

CALIFORNIA COASTAL COMMISSION

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**W23c**

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 Staff: C. Oshida – LB
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 Hearing Date: 06/7/2017

STAFF REPORT: APPEAL – NO SUBSTANTIAL ISSUE

Appeal Number: A-5-PPL-17-0015

Applicant: Los Angeles Department of Water and Power (LADWP)

Local Government: City of Los Angeles

Local Decision: Approval with Conditions

Appellants: 16974 Sunset Blvd., LLC

Project Location: 16970 W. Sunset Blvd., in the public right-of-way along Sunset Blvd. between Marquez Ave. and Marquez Pl., Pacific Palisades, City of Los Angeles, Los Angeles County

Project Description: Appeal of City of Los Angeles Local Coastal Development Permit No. 16-14 approved, partially after-the-fact, with conditions for the installation of a temporary pole top power distribution station (PTDS), consisting of two 61 ft.-high, 18.4-inch diameter poles, a platform measuring 26'0" x 7'5", three 833-KVA transformers measuring 6'9" tall x 4'7" wide, cross arms, circuit breakers, switches, a controller, an underground vault, conduits, cables, and a 1,000' of trench for conduit installation with a 9'4" x 17'4" substructure near the PTDS.

Staff Recommendation: No Substantial Issue

SUMMARY OF STAFF RECOMMENDATION

The staff recommends that the Commission determine that **no substantial issue exists** with respect to the grounds on which the appeal has been filed for the following reasons: the project, as approved by the City of Los Angeles, is consistent with the Chapter 3 policies of the Coastal Act, and therefore does not negatively impact coastal resources. Pursuant to section 30625, the

grounds of appeal are limited to whether or not a substantial issue exists as to conformity with Chapter 3 of the Coastal Act when there is an appeal pursuant to section 30602(a). The motion to carry out the staff recommendation is on **page 4**.

Important Hearing Procedure 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 three minutes **total** per side. Please plan your testimony accordingly. Only the applicants, 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.

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Appendix A - Substantive File Documents

EXHIBITS

Exhibit 1 – Project Location /Vicinity Map

Exhibit 2 – Photo of Subject Site, 10/7/2016

Exhibit 3 – Local CDP No. 16-14 and Bureau of Engineering Staff Report

Exhibit 4 – Appeal

I. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE

Motion:

*I move that the Commission determine that Appeal No. A-5-PPL-17-0015 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 **YES** vote. Failure of this motion will result in a de novo hearing on the application, and adoption of the following resolution and findings. Passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

Resolution:

*The Commission hereby finds that Appeal No. A-5-PPL-17-0015 presents **NO SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed under § 30602 of the Coastal Act regarding consistency with Chapter 3 policies of the Coastal Act.*

II. APPELLANT'S CONTENTIONS

The City-approved local CDP authorizes the construction of a temporary pole top power distribution station (PTDS), consisting of two 61 ft.-high, 18.4-inch diameter poles, a platform measuring 26'0" x 7'5", three 833-KVA transformers measuring 6'9" tall x 4'7" wide, cross arms, circuit breakers, switches, a controller, an underground vault, conduits, cables, and a 1,000' of trench for conduit installation with a 9'4" x 17'4" underground substructure near the PTDS. The PTDS will be located in the Sunset Blvd. public right-of-way between Marquez Avenue and Marquez Place.

The appeal was filed by 16974 Sunset Blvd., LLC (**Exhibit 4**). The appellant contends the following:

- The unpermitted work at the site for the PTDS violated the Coastal Act;
- The PTDS violates the Coastal Act due to significant, negative visual impact;
- The City staff report did not address the safety risks of PTDS falling or being hit or of the oil and chemicals and materials used to construct the PTDS and to manufacture the transformers;
- The PTDS violates the General and the Community Plans;
- The permit application and the City staff report are devoid of any evidence that the undergrounding of the distribution station or other alternatives to the PTDS were analyzed "to the maximum extent feasible" as required by the General Plan;
- The PTDS development violates the Community Plan, Page IV-3 which provides "UTILITIES 1. Install utilities underground through assessment districts or other funding, when feasible";

- The application and City staff report contain no evidence as to what the LADWP thinks a padmounted or underground solution will cost;
- Since the Community Plan incorporates the provisions of the Coastal Act, all violations under the Coastal Act are also violations of the Community Plan;
- The LADWP failed to follow several sections and requirements of the Community and General Plans and the City staff report contains no evidence to support its findings on these matters, and the LADWP should be ordered to comply with the General Plan and the Community Plan;
- The City staff report without any analysis or without commenting upon the analysis offered by the Objecting Party claims that the application complies with CEQA, but this is not true and there is no evidence to support this finding;
- The City staff report simply indicates that the staff reviewed and considered the NOE, but it does not indicate that they compared the NOE [Notice of Exemption] and the stated basis for the exemption to the actual statutory requirements of CEQA for an emergency or “utility extension” exemption;
- The NOE was filed at time when the LADWP stated that it did not need a permit to develop the PTDS and the NOE was not tied to any permit and the normal community notice procedures involved with the issuance of a permit were not complied with respect to the NOE and it was divorced from the permitting process thereby denying the community any meaningful notice or ability to understand the NOE related to the project;
- The unpermitted work at the site for the PTDS created a conflict of interest for the City, the LADWP and the Bureau [of Engineering];
- The draft staff report was not available until after the hearing was noticed;
- Some of the information in the City’s staff report: (1) directly conflicted with the application causing confusion; (2) did not provide the public with sufficient information to fully understand the application or to consider alternatives; (3) did not provide adequate information for the public to meaningfully participate in the public hearing; and (4) is a violation of due process;
- Misleading information in the application as to the location of the construction (PTDS) and failure of the LADWP to accurately depict where it had actually already installed the PTDS;
- The City staff report does not explain what the word “temporary” means in the context of the PTDS and lacks a deadline for the expiration of the permit;
- No basis or evidence to support any findings that the PTDS will neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms;
- The City staff report did not address the public comment that LADWP did not adequately analyze alternatives;
- Relocation the PTDS to another alternative location was required by the Coastal Act;
- The staff finding of “No Adverse Impacts to the scenic and visual qualities of the coastal area are expected” is not supported by the application, anything discussed at the hearing and there is no evidence to support the same;
- No evidence that the project construction does not violate Section 30232 of the Coastal Act;

- The proposed PTDS is an industrial project with three 833KVA electrical transformers and there is no evidence or explanation as to which manufacturer makes the transformers and as to what materials are used in their manufacturing such as hazardous substances; and
- There is substantial issue as to whether the PTDS will affect geological, flood or fire risks because there was no CEQA compliance and no reports or analysis whatsoever in the application or the City staff report and no evidence cited to support such findings.

III. LOCAL GOVERNMENT ACTION

On May 25, 2016, the City issued a Notice of Exemption from CEQA requirements for the construction of two temporary PTD Stations in the Pacific Palisades community. Construction of the poles commenced in July 2016, without a Coastal Development Permit. When the Los Angeles Department of Water and Power (LADPW) became aware that the project required a Coastal Development Permit (CDP), work on the project was stopped and the applicant submitted Application No. 16-14 for a local CDP. Prior to the hearing, on October 25, 2016, Notice of Public Hearing letters were sent to the property owners, residents within 300 feet of the project site, and known interested parties. On November 9, 2016, the Bureau of Engineering/City Engineer held a public hearing for Local CDP DIR-16-14 (Los Angeles Department of Water and Power [LADWP]) for the project. On December 5, 2016, the Bureau of Engineering issued a notice of decision approving the project. The local CDP was appealed to the City on December 15, 2016, by 16974 Sunset Blvd., LLC, and subsequently denied by the Board of Public Works Commissioners on March 8, 2017. On March 9, 2017, the Bureau of Engineering issued a notice of permit issuance. The City's Notice of Final Local Action for the local CDP was received in the Coastal Commission's Long Beach Office on March 14, 2017, and the Coastal Commission's required twenty working-day appeal period was established. On April 12, 2017, one appeal was received from 16974 Sunset Blvd., LLC (**Exhibit 4**). No other appeals were received prior to the end of the appeal period on April 12, 2017.

IV. APPEAL PROCEDURES

Section 30600(b) of the Coastal Act provides that prior to certification of its LCP, a local jurisdiction may, with respect to development within its area of jurisdiction in the coastal zone and consistent with the provisions of Sections 30604, 30620 and 30620.5, establish procedures for the filing, processing, review, modification, approval or denial of a coastal development permit. Pursuant to this provision, the City of Los Angeles developed a permit program in 1978 to exercise its option to issue local 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 CDP application, the Coastal Commission must be noticed within five days of the decision. After receipt of such a notice, which contains all the required information, a twenty working-day appeal period begins during which any person, including the

applicant, the Executive Director, or any two members of the Commission, may appeal the local decision to the Coastal Commission. [Cal. Pub. Res. Code § 30602.] As provided under section 13318 of Title 14 of the California Code of Regulations, the appellant must conform to the procedures for filing an appeal as required under section 13111 of Title 14 of the California Code of Regulations, including the specific grounds for appeal and a summary of the significant question raised by the appeal.

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

Commission staff recommends a finding of **no 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 CDP is voided and the Commission typically continues the public hearing to a later date in order to review the coastal development permit as a *de novo* matter. [Cal. Pub. Res. Code §§ 30621 and 30625.] Section 13321 of the Coastal Commission regulations specifies that *de novo* actions will be heard according to the procedures outlined in Sections 13114 and 13057-13096 of the Commission’s regulations.

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

If the Commission decides to hear arguments and vote on the substantial issue question, those who are qualified to testify at the hearing, as provided by Section 13117 of Title 14 of the California Code of Regulation, will have three minutes per side to address whether the appeal raises a substantial issue. The only persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. The Commission will then vote on the substantial issue matter. It takes a majority of Commissioners present to find that the grounds for the appeal raise no substantial issue.

V. SINGLE/DUAL PERMIT JURISDICTION AREA

Within the areas specified in Section 30601, which is known in the City of Los Angeles permit program as the *Dual Permit Jurisdiction* area, the Coastal Act requires that any development which receives a local CDP permit also obtain a second (or “dual”) CDP from the Coastal Commission. The Commission’s standard of review for proposed development in the *Dual Permit Jurisdiction* area is the Chapter 3 policies of the Coastal Act. For most projects located inland of the areas identified in Section 30601 (i.e., projects in the *Single Permit Jurisdiction*),

the City of Los Angeles local CDP is the only CDP required. In this case, the proposed project site is located within the *Single Permit Jurisdiction Area*.

However, a Coastal Commission CDP is required for some particular types of projects within the Single Permit Jurisdiction area. Coastal Act Section 30601 states:

Prior to certification of the local coastal program and, where applicable, in addition to a permit from local government pursuant to subdivision (b) or (d) of Section 30600, a coastal development permit shall be obtained from the commission for any of the following:

...

(3) Any development which constitutes a major public works project or a major energy facility.

Title 14 California Code Regulations section 13012 defines “major public works” and “energy facilities” as:

(a) “Major public works” and “Major energy facilities” mean facilities that cost more than one hundred thousand dollars (\$100,000)...

(b) Notwithstanding the criteria in (a), “major public works” also means publicly financed recreational facilities that serve, affect, or otherwise impact regional or statewide use of the coast by increasing or decreasing public recreational opportunities or facilities.

Since the proposed project is projected to cost approximately \$930,000, it constitutes a major public works project and therefore requires two coastal development permits: one from the local government and one from the Commission. The present action only pertains to the City-issued CDP. The applicant will need to later apply to the Commission for a separate CDP.

VI. FINDINGS AND DECLARATIONS

A. PROJECT DESCRIPTION & LOCATION

The project consists of two 61-foot high, 18.4-inch diameter poles, a platform measuring 26 feet x 7 feet-5 inches, three 833-KVA transformers measuring 6 feet-9 inches tall x 4 feet-7 inches wide, cross arms, circuit breakers, switches, and a controller. The project also requires the installation of an underground vault, conduits, and cables. The underground substructure will be connected to the PTDS via underground cable terminations. The underground substructure work consists of approximately 1,000 feet of trench for conduit installation with a 9 feet-4 inches x 17 feet-4 inches substructure near the PTDS. The trench will be from two existing substructures on Marquez and Sunset to the new substructure and the PTDS. The PTDS is designed, constructed and maintained to meet or exceed California Public Utility Commission (CPUC) safety rules and regulations. The PTDS would be temporary, and will be removed once a permanent distribution station site is selected and the facility is operational.

The proposed project site is located in the public right-of-way parallel with Sunset Boulevard, near the intersection with Marquez Avenue and Marquez Place, within the Pacific Palisades Community of the City of Los Angeles (**Exhibit 1** and **Exhibit 2**). The site is located in a

residential area, adjacent to a 100,837 sq. ft. vacant lot zoned for multi-residential use in the City's Municipal Code.

Project Background

According to the City staff report, the current power load in Pacific Palisades is being distributed by a single distribution station, Distribution Station 29, which was constructed almost 80 years ago. "The heaviest power load is also being distributed on circuits that are furthest away from DS-29, which negatively impacts reliability for the entire area. There is no space at DS-29 to build more capacity, and LADWP has not yet selected a site for a new [distribution station]." Therefore, as a temporary measure, the City is proposing to relieve three overloaded 4,800 volts circuits that currently serve the community by installing two PTD stations: one is the currently proposed project, and the other was recently approved by the Commission near the corner of Sunset Blvd. and Temescal Canyon Road, about 1.25 miles to the northeast (CDP No. 5-16-1145-W). By installing these two new PTDS, the LADWP asserts it will "prevent power outages, limit outage durations, and improve power quality." Public services and facilities in the areas include the Pacific Palisades Medical Group, Pacific Palisades Veterinary Clinic, and fifteen (15) schools.

B. FACTORS TO BE CONSIDERED IN SUBSTANTIAL ISSUE ANALYSIS

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

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

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

Staff is recommending that the Commission find that **no substantial issue exists** with respect to whether the local government action conforms to the provisions of Chapter 3 of the Coastal Act for the reasons set forth below.

C. SUBSTANTIAL ISSUE ANALYSIS

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

Section II of this staff report outlined the appellant's contentions regarding the project. Concerns raised by the appellant include the City-approved project's consistency with sections 30232, 30250, 30251, 30253 and 30600 of the Coastal Act. There is no certified LCP or LUP for this area of the City of Los Angeles. As such, the Coastal Act is the standard of review for this coastal development permit.

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

The contentions raised in this appeal are that the project is not in conformity with the Los Angeles General Plan, the Brentwood-Pacific Palisades Community Plan, and Chapter 3 of the Coastal Act (Cal. Pub. Res. Code §§ 30200-30265.5)¹, and the project should have been denied or modified to require compliance by "situating the PTDS underground or installing a padmounted transformer and setting a deadline for the removal of the temporary power installation" (**Exhibit 4**). The City's Director Determination for Local CDP No. 16-14 issued by the City of Los Angeles states that the City applied the policies of Chapter 3 of the Coastal Act and concluded, in part, that the development, as proposed and conditioned by the City, would be consistent with Chapter 3 of the Coastal Act and will not prejudice the ability of the City to prepare an LCP for the Pacific Palisades Coastal Zone (**Exhibit 3**).

1. Projects Requiring a Coastal Development Permit

a. Appellant's Contentions

The appellant contends that the project required a coastal development permit (CDP) since it meets the definition of "development" under Section 30106 of the Coastal Act. However, because the development occurred prior to obtaining a CDP, the project violates Section 30600 of the Coastal Act and therefore the unpermitted work must be removed.

b. Analysis

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

"Development" means, on land, in or under water, the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials; change in the density or intensity of use of land, including, but not limited to,

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

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).

As used in this section, "structure" includes, but is not limited to, any building, road, pipe, flume, conduit, siphon, aqueduct, telephone line, and electrical power transmission and distribution line.

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.

(b) (1) Prior to certification of its local coastal program, a local government may, with respect to any development within its area of jurisdiction in the coastal zone and consistent with the provision of Sections 30604, 30620, and 30620.5, establish procedures for the filing, processing, review, modification, approval, or denial of a coastal development permit. Those procedures may be incorporated and made a part of the procedures relating to any other appropriate land use development permit issued by the local government...

Construction, reconstruction, demolition, or alteration of the size of any structure in the coastal zone is development that requires a coastal development permit, unless the development qualifies as development that is authorized without a coastal development permit. Construction of the poles commenced in July 2016, without a Coastal Development Permit. The City made a determination that the installation of the PTDS was exempt from needing a coastal development permit as work to an existing public utility line. However, installation of the transformers is not exempt. When the Los Angeles Department of Water and Power (LADWP) became aware that the project required a Coastal Development Permit (CDP), work on the project was stopped and the applicant submitted Application No. 16-14 to the Bureau of Engineering for a local CDP, which was approved on December 5, 2016 and issued on March 9, 2017. While the City should have received both a local CDP and a CDP from the Commission prior to the commencement of work, the City did immediately halt construction upon becoming aware that the project needed a coastal development permit. No work has since been conducted on the project site and the City is in the process of acquiring the required local CDP and a CDP from the Commission (see section "III. Local Government Action" of this report). Therefore, this project does not raise a substantial issue with regards to Section 30600 of the Coastal Act, as the City is currently in the process of acquiring the appropriate coastal development permits and all work on the project site has ceased until the permits have been granted.

2. Protection of Scenic Views and Public Safety

a. Appellant's Contentions

The appellant contends that the “PTDS violates the Act due to visual blight and safety”, stating that “The Property and the proposed site for the PTDS are located in a very sensitive area off Sunset Boulevard which is designated as a scenic highway by the City” and “The poles are in excess of 60’, and are effectively an industrial development negatively impacting the views along Sunset Boulevard and the properties that face along Sunset Boulevard as well as the Property.” The appellant also contends that the safety concerns, such as traffic volume on Sunset and proximity of the PTDS to the road, potential oil leaks, and electromagnetic radiation or fields (EMF), have not been addressed by the LADWP or the City in their Staff report and the PTDS as proposed is a hazard to the community (**Exhibit 4**).

b. Analysis

The California Coastal Act provides policy guidelines for the protection of a broad range of environmental elements, including visual resources.

Coastal Act Section 30251, states in part:

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.

The Coastal Act does not provide a definition or further clarification of “views to... the ocean.” Given the lack of definition or further clarification, past policy and practices has been to interpret “views to the ocean” as views looking from public vantage points that have ocean views. “Views to the ocean,” in the context of Section 30251, are not interpreted to mean views from private property.

In this particular case, the proposed development will not result in the blockage of any public views of, or to, the ocean from Sunset Boulevard or other public right-of-ways adjacent to the project site. The property seaward of the project site slopes higher than the public right-of-way and the bluff edge is located 260 to 300 feet from the project site; therefore, the distance and topography of this location eliminate views of the ocean and horizon. Under California General Order 95, there are minimum clearances that must be met between conductors and communication equipment. In order to meet this minimum, the PTDS poles are required to be 61 feet in height. The development will be painted in an attempt to soften the visibility issues and blend the poles and transformers into the surrounding area to decrease their visibility as much as possible. In addition, the PTDS will be placed near other utility poles and lights; thus, it is not visually incompatible with the area. There are also tall trees 20-30 feet high along the right-of-way that help screen the poles as one travels along Sunset Blvd. Furthermore, the PTDS is only temporary until such time when a new distribution station can be constructed. As such, the Commission finds that the appeal does not raise a substantial issue regarding conformity of the proposed development with the public view protection policies of the Coastal Act.

Coastal Act Section 30232, states:

Protection against the spillage of crude oil, gas, petroleum products, or hazardous substances shall be provided in relation to any development or transportation of such materials. Effective containment and cleanup facilities and procedures shall be provided for accidental spills that do occur.

City records indicate that LADWP has stated that “each transformer is designed to contain oil, is pressure tested to ensure it is free from leaks, and is coated to prevent corrosion in accordance with industry standards” and the PTDS is “designed, constructed and maintained to meet or exceed CPUC safety rules and regulations.” As part of the safety rules and regulations, routine inspections are performed, preventative measures are addressed, and procedures for accidental spills are in place. As such, the Commission finds that the appeal does not raise a substantial issue regarding conformity of the proposed development with Section 30232 of the Coastal Act.

In addition, the appellant claims that the PTDS is an “industrial development.” As described in the Adopted Board Report, titled “Consideration of an Appeal of City Engineer’s Approval of Coastal Development Permit (CDP) 16-14 for the Los Angeles Department of Water and Power (LADWP Temp Pole Top Distribution Station (PTDS) – Sunset Boulevard at Marquez Avenue Project” dated March 8, 2017, a PTDS “is an electrical utility connected to existing power poles and underground conduits and cables that run along Sunset Boulevard, which in turn supply existing residential, commercial, and other development in the Pacific Palisades” (**Exhibit 3**). Furthermore, the PTDS does not constitute “industrial development” under the Coastal Act. Industrial development policies of the Coastal Act (Sections 30260-30265.5) pertain to coastal-dependent industrial facilities such as oil and gas development, refineries or petrochemical facilities, thermal electric generating plants, and off-shore oil transport. Facilities such as this provide necessary infrastructure for all developed areas.

3. Los Angeles General Plan and the Brentwood-Pacific Palisades General Community Plan

a. Appellant’s Contentions

The appellant contends that the PTDS violates the Los Angeles General Plan and the Brentwood Pacific Palisades General Community Plan.

b. Analysis

In 1978, relying on section 30600(b) of the Coastal Act, the City adopted procedures for the City to issue coastal development permits. The Commission approved those procedures and authorized the City to issue coastal development permits and exemption determinations. Chapter 3 of the Coastal Act is the standard of review for the review of permits because section 30604(a) provides that Chapter 3 is the standard of review when issuing a permit prior to certification of a local coastal program, and exemptions must meet the requirements of Coastal Act section 30610 and sections 13250, 13252, or 13253 of the Commission’s regulations. While the City may use the Los Angeles General Plan and the Brentwood-Pacific Palisades General Community Plan as guidance for projects within their jurisdiction, these two documents were never certified or approved by the Commission. Thus, the City is still issuing permits under the procedures it adopted pursuant to section 30600(b) of the Coastal Act and must use Coastal Act provisions, rather than the aforementioned Plans, as the standard of review. The Commission uses the same standards when reviewing city actions on appeal. As such, the Commission finds that the appeal does not raise a substantial issue regarding violation of the Los Angeles General Plan and the

Brentwood-Pacific Palisades General Community Plan as neither are the standard of review for projects within the Coastal Zone.

4. California Environmental Quality Act (CEQA)

a. Appellant's Contentions

The appellant contends that LADWP has not complied with CEQA and compliance is a requirement of a CDP for the PTDS. The appellant states that “the Staff Report without any analysis or without commenting upon the analysis offered by the Objecting Party claims that the Application complies with CEQA. This is not true and there is no evidence to support this finding” (**Exhibit 4**). The appellant acknowledges that a notice of exemption (NOE) was filed for the project on May 25, 2016; however, the appellant states that the NOE is invalid because the project does not qualify for either of the grounds on which the exemption was given: (1) for an electrical and other utility extension and (2) as an emergency project. In addition, because the NOE was filed and posted before the LADWP sought a CDP and the NOE was not tied to any permit or public notice to the neighbor about the construction of the PTDS, the community had no notice, and therefore was not able to review and comment on, the pending construction of the PTDS or that the LADWP was contending that the PTDS did not need a CEQA review and was exempt.

b. Analysis

As described above, the Commission's standard of review in determining whether to find substantial issue on an appeal is solely whether the appeal raises a substantial issue of conformity with Chapter 3 of the Coastal Act. Accordingly, the Commission does not have the authority to review LADWP's CEQA determination, and any alleged CEQA defect is not a valid ground for appeal. Were the Commission to find substantial issue and take the appeal, it would be required as a responsible agency to make its own CEQA-related determinations pursuant to its certified regulatory program. Specifically, Section 13096 of the Commission's regulations requires Commission approval of Coastal Development Permit applications 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 the Commission from approving a proposed development 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. Although these provisions are not applicable here because the Commission has not taken the appeal, it is worth noting that the City did consider alternatives such as undergrounding the PTDS, but found the proposed project the least environmentally damaging. The City is the lead agency for CEQA compliance and after preparing an Initial Study the City made a determination that the project was exempt as the construction of a small structure, including “electrical...and other utility extensions, including street improvements, of reasonable length to serve such construction” and as an emergency project, “since the installation of PTD Stations is necessary to prevent or reduce the frequency of significant and lengthy outages in the Pacific Palisades community, reduce the existing fire risk associated with the constant overloading of three circuits serving the area, and ensure that essential public services within the community are not without power.” It accordingly issued a CEQA Notice of Exemption (NOE) on May 25, 2016.

Although the Commission does not need to make any such findings at this stage, as proposed and conditioned in the local CDP, there do not appear to be 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, although the alleged CEQA deficiencies do not raise a valid ground for appeal, the City’s underlying analysis and finding that the proposed project is the least environmentally damaging feasible alternative is supported by the record.

5. Conflict of Interest – Permit Issuance

a. Appellant’s Contentions

The appellant contends that the unpermitted work at the site for the PTDS created a conflict of interest for the City, the LADWP and the Bureau. The appellant states this conflict of interest “clouded the City’s and the Bureau’s judgement and raised the specter of the City having a conflict of interest in hearing and ruling on the Application and the City Appeal or, at a minimum, gives the appearance of a conflict of interest”; therefore, under Coastal Act Section 30811 the permit should be denied (**Exhibit 4**).

b. Analysis

Coastal Act Section 30811 states (emphasis added):

*In addition to any other authority to order restoration, the commission, a local government that is implementing a certified local coastal program, or a port government body that is implementing a certified master plan **may**, after a public hearing, order restoration of a site **if it finds that the development has occurred without a coastal development permit from the commission, local government, or port government body, the development is inconsistent with this division, and the development is causing continuing resource damage.***

Section 30811 is not within Chapter 3 of the Coastal Act, and any alleged violation of this provision does not provide a valid ground for appeal. In any event, cities and counties with certified LCPs, or that issue their own permits pursuant to Section 30600(b), are required to issue permits to themselves and their own departments. Rather than constituting a conflict of interest, this is how the Coastal Act is explicitly set up. Further, as described above, this development will also require a Coastal Commission CDP because it constitutes a major public works facility. Therefore, any alleged conflict of interest would be ameliorated by the process of the Commission also reviewing the project.

As such, the Commission finds that the appeal does not raise a substantial issue with regard to the alleged conflict of interest.

6. Due Process

a. Appellant’s Contentions

The appellant contends that LADWP violated the Coastal Act (Section 30320) and the state and federal constitutional due process by failing to give sufficient notice and by failing to make materials and accurate information related to the Application available to the public in a timely manner and by holding the hearing on the minimum notice after the LADWP had already constructed a significant portion of the PTDS without the proper permit.

b. Analysis

Coastal Act Section 30320, states:

(a) The people of California find and declare that the duties, responsibilities, and quasi-judicial actions of the commission are sensitive and extremely important for the well-being of current and future generations and that the public interest and principles of fundamental fairness and due process of law require that the commission conduct its affairs in an open, objective, and impartial manner free of undue influence and the abuse of power and authority. It is further found that, to be effective, California's coastal protection program requires public awareness, understanding, support, participation, and confidence in the commission and its practices and procedures. Accordingly, this article is necessary to preserve the public's welfare and the integrity of, and to maintain the public's trust in, the commission and the implementation of this division.

(b) The people of California further find that in a democracy, due process, fairness, and the responsible exercise of authority are all essential elements of good government which require that the public's business be conducted in public meetings, with limited exceptions for sensitive personnel matters and litigation, and on the official record. Reasonable restrictions are necessary and proper to prevent future abuses and misuse of governmental power so long as all members of the public are given adequate opportunities to represent their views and opinions to the commission through written or oral communication on the official record either before or during the public hearing on any matter before the commission.

Title 14 California Code Regulations section 13565, *Notice of Appealable Developments*, states in part:

Within ten (10) calendar days of accepting an application for an appealable coastal development permit (or local government equivalent) or at least seven (7) calendar days prior to the first public hearing on the development proposal, the local government shall provide notice by first class mail of pending application for appealable development. This notice shall be provided to each applicant, to all persons who have requested to be on the mailing list for that development project or for coastal decisions within the local jurisdiction, to all property owners and residents within 100 feet of the perimeter of the parcel on which the development is proposed and to the Commission...

Section 30320 is not within Chapter 3 of the Coastal Act, and any alleged violation of this provision does not provide a valid ground for appeal. Nevertheless, the record demonstrates that the City provided notice of its actions and that the public had opportunities to comment on the proposed project. According to the City's record, public hearing notices for the local CDP application were mailed to owners and occupants within 300 feet of the project site and interested parties on October 25, 2016, and a public hearing was held fifteen (15) days later on November 9, 2016 at the Palisades Branch Library, 861 Alma Real Drive, Pacific Palisades. Attendees to the public meeting included staff members from the Bureau of Engineering (BOE), the LADWP, a representative from Council District No. 11, and 26 members of the public. Prior to the public hearing, 21 written comments, including a petition with 151 signatures opposing the project and a petition with 111 signatures supporting the project, were received; two (2) inquiries

were received; and five (5) people provided written comments at the hearing. Oral comments were noted. The final City staff report was prepared after considering all the comments received.

A Notice-of-Decision was issued on December 5, 2016 and an appeal period was established. On December 15, 2016, Alexandre Cornelius submitted an individual appeal as the authorized representative and attorney-in-fact for 16974 Sunset Boulevard, LLC. The Los Angeles Municipal Code requires that any appeal filed with the City Engineer shall be heard and decided within 30 days of filing such an appeal, with notice having been mailed to the required parties at least ten (10) days prior to such hearing. On March 8, 2017, the Board of Public Works Commissioners denied the appeal and on March 9, 2017, the City Engineer issued a notice of permit issuance. The City's Notice of Final Local Action for the local CDP was received in the Coastal Commission's Long Beach Office on March 14, 2017, and the Coastal Commission's required twenty working-day appeal period was established. On April 12, 2017, one appeal was received from 16974 Sunset Blvd., LLC, by the Commission's South Coast District Office.

In addition, prior to initiating the CDP process, LADWP conducted public outreach concerning the proposed PTDS, including community meetings held in the Pacific Palisades on January 28, 2016 and on March 14, 2016. Copies of the meeting materials, news, releases, and newspaper articles were included in the LADWP's CDP Application and are a part of the City record.

The appellant also contends that due process was violated because information contained in the staff report and the CDP application differed, wording in the City staff report was conflicting (past vs. present tense), and "temporary" was not defined. While these are not Coastal Act issues and do not present valid grounds for this appeal, CDP applications do frequently change during the review process, and information that was originally presented in the application may or may not change prior to a staff report and hearing on the project. In addition, the "conflicting" language of the staff report was the City staff's effort to be forthright about the installation of the poles prior to a CDP being approved. The City did state in their report that the PTDS would be temporary, and will be removed once a new permanent distribution station is operational. At this time it is unknown when that will be as it is dependent on several factors, such as finding a location and funding. However, the fact that the poles are temporary or not would not have an effect on the City finding the project consistent with the resource protection policies of the Coastal Act.

The appellant also contends that the maps provided in the CDP application (Attachment A to the City CDP application) showed faulty information that misled the public and that the map "shows the PTDS being installed at the corner of Marquez Avenue and Sunset Blvd." Commission staff would note that after review of the City record and maps provided by the appellant, the parcel maps clearly and correctly show the project location being located in the public right-of-way approximately 100 feet from the intersection of Marquez Pl. and Sunset Blvd. The appellant also contends that the map inaccurately shows the project site in the single permit jurisdiction of the coastal zone. Commission staff has consulted the Commission's mapping division and it has been confirmed that the project site is located in the single jurisdiction area. (See section "V. Single/Dual Jurisdiction" of this report for clarification on jurisdiction for this site.)

In this case, the City record indicates that proper noticing was conducted prior to each hearing for this project and the draft report published seven (7) days prior to the hearing. The appellant's property is located within the mailing radius for CDP project applications and his participation in

these hearings indicates that he was aware of the project hearings. Furthermore, the record correctly shows the location of the project and is not misleading. For all of these reasons, the Commission finds that the allegation of improper noticing and hearings does not raise a substantial issue regarding conformity with Chapter 3 policies of the Coastal Act.

7. Hazards Analysis

a. Appellant's Contentions

The appellant contends that LADWP did not address the adverse impact of the PTDS development since it failed to consider the issues because it was “proceeding under an invalid NOE and without a CDP and there is a substantial issue that there is no evidence to support any finding that the PTDS will neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms” (**Exhibit 4**).

b. Analysis

Coastal Act Section 30253, states in part:

New development shall do all of the following:

(a) Minimize risks to life and property in areas of high geologic, flood, and fire hazard.

(b) Assure stability and structural integrity, and neither create nor contribute significantly to erosion, geologic instability, or destruction of the site or surrounding area or in any way require the construction of protective devices that would substantially alter natural landforms along bluffs and cliffs.

The site for the project is located within the public right-of-way adjacent to Sunset Blvd. The right-of-way is relatively flat and level, approximately 20 feet wide and improved with landscaping and sidewalk. There is a large, approximately 100,837 square foot, bluff top vacant lot adjacent to the project site. The vacant lot has a slight rise in elevation from west to east and extends 260 feet to 300 feet from the bluff edge and the project site. The right-of-way location chosen for the project also contains other existing poles, such as traffic signals, street lights, and other power poles, at and near this location. In the Adopted Board Findings (dated March 8, 2017), the City states that those existing poles have been there for years and LADWP “has found that they have proven to be stable in the ground.” In addition “LADWP found that no instability would be expected for any additional pole installations at this location. Installation of the PTDS will not damage or change any existing land forms.” The LADWP also conducted site visits and visually inspected the site prior to choosing the location.

Additionally, the PTDS is temporary and designed to be removed. Also, there are no coastal resources in the vicinity of the project that would concern the Commission in regards to erosion or destruction of the site and surrounding area. Therefore, the Commission finds that the appeal does not raise a substantial issue regarding Section 30253 of the Coastal Act. (See above section on CEQA review for NOE concerns raised by the appellant.)

8. Project Alternatives

a. Appellant's Contentions

The appellant contends that the LADWP did not adequately analyze alternatives to the project, such as putting the development underground, padmounting, or slab on grade. The appellant states that Section 30250 of the Coastal Act requires the new “industrial development” to be located where it will not have significant adverse effects, either individually or cumulatively, on coastal resources, and, where feasible, located away from existing developed areas. Therefore, the appellant argues that relocating the PTDS to another location is required by the Coastal Act.

b. Analysis

Coastal Act Section 30250, states in part:

*(a) New residential, commercial, or industrial development, except as otherwise provided in this division, **shall be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate it** or, where such areas are not able to accommodate it, in other areas with adequate public services and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources...*

(b) Where feasible, new hazardous industrial development shall be located away from existing developed areas.

First, the location for the PTDS was dictated by the need for a reliable source to distribute power in the Pacific Palisades community and location of existing underground and overhead infrastructure (see Section “Project Background”). City records show numerous public notices and articles where the LADWP worked with the local community to choose a site that best served the community. On January 28, 2016, LADWP presented information regarding the City’s intent to install PTDS in the community and offered three possible locations for the PTDS. Based on public comments, on March 14, 2016 LADWP held another public meeting and identified five alternative sites for the PTDS. In the end, the community requested LADWP evaluate placing one PTDS at Temescal Canyon and one PTDS at Sunset Boulevard and Marquez Place in lieu of a site at El Medio and Sunset Boulevard, located approximately 1 mile northeast of the project site.

City records, including letters from the Office of the City Attorney to the appellant dated November 21, 2016 and January 4, 2017, state that the City did look at alternatives such as undergrounding the PTDS and padmounting it. The letters states that there is currently no available technology or product on the market that would allow LADWP to underground a PTDS of the proposed size needed and the presence of water draining through the site could damage the underground PTDS. City record indicates that LADWP considered padmounting and undergrounding, but found that even if the pad-mount transformers could be constructed, new poles similar to the PTDS would have to be constructed in order to connect directly to the existing overhead distribution circuits.

As such, the Commission finds that this appeal does not raise substantial issue in regard to Coastal Act section 30250, as the need for the project dictated possible locations for the site within the community and the PTDS is a temporary solution until a permanent distribution station can be constructed by the City to reduce and/or eliminate the power outages. In addition, there are no impacts to coastal resources by constructing the project at this location.

Finally the appellant contends that the findings in Section III of the City Staff Report are not supported by the record or by the application. As demonstrated above, the City staff reports and record addressed all issues concerning the Coastal Act and found the project consistent with the policies of the Coastal Act; therefore they do support the findings in Section III of the Staff Report, dated December 5, 2016. Therefore, the Commission finds that this appeal does not raise substantial issue in regard to lack of evidence to support findings for the City staff report for CDP 16-14, as there is legal and factual support for the City's determination.

Conclusion

Applying the five factors listed in the prior section clarifies that the appeal raises a “no substantial issue” with respect to Chapter 3 of the Coastal Act, and therefore, meets the substantiality standard of Section 30265(b)(1), because the nature of the proposed project and the local government action are consistent with policies of Chapter 3 of the Coastal Act.

The first factor is the degree of factual and legal support for the local government's decision that the development is consistent or inconsistent with the relevant provisions of the Coastal Act. The local government's conclusion was adequately supported by sufficient evidence and findings. In their December 5, 2016 report and Adopted Report dated March 8, 2017, the Bureau of Engineering staff specifically addressed the public's major concerns with regards to this project and its conformity with the Coastal Act. The local coastal development permit contains a high degree of factual and legal support because the record showed evidence that LADWP thoroughly reviewed the siting of the project in regards to coastal resources, such as public coastal view impact and coastal hazard impacts, and found the development consistent with the Coastal Act.

The second factor is the extent and scope of the development as approved or denied by the local government. Here, the development includes installation of a temporary pole top power distribution station (PTDS), consisting of two 61 ft.-high, 18.4-inch diameter poles, a platform measuring 26'0" x 7'5", three 833-KVA transformers measuring 6'9" tall x 4'7" wide, cross arms, circuit breakers, switches, a controller, an underground vault, conduits, cables, and a 1,000' of trench for conduit installation with a 9'4" x 17'4" substructure near the PTDS. The scope of the approved development is consistent with existing policies that govern the allowable extent of development and supports a finding that the appeal raises “no substantial” issue.

The third factor is the significance of the coastal resources affected by the decision. There are no significant coastal resources affected by the decision. In this particular case, the proposed development will not result in the blockage of any public views of or to the ocean from Sunset Boulevard or other public areas. The development will also be painted in an attempt to screen or soften the visibility of the poles and transformers to decrease their visibility along Sunset Blvd. as much as possible. In addition, the PTDS will be placed near other utility poles and lights. There are also tall trees 20-30 feet high along the right-of-way that help reduce the visibility of the poles as one travels along Sunset Blvd. Furthermore, the PTDS is only temporary until such time when a new distribution station can be constructed. The Commission concurs that no significant public views, which are protected by the Coastal Act, would be impacted by the development or cause geologic instability to the surrounding area. The local government's CDP approval includes measures to assure that any potential impacts are minimized as required by the policies of the Coastal Act.

The fourth factor is the precedential value of the local government's decision for future interpretations of its LCP. The City does not currently have a certified LCP for the Pacific

Palisades area. The coastal resources affected by the City-approved development are not significant. The City record indicates that LADWP reviewed the project thoroughly, selecting a site that would not impact any public views of the coast or ocean. In addition, the PTDS development is temporary and is not a permanent solution to the community's power shortage. Therefore, the PTDS is designed to be removed. For all of these reasons, the proposed project is not precedent-setting.

The final factor is whether the appeal raises local issues, or those of regional or statewide significance. Impacts to coastal resources such as visual impacts along the sea are important statewide issues. The local government's approval considered the factors required by Chapter 3 policies of the Coastal Act and its approval of the project is consistent with the Coastal Act and therefore does not adversely impact coastal resources and, as a result, does not raise issues of regional or statewide significance. Therefore, the City's approval does not raise issues of statewide significance.

Applying the five factors listed above clarifies that the appeal raises "no substantial issue" with respect to Chapter 3 of the Coastal Act, and therefore, does not meet the substantiality standard of Section 30625(b)(1), because the nature of the proposed project and the local government action are consistent with policies of Chapter 3 of the Coastal Act.

APPENDIX A – SUBSTANTIVE FILE DOCUMENTS

1. Appeal A-5-PPL-17-0015, File
2. CDP No. 5-16-1145-W, approved February 8, 2016