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# W16c

Filed: 09/27/2021  
49<sup>th</sup> Day: 12/08/2021  
Staff: C.Seifert-LB  
Staff Report: 11/04/2021  
Hearing Date: 11/17/2021

## STAFF REPORT: APPEAL – SUBSTANTIAL ISSUE

**Appeal Number:** A-5-VEN-21-0063

**Applicants:** Gary and Vera Sutter

**Local Government:** City of Los Angeles

**Local Decision:** Approval with Conditions

**Appellants:** Coastal Commission Executive Director; People Organized for Westside Renewal (attn: Bill Przylucki); Citizens Preserving Venice (attn: Robin Rudisill); Laddie Williams; Lydia Ponce; Margaret Molloy

**Project Location:** 811 and 815 Ocean Front Walk, Venice, City of Los Angeles, Los Angeles County (APNs: 428-602-7007, 428-602-7008)

**Project Description:** Appeal of City of Los Angeles Local Coastal Development Permit No. CPC-2019-2282-CDP-MEL-SPP-DB-CUB approved with conditions for the demolition of three detached structures with nine dwelling units, consolidation of the two lots, and construction of a new, three-story over basement, 39-ft. tall, 13,412 sq. ft., mixed-use development including nine dwelling units, a 1,568 sq. ft. restaurant, and 27 parking spaces on the two ocean-fronting lots.

**Staff Recommendation:** Find Substantial Issue.

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**IMPORTANT HEARING PROCEDURE NOTE:** The Commission will not take public testimony during the “substantial issue” phase of the appeal hearing unless at least three commissioners request it. The Commission may ask questions of the applicants,

appellants, 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 three minutes total per side. Only the applicants, appellants, persons who opposed the application before the local government, 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 the Commission will take public testimony.

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## **SUMMARY OF STAFF RECOMMENDATION**

The action by the City of Los Angeles on Local Coastal Development Permit (CDP) No. CPC-2019-2282-CDP-MEL-SPP-DB-CUB approved the demolition of an existing 1,651 sq. ft. single-family residence at 811 Ocean Front Walk, as well as two existing, 2,200 sq. ft. and 2,300 sq. ft. quadraplexes at 815 Ocean Front Walk, resulting in a demolition of nine total dwelling units on two adjacent lots. Upon demolition of the three existing structures, the local CDP approved consolidation of the two lots and construction of a new, three-story over basement (total of four stories), 39-ft. tall, 13,412 sq. ft., mixed-use development. The new development will include nine dwelling units on the upper two floors, a 1,568 sq. ft. restaurant on the ground floor, and 27 parking spaces on the ground floor and subterranean level. One of the nine dwelling units will be restricted as an affordable unit for Very Low Income households. The new restaurant will include 574 sq. ft. of service floor area and 994 sq. ft. of kitchen area.

The project site is located in the North Venice subarea of Venice within the City of Los Angeles Dual Permit Jurisdiction Area. The standards of review for this appeal are the Chapter 3 policies of the Coastal Act, with the certified Venice Land Use Plan (LUP) serving as guidance.

The appellants contend that the local CDP does not adequately address potential coastal hazards and water quality issues raised by the 8,504 sq. ft. subterranean parking garage. The project site is located in a low-lying area vulnerable to flooding, which may be exacerbated by sea level rise due to the site's oceanfront location; Section 30253 requires that new development minimize risks to life and property in hazardous areas, including areas subject to flooding. Given the project's location in a hazardous, flood-prone area, the potential flooding of the garage could impact groundwater and endanger human life and property. Thus, the appellants' contention raises a substantial issue with regard to the project's consistency with Section 30253 of the Coastal Act.

Additionally, the appellants contend that the locally-approved project fails to provide the minimum number of parking spaces required by the certified LUP. LUP policies II.A.3 and II.A.4 require the project to provide at least 21 residential parking spaces and 15 restaurant parking spaces, for a total of 36 spaces onsite. The locally-approved 27 parking spaces and 24 bicycle docking spaces onsite do not satisfy the 35 parking spaces required by the

LUP. Staff believe this contention raises a substantial issue with regard to the project's consistency with public access policies of the Coastal Act, as well as certified LUP policies II.A.3 and II.A.4.

The appellants contend that the City's findings do not adequately address whether the project height will be visually compatible with the surrounding development. The new development will be 39-ft. tall, with a varied roofline and a 41-ft. tall elevator shaft. This will exceed the 35-ft. maximum height allowed for buildings with a varied roofline in the North Venice subarea pursuant to LUP Exhibit 14a. The City's findings justify the height exceedance as an affordable density incentive allowed by LUP Policy I.A.14. and indicate that the height will not have an adverse impact on the community character with regard to surrounding development heights. The City sufficiently analyzed the range of surrounding development heights and architectural styles in making the determination. The City also made sufficient findings regarding the lack of impacts to public views from the boardwalk. Therefore, the local CDP findings provide sufficient analysis of whether the height exceedance would impact community character or public ocean views, and the appellants' contention does not raise a substantial issue with regard to community character and visual resource policies of the Coastal Act.

The appellants also contend that 10 dwelling units previously existed on the subject properties, rather than the existing nine dwelling units reflected in the local CDP findings. The Certificate of Occupancy for the development at 811 Ocean Front Walk identifies the structure as a single-family residence. A single existing unit at 811 Ocean Front Walk is also reflected on ZIMAS and all available City records. Thus, the City record reflects nine existing units (a single-family residence and two quadraplexes) and the appellants' submitted evidence does not adequately substantiate their claim of 10 original units. The nine dwelling units currently existing onsite have been confirmed by the HCIDLA as vacant since at least 2009 and have not been designated affordable units for the past 12 years. The project will replace the nine vacant dwelling units with nine new units, one of which will be restricted as affordable for Very Low Income households.

The appellants contend that Chapter 3 Coastal Act policies require prioritization of existing affordable housing over new commercial development in the coastal zone. However, Section 30222 states that visitor-serving commercial facilities shall be prioritized over private residential development. A public restaurant located on the Venice Beach boardwalk constitutes a visitor-serving commercial use. The locally-approved project balances private, residential development with visitor-serving, commercial development, consistent with both the certified LUP and uncertified Zoning Code land use designation. Therefore, the appellants' contention regarding coastal resource protection does not raise a substantial issue.

The appellants contend that conversion of the existing development from solely residential to mixed-use commercial and residential will have a cumulative effect on the residential community character of the surrounding area. However, Commission staff have determined that the City's findings, which indicate that the project will be compatible with the existing community character of the area, are substantiated. The subject project is consistent with the community character of the area and will not result in an adverse

cumulative effect with regard to community character.

The appellants contend that the project will impede emergency vehicle access through intensified use of the rear alley, posing public safety risks inconsistent with sections 30252 and 30253 of the Coastal Act. The appellants did not provide justification to support the contention that the subject project differs from the surrounding development in terms of impeding public safety. Therefore, the appellants' contention does not raise a substantial issue with regard to project consistency with sections 30252 and 30253 of the Coastal Act.

While the appellants' contentions regarding community character, environmental justice, prioritization of developed use, and safe use of the rear alley do not raise a substantial issue, the appellants' contentions regarding insufficient parking and coastal hazards associated with sea level rise do raise a substantial issue with regard to relevant Coastal Act and certified LUP policies. Thus, Commission staff believes that there is a substantial issue with respect to the grounds on which the appeal was filed and the project's consistency with Chapter 3 of the Coastal Act and the Venice LUP. Staff recommends that the Commission determine that a substantial issue exists. The motion and resolution to carry out the staff recommendation is on Page 6 of this report.

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**EXHIBITS**

- [Exhibit 1 – Vicinity Map](#)
- [Exhibit 2 – City Approved Plans](#)
- [Exhibit 3 – City Determination Letter](#)
- [Exhibit 4 – Appeals](#)
  - [a\) Commission Executive Director](#)
  - [b\) POWR, CPV, Laddie Williams, Lydia Ponce, Margaret Molloy](#)

## I. MOTION AND RESOLUTION – SUBSTANTIAL ISSUE

**Motion:** I move that the Commission determine that Appeal No. A-5-VEN-21-0063 raises **NO SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed under Section 30602 of the Coastal Act.

Staff recommends a **NO** vote. Following the staff recommendation on this motion will result in the Commission proceeding to conduct a de novo review of the application, and adoption of the following resolution and findings. Conversely, passage of this motion will result in a finding of No Substantial Issue and the local action will become final and effective. The motion passes only by an affirmative vote of the majority of the appointed Commissioners present.

**Resolution:** The Commission hereby finds that Appeal No. A-5-VEN-21-0063 presents a **SUBSTANTIAL ISSUE** with respect to the grounds on which the appeal has been filed under Section 30602 of the Coastal Act regarding consistency with Chapter 3 policies of the Coastal Act.

## II. APPELLANTS' CONTENTIONS

On September 27, 2021, an appeal was filed by the Coastal Commission Executive Director ([Exhibit 4a](#)) that raises the following concerns with the City-approved development:

- 1) The City's findings do not adequately address potential coastal hazard and water quality issues raised by the subterranean level, inconsistent with Section 30253 of the Coastal Act.
- 2) The project does not conform with parking requirements of the certified Venice LUP.
- 3) The City's findings do not adequately address whether the project is consistent with height requirements of the certified Venice LUP.

On September 28, 2021, an appeal was filed by Bill Przylucki on behalf of People Organized for Westside Renewal, Robin Rudisill on behalf of Citizens Preserving Venice, Laddie Williams, Lydia Ponce, and Margaret Molloy ([Exhibit 4b](#)). The subject appellants raise the following concerns with the City-approved development:

- 1) The City-approved conversion of solely residential to mixed-use development is inconsistent with the protection of coastal resources per sections 30001, 30007.5, and 30222 of the Coastal Act, as well as Certified LUP policies I.E.1 and I.B.2.
- 2) The project raises issues of environmental justice per sections 30013, 30107.3, and 30604 of the Coastal Act.

- 3) The City did not make adequate findings regarding the mixed-use project's consistency with residential community character and the cumulative effects on community character, per sections 30250 and 30253 of the Coastal Act.
- 4) The project does not conform with minimum parking and access requirements of the certified Venice LUP and uncertified Municipal Code.
- 5) The City's findings do not adequately address whether the project is consistent with height requirements of the certified Venice LUP.
- 6) The City's findings do not adequately address whether the project will impede emergency vehicle access through intensified use of the rear alley.
- 7) The project is inconsistent with the Mello Act with regard to conversion of solely residential development into mixed-use development.

### **III. LOCAL GOVERNMENT ACTION**

On November 1, 2017, the West Los Angeles Area Planning Commission (WLAAPC) denied the applicant's (Gary Sutter's) request for demolition of the three residential structures and construction of a new, three-story above basement, 35-ft. tall, 11,147 sq. ft. mixed-use development. The denied application proposed a 2,691 sq. ft. restaurant on the ground floor and two dwelling units on the upper floors. The WLAAPC's findings indicated the net loss of seven dwelling units was inconsistent with LUP Policy III.A.1, which encourages visitor-serving facilities only if they retain existing housing opportunities in the area.

On February 9, 2018, the applicants filed a timely appeal with the Coastal Commission (Appeal No. A-5-VEN-18-0010) of the City's application denial. On March 8, 2018, Commission staff rejected the appeal due to the applicant's failure to obtain the local approvals required pursuant to the Venice Specific Plan, Mello Act, and CEQA, which were required for appeal of a local application denial pursuant to Section 13319 of Title 14 of the California Code of Regulations. No other Commission actions have been taken on the project site.

On February 2, 2020 and December 3, 2020, the City held public hearings for local CDP No. CPC-2019-2282-CDP-MEL-SPP-DB-CUB. The City record indicates that letters of opposition were received from 11 interested parties, including appellants Robin Rudisill, Lydia Ponce, Margaret Molloy, and Citizens Preserving Venice. On December 15, 2020, the local CDP was approved by the City Planning Commission, and on December 30, 2020, a timely local appeal was filed by People Organized for Westside Renewal, Citizens Preserving Venice, Lydia Ponce, and Margaret Molloy ([Exhibit 3](#)). On August 3, 2021, Planning and Land Use Management (PLUM) recommended denial of the appeal. On August 18, 2021, the City Council upheld PLUM's recommendation by denying the appeal and approving Local CDP No. CPC-2019-2282-CDP-MEL-SPP-DB-CUB, with an amendment modifying the single affordable unit from restricted to Low Income Household to Very Low Income Household.

On September 27, 2021, the Commission Executive Director filed a timely appeal of the City's local CDP approval ([Exhibit 4a](#)). A second timely appeal was filed by Bill Przylucki on behalf of People Organized for Westside Renewal, Robin Rudisill on behalf of Citizens Preserving Venice, Laddie Williams, Lydia Ponce, and Margaret Molloy on September 28, 2021 ([Exhibit 4b](#)). No other appeals were received prior to the end of the appeal period on September 28, 2021.

#### 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 Coastal Act sections 30604, 30620 and 30620.5, establish procedures for the filing, processing, review, modification, approval or denial of a CDP. 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 Chapter 3 of the Coastal Act. [Cal. Pub. Res. Code § 30625(b)(1)]

After final local action on a 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, 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 appeal must contain the information required by 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 as to the proposed project's conformity with Chapter 3.

Commission staff recommends a finding of **substantial issue**. If the Commission decides that the appellants' contentions raise no substantial issue as to conformity with Chapter 3 of the Coastal Act, the action of the local government becomes final. Alternatively, if the Commission finds that a substantial issue exists with respect to the conformity of the action of the local government with the Chapter 3 policies of the Coastal Act, the Commission accepts the appeal for a full de novo review of the permit application, and 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 at a future Commission meeting. A de novo public hearing on the merits of the application uses the Chapter 3 policies of the Coastal Act. The certified Venice LUP 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 Regulations, will have three minutes per side to address whether the appeal raises a substantial issue. The only persons qualified to testify before the Commission at the substantial issue portion of the appeal process are the applicants, the appellants, persons who opposed the application before the local government, and the local government. Testimony from other persons must be submitted in writing. The Commission will then vote on the substantial issue matter. A majority of Commissioners present is required to find that the grounds for the appeal raise no substantial issue.

## **V. SINGLE/DUAL PERMIT JURISDICTION AREAS**

Within the areas specified in Coastal Act 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 the proposed development in the Dual Permit Jurisdiction area are the Chapter 3 policies of the Coastal Act. For projects identified in Section 30601 (i.e., projects in the Single Permit Jurisdiction), the City of Los Angeles local CDP is the only CDP required. The proposed project is located with the Dual Permit Jurisdiction Area. Therefore, the applicants are required to obtain a second, or “dual”, CDP from the Commission for the proposed development. An application for the dual CDP has not yet been submitted.

## **VI. FINDINGS AND DECLARATIONS – SUBSTANTIAL ISSUE**

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

The project site is located in an ocean-fronting commercial corridor bordered primarily by residential development inland of the site, in the North Venice subarea of Venice, City of Los Angeles ([Exhibit 1](#)). The project site consists of two, 4,500 sq. ft. adjacent lots, each 30-ft. wide by 150-ft. long. The project site is designated Community Commercial by the certified Venice LUP and C1-1 by the City of Los Angeles uncertified Zoning Code. The site is located less than 100 ft. inland of the public beach and fronts the Venice Beach boardwalk (Ocean Front Walk), with vehicle access obtained solely from the rear alley (Speedway).

The northern lot, 811 Ocean Front Walk, is currently developed with a two-story, 1,651 sq. ft. single-family residence constructed in 1964. The southern lot, 815 Ocean Front Walk, is developed with two, two-story quadrplexes constructed in 1963, 2,200 sq. ft. and 2,300 sq. ft. in size. There are nine dwelling units spanning the two lots; however, the applicants

received approval from HCIDLA to vacate the development at 811 Ocean Front Walk pursuant to the Ellis Act<sup>1</sup> on September 24, 2009, and all nine units have been vacant for at least 12 years.

It is unclear from HCIDLA records how 815 Ocean Front Walk (the location of the two quadraplexes) came to be vacant—however, the site history suggests Ellis Act evictions concurrent with the eviction that occurred at 811 Ocean Front Walk. According to the City record, the current applicants acquired the property on February 6, 2006 and filed a Notice of Intent to Withdraw Units from Rental Housing Use on May 7, 2007. HCIDLA granted the request on September 24, 2009 pursuant to the Ellis Act, which allows property owners to vacate rental properties with the intent of concluding residential use. HCIDLA records indicate that the nine dwelling units were inspected and confirmed as vacant in February 2008 and July 2012. In a letter dated July 14, 2015, HCIDLA formally determined that no affordable dwelling units exist at 811 Ocean Front Walk. This letter does not acknowledge the status of 815 Ocean Front Walk, but the images of boarded-up windows available on Google Maps suggest the two quadraplexes onsite may have been vacant since at least 2018. The City's findings state that all nine units on the two lots have remained vacant since 2009.

The local CDP approved consolidation of the two subject lots, demolition of the three existing detached structures, and construction of a new, three-story above basement, 39-ft. tall, 13,412 sq. ft. mixed-use, commercial and residential development ([Exhibit 2](#)). The upper two levels will contain nine new dwelling units, one of which will be restricted for Very Low Income households. The ground level will contain a 1,568 sq. ft. restaurant with 574 sq. ft. of service area and 994 sq. ft. of kitchen area, in addition to nine parking spaces and a loading dock area. The subterranean level, extending 13.5 feet below the first floor foundation, will provide an additional 18 parking spaces for a total of 27 parking spaces onsite. 24 bicycle docking stations will also be provided onsite.

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

When determining whether an appeal raises a “substantial issue,” Section 13115(c) 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;
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

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<sup>1</sup> The Ellis Act is a California state law that allows landlords to evict tenants if the landlord intends to leave the residential rental business. Source: <https://councilmemberpaulkoretz.com/policies/ellis-act>

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 recommends that the Commission find that **a substantial issue exists** with respect to whether the local government action conforms to the provisions of Chapter 3 of the Coastal Act for the reasons set forth below.

### **C. SUBSTANTIAL ISSUE ANALYSIS**

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 hear an appeal unless it determines that no substantial issue exists as to conformity with Chapter 3 policies of the Coastal Act. The primary issues raised by this appeal relate to coastal hazards, public access, and community character.

Section 30001 of the Coastal Act states, in relevant part:

The Legislature hereby finds and declares: ...

- (d) That existing developed uses, and future developments that are carefully planned and developed consistent with the policies of this division, are essential to the economic and social well-being of the people of this state and especially to working persons employed within the coastal zone.

Section 30007.5 of the Coastal Act states, in relevant part:

The Legislature further finds and recognizes that conflicts may occur between one or more policies of the division. The Legislature therefore declares that in carrying out the provisions of this division such conflicts be resolved in a manner which on balance is the most protective of significant coastal resources...

Section 30013 of the Coastal Act states:

The Legislature further finds and declares that in order to advance the principles of environmental justice and equality, subdivision (a) of Section 11135 of the Government Code and subdivision (e) of Section 65040.12 of the Government Code apply to the commission and all public agencies implementing the provisions of this division. As required by Section 11135 of the Government Code, no person in the State of California, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic information, or disability, shall be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination, under any program or activity that is conducted, operated, or administered pursuant to this division, is funded directly by the state for purposes of this division, or receives any financial assistance from the

state pursuant to this division.

Section 30107.3 of the Coastal Act states, in relevant part:

(a) “Environmental justice” means the fair treatment and meaningful involvement of people of all races, cultures, and incomes, and national origins, with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.

Section 30222 of the Coastal Act states, in relevant part:

The use of private lands suitable for visitor-serving commercial recreational facilities designed to enhance public opportunities for coastal recreation shall have priority over private residential, general industrial, or general commercial development, but not over agriculture or coastal-dependent industry.

Section 30250 of the Coastal Act states, in relevant 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. ...

(c) Visitor-serving facilities that cannot feasibly be located in existing developed areas shall be located in existing isolated developments or at selected points of attraction for visitors.

Section 30251 of the Coastal Act states, in relevant 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.

Section 30252 of the Coastal Act states, in relevant part:

The location and amount of new development should maintain and enhance public access to the coast by ... (2) providing commercial facilities within or adjoining residential development or in other areas that will minimize the use of coastal access roads ... (4) providing adequate parking facilities or providing substitute means of serving the development with public transportation ...

Section 30253 of the Coastal Act states, in relevant 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. ...
- (e) Where appropriate, protect special communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses.

Section 30604 of the Coastal Act states, in relevant part:

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

Venice Certified LUP Policy I.A.13 Density Bonus Applications, states, in relevant part:

In order to encourage the provision of affordable housing units in the areas designated as “Multiple Family Residential” and in mixed-use developments, the City may grant incentives such as reduced parking, additional height or increased density consistent with Government Code Section 65915 provided that the affordable housing complies with the following: ...

(b) In accordance with Government Code Section 65915(f), the density bonus shall be calculated based on the otherwise maximum allowable residential density under the applicable zoning ordinance and land use element of the general plan. In the Coastal Zone, the otherwise maximum allowable residential density shall mean the maximum density determined by applying all site-specific environmental development constraints applicable under the coastal zoning ordinances and land use element certified by the Coastal Commission. The density bonus shall be applicable to housing development consisting of five or more units...

(e) In addition to a 25 percent density bonus, a qualifying housing development shall receive one of the incentives identified in Government Code Section 65915(h), unless it is found that the additional incentive is not required in order to provide for affordable housing costs or rents. If the City determines that the additional development incentive requested by an applicant pursuant to this section will not have any adverse effects on coastal resources, the City may grant the requested incentive. If the City determines that the requested incentive will have an adverse effect on coastal resources, the City shall consider all feasible alternative incentives and the effects of such incentives on coastal resources. The City may grant one or more of those incentives that do not have an adverse effect on coastal resources. If all feasible incentives would have an adverse effect on coastal resources, the City shall grant only that additional incentive which is most protective of significant coastal resources.

(f) For the purposes of this section, “coastal resources” means any resource which is afforded protection under the policies of Chapter 3 of the Coastal Act, California Public Resources Code section 30200 et seq., including but not limited to public access, marine and other aquatic resources, environmentally sensitive habitat, and the visual quality of coastal areas.

Venice Certified LUP Policy I.A.14. Parking Requirements for Affordable Housing, states:

Reduced parking is permitted for low income units only if: a) the project is consistent with LUP policy I.A.13; and b) it is demonstrated that the prospective occupants of the project will have a reduced demand for parking. However, if a unit changes its status from low or low-moderate income to market rate unit, parking should be provided for market rate units according to the parking standards listed in LUP Policies II.A.3 and II.A.4.

Venice Certified LUP Policy I.B.2. Mixed-Use Development states:

Mixed-use residential commercial development shall be encouraged in all areas designated on the Land Use Policy Map for commercial use. Residential density in commercial land use designations shall not exceed one unit per 800-1200 square feet of lot area and shall comply with the Floor Area Ratio (FAR) limits set forth in Policy I.B.7. The design of mixed-use development is intended to help mitigate the

impact of the traffic generated by the development on coastal access roads and reduce parking demand by reducing the need for automobile use by residents and encouraging pedestrian activity. Such development shall comply with the density and development standards set forth in this LUP.

Venice Certified LUP Policy I.B.6. Community Commercial Land Use states:

The areas designated as Community Commercial on the Land Use Policy Map (Exhibits 9 through 12) will accommodate the development of community-serving commercial uses and services, with a mix of residential dwelling units and visitor-serving uses. The Community Commercial designation is intended to provide focal points for local shopping, civic and social activities and for visitor-serving commercial uses. They differ from Neighborhood Commercial areas in their size and intensity of business and social activities. The existing community centers in Venice are most consistent with, and should be developed as, mixed-use centers that encourage the development of housing in concert with multi-use commercial uses. The integration and mixing of uses will increase opportunities for employees to live near jobs and residents to live near shopping. Overnight visitor-serving uses, such as hotels and youth hostels, are preferred uses in the Community Commercial land use category.

Uses/Density: Community commercial uses shall accommodate neighborhood and visitor-serving commercial and personal service uses, emphasizing retail and restaurants; and mixed residential/commercial use with retail on the ground floor and personal services and residential uses on upper floors...On a commercial lot, residential uses shall not exceed one unit per 800-1200 square feet of lot area...

(c) North Venice Community Commercial. Properties located along Ocean Front Walk from 17th Avenue to the Santa Monica City Line (Exhibit 10).

Uses: Visitor-serving and personal services emphasizing retail and restaurants. Mixed-use with retail and/ or personal services on the ground floor with either residential or personal services on upper floors.

Venice Certified LUP Policy I.E.1 General, states:

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

Venice Certified LUP Policy I.E.2. Mixed-Use Development, states:

New development within the Venice Coastal Zone shall respect the scale and character of 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. Lot consolidations shall be restricted to protect the scale of existing neighborhoods. Roof access structures shall be limited to the minimum size necessary to reduce visual impacts while providing access for fire safety. In visually sensitive areas, roof access structures shall be set back from public recreation areas, public walkways, and all water areas so that the roof access structure does not result in a visible increase in bulk or height of the roof line as seen from a public recreation area, public walkway, or water area. No roof access structure shall exceed the height limit by more than ten (10') feet. Roof deck enclosures (e.g. railings and parapet walls) shall not exceed the height limit by more than 42 inches and shall be constructed of railings or transparent materials. Notwithstanding other policies of this LUP, chimneys, exhaust ducts, ventilation shafts and other similar devices essential for building function may exceed the specified height limit in a residential zone by five feet.

Venice Certified LUP Policy II.A.3. Parking Requirements, states:

Multiple dwelling and duplex on lots 40 feet or more in width, or 35 feet or more in width if adjacent to an alley: 2 spaces for each dwelling unit; plus a minimum of 1 (one) guest parking space for each 4 (four) or fewer units (i.e. 2.25 spaces per unit; always round-up to highest whole number of spaces). Exception: For projects where all required parking spaces are fully enclosed, any required guest spaces may be paid for at the same in lieu fee rate defined for BIZ parking.

...Restaurant, Night Club, Bar, and similar establishments and for the sale or consumption of food and beverages on the premises: 1 space for each 50 square feet of service floor area (including outdoor service areas).

Venice Certified LUP Policy II.A.4. Parking Requirements in the Beach Impact Zone, states:

Any new and/or any addition to commercial, industrial, and multiple-family residential development projects within the Beach Impact Zone shall provide additional (in addition to parking required by Policy II.A.3) parking spaces for public use or pay in-lieu fees into the Venice Coastal Parking Impact Trust Fund. Beach Impact Zone (BIZ) Parking Impact Trust Fund criteria:

a. Commercial and industrial projects in the BIZ shall provide one additional parking space for each 640 square feet of floor area of the ground floor. Up to 50% of the total number of these additional parking spaces required in this section may be paid for in lieu of providing the spaces.

b. Multiple family residential projects in the BIZ shall provide an additional parking space for each 1,000 square feet of floor area of the ground floor for multiple dwelling projects of three units or more. Up to 100% of the total number of these additional parking spaces required in this section may be paid for in lieu of providing the spaces. The recommended rates shall be



established based upon the development cost study of the area...

d. In no event shall the number of BIZ parking spaces (over and above those spaces required by the parking requirements set forth in Policy II.A.3) required for projects of three or more dwelling units, or commercial or industrial projects, be less than one (1) parking space for residential projects and two (2) parking spaces for commercial and industrial projects.

Venice Certified LUP Policy III.A.1 General, states:

(a) Recreation and visitor-serving facilities shall be encouraged, provided they retain the existing character and housing opportunities of the area, and provided there is sufficient infrastructure capacity to service such facilities.

### **Coastal Hazards**

Section 30253 of the Coastal Act requires that new development minimize risks to life and property in hazardous areas, including areas subject to flooding. New development must also not significantly contribute to erosion or destruction of the site or surrounding area, or require the construction of protective devices that would substantially alter natural landforms.

The appellant contends that the City's findings do not adequately address potential coastal hazard and water quality issues raised by the subterranean level, inconsistent with Section 30253 of the Coastal Act. The City's findings reference the applicant's submitted Wave Uprush/Coastal Engineering Study, provided by Pacific Engineering Group and dated February 1, 2020. The report analyzed the project's vulnerability in the event of 5.5 ft. of sea level rise combined with a 100-year storm.<sup>2</sup> The analysis concluded that, under those circumstances, the maximum storm wave uprush in this area will occur 145 ft. seaward of the subject property. However, the Commission's 2018 update to the Sea Level Rise Policy Guidance recommends using the high emission scenario when determining a Low Risk to Medium-High Risk range of projected sea level rise. Per this guidance, sea levels near the Santa Monica gauge (the nearest tide gauge to the project site) will likely rise between 3.3 ft. and 6.8 ft. within the subject development's estimated 75-year lifespan. Using Our Coast, Our Future's (OCOF's) Coastal Storm Modeling System (CoSMoS), 3.3 feet of sea level rise combined with a 100-year storm will result in flooding at the perimeter of the site within the 75-year lifespan. With 6.6 ft. of sea level rise and a 100-year storm, the entire site would be flooded.

Inundation poses a threat to above-ground development but may raise even more significant issues for a below-ground parking garage relating to the presence of pollutants, the storage of hazardous materials and electrical/mechanical equipment. Parking garages typically include an elevator system, lighting and ventilation system, cleaning chemicals and vehicles. Inundation of a parking lot with up to 18 cars could present important human health and safety concerns (e.g., electrocution, power outages interrupting public

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<sup>2</sup> 100-year storm describes a magnitude of storm event with 1 in 100 chance, or 1% chance, of occurring any given year. Annual storms have a lesser magnitude and high likelihood of occurring at least once every year.

infrastructure services), release of harmful toxins into the water, and/or impacts to water quality and surrounding coastal habitats. In the event of potential inundation, removal of vulnerable structures may be considered necessary to minimize risks to life and property. In past decisions, the Commission has imposed conditions requiring removal, relocation, or elevation of structures at a specified future time to ensure the development will appropriately minimize risks and protect coastal resources consistent with Coastal Act provisions.<sup>3</sup> However, the local CDP approval does not include any of these conditions. The approved sub-surface development would also make removal of the associated development difficult and/or result in greater impacts to coastal resources, in a manner inconsistent with Section 30253.

The appellant additionally contends that the subterranean parking level may serve as a future shoreline protection device. In past Commission actions, shoreline basements and sub-surface development have been considered potential future shoreline protective devices.<sup>4</sup> Erosion from magnified wave action and storms could cause the subterranean level to daylight and guard the development from coastal erosion, much like a seawall. Additionally, a daylighting structure would reflect wave energy in a manner similar to a seawall and impact surrounding coastal resources, such as the remaining sandy beach or surrounding developments without shoreline protection. This could adversely affect public access, beach width, shoreline sand supply, or visual resources.

Therefore, the appellant's contention raises a substantial issue with regard to the project's consistency with Section 30253 of the Coastal Act.

### **Public Access**

Section 30210 of the Coastal Act requires maximum access and recreational opportunities to be provided in the coastal zone consistent with the need to protect public safety and public and private rights. Section 30252 additionally encourages the provision of commercial facilities "within or adjoining residential development" if adequate parking facilities are provided for the public.

The appellants contend that the project does not provide adequate onsite parking and will increase the deficit of beach parking in the surrounding area. Per certified LUP Policy II.A.3, a multi-family dwelling with nine units requires 21 parking spaces (rounding up from 20.25). Policy II.A.4 requires additional parking spaces for multi-family dwellings in the Beach Impact Zone (BIZ) but is not applicable here due to the lack of residential floor area on the ground level. The City reduced the parking requirements for the single affordable unit by one parking space as an affordable housing density incentive, consistent with policies I.A.13 and I.A.14. Thus, the residential component of the project requires 20 onsite parking spaces. The restaurant with 574 square feet of service area requires 12 parking spaces (rounding up from 11.48), as well as an additional three spaces (rounding up from

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<sup>3</sup> [5-19-1167](#) (Harley GCS, LLC), [5-19-1266](#) (German Quality Borders, LLC), [A-5-VEN-18-0049 & 5-19-1015](#) (Mobile Park Investment), [5-89-011-A1](#) (Waldorf, LLC).

<sup>4</sup> [A-5-MNB-20-0020 & A-5-MNB-20-0041](#) (Cotsen), [5-19-0955](#) (Lesman), [5-18-1212](#) (Lowell/Correll), [A-5-VEN-15-0052](#), [A-5-VEN-15-0053](#), and [A-5-VEN-15-0054](#) (Bever).

2.72) due to the BIZ location. Thus, the certified LUP requires a total of 35 parking spaces onsite.

The City's findings indicate that 32 parking spaces are required onsite, likely due to the City's decision not to round up for parking requirements. (The LUP does not specifically require rounding up when a proposed development area is less than the amount that triggers the need for an additional parking space, but rounding up may be the most protective of public access.) The local CDP also approved a reduction in parking based on the provision of 24 bicycle docking stations, pursuant to uncertified Municipal Code Section 12.21-A.4, which allows up to 30% of required commercial vehicle parking to be satisfied with the provision of bicycle parking. The City ultimately approved 27 vehicle parking spaces and 24 bicycle parking spaces onsite.

The local CDP allowed an eight-parking space deficit for new development located in a densely-developed coastal area where parking plays a significant role in public access, inconsistent with the requirements of LUP policies II.A.3. and II.A.4. Therefore, the appellants' contention raises a substantial issue with regard to project consistency with sections 30210 and 30252 of the Coastal Act, as well as parking requirements of the certified LUP.

The appellants additionally contend that the new development will impede vehicle access through the rear alley due to the intensification of use associated with the new restaurant. The appellants contend that the food deliveries and patrons will block emergency vehicle and resident use of Speedway. For substantiation, the appellants provided photographs of garbage trucks, delivery trucks, and parked vehicles blocking the rear alley ([Exhibit 4b, Pages 126-133](#)).

As previously stated, Speedway is the sole source of vehicle access to and from the development. The restaurant will require at least 18 parking spaces, suggesting an increase in vehicle usage of Speedway. However, the LUP designates this area Community Commercial and specifically encourages commercial uses on the ground floor in order to "increase opportunities for employees to live near jobs and residents to live near shopping". This designation implies the area has sufficient infrastructure to support commercial, visitor-serving uses. There are several retail stores and cafes in the immediate vicinity of the project site that also rely on Speedway for vehicle access, further suggesting the area is capable of facilitating vehicle use associated with mixed-use commercial development. Additionally, the ground floor restaurant entrance will be located on the Venice Beach boardwalk, a busy pedestrian accessway that allows tourists and beachgoers to walk to the restaurant from the beach.

The examples of blocked access shown in the appellants' photos appear to be either errors committed by the drivers—such as the private car parked in the middle of an accessway and the delivery truck unable to execute a full turn—or necessary uses of the alley, such as the garbage truck. Regardless, there are multiple streets located within 200 feet of the subject development (Parks Avenue, Parks Court, and Brooks Avenue) that intersect the rear alley and provide methods of exit if a portion of the rear alley is blocked. As such, the appellants have not demonstrated that the locally approved restaurant use

poses a threat to public access or public safety related to use of Speedway, and this contention does not raise a substantial issue with regard to sections 30252 and 30253 of the Coastal Act.

### **Prioritization of Use**

Section 30001 of the Coastal Act states that both “existing developed uses” and future planned uses in the coastal zone are crucial for maintaining the well-being of the community, especially that of the workforce employed in the coastal zone. Section 30222 additionally prioritizes visitor-serving, commercial recreational facilities over private residential development regarding the use of private lands, as the former use enhances public opportunities for coastal recreation. Certified LUP Policy III.A.1 encourages the provision of visitor-serving facilities provided that they are located in areas with sufficient infrastructure and designed to retain existing housing opportunities in the area.

These policies are not intended to prevent all residential use in the coastal zone; rather, Section 30250(a) specifically requires new residential development be located in close proximity to existing developed areas able to accommodate it (which may include coastal communities), and Section 30253 encourages minimizing vehicle miles traveled, which may be accomplished by locating residential development contiguously with commercial, recreational facilities. However, it is important to balance visitor-serving, commercial uses with private residential uses to ensure all coastal resources are protected. This balance is required by Section 30007.5, which states that any conflicts between Coastal Act policies must be resolved through interpretation “which on balance is the most protective of significant coastal resources.”

The appellants contend that the conversion of solely residential development to mixed-use development is inconsistent with coastal resource protection policies described above, claiming that housing must be prioritized over commercial uses for Coastal Act consistency. The appellants contend that mixed-use, commercial and residential development should not be considered a residential use and must never be approved to replace solely residential development for consistency with sections 30222 and 30250 of the Coastal Act.

As previously described, the subject project will fully maintain the existing housing density of nine units onsite, with one affordable unit reserved for Very Low Income households. The existing nine dwelling units onsite have been vacant for the past 12 years, and pursuant to Los Angeles City Council approval, no affordable housing will be displaced. Furthermore, the appellants’ contention regarding prioritization of uses is inconsistent with Section 30222, which specifically indicates visitor-serving recreational uses as the preferred use in the coastal zone. The appellants cite an online source defining recreational facilities and contend that the locally-approved restaurant does not fulfill the definition. However, the Commission has considered food establishments to be visitor-serving recreational facilities in past actions, and a ground-level restaurant located on the Venice Beach boardwalk meets the criteria for an establishment intended to facilitate

public recreation.<sup>5</sup>

Additionally, the subject two lots are designated Community Commercial in the certified LUP and C1-1 in the uncertified Zoning Code. The subject project is consistent with LUP Policy I.B.6, which specifically encourages the provision of restaurants and retail on the ground floor and residential uses on the upper floors. Policy I.B.6 states this is intended to “increase opportunities for employees to live near jobs and residents to live near shopping”, thus reducing vehicle miles traveled pursuant to Section 30253. The intent of mixed-use development to encourage pedestrian activity by locating commercial uses near or below residential development is also upheld by LUP Policy I.B.2.

The appellants contend that these policies encourage, rather than require, mixed-use development on the subject site. The appellants cite the Commission’s discussion on CDP Application No. A-5-VEN-18-0017 at the public hearing on March 6, 2019, in which multiple Commissioners spoke to the need to preserve housing regardless of land use designation and stated that commercial development was not required at 3011 Ocean Front Walk (which is also designated Community Commercial by the LUP).<sup>6</sup> However, this discussion was prompted by the loss of housing density included in Application No. A-5-VEN-18-0017, as well as the applicant’s expressed wish to forgo commercial use in favor of a solely residential development. Neither of these factors are the case in the subject project: the applicants wish to retain the existing housing density while providing a new visitor-serving use, as allowed by LUP policies I.B.2 and I.B.6.

Thus, the appellants’ contention does not raise a substantial issue with regard to project consistency with section 30222 of the Coastal Act, as well as LUP policies I.B.2 and I.B.6.

### **Community Character**

Sections 30251 and 30253(e) of the Coastal Act state that special communities shall be protected and require permitted development to be visually compatible with the character of surrounding areas. These sections also require protection of communities and neighborhoods that, because of their unique characteristics, are popular visitor destination points for recreational uses. The Commission has previously found that Venice’s unique social and architectural diversity should be protected as a Special Coastal Community, as required by LUP Policy I.E.1. The Venice LUP also sets forth policies to preserve the community character and scale specific to each subarea within the Special Coastal Community.

The appellants contend that the project’s conversion of solely residential development to mixed use, commercial and residential development will adversely impact the residential nature of the surrounding area, based on the claim that the project site is surrounded primarily by residential uses. The City’s findings indicate that there are multiple mixed-use and multi-family residences along Ocean Front Walk, and the findings determined the project to be compatible in character with the existing neighborhood.

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<sup>5</sup>Ref. [A-5-VEN-18-0017](#) (Targon), [5-19-0984](#) (NXT2 Beach, LLC), [5-21-0142](#) (Venice Ventures, LLC)

<sup>6</sup> <https://cal-span.org/unipage/?site=cal-span&owner=CCC&date=2019-03-06>

As shown by certified LUP exhibits 10a and 10b, the majority of the North Venice subarea is designated Multiple Family Residential, and roughly three linear portions of the area are designated Community Commercial (Ocean Front Walk, Electric Avenue, and Main Street). The project site is located in the Ocean Front Walk portion of the Community Commercial designations, bounded by Navy Street to the north and Westminster Avenue to the south. This portion of the North Venice subarea (i.e. the properties along Ocean Front Walk from Navy Street to Westminster Avenue) includes at least 12 food service establishments and 23 retail stores, most of which are located on the ground floor, to serve boardwalk pedestrians. While the blocks inland of the project site are primarily private residential homes, the subject 0.6-mile stretch of Venice Beach boardwalk designated Community Commercial is characterized by a mix of residential and commercial uses. The concentration of visitor-serving recreational facilities in this area allows for a diverse composition of storefronts, street art, and public amenities that support Venice Beach as a major tourist destination. Furthermore, the project does not pose any reduction in existing residential density onsite. Rather than displacing a residential use, the project is simply adding a commercial use, consistent with surrounding uses and LUP and Chapter 3 priorities.

As such, the project does not pose a threat to the community character with regard to use, and the appellant's contention does not raise a substantial issue with regard to sections 30251 and 30253(e) of the Coastal Act.

The appellants contend that the City's findings do not sufficiently address whether the project is compatible with the surrounding community character in terms of size and scale. The appellants claim that the City's consistency findings were not supported by analysis of whether the roofline is varied, whether any nearby structures are of similar height, or whether it may result in adverse visual impacts. This analysis is required by Section 30251 of the Coastal Act, which designates scenic qualities of coastal areas as a public resource. LUP policies I.E.1 and I.E.2 also require the scale and massing of new development to respect that of the existing community.

Roof Access Structures (RASs) are defined as "an enclosed stairway or elevator housing that provides access to a roof, but contains no storage, habitable, or living area. LUP Exhibit 14a allows a maximum 35-ft. height for varied rooflines and an additional five-foot for "chimneys, exhaust ducts, ventilation shafts, and other similar devices essential for building function". Policy I.A.1 allows RASs to exceed the specified flat roof height by 10 ft. The locally-approved plans show stepped back upper floors with a varied roofline ([Exhibit 2, Page 15](#)). The City characterizes the elevator structure as a RAS allowed to exceed the maximum varied roofline height by 10 ft., despite the structure failing to provide access to the roof. It may be more accurately considered a device essential for building function allowed to exceed the varied roofline height by five feet.

Regardless, the locally-approved development exceeds relevant height limitations for varied rooflines by four feet. The City approved the height exceedance pursuant to Policy I.A.13, which allows exceptions to height requirements as an incentive for the provision of affordable housing. In considering the visual compatibility of the development with the surrounding community, the City considered the portion of Ocean Front Walk between

Rose Avenue and 17<sup>th</sup> Avenue. The City described heights ranging from 30 to 76 ft., including 13 three-story buildings (consistent with the number of above-ground stories currently proposed) and seven buildings that exceed three stories. The maximum building height extends six-stories tall in this area. The City also analyzed the scale and design of the development in its findings:

The architectural character of nearby development includes an eclectic mix of architectural styles including modern and contemporary style buildings. The project's proposed contemporary design fits into the architectural diversity of the neighborhood. The building facades clearly identifies the commercial from residential uses with the use of color and material changes. The project height, massing and scale of the project is consistent with existing buildings along Ocean Front Walk. The requested four-foot height increase will not adversely impact the scale of the street. Additionally, the residential portion of the project, levels 2 and 3, are set back 5 feet from the property line decreasing the visual impact of the project along sidewalk of Ocean Front Walk. Therefore, the Project is visually compatible in scale and character with the existing neighborhood, and the...[CDP] would not be materially detrimental to adjoining lots or the immediate neighborhood.

The structure height was approved in exceedance of LUP Exhibit 14a, as allowed by Policy I.A.13 as an incentive bonus. The City determined the development size, scale, and design was unlikely to produce adverse impacts to community character. This analysis adequately considered potential visual impacts to the public walkway and changes to the community character, consistent with visual resource and community character policies of the LUP and the Coastal Act.

Thus, the appellants' contention does not raise a substantial issue with regard to local CDP consistency with sections 30251 and 30253(e) of the Coastal Act, nor LUP policies I.E.1 and I.E.2.

### **Cumulative Effects**

The appellants contend that the locally-approved conversion of solely residential development to mixed-use, residential and commercial development will result in an adverse cumulative effect on the availability of affordable housing in the Venice coastal zone. The appellants claim that the project supports an existing precedent of displacing residents in affordable units for the purpose of establishing commercial uses.

The project does not support the appellants' contention that mixed-use conversion will result in displacement of existing units. The existing nine dwelling units on the subject two lots were vacated pursuant to the Ellis Act in 2009 and have not served as affordable units for the past 12 years. (The previous evictions are discussed in more detail in the "Environmental Justice and Mello Act" subsection below.) The current project does not displace existing affordable unit residents. Furthermore, the project will result in nine dwelling units, one of which has been reserved for Very Low-income households in perpetuity. The new, ground floor restaurant will not result any loss of existing housing density.

A-5-VEN-21-0063 (Sutter)  
Appeal – Substantial Issue

As discussed above, mixed-use, residential and commercial development is consistent with the Community Commercial LUP land use designation and C1-1 uncertified Zoning Code designation. The City's action approved a mixed-use commercial food service and residential development in an area specifically designated for such uses by the certified LUP. The demolition of nine vacant units for construction of nine new units, and a new restaurant, does not support the contention that all mixed-use conversion projects contribute incrementally to a loss of affordable housing in the coastal zone. Thus, this contention does not raise a substantial issue.

Commission staff reviewed the North Venice subarea (specifically the area shown by LUP Exhibit 10(a) on Page 34 of the Venice LUP, inland of Hampton Drive and extending between Navy Street and Windward Avenue) for any past projects that may relate to the contended cumulative impact resulting from a change in use from residential to mixed-use commercial and residential. The Commission approved de novo CDP No. A-5-VEN-16-0041 on July 14, 2016 for conversion of an artist-in-residence (AIR) single-family residence to a mixed-use commercial and residential development at 1346 Abbott Kinney Boulevard.<sup>7</sup> This action approved the construction of a new 874 sq. ft. salon on the first floor of an existing two-story, 3,590 sq. ft. AIR dwelling unit. The appealed local CDP had originally approved a much larger, 2,621 sq. ft. salon, but the Commission found Substantial Issue based on failure to meet parking requirements.

Additionally, the Commission found Substantial Issue on Appeal No. A-5-VEN-21-0046 on September 8, 2021 for conversion of an AIR single-family residence to a mixed-use development with a restaurant on the ground floor at 800 and 802 Main Street.<sup>8</sup> Similar to the subject appeal, the appellants contended that the project would have an adverse cumulative effect on existing affordable housing. However, the Commission found that the loss of housing density occurred independently of the project, through the applicant's previous construction of a single-family residence rather than the locally permitted triplex. The Commission determined that the new ground level restaurant would not adversely impact housing, due to the location of the previously approved three units on the upper floors. The Commission found Substantial Issue based on the unpermitted reduction in density (independent of the proposed mixed-use conversion) and failure to meet parking requirements.

These previous Commission actions and the current project demonstrate that while Venice is struggling with a loss of affordable housing in the coastal zone, this issue does not appear to be contingent on mixed-use, commercial and residential conversions. These projects maintained existing housing density while also providing new commercial uses.

The submitted appeal references a list of over 200 properties with residential housing in commercially designated areas of the coastal zone, contending that these 200 properties include over 700 Rent Stabilization Order housing units that could be impacted by housing density reduction related to changes in use. However, the referenced list does

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<sup>7</sup> <https://documents.coastal.ca.gov/reports/2016/7/th24b-7-2016.pdf>

<sup>8</sup> <https://documents.coastal.ca.gov/reports/2021/9/W15b/W15b-9-2021-report.pdf>



not indicate whether any of the included properties have been approved for a housing density reduction due to mixed-use, residential and commercial development. The submitted appeal also provided a list of six sites in the North Venice subarea, indicating the sites as support for their contention regarding a cumulative effect on housing density resulting from mixed-use conversions. However, three of the six properties listed by the appellants were converted from residential development to mixed-use development with no net reduction in housing density<sup>9</sup>; two of the properties did not show any relevant past or current projects in the City and Commission record<sup>10</sup>; and the sixth property was converted from residential development to solely commercial development, which resulted in a loss of housing unrelated to mixed-use conversion<sup>11</sup>.

Commission staff are unaware of any future probable projects that could result in a cumulative adverse impact on existing affordable units due to conversion of residential use to mixed-use development. The subject project also does not meet that description. The project does not pose a reduction in overall housing density, nor a reduction in existing affordable housing density onsite.

In summary, the locally-approved change of use to mixed-use development is consistent with Section 30222 of the Coastal Act and policies I.B.1 and I.B.6 of the certified LUP. The appeal does not raise a substantial issue regarding the cumulative effect of the project on housing density in relation to sections 30250 and 30253 of the Coastal Act.

### **Environmental Justice and Mello Act**

Section 30107.3 of the Coastal Act defines environmental justice as “the fair treatment and meaningful involvement of people of all races, cultures, and incomes, and national origins” in implementing planning policies. Section 30013 requires the Commission to advance principals of environmental justice by ensuring equitable access to the coast and preventing discrimination on the basis of any demographic or socioeconomic characteristic. One method of facilitating equitable access is to protect existing affordable housing density and encourage the provision of new affordable units in the coastal zone, as required by Section 30604(f) and (g) of the Coastal Act. Section 30604(h) also encourages local governments and the Commission to consider environmental justice when acting on projects.

The appellants contend that all solely residential development in the coastal zone must remain entirely residential, in order to prevent displacement of lower income residents and vulnerable communities from the coastal zone. The appellants contend that the mixed-use project will disproportionately harm low-income communities of color in the coastal zone and cite sections 30013, 30107.3, and 30604 of the Coastal Act as policies supporting their contention.

As discussed above, the nine existing dwelling units on the subject properties have remained vacant since at least 2009. Ellis Act evictions may raise environmental justice

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<sup>9</sup> DIR-2017-1124-CDP-SPP-MEL (Berkson), DIR-2020-1241-CDP-SPP (Darvish), A-5-VEN-18-0010 (Sutter).

<sup>10</sup> 1410 S Main Street and 1214 Abbott Kinney Boulevard.

<sup>11</sup> DIR-2012-367-VSO-MEL (Duvivier).

issues, stemming from landlords' ability to evict tenants of affordable units for the minimum period of time necessary until the affordable unit designation no longer applies. However, the evictions that occurred 12 years ago appear to be legal and are outside the scope of the current appeal. The project before the Commission is demolition of nine vacant dwelling units and construction of nine new units, one of which is restricted for Very Low Income households. The local CDP appealed to the Commission approves the same number of housing units, including one affordable unit, and the appeal does not demonstrate that the project fails to encourage affordable housing or lack consideration of environmental justice.

Additionally, the appellants contend that a duplex existed at 811 Ocean Front Walk rather than the single-family residence reflected in the City's findings, and that ten units originally existed across both lots. The appellants claim this necessitates a new Mello Act determination, as the City's determination considered nine existing units. To substantiate this contention, the appellants provided HCIDLA inspection records dated as recently as April 30, 2015, which list two units at 811 Ocean Front Walk ([Exhibit 4b, Page 144](#)); they also allege that the City's Zoning and Information Management System (ZIMAS) listing of the property as "811 1-2 Ocean Front Walk" suggests two units; they provided photographs of ten gas meters, stating that ten meters is indicative of ten total units; and they stated that Ellis Act eviction only applies to multi-family residences and would not have been used for a single family residence.

The Certificate of Occupancy for the development at 811 Ocean Front Walk indicates that a single-family residence was constructed on the lot in 1964. A single existing unit at 811 Ocean Front Walk is also reflected on ZIMAS and all available City records. Additionally, the appellants are incorrect in contending that Ellis Act evictions do not apply to single-family residences; Government Code Section 7060(a) prohibits any public entity from requiring maintained rental accommodations, and Section 7060(b) specifically includes "a detached physical structure containing three or fewer residential rental units" in the definition of accommodations to which the Ellis Act applies, instead of limiting the definition to "two or three." Therefore, the appellants have not substantiated the claim that ten units originally existed on the project site. This is also a moot point, as the three subject residential structures have remained vacant since 2009.

The appellants additionally claim that the structures have not remained vacant for the past 12 years and that a new Mello Act determination should be made to determine whether affordable units have, in fact, existed since 2009. To substantiate this claim, the appellants provided video footage showing concerts occurring at the subject site; a letter from an alleged previous resident indicating he occupied the site in a van with the property-owner's permission; and utility bills showing electrical use onsite between 2013 and 2014. The appellants were not able to provide additional proof in the form of rental contracts or recorded City documents. Therefore, this claim of affordable occupancy was not sufficiently substantiated, and the nine units must be considered vacant since 2009 based on the HCIDLA records previously discussed.

The above information has been provided to address the appellants contentions; however, the Ellis Act and Mello Act are implemented by other agencies and are not part

of, or incorporated into, Chapter 3 of the Coastal Act. Therefore, the appellant's contentions related to those statutes do not raise a substantial issue as to conformance with Chapter 3 of the Coastal Act, as required by section 30625(b)(1).

### **SUBSTANTIAL ISSUE FACTORS:**

The Commission's standard of review for determining whether to hear the appeal is 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 is guided by the factors listed in the previous section of this report.

**1. The degree of factual and legal support for the local government's decision that the development is consistent with the relevant provisions of the Coastal Act.** The City found that the project would be consistent with the Chapter 3 policies of the Coastal Act, including sections 30250 and 30253 which encourage concentration of development in appropriate areas. The City also analyzed the project for consistency with preferred development use policies of the certified LUP, including I.E.2, I.B.2, and I.B.6, and determined that the project adequately balanced visitor-serving recreational facilities with private residential development in a manner that preserved visual resources and architectural diversity. However, as detailed above, the City did not adequately address how the project met the parking requirements of LUP policies II.A.3 and II.A.4. The City also referenced the applicant's submitted wave uprush study in the local CDP findings without elaborating on the likelihood of inundation and shoreline hazards within the development's lifespan. Therefore, the Commission finds that the City provided an inadequate degree of factual and legal support for its decision to approve a subterranean parking garage on a vulnerable beach-fronting lot, with a fewer number of parking spaces than required by LUP policies.

**2. The extent and scope of the development as approved or denied by the local government.** The City-approved development will allow a new subterranean development that may function as a large shoreline protection—and be a threat to surrounding community safety—within the next 75 years. Additionally, the subject site is located in a major tourist destination already struggling with public parking for beach access but includes an eight-parking space deficit compared to requirements of LUP policies II.A.3 and II.A.4. Therefore, the Commission finds that the extent and scope of the City-approved development is not consistent with the Chapter 3 policies of the Coastal Act, and this factor supports a finding of substantial issue.

**3. The significance of the coastal resources affected by the decision.** Venice is a unique area that specifically draws millions of visitors from around the world each year. As such, it has been designated a coastal resource that deserves special protection. The City-approved development includes a subterranean structure which may pose a significant risk to public safety, water quality, and loss of public access to the sandy beach in the event of sea level rise and inundation. The overall stock of beach parking in this area may also be impacted, affecting visitor access to the Venice Beach boardwalk. These are all significant resources that may be adversely impacted by the subject project. Therefore, the Commission finds that 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 LUP. The LUP was certified by the Commission in November 2000 and does not address sea level rise. However, as an emerging and evolving issue, and as outlined in the Commission’s recent guidance on sea level rise, local jurisdictions must consider the effects that sea level rise may have on new development. In this case, the City failed to mention or analyze how the proposed project will be impacted by sea level rise beyond referencing the applicant’s submitted wave uprush study. If the City does not consider projects in ocean-fronting, flood-prone areas more stringently, it may allow significant new development to be constructed in hazardous locations in the City. This, in turn, would make it more difficult for the City to draft an LCP that adequately addresses sea level rise and protects life and property in areas subject to coastal hazards. Additionally, the City approved a number of parking spaces inconsistent with the certified LUP. Therefore, the Commission finds that the City-approved development will have an adverse impact on future interpretations of its LUP and prejudice the City’s ability to certify an LCP. The Commission finds that this factor supports a finding of substantial issue.

**5. Whether the appeal raises local issues, or those of regional or statewide significance.** The state of California is facing a crisis of sea level rise, with shoreline communities struggling to adapt to erosion, direct wave impacts, and flooding of public infrastructure. Designing new development for long-term safety in the face of climate change must occur at a regional level for comprehensive, statewide change. Additionally, the City’s approval raises questions regarding consistency with public access and coastal hazard policies of the Coastal Act. Therefore, the Commission finds that the City’s action on the subject project raises issues of regional and statewide significance, and this factor supports a finding of substantial issue.

### **Conclusion**

Applying the five factors listed above clarifies that, on balance, the appeal raises a “substantial issue” with respect to the project’s consistency with Chapter 3 of the Coastal Act. There is sufficient support that the project is inconsistent with the Chapter 3 policies and, by extension, the Venice LUP with respect to coastal hazards and public access. The decision is likely to set an adverse precedent for future interpretations of the Venice LUP or the Coastal Act and prejudice the City’s ability to prepare an LCP in the future. Therefore, staff recommends that the Commission find that the appeal raises a substantial issue as to the project’s conformity with the Chapter 3 policies of the Coastal Act.