeal has been filed under §30603 of the Coastal Act.*

STAFF RECOMMENDATION OF NO SUBSTANTIAL ISSUE:

Staff recommends a **YES** vote. Passage of this motion will result in a finding of **No Substantial Issue** and adoption of the following resolution and findings. If the Commission finds **No Substantial Issue**, the Commission will not hear the application de novo, and the local action will become final and effective. The motion passes only by an affirmative vote by a majority of the Commissioners present.

RESOLUTION TO FIND NO SUBSTANTIAL ISSUE:

The Commission finds that Appeal No. A-VNT-17-0013 does not present a substantial issue with respect to the grounds on which the appeal has been filed under § 30603 of the Coastal Act regarding consistency with the Certified Local Coastal Plan and/or the public access and recreation policies of the Coastal Act.

III. FINDINGS AND DECLARATIONS FOR NO SUBSTANTIAL ISSUE

The Commission hereby finds and declares:

A. PROJECT DESCRIPTION, SETTING, AND BACKGROUND

The subject planned development permit (PDP) that was approved by Ventura County consists of demolition of an existing 2,208 square foot, 25 foot tall residential triplex and construction of a new 5,684 square foot, 28 foot tall two-family residential dwelling with an 898 square foot garage and 799 square foot deck at 3289 Ocean Drive (APN 206-0-226-010) (Exhibits 1-2). The approved project is located on a 0.09-acre beachfront parcel located within a residentially developed neighborhood in the Hollywood Beach area of the County of Ventura, near the City of Oxnard. The subject parcel is zoned Residential Beach Harbor (RBH). The purpose of this zone designation is to provide for development and preservation of unique beach-oriented residential communities with small lot subdivision patterns. No more than two dwellings are allowed per parcel within this designation. As such, the subject existing triplex is a legal, non-conforming use, as it was constructed prior to creation of the RBH zone designation.

The subject PDP for the proposed project was originally approved by the County of Ventura Planning Director on February 25, 2016. This action was then appealed to both the Planning Commission and Board of Supervisors of Ventura County by Marc Benezra. Ultimately, the Board of Supervisors upheld the Planning Commission's action and approved the subject PDP. In its action on the subject permit, the Board of Supervisors found that the project site does not contain any environmentally sensitive habitat areas (ESHA), would not impact public access or recreation, and that based upon the information contained within a site specific wave run-up study, the subject development would remain safe from wave attack and wave run-up over the expected life of the structure in consideration of projected sea level rise. Furthermore, the Board of Supervisors found that the approved project is consistent with all applicable policies and provisions of the County's LCP, including the maximum building height, building coverage, and setback requirements.

B. APPELLANT’S CONTENTIONS AND FRIVOLOUS APPEAL

The County’s final action on the subject planned development permit was appealed to this Commission by Marc Benezra, the owner of a property located directly adjacent to the subject property. The appeal was filed on April 7, 2017, and is attached as Exhibit 4. On the appeal form the appellant states:

“The proposed project does not conform to the Certified Local Coastal Program (particularly the Coastal Zoning Ordinance. Please refer to attachments.”

The appellant attached the same appeal forms that he had submitted to the County of Ventura as part of his appeals to the County Planning Commission and Board of Supervisors. Both of these appeals allege that the project does not comply with the Mello Act (Government Code Section 65590) regarding the preservation of housing for low and moderate income residents. The appeal does not reference any specific Ventura County LUP policy or LIP provision related to these allegations. In fact, Mello Act or other affordable housing requirements are not a part of the certified LCP or Coastal Act, as described in further detail below.

As the subject appeal did not include any specific allegation of the approved development’s inconsistency with any specific policy or provision of the certified County of Ventura LCP or the public access policies of the Coastal Act, on April 13, 2017, Commission staff sent a letter to the appellant explaining that the Executive Director determined the appeal to be patently frivolous pursuant to Public Resources Code Section 30620(d). On April 21, 2017, and within five working days of the receipt of the Executive Director’s frivolous appeal determination, the appellant submitted the \$300.00 filing fee for Commission filing of the frivolous appeal, as required pursuant to Public Resources Code Section 30620(d). Accordingly, the Commission is required to hold a Substantial Issue hearing to determine whether the frivolous appeal raises a substantial issue of regarding the project’s conformance with the County of Ventura’s certified Local Coastal Plan.

C. ANALYSIS OF SUBSTANTIAL ISSUE

Pursuant to Sections 30603 and 30625 of the Coastal Act, the appropriate standard of review for an appeal is whether a substantial issue exists with respect to the grounds raised by the appellant relative to the locally-approved project’s conformity to the policies contained in the certified Local Coastal Program (LCP) or the public access policies of the Coastal Act. In this case, the appellant did not include any specific allegation of the approved development’s inconsistency with any specific policy or provision of the certified County of Ventura Local Coastal Plan or the public access policies of the Coastal Act. The appellant did, however, raise issue with the subject project’s consistency with the requirements of the Mello Act (Government Code Section 65590).

The term “substantial issue” is not defined in the Coastal Act or its implementing regulations. The Commission’s regulations indicate simply that the Commission will hear an appeal unless it “finds that the appeal raises no significant question” (Cal. Code Regs., Title 14, Section 13115(b).

In evaluating the issue of whether the appeal raises a substantial issue, the Commission considers 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 certified LCP;
2. The extent and scope of the development as approved or denied by the local government;
3. The significance of coastal resources affected by the decision;
4. The precedential value of the local government's decision for future interpretation of its LCP; and
5. Whether the appeal raises only local issues, or those of regional or statewide significance.

In this case, for the reasons discussed below, the Commission determines that the appeal raises no substantial issue with regards to the grounds on which the appeal has been filed, as discussed below.

1. The Mello Act and Affordable Housing

The appellant contends that the project, as approved by the County, does not comply with the requirements of Government Code Section 65590, known as the Mello Act. The Mello act seeks to preserve housing for low and moderate income residents. The certified County of Ventura LCP does not contain any policies or provisions relating to the Mello Act or affordable housing.

The County of Ventura General Plan, which is not a part of the certified LCP, does however contain policies relating to the preservation of low to moderate income housing within the County. As such, the County conducted an analysis in order to comply with the Mello Act, and determined that in the subject case, the Mello Act is not triggered because the evidence does not establish that any of the occupants of the exiting triplex are low or moderate income.

While the appellant raises issue regarding the County's compliance with the Mello Act, the Coastal Commission has no jurisdiction to review or alter the County's Mello Act determinations. The Coastal Act makes it clear that it is the responsibility of the local government to implement Section 65590 and that the Commission is prohibited from reviewing local government Mello Act determinations. Therefore, the appellant's contentions regarding the County's Mello Act determination do not raise a substantial issue because the Commission does not have jurisdiction to review those contentions.

Furthermore, the preservation of low-cost housing in the coastal zone was included in early versions of the Coastal Act. These provisions, however, have been removed from the Coastal Act by the California State Legislature. The Coastal Act does still require the Commission to *encourage* affordable housing (Pub. Res. Code § 30604(f), (g), (h)); however, the Coastal Act specifically forbids the Commission from reviewing local government Mello Act determinations or requiring an applicant for a coastal development permit to provide evidence of compliance with the Mello Act (Pub. Res. Code § 30011). Accordingly, the Commission no longer has authority to review the impact of proposed development projects on low-cost housing in the coastal zone. As such, the appellant's contentions raise no substantial issue with regard to the approved project's consistency with the policies and provisions of the County of Ventura certified LCP, or the public access policies of the Coastal Act.

2. Factors Considered in Substantial Issue Analysis

The standard of review for the subject appeal is whether a substantial issue exists with respect to the grounds raised by the appellant relative to the appealable development's conformity to the policies contained in the certified LCP or the public access policies of the Coastal Act. In this case, the appeal does not include any specific allegation of the approved development's inconsistency with any specific policy or provision of the certified County of Ventura Local Coastal Plan or the public access policies of the Coastal Act. The term "substantial issue" is not defined in the Coastal Act or its implementing regulations. The Commission's regulations indicate simply that the Commission will hear an appeal unless it "finds that the appeal raises no significant question." (Cal. Code Regs., Title 14, Section 13115(b).) In previous decisions on appeals, the Commission has been guided by the following five factors that are addressed below.

The first factor in evaluating the issue of whether the appeal raises a substantial issue is the degree of factual and legal support for the local government's decision that the development is consistent with the subject provisions of the certified LCP. In this case, the County's record includes extensive factual evidence and legal support for the County's findings that the development is consistent with the policies and provisions of the certified LCP.

The second factor in evaluating the issue of whether the appeal raises a substantial issue is the extent and scope of the development as approved. As described above, the project consists of residential development of a two-family dwelling on a previously developed parcel located within a residentially developed neighborhood. Given that this lot is relatively small and the development type is consistent with the surrounding area, the extent and scope of the subject development is not large.

The third factor in evaluating the issue of whether the appeal raises a substantial issue is the significance of coastal resources affected by the decision. In this case, the project site is a developed beachfront lot located in a developed residential community. The project is consistent with the policies and provisions of the certified LCP. Furthermore, there are no significant coastal resources and no environmentally sensitive habitat area (ESHA) on the site that would be negatively affected by the subject project. Thus, no significant coastal resources would be affected by the decision.

The fourth factor in evaluating the issue of whether the appeal raises a substantial issue is the precedential value of the local government's decision for the future interpretation of its LCP. In this case, the project is consistent with the policies and provisions of the LCP. As such, the County's decision will have no adverse precedential value for future CDP decisions.

The final factor in evaluating the issue of whether the appeal raises a substantial issue is whether the appeal raises only local issues, or those of regional or statewide significance. In this case, the approved development is consistent with the policies and provisions of the LCP, will not result in any adverse impacts to significant coastal resources, and therefore does not present issues of regional or statewide significance.

D. SUBSTANTIAL ISSUE REVIEW CONCLUSION

For the reasons discussed above, the Commission finds that the appeal raises no substantial issue with respect to the consistency of the approved development with the policies of the County's certified LCP or the public access policies in Chapter 3 of the Coastal Act. Applying the five factors identified above, the Commission finds the County's record adequately supports its position that the proposed project is consistent with the applicable LCP policies. In addition, the development is relatively small in scope, does not have a significant adverse effect on significant coastal resources, would not be an adverse precedent for future coastal development permits, and doesn't raise issues of regional or statewide significance. Therefore, the Commission finds that the appeal does not raise a substantial issue with respect to the grounds on which it was filed.

APPENDIX 1

Substantive File Documents

County of Ventura Local Coastal Program; County of Ventura Planning Director Staff Report for PD Permit No. PL15-0150, prepared for January 28, 2016 hearing; County of Ventura Planning Commission Staff Report- Appeal of the Planning Director Decision for PD Permit No. PL15-0150, prepared for the December 1, 2016 hearing; Board of Supervisors De Novo Hearing Staff Report for PD Permit No. PL15-0150, prepared for the March 21, 2017 hearing.