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# W14a

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Hearing Date: 11/04/2020

## STAFF REPORT: APPEAL – SUBSTANTIAL ISSUE

**Appeal No.:** **A-5-VEN-20-0054**

**Applicant:** **HJG CA LLC (Attn: Rachel Geicke)**

**Agent:** Kim Gordon Designs (Attn: Kim Gordon)

**Local Government:** City of Los Angeles

**Local Decision:** Approval with Conditions

**Appellants:** Dr. Naomi Nightingale, Citizens Preserving Venice (Attn: Sue Kaplan, President), and Miguel Bravo

**Project Location:** 717 E. California Avenue & 670 E. Santa Clara Avenue, Venice, Los Angeles, Los Angeles County (APN: 06037-4239029001)

**Project Description:** Appeal of City of Los Angeles Local Coastal Development Permit No. DIR-2019-499-CDP-MEL for the demolition of an existing 773-sq. ft. one-story single-family residence and construction of a 6,528-sq. ft., two-story, 25-ft. high single-family residence with a basement and attached three-car garage, roof deck with 34-ft. high (measured above street) roof access structure, swimming pool, and hardscape and landscape improvements.

**Staff Recommendation:** Determine that a substantial issue exists.

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**IMPORTANT HEARING PROCEDURE NOTE:** The Commission will not take testimony on this “substantial issue” recommendation unless at least three commissioners request it. The Commission may ask questions of the applicant, any aggrieved person, the Attorney General or the executive director prior to determining whether or not to take testimony regarding whether the appeal raises a substantial issue. If the Commission takes testimony regarding whether the appeal raises a substantial issue, testimony is generally and at the discretion of the Chair limited to 3 minutes total per side. Only the applicant, persons who opposed the application before the local government (or their representatives), and the local government shall be qualified to testify during this phase of the hearing. Others may submit comments in writing. If the Commission finds that the appeal raises a substantial issue, the de novo phase of the hearing will occur at a future Commission meeting, during which it will take public testimony.

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#### SUMMARY OF STAFF RECOMMENDATION

The City’s action on Local CDP No. DIR-2019-499-CDP-MEL authorized the demolition of a one-story, 773-square-foot single family residence and construction of a 6,528-square-foot, 25-foot high, two-story single-family residence with a basement and an attached three-car garage on an approximately 8,207-square-foot triangular-shaped corner through lot (717 E. California Avenue & 670 E. Santa Clara Avenue) in the Venice coastal zone of the City of Los Angeles.

Staff recommends that the Commission, after public hearing, determine that a **substantial issue exists** with respect to the grounds on which Appeal A-5-VEN-20-0054 has been filed for the following reasons: the City’s findings that the development is consistent with the community character policies (Sections 30251 and 30253) of the Coastal Act and does not have the potential to prejudice the City’s adoption of an LCP that complies with Chapter 3 were not adequately supported by documents in the record file or the Local CDP’s findings. Further information is required to determine whether or not the project is consistent with the relevant policies of the Coastal Act, using the certified LUP for Venice as guidance. 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).

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## I. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE

**Motion:** I move that the Commission determine that Appeal No. A-5-VEN-20-0054 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 the motion will result in a de novo hearing on the application and adoption of the following resolution and finding. 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 Commissioners present.

**Resolution:** The Commission hereby finds that Appeal No. A-5-LGB-20-0054 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 of the Coastal Act.

## II. APPELLANTS' CONTENTIONS

Commission staff received a Notice of Final Local Action (NOFA) for City of Los Angeles Local CDP No. DIR-2019-499-CDP-MEL on August 10, 2020. Local CDP No. DIR-2019-499-CDP-MEL approves the demolition of an existing one-story single-family residence, and the construction of a new two-story over basement single-family residence.

On September 8, 2020, an appeal was filed by Dr. Naomi Nightingale, Citizens Preserving Venice (Attn: Sue Kaplan, President), and Miguel Bravo ([Exhibit 3](#)). The appellants contend that the City's approval does not comply with the Chapter 3 policies of the Coastal Act and the proposed project would prejudice the ability of the City to prepare a Coastal Act Chapter 3 compliant LCP. More specifically, the appellants raise the following concerns with the City-approved development:

- 1) The City's Chapter 3-related findings do not adequately support that the project is visually compatible with the character of surrounding areas, do not adequately address Coastal Act Section 30251 and certified LUP I.E.2. and I.E.3, and do not address the protection of Venice as a "Special Coastal Community" and Coastal Act Section 30253(e) and certified Land Use Plan Policy I.E.1.
- 2) The City Decision Maker erred by not concluding that the construction of a 'McMansion' would cause a significant adverse cumulative impact in this multi-family subarea and immediate neighborhood.
- 3) The project raises a substantial issue with respect to the Coastal Act requirement to consider environmental justice. The City determined one affordable residence exist onsite and no replacement affordable residence is proposed.
- 4) The project would set a precedent for more single-family residences to be built in multi-family zones, which would downzone an area that is intended to provide multi-family structures as per the certified LUP.

### III. LOCAL GOVERNMENT ACTION

On November 18, 2019, the City of Los Angeles West/Coast Project Planning Hearing Officer held a public hearing at the West Los Angeles Municipal Building for the proposed development. The case was taken under advisement for one week to allow for additional comments to be submitted.

On July 20, 2020, the City Department of Planning conditionally approved Local Coastal Development Permit (CDP) (and Mello Act Compliance Review) No. DIR-2019-499-CDP-MEL authorizing "...the demolition of an existing 773 square-foot single-family dwelling; the construction of a new 6,528 square-foot two-story single-family dwelling with a basement level (having habitable area), an attached three-car garage, roof deck and a swimming pool, within the Single Permit Jurisdiction of the Coastal Zone..." ([Exhibit 4](#)). The City also adopted a Categorical Exemption (ENV-2019-502-CE) for the project pursuant to California Environmental Quality Act (CEQA) Guidelines Article 19, Sections 15301 (Class 1) and 15303 (Class 3).<sup>1</sup>

On August 10, 2020, the Coastal Commission's South Coast District Office received a valid Notice of Final Action (NOFA) for Local CDP No. DIR-2019-499-CDP-MEL. The Commission issued a Notification of Appeal Period on August 11, 2020. On September 8, 2020, Dr. Naomi Nightingale, Citizens Preserving Venice (Attn: Sue Kaplan, President), and Miguel Bravo filed this appeal during the required 20 working-day appeal period ([Exhibit 3](#)). No other appeals were received prior to the end of the appeal period at 5 p.m. on September 8, 2020. The City and applicant were notified of the appeal by Commission staff in a letter dated September 10, 2020.

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

After a final local action on a local CDP application, the Coastal Commission must be noticed within five days of the decision. After receipt of such a notice which contains all the required information, a twenty working-day appeal period begins during which any person, including the applicants, the Executive Director, or any two members of the Commission,

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<sup>1</sup> The Class 1 CEQA Categorical Exemption includes the demolition and removal of individual small structures, including one single-family residence. The Class 3 CEQA Categorical Exemption allows for construction and location of limited numbers of new, small facilities or structures; this includes one single-family residence. The Class 3 CEQA Categorical Exemption also allows for construction of accessory (appurtenant) structures including garages, carports, patios, swimming pools, and fences.

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, and Section 13321 of the Commission’s regulations, require a de novo hearing of the appealed project unless the Commission determines that no substantial issue exists as to the project’s conformity with Chapter 3 of the Coastal Act.

Commission staff recommends that the Commission find that a substantial issue exists based on the ground on which the appeal was filed. 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 Commission typically continues the public hearing to a later date in order to review the CDP as a de novo matter. [Cal. Pub. Res. Code §§ 30621 and 30625.] Section 13321 of the Coastal Commission regulations specifies that de novo actions will be heard according to the procedures outlined in Sections 13114 and 13057-13096 of the Commission’s regulations.

If there is no motion from the Commission to find no substantial issue, it will be presumed that the appeal raises a substantial issue and the Commission will schedule the de novo phase of the public hearing on the merits of the application at a subsequent Commission hearing. A de novo public hearing on the merits of the application uses the Chapter 3 policies of the Coastal Act. The Venice LUP, certified on June 14, 2001, is used as guidance. Sections 13110-13120 of Title 14 of the California Code of Regulations further explain the appeal hearing process.

If the Commission decides to hear arguments and vote on the substantial issue question, those who are qualified to testify at the hearing, as provided by Section 13117 of Title 14 of the California Code of Regulation, will have three minutes per side to address whether the appeal raises a substantial issue. The 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 CDP also obtain a second (or “dual”) CDP 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 CDP 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. FINDINGS AND DECLARATIONS – SUBSTANTIAL ISSUE**

### **A. PROJECT LOCATION AND DESCRIPTION**

The project site for the City-approved development is located in the Oakwood residential subarea within the Venice coastal zone of the City of Los Angeles. The project site consists of a singular lot with two site addresses. The subject triangular-shaped corner through lot, which is larger than most of the lots in the surrounding neighborhood, is approximately 8,207 square feet in area and designated as Low Medium II Residential by the Venice LUP and zoned RD1.5-1 (Restricted Density Multiple Dwelling Zone) by the Los Angeles Municipal Code. The site is located over a half-mile inland of the public beach and boardwalk ([Exhibit 1](#)). The Oakwood Venice neighborhood and the subject block are characterized by one-story, two-story, and three-story single-family and multi-family homes of varying sizes and architectural styles.

The City-approved project includes the demolition of an existing 773-square-foot, one-story single-family residence (c. 1954) and construction of a 6,528-square-foot, two-story, 25-foot high single-family residence with a basement and an attached three-car garage ([Exhibit 2](#)). The project includes an 820-square-foot roof deck with 34-foot high (measured above street) roof access structure that would be less in 100-square feet in area, a 36-inch high roof deck railing, a swimming pool, and hardscape and landscape improvements.

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

When determining whether an appeal raises a “substantial issue,” section 13115(b) of the Commission’s regulations provide that the Commission may consider factors, including but not limited to:

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

The Commission may, but need not, assign a particular weight to a factor.

Staff is recommending that the Commission find that a substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30602 of the Coastal Act.

### **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 Chapter 3 policies of the Coastal Act. Any local government CDP issued prior to certification of its LCP may be appealed to the Commission. The Commission shall consider an appeal unless it determines that no substantial issue exists as to conformity with Chapter 3 policies of the Coastal Act. The appellants raise several substantial issues discussed in detail below. Therefore, Staff is recommending that the Commission find that a substantial issue exists with respect to the grounds on which an appeal has been filed pursuant to Section 30602 of the Coastal Act.

The grounds for this appeal focus primarily on the proposed project's consistency with Sections 30250, 30251, and 30253 of the Coastal Act because the appellants allege that the mass and scale of the proposed structure is not consistent with the character of the Oakwood subarea of Venice.

Section 30250(a) of the Coastal Act states, in relevant part:

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.

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, in relevant part:

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.

Section 30250 of the Coastal Act requires new development to “be located within, contiguous with, or in close proximity to, existing developed areas able to accommodate”



and where it will not have significant adverse effects, either individually or cumulatively, on coastal resources. Sections 30251 and 30253 of the Coastal Act state that scenic areas and special communities shall be protected. These sections 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, 15 million people visited Venice in 2015, drawn by the unique characteristics of the area.<sup>2</sup>

When the Commission certified the Venice LUP in 2001, it considered the potential impacts that development could have on community character and adopted policies and specific residential building standards to ensure development was designed with pedestrian scale and compatibility with surrounding development. The Commission recognized that Venice was largely built out and that "recycling" of older homes was the primary form of residential development in Venice. The building standards approved by the Commission would allow for some larger homes to be built over time. However, due to the inherently small size of most Venice lots, the Commission found that height limits and land use designations were generally sufficient to protect community character, as long as two issues were addressed—over-sized roof access structures and lot consolidations, which the Commission identified as the "major threat" to community character in Venice.<sup>3</sup> Therefore, the Commission approved suggested modifications to the Venice Land Use Plan to control roof access structures and lot consolidations and found that the "proposed height limits and land use designations, and the suggested controls on roof access structures and lot consolidations, will effectively control the character and scale of existing single family neighborhoods..."<sup>4</sup>

Given the specific conditions surrounding the subject site and the diverse development pattern of Venice, it is appropriate to use the certified LUP policies as guidance in determining whether or not the project is consistent with sections 30250, 30251, and 30253 of the Coastal Act.

The certified Venice LUP 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) of the certified LUP, states:

Venice's unique social and architectural diversity should be protected as a Special

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<sup>2</sup> Venice Chamber of Commerce website. <<http://venicechamber.net/visitors/about-venice/>>

<sup>3</sup> With respect to lot consolidations, the Commission found that "[w]ithout lot consolidation, the new modern homes and other structures are limited in size and bulk by the area of the small lots that are typical of Venice neighborhoods. If lot consolidations are permitted, new modern structures could be built across two lots that formerly had two separate homes."

<sup>4</sup> The Commission approved the Venice Land Use Plan with suggested modifications in November 2000. The Land Use Plan was effectively certified in 2001, after the City accepted the Commission's suggested modifications. The staff report for the Commission's approval of the Venice Land Use Plan is found at: <https://documents.coastal.ca.gov/reports/2000/11/T10e-11-2000.pdf>.

Coastal Community pursuant to Chapter 3 of the California Coastal Act of 1976.

Policy I. E.2 (Scale) of the certified LUP, states.

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) of the certified LUP, 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 of the certified LUP states, in relevant part:

The maximum densities, building heights and bulks for residential development in the Venice Coastal Zone shall be defined by the Land Use Plan Maps and Height Exhibits (Exhibits 9 through 16), and the corresponding land use categories and the development standards as described in this LUP...

- a. Roof Access Structures. Building heights and bulks shall be controlled to preserve the nature and character of existing residential neighborhoods. Residential structures may have an enclosed stairway (roof access structure) to provide access to a roof provided that:
  - i. The roof access structure shall not exceed the specified flat roof height limit by more than 10 feet;
  - ii. the roof access structure shall be designed and oriented so as to reduce its visibility from adjacent public walkways and recreation areas;
  - iii. The area within the outside walls of the roof access structure shall be minimized and shall not exceed 100 square feet in area as measured from the outside walls;...

Policy I.A.5. of the certified LUP states:

Preserve and protect stable multi-family residential neighborhoods and allow for growth in areas where there is sufficient public infrastructure and services and the residents' quality of life can be maintained and improved.

Policy I.A.7 (Multi-family Residential – Low Medium II Density) of the certified LUP states, in relevant part:

Accommodate the development of multi-family dwelling units in the areas designated as "Multiple Family Residential" and "Low Medium II Density" on the Venice Coastal Land Use Plan...

d. Oakwood, Milwood, Southeast and North Venice

Use: Duplexes and multi-family structures

Density: One unit per 1,500-2,000 square feet of lot area. Lots smaller than 4,000 square feet are limited to a maximum density of two units.

Replacement Units/Bonus Density: Lots greater than 4,000 square feet can add extra density at the rate of one unit for each 1,500 square feet of lot area in excess of 4,000 square feet on parcels zoned RD1.5, or one unit for each 2,000 square feet of lot area in excess of 4,000 square feet on parcels zoned RD2, if the unit is a replacement affordable unit reserved for low and very low income persons. (See LUP Policies I.A.9 through I.A.16).

Yards: Yards shall be required in order to accommodate the need for fire safety, open space, permeable land area for on-site percolation of stormwater, and on-site recreation consistent with the existing scale and character of the neighborhood.

Height:

Oakwood, Milwood, and Southeast Venice: Not to exceed 25 feet for buildings with flat roofs; or 30 feet for buildings utilizing a stepped back or varied roofline. The portion that exceeds 25 feet in height shall be set back from the required front yard one foot for every foot in height above 25 feet...

### **Appellants' Argument No. 1: Community Character Issues**

The appellants contend that the City-approved development is not consistent with the Chapter 3 policies of the Coastal Act because it does not conform to the established community character, is out of scale with the surrounding residences within the Oakwood subarea of Venice, and includes an over-in-height fence and reduced setbacks that are in contradiction with the LUP yard requirements and directly impact the mass and scale of the development. In addition, the appellants assert that the City's Chapter 3-related findings do not adequately support that the project is visually compatible with the character of surrounding areas, do not adequately address Coastal Act Section 30251 and certified LUP I.E.2. and I.E.3, and do not address the protection of Venice as a "Special Coastal Community" and Coastal Act Section 30253(e) and certified Land Use Plan Policy I.E.1. As such, the appellants argue the proposed project would prejudice the ability of the City to prepare a Coastal Act Chapter 3 compliant LCP.

The City-approved project is the demolition of a 773 square-foot, one-story single-family residence, and the construction of a 6,528-square-foot, 25-foot high, three-level (two-stories above basement) single-family residence with an attached three-car garage and a 34-foot high (measured above street) roof access structure on a site in the Oakwood subarea that is designated "Low Medium II Residential" by the certified LUP.

The City found that the proposed project is consistent with Sections 30210 (public access), 30211 (public recreation), 30244 (archaeological and paleontological resources), 30250(a) (existing developed area), 30251 (scenic and visual qualities), 30252 (maintenance and enhancement of public access), and 30253 (minimization of adverse impacts) of the Coastal Act, some of which, among other things, encourage that permitted development be visual compatible with the character of the surrounding areas. The City's analysis,

however, does not adequately address the visual compatibility of the proposed project with the existing community character of the Oakwood neighborhood in Venice.

The City determined that the project is in character with the surrounding area. In its findings that the project is in character with the surrounding area and other three-story structures, the City makes reference to 10 large, modern single-family residences and multi-family structure which have recently been approved by the Commission (A-5-VEN-15-0052, A-5-VEN-15-0053, A-5-VEN-15-0054, A-5-VEN-17-0044, A-5-VEN-17-0072, 5-17-0312, 5-17-0776, 5-17-0852, 5-18-0512, and 5-19-0233). The Commission issued coastal development permits for six (6) single-family residences in the Venice Canal, Southeast Venice, and Silver Strand subareas ranging from two- to four-stories and 1,560 to 4,203 square feet in area; three (3) three-story single-family residences each with attached Accessory Dwelling Units in the North Venice subarea ranging from 4,681 to 4,848 square feet in area; and one (1) two-story 3,547-square-foot four-unit apartment building in the North Venice subarea. However, all of these projects referenced by the City are outside of the Oakwood subarea where the proposed project site is located, and, therefore, are not substantial evidence to support the proposed project's conformity to the character of the Oakwood community. Consequently, further review is necessary to determine the proposed project's conformance to the established community character of the subject 600-700 residential blocks of California Avenue and Santa Clara Avenue within the Oakwood subarea. Typically, the Commission looks at allowable land uses, density, height, mass, and scale when evaluating whether or not a project is visually compatible with the character of the neighborhood.

The height limit, as set forth in the certified LUP, is 25 feet for structures with flat roofs and 30 feet for structures with varied roofs located in the Oakwood subarea of Venice. Roof access structures may reach a height of 10 feet above the flat roof height limit and have an area of no greater than 100 square feet as measured from the outside of the structure. In this case, the City approved a 25-foot high single-family residence with a flat roof and a 34-foot high roof access structure, and a roof deck with 42-inch high roof deck railings. However, although the height of the City-approved residence is consistent with the development standards regarding height and roof access structures of the certified Venice LUP as listed above, the City's findings do not substantiate how the proposed residence is compatible with the immediate surrounding area with regard to bulk, scale and mass of the structure.

Based on a preliminary review of aerials of the subject blocks and the City's mapping tool, ZIMAS, the city-approved residence would potentially be the third largest building in the 600-700 residential blocks of California Avenue and Santa Clara Blocks, after a 35,027-square-foot affordable apartment building reserved as senior and disabled housing and an 13,216-square-foot apartment building.

The subject Oakwood neighborhood surrounding the property is developed with single- and multi-family residential structures, but predominantly multi-family residential structures ranging from one to three stories.

Although large residential structures have been built in this neighborhood in recent years,

the locally-approved residence at issue in this appeal would be the largest structure constructed since the certification of the LUP in 2001. In addition, unlike the surrounding larger multi-family structures, the City-approved project would be limited to a single-family residence and not a multi-family complex.

Policies I.E.3 and I.E.2 of the certified LUP require that the neighborhood scale and massing be maintained and respected. At 6,528 square feet the proposed project potentially would be the largest single-family residence and one of the largest residential structures of the subject blocks. Further analysis of the streetscape is necessary to determine whether the proposed residence is out of scale with the character of this neighborhood.

The appellants also assert a 6-foot front yard over-in-height fence and gate and reduced front yard setbacks would only further increase the bulk and mass of the project and would set a dangerous precedent that can cumulatively impact the pedestrian-friendly character of the neighborhood. The City approved an over-in-height fence and gate in lieu of the City-required maximum 3.5-foot fence/gate. The City approved a reduced front yard setback of seven feet along Santa Clara and a reduced front yard setback of nine feet along California Avenue in lieu of the otherwise City-required 15-foot front yards, and approved the construction of a swimming pool within the required front yard. Because the project site is a through corner lot that is triangular in shape, the City designated the frontages along both California Avenue and Santa Clara Avenue as front yards. In its findings, the City indicated that because the lots adjacent to the site along California Avenue observe front yard setbacks ranging from 3.5 feet to 20 feet and the lots adjacent to the site observe a variety of fence heights, including heights in excess of 3.5 feet, authorizing these variances would be compatible with the existing character.

The question is whether or not the proposed project is compatible with the existing community character of the subject Oakwood neighborhood. The City's analysis does not provide sufficient information to support how the proposed project is visually compatible with the existing community character. Consequently, the appeal raises a substantial issue as to whether the City's decision is consistent with the Chapter 3 policies of the Coastal Act.

The appellants also contend that the project will prejudice the City's ability to prepare a certified LCP that complies with Chapter 3 of the Coastal Act. The Venice LUP was certified by the Coastal Commission on June 14, 2001 but implementing ordinances have not been adopted. The City is currently working to certify an updated LUP for Venice and Implementation Plan, and subsequently obtain a fully certified LCP. However, in the interim the City is able to issue CDPs with the Chapter 3 policies of the Coastal Act as the standard of review and the certified LUP used by the Commission as guidance in the event of an appeal. Under Section 30604(a) of the Coastal Act, a local government's approval of a CDP must include findings that the project conforms with Chapter 3 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 Chapter 3."

Here, the City-approved project does not adequately address the potential community character impacts of the development. Only with careful review of the City-approved

project can the Commission ensure that community character is protected. If it finds that a substantial issue exists, the Commission will have the opportunity to review and act on the project at the subsequent de novo hearing. Therefore, the Commission Staff recommends that the Commission find that a substantial issue exists with respect to the project's conformance with the Chapter 3 policies of the Coastal Act, and with the approval of Local Coastal Development Permit No. DIR-2019-499-CDP-MEL.

**Appellants' Argument No. 2: Cumulative Impact Issues**

The appellants contend that the City erred by not concluding that the construction of a 'McMansion' single-family residence would cause a significant adverse cumulative impact in this multi-family subarea and immediate neighborhood.

Section 30105.5 of the Coastal Act states:

“Cumulatively” or “cumulative effect” means the incremental effects of an individual project shall be reviewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects”

The continued change in the residential character of the Venice Community has been a cause of public concern over the years. In order to evaluate the potential cumulative impacts of the City-approved residence, the incremental effects of the proposed development on community character, mass, and scale should be considered in connection with the effects of the past, current, and probable future projects within the subject area.

There is no indication in the City's record that the City evaluated the potential cumulative effects of this project in conjunction with the effects of past projects or that it evaluated the mass and scale of the surrounding development on the subject block and adjacent residential blocks beyond evaluating height and number of stories.

The Venice LUP anticipated that residences in Venice would be replaced over time and that larger homes could be built, as long as the LUP's land use designations and limits on height, roof access structures, and lot consolidations are observed. However, as discussed above, at 6,528 square feet, the City-approved project would potentially be the largest single-family residence and one of the largest structures in the area. Further review is required to determine whether or not the project could have cumulative effects that are inconsistent with Chapter 3 policies of the Coastal Act. Therefore, a substantial issue exists with respect to the grounds on which the appeal was filed.

**Appellants' Argument No. 3: Loss of Affordable Housing**

The appellants contend that because the City determined one affordable residence exists onsite and no replacement affordable residence is proposed, the project raises a substantial issue with respect to the Coastal Act requirement to consider environmental justice.

Section 30604(h) states that when “acting on a coastal development permit, the issuing agency, or the commission on appeal, may consider environmental justice, or the equitable distribution of environmental benefits throughout the state.” Therefore, both the City and

the Commission on appeal have the discretion to consider environmental justice. However, Section 30604 of the Coastal Act is not a Chapter 3 policy that may be a grounds for appealing a local government's action. The appeal would need to raise an issue as to consistency with a Chapter 3 policy.

Here, the City determined that one affordable unit exists at the project site because the owner was unable to obtain sufficient documentation to make a Mello Determination. Therefore, one affordable existing residential unit is proposed for demolition. The applicant provided a (in)feasibility study, which indicated that it would not be feasible to replace the existing affordable unit. Because of this, the City determined that no affordable replacement units are required for the project under Mello Act.

The California Legislature amended the Coastal Act to remove specific policies related to the Commission's direct authority to protect affordable housing in the coastal zone. These policies required 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 California Government Code Section 65590 (the Mello Act), requiring local governments to protect and increase the supply of affordable housing in the Coastal Zone. Currently, Section 30011 of the Coastal Act states that nothing in the Coastal Act "shall authorize the commission to review a local government's application of the requirements of Section 65590 of the Government Code to any development." The Venice Land Use Plan was certified after the Coastal Act was amended to remove specific affordable housing policies, and after the Mello Act was passed. The City's certified LUP sets forth specific policies encouraging the preservation of existing residential units. LUP 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).

The certified Venice Land Use Plan also includes Policy I.A.11 requiring affordable housing units to be replaced at a 1:1 ratio, Policy I.A.12. giving displaced residents priority for new units, Policy I.13.A allowing for greater residential density in projects that include affordable housing units, Policy I.A.14 allowing for the provision of fewer parking spaces than required for projects that include affordable housing units, and Policy I.A.15 allowing for a payment of a fee in lieu of providing actual required replacement affordable housing units.

However, LUP Policy I.A.16 incorporates by reference the exception provisions of the Mello Act. Applying Policy I.A.16. (Exceptions), for proposed demolitions of fewer than three units in one structure, or up to 10 units in multiple structures, replacement of affordable housing units is only required when the local government determines that it is feasible. In this case, the City considered the demolitions of the existing residence and the City did not require any replacement affordable housing units because the City determined

that it was not feasible to provide replacement affordable housing units, pursuant to the provision of the Mello Act.

While the appellants raise issues related to the City's compliance with the Mello Act, the Commission does not have authority to review the City's Mello Act determinations. 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.

**Appellants' Argument No. 4: Density Issues**

The appellants contend that the project would set a precedent for more single-family residences to be built in multi-family zones, which would downzone an area that is intended to provide multi-family structures as pursuant to the certified LUP. The appellants assert that any new project should be brought into conformance with the certified LUP coastal land use designation for the project site, which limits the use of the site for duplexes and multi-family structures pursuant to certified LUP Policy I.A.7.d.

Policy I.A.7.d (Multi-family Residential – Low Medium II Density) of the certified LUP states, in relevant part:

...

Use: Duplexes and multi-family structures

Density: One unit per 1,500-2,000 square feet of lot area. Lots smaller than 4,000 square feet are limited to a maximum density of two units...

The project site is an 8,207-square-foot lot. Pursuant to LUP Policy I.A.7.d, the property could accommodate up to four or five residential units onsite.

However, the project maintains the existing density of one residential unit. The site is currently zoned RD1.5, which allows for construction and maintenance of a single-family residence on the site. Therefore, the City-approved project would not result in a loss of density.

In addition, when the Commission certified the Venice LUP in 2001, it found that properties with the Multi-Family Residential – Low Medium II Density land use designation that are subject to Policy I.A.7.d could be developed with single family residences.<sup>5</sup> As such, this contention does not raise a substantial issue.

**SUBSTANTIAL ISSUE FACTORS:**

The Commission typically applies five factors in making a determination whether an appeal

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<sup>5</sup> The staff report for the Commission's approval of the Venice Land Use Plan is found at: <https://documents.coastal.ca.gov/reports/2000/11/T10e-11-2000.pdf>.



raises a substantial issue pursuant to Section 30625(b)(2).

**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.**

The City discussed consistency with the Venice Specific Plan and Los Angeles Municipal Code. The City also found that the proposed project complies with the Chapter 3 policies of the Coastal Act with regards to land use, density, and height. The City did not, however, substantially support the project’s consistency with the community character provisions of the Coastal Act (Sections 30251 and 30253) and the Certified Venice LUP. Therefore, there is a low degree of factual and legal support for the local government’s decision that the project, as conditioned, is consistent with the LCP, and this factor supports a substantial issue finding.

**2. The extent and scope of the development as approved or denied by the local government.**

The City-approved development would result in a 6,528-square-foot single-family residence. The scope of the proposed new structure is greater than any other single-family residence on the subject block. However, it is recognized that the residence would be located on a lot that is larger than many of the surrounding lots.

**3. The significance of the coastal resources affected by the decision.**

The project has the potential to negatively impact the character of the surrounding community and is not consistent with the surrounding development pattern. Therefore, the development could significantly and adversely affect coastal resources. This factor supports a finding of substantial issue.

**4. The precedential value of the local government’s decision for future interpretations of its LCP.**

The City does not currently have a certified LCP, but it does have a certified Land Use Plan (LUP). The proposed development is not consistent with the mass and scale of the existing structures in this neighborhood of Venice, and, thus, with the policies of the certified Venice LUP. Thus, the project, as approved and conditioned, raises a substantial issue with regard to the project’s conformity with the community character policies of Chapter 3 of the Coastal Act and the certified Venice LUP and would have the potential to set a negative precedent for future development. However, it is recognized that the residence would be located on a lot that is larger than many of the surrounding lots. If the subject local CDP is found to be consistent with the applicable policies of the Coastal Act and the certified LUP, which serves as guidance, based on the current record, there is a potential that future applicants, especially within the vicinity, will reference this permit if they wish to develop other sites in Venice. This factor supports a finding of substantial issue.

**5. Whether the appeal raises local issues, or those of regional or statewide significance.**

Impacts to coastal resources are important statewide issues. 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 with regards to Venice’s community character.

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**Conclusion**

In conclusion, the issues for this appeal relate primarily to the potential impacts to the community character of Venice. Staff recommends that the Commission find that a substantial issue exists with respect to whether the local government action conforms with the Chapter 3 policies of the Coastal Act.

## **APPENDIX A – SUBSTANTIVE FILE DOCUMENTS**

1. City of Los Angeles certified Venice Land Use Plan.
2. City of Los Angeles Resolution and staff report for Local CDP No. DIR-2019-499-CDP-MEL