CALIFORNIA COASTAL COMMISSION
SOUTH COAST DISTRICT OFFICE
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W16d

A-5-VEN-21-0036 (Venice)
November 17, 2021

CORRESPONDENCE

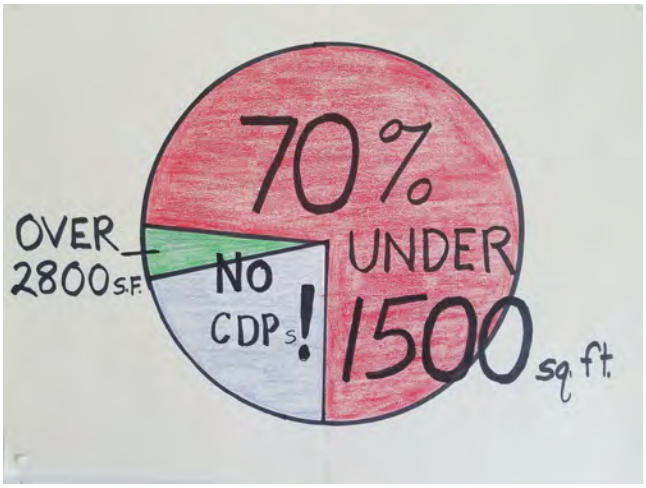
From:	Judy Esposito
To:	Doyle, Jennifer@Coastal
Subject:	Appeal # A-5-Ven-21-0036 610 Mildred Ave. Venice agenda item W14 a hearing date: 7-7-21
Date:	Thursday, July 1, 2021 6:19:28 PM

Appeal # A-5-Ven-21-0036 610 Mildred Ave. Venice Agenda item W 14a hearing date 7-7-21

Coastal Commission,

This project is YET ANOTHER perfect example of cumulative effect !! The city so wrongly bases approval of new McMansions, on the **minority** of larger homes, **that were approved with de minimis waivers ! No community input was sought !!** The larger homes are NOT the majority !! Yet they are the only ones LOOKED AT FOR JUSTIFICATION !! We have no McMansion protection !!! The Coastal Commission is in place to protect the character of coastal neighborhoods. You are not doing your jobs !!

Seventy percent of the homes in the Silver Triangle are under1500 sq. ft. Virtually all the homes in this neighborhood over 2500 sq. ft. were built without going through the CDP process.



I am writing to object, in the strongest possible terms, to the proposed over development of 610 Mildred in Venice. The scale of the project is completely over the top. Regard must be given to mass and scale and character of the project and this one is completely inappropriate on all 3 considerations. **The neighborhood as a WHOLE must be looked at !!**

This project is **3 X the size** of other homes on the block !!

This lot is at the beginning of the Silver Triangle and such a MASS of this **size**, would serve to block out all other structures on Beach, as well as offering a stifling blocked IN feel to all of its neighbors and to the street of Mildred itself ! It would act as a massive wall and give Mildred a feeling of being in a tunnel.

Homes on the north side of Mildred Ave. are zoned Multi-Family and should never be considered as part of the Silver Triangle neighborhood. Those homes were recently built and are NOT part of the Silver Triangle !!!

My neighbor **Richard Stanger,** an appellant, has written to you with **detailed and correct information** about our neighborhood. Our Silver Triangle neighborhood is zoned **Single-Family Residential LOW and that must be respected.**

A project of 3008 sq. ft. + 423 sq. ft. of accessory structure and a swimming pool. WHAT ?? + 3 parking spaces is simply ridiculous. The **SIZE** is outrageous.

Developers have no vested interest in protecting the quality of our neighborhood, but rather maximizing square footage for their own maximum financial gain. This of course, causes irreparable damage to the entire neighborhood. The city and Coastal Commission are allowing this horrific destruction !!

Please take all of Richard Stanger's information into very careful account. The damage caused by this McMansion would be terrible to bear for our Silver Triangle neighborhood and for Venice itself. This is another nail in the coffin of the destruction of our precious coastal neighborhood. **Look at what has been done to the Silver Triangle !!** It is so blatantly obvious that out of scale homes have been approved !!! NO CUMULATIVE ANALYSIS WAS DONE !!!! LOOK AT THE VENICE CANALS ! New homes there now look like MASSIVE HOTELS ! It's complete destruction of finite coastal areas. Almost NO open space or vegetation at all !

A cumulative impact analysis should be required for this project.

This appeal raises a Substantial Issue.

Most sincerely,

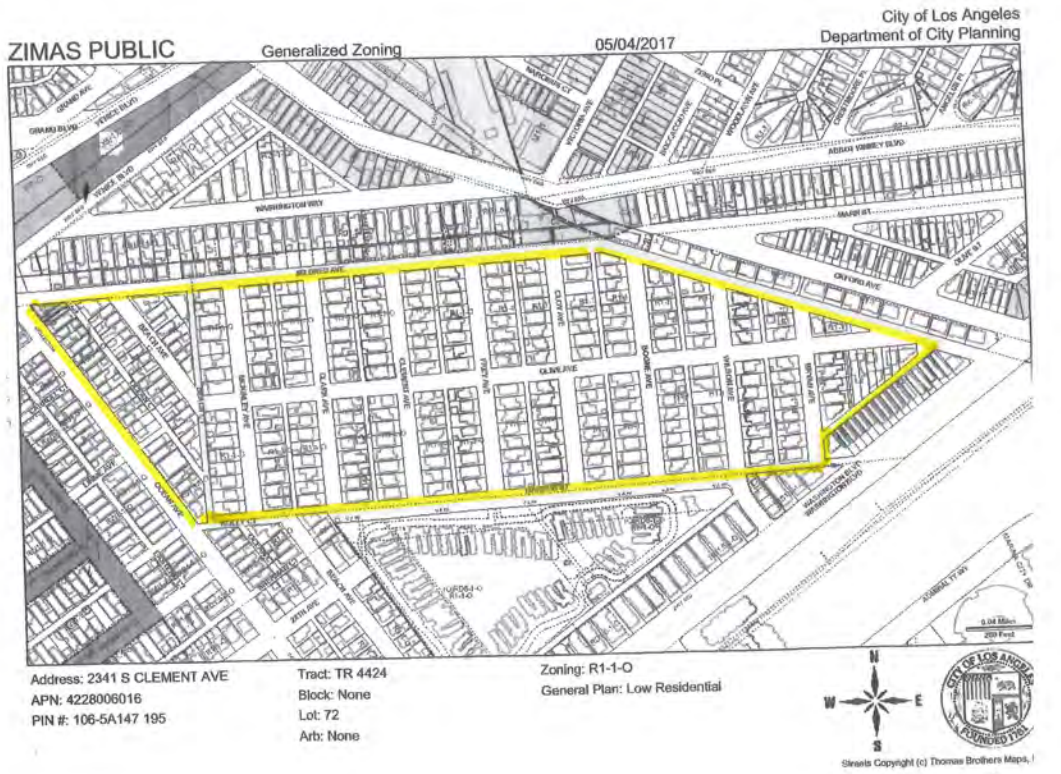
Judith Esposito
Pamela Harbour Venice Residents

From:	Frank Defurio
To:	Doyle, Jennifer@Coastal
Subject:	Re: Agenda Item W14a Appeal Number A-5-VEN-21-0036 Hearing Date: 07/07/2021 610 Mildred Ave, Venice, City of Los Angeles
Date:	Friday, July 2, 2021 2:51:42 PM

Jennifer Doyle,

I inadvertently failed to include this map which I referred to the email that I sent to you moments ago. Please include the map in your review of the previous email and include it if the previous email is shared by you with others.

Thank you,
Frank DeFurio



Frank DeFurio

From: Frank Defurio <defurio@msn.com>
Sent: Friday, July 2, 2021 2:37 PM
To: jennifer.doyle@coastal.ca.gov <jennifer.doyle@coastal.ca.gov>
Subject: Agenda Item W14a Appeal Number A-5-VEN-21-0036 Hearing Date: 07/07/2021 610 Mildred Ave, Venice, City of Los Angeles

To: California Coastal Commission

Re: Appeal Number A-5-VEN-21-0036 clearly raises a SUBSTANTIAL ISSUE
610 Mildred Avenue, Venice, City of Los Angeles

This letter is in opposition to the proposed project located at 610 East Mildred Avenue, Venice, California, and in **support of a finding of SUBSTANTIAL ISSUE.** With a total square footage of more than 3,400 square feet, **the project is not in compliance with the provisions of the Coastal Act and the Venice Land Use Plan** (LUP) because: (1) the project is not compatible in mass, scale and character with the **"existing neighborhood"**, and (2) the size of the project will have a significant detrimental cumulative effect and impact on the **"surrounding neighborhood"**.

The City and Coastal Commision staff improperly compared the project to developments outside the "surrounding neighborhood", and to newly constructed developments that should not be considered as part of the "existing neighborhood", as those terms are used in the Coastal Act and the LUP.

The LUP was adopted in 2001. The property is in the neighborhood known as the Silver Triangle. This area is unique and is shown on the map below. The neighborhood is bound by Mildred Avenue to the north, Harbor Street to the south and Ocean Avenue to the west. The properties on the north side of Mildred Avenue and on the south side of the Harbor Street are zoned Multi-Family, and therefore should not be included in the Siver Triangle "neighborhood" for the purpose of determining the project's compatibility with mass, scale and character of this neighborhood or the project's cumulative effect on the surrounding neighborhood. The Silver Triangle, as so defined and shown on the map below, is the "surrounding neighborhood", and the surrounding neighborhood as it existed in 2001 is the "existing neighborhood" as those terms are used in the Coastal Act and the LUP. **It is this surrounding neighborhood as it existed in 2001 with which the project must be compatible in mass, scale, and character, and with respect to which the project's cumulative effect on the surrounding neighborhood must be considered.**

The homes that existed in this neighborhood in 2001 were virtually all single-story homes with an average size of less than 1200 square feet. These modest homes define the true mass, scale, and character of the Silver Triangle. This is not to say that all new projects must be single story. But they must be compatible with the single-story homes. Most of these single-story

homes still exist today, along with a few compatible two-story homes of reasonable size. 70% of the homes in this neighborhood today are less than 1500 square feet in size. It is these modest size homes with which all new developments, whether one- story or two-story, must be compatible. A few large incompatible homes were built in this neighborhood since 2001 without considering their compatibility with the existing neighborhood. **With a few exceptions, all of homes in this area which exceed 2,500 square feet in size were built without the benefit of a full Coastal Development Permit (no notice to affected homeowners, public hearing, or rights of appeal).** Compatibility with the smaller homes was not considered. These massive structures should not now be considered when defining the mass, scale, and character of this neighborhood.

The fact that the size of the proposed project is compatible with the largest of the homes in this neighborhood is irrelevant. The project must be compatible as well with the smaller homes that existed in 2001.

If this project is approved by the Coastal Commission based on its compatibility with the largest of the homes, it will be due to the detrimental cumulative effect and impact of the previous out-of-scale developments. Out-of- scale projects, including this project, have recently gained their approval by the City based on their compatibility with the previously improperly approved out-of-scale projects. **The dubious use by the City and the Coastal Staff to argue that the size of this project will not have a significant detrimental cumulative effect on the surrounding neighborhood, proves that this project and the largest of new construction in this neighborhood has had, and will continue to have, a significant detrimental cumulative effect and impact.**

Appeal Number A-5-VEN-21-0036 clearly raises a SUBSTANTIAL ISSUE.

Frank DeFurio, a long-term Venice resident

June 1, 2021

California Coastal Commission
Shannon Vaughn, Coastal Program Manager
301 E. Ocean Boulevard, Suite 300
Long Beach, CA 90802

Re: Reasons for Appeal
DIR-2020-3520-CDP-MEL-1A ("Project")
610 Mildred Avenue ("Property")

Honorable Commissioners:

I am a property stakeholder in the Silver Triangle neighborhood of Venice, Ca. For the past 5 years, I have provided my opinions on the various proposed projects that continue to be approved by the city, even though these projects have negatively impacted the mass, scale and character of the Silver Triangle. I am requesting that the California Coastal Commission support this appeal for the following reasons:

1. The Project is not in conformance with Chapter 3 of the California Coastal Act, specifically Sections 30250(a), 30251 and 30253(e).
2. The Project fails to meet the neighborhood protection policies of the 2001 Venice Land Use Plan by ignoring Policies I.A.2 (Preserve Stable Single-Family Neighborhoods), I.E.1 (General), I.E.2 (Scale), I.E.3 (Architecture).
3. The Project will prejudice the ability of the City of Los Angeles to prepare a local coastal program in conformity with Chapter 3 of the California Coastal Act.
4. The Project will have a negative cumulative effect on the character and scale of its immediate neighbors and on the larger Silver Triangle neighborhood.
5. The analysis of the Project in the Director's Determination ("Determination") is substantially flawed, mispresenting the area, using prior irrelevant zoning decisions, selectively choosing policies in the Venice Land Use Plan (LUP), and ignoring relevant recent judicial rulings.

There is a lot of contention among the neighbors, local and state government regarding the affordability of homes in Venice. What was once a semi-sleepy coastal town is now turning into an enclave for the wealthy. Although I could be happy about the rising property values in the Silver Triangle, I would much prefer daylight between properties as well as the low-rise nature of the original bungalows, or, at a maximum, homes with an FAR value of less than 50%. Most people are blaming the mansionization of our neighborhood on the developers who are scooping up the old homes, tearing them down, and replacing them with 2 and 3 story homes. The current projects being pushed through the city are 3 times larger than the original homes! I don't have a problem with large homes as I am an architectural designer and I work on homes in the neighborhood of 4,000 to 11,000 sf, but these projects do not belong on 3600 sf lots! I do not blame the developers for these developments. I blame the City of West Los Angeles for continuing to approve these projects! There are neighborhoods surrounding the Silver Triangle that have mansionization

ordinances in place. These neighborhoods have lots sizes averaging 1.5 to 2 times the size of ours, and have FARs in place that limit projects far smaller than the ones being built in our neighborhood! How is that possible I ask you?

Less than 4 years ago, the average home FAR in our neighborhood was 38%. 5 to 7 years ago is was 30%. The new homes being approved are over 80% FAR. If this does not specifically address item #4 above, cumulative effect, then our situation is hopeless.

There are currently 2 homes for sale in the Silver Triangle. One asking for $3,600,000, and the other listing at $3,875,000. The original “tear down” homes being sold are averaging $1,450,000. This should give you some indication of what size new homes are replacing the old ones. It’s a shame that the existing residents are losing all of the most valuable qualities of the neighborhood. No more daylight in the front or back yards. No more privacy as the new homes bear straight down on their neighbors. No more available parking. No more gardens our outdoor space. Just massive 28’ tall homes that are built from setback to setback line.

In closing, I recommend that the Report’s conclusion that the project will not have an adverse cumulative effect be changed. Approving a project this large will clearly be used in the future to justify other similarly large projects.

Please support this appeal, as we have nowhere else to turn.

Thank you,

Stacy Fong

Owner of 2342 Cloy Avenue, Venice, CA 90291 and 2326 Cloy Avenue, Venice, CA 90291

July 2, 2021

Agenda Item: W14a
Appeal Number: A-5-VEN-21-0036
Appellants: Richard Stanger, Ingrid Marston, Warren Adler, Citizens Preserving Venice
Position: Support Substantial Issue, but augment staff report re. cumulative effects

Via Email: Jennifer.Doyle@coastal.ca.gov

California Coastal Commission
c/o South Coast District Office
301 E. Ocean Blvd, Suite 300
Long Beach, Ca 90802

Honorable Commissioners:

We agree with your Staff's Substantial Issue recommendation and appreciate their work on this appeal. The purpose of this letter is to request that the Commission augment the recommendation of your staff to include a finding that the adverse cumulative effect of this project also constitutes a Significant Issue. This is important because this item is the first Commission action on a (non de novo) project since the two superior court rulings that a cumulative effects analysis is required. We believe staff's analysis in this regard requires adjustment so that it does not establish an unacceptable precedent.

In its September 10, 2020 hearing, the Commission discussed the meaning of cumulative effects and how an analysis of cumulative effects applied to a project in the Silver Triangle neighborhood (A-5-VEN-17-0016 (Korchia), 2325 Wilson Avenue). A superior court decision for this case had ruled that the Commission failed to address the cumulative effect of that project. The Commission discussed the relationship between protecting community character vs. meeting maximum size and setback requirements. Five Commissioners voted against the project, indicating that such a large project, along with similar past, other current and probable future projects, constituted an adverse cumulative effect that could or would change the character of the neighborhood. Also, several others who voted for the project shared similar concerns! Here are excerpts from that discussion along with the votes:

> COMMISSIONER WILSON: (No.) *For me, cumulative impact is a trajectory, is an analysis of a trajectory … where the neighborhood is going, and if we see it continue in that direction, it will change substantially, and in a way that is irrevocable.*
>
> COMMISSIONER HART: (No.) *Community character is more than square feet and the bulk of the house. It's the type of the house and whether that house in fact, in my mind, fits in with the of this neighborhood.*
>
> COMMISSIONER MANN: (No.) *What the lot allows and what the zoning allows is different than community character, there are two different assessments.*
>
> COMMISSIONER O'MALLEY: (No.) *I think the court [is] saying that the Commission has to consider whether the appeal raises a substantial issue with respect to the*

project's cumulative impact, with other approved projects, on the character of the neighborhood. At least to me [that] indicates that we should only consider the size, scope, and impact of these newer previously approved projects with great regard to their collective and cumulative impact on the preexisting community before their approval, rather than using them as some sort of guide as to whether this project alone fits with the newer post-project character of the community.

COMMISSIONER LUCE: (No.)

COMMISSIONER RICE: (Yes.) *I mean frankly, the community character would be changed if everything built out to the limits of what's allowed by code.*

COMMISSIONER HOWELL: (Yes.) *If every home that was being built in Venice was of this size, then the cumulative impact of these homes would be to change the community character.*

Finally, in a prior Commission Significant Issue ruling (A-5-VEN-17-0072 (Paz) 2412 Clement Avenue) the based its decision in part by finding: "*When you get rid of a 700 square foot house and you replace it with a 3,000 square foot house you are fundamentally disrupting the social character that the LUP is designed to protect.*"

Before you now is the appeal of another McMansion of similar design to the one you heard last September. The Staff Report recommends a finding of Significant Issue. We do not disagree! However, the recommendation is primarily based on its visual impact to pedestrians, and does not correctly address the project's adverse cumulative effect.

We are asking you to augment the staff recommendation to include the adverse cumulative effect of the project as another reason for the finding of Significant Issue.

Our concern is that Staff's cumulative effects analysis does not, in fact, evaluate the cumulative effect of the project. We believe the Staff Report, by finding that this home does not contribute to the on-going adverse cumulative effect, is remiss, as explained below, and that this important factor should also be a reason to find Significant Issue.

- The analysis expands the normal "streetscape/blockscape" study area used by City Planning, the Applicant, and the Appellant to arbitrarily include two blocks of an adjacent street not similar to the much narrower street, smaller-lot, 1920-era Beach Avenue. McKinley is 36' wide whereas Beach is only 28' wide, a significant difference. The two blocks of McKinley have bigger lots and consequently a number of bigger homes, most built since the 2001 VLUP, which skews the results of the analysis.

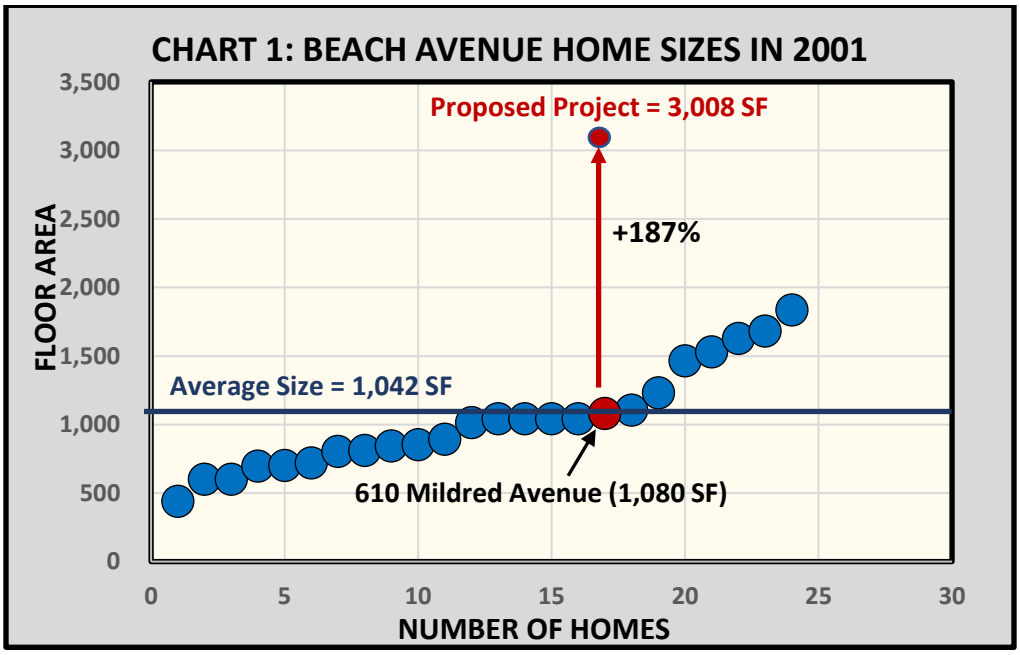
- The analysis only looks at height and size, ignoring the VLUP policies that were to protect – and still must - community character of the 2001 existing neighborhood.

- The analysis looks only at the number of 2021 homes that are similar in size: "*The information analyzed by Commission staff shows that the City-approved residence has a height and size consistent with past Commission and City actions on similar residences since 2001.*" (Page 14). However, the Superior Court revoked the CDPs for two similar homes on similar streets that used the same review procedure as is used here.

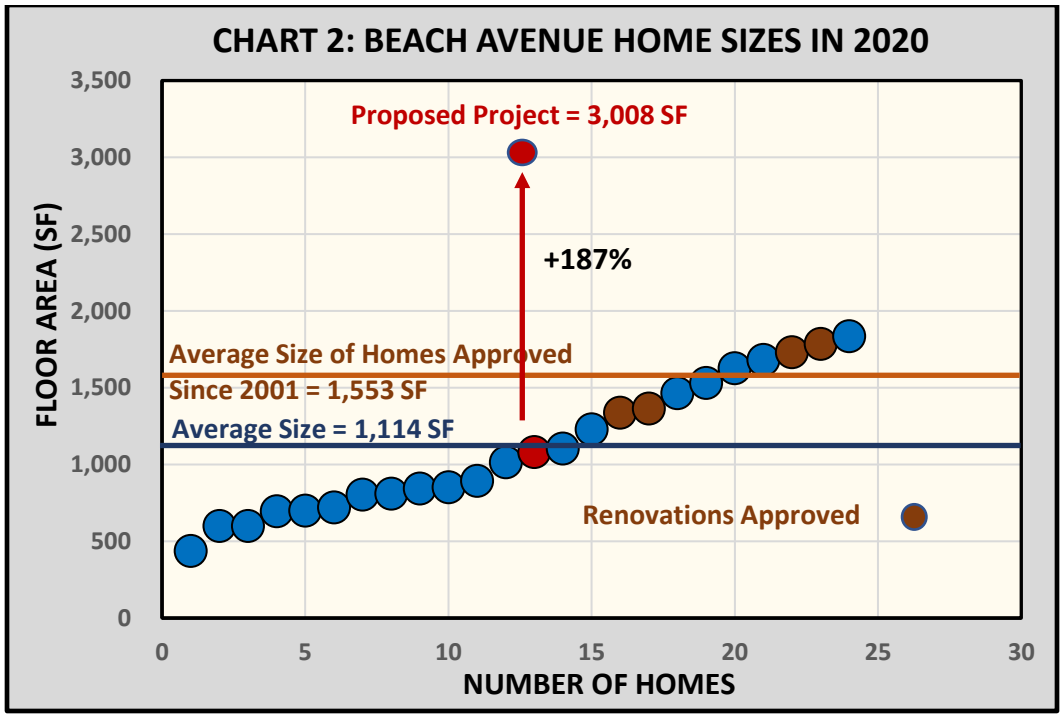
- The Staff Report's Tables 1-3 include a number of serious errors. Seven of the homes listed in Table 3 as built before 2001 were in fact built after that (VLUP certified). (Large 2-story homes were not built anywhere in this neighborhood in the 1948-1954 period,

as indicated in the Commission's tables.) These errors raise questions of the validity of the Staff Report's conclusions based on these tables. Attached is a copy of the corrections and comments we sent Commission staff on July 2.

- Of the 24 homes on Beach Avenue, 62% are still 1-story. Not one is even within 1,000 SF of the project size[1], which is three times the size of the average/median home size on Beach Avenue either in 2001 or now. (See Charts 1 and 2 below.) Similarly, 63% of all homes even within the Commission's expanded study area are 1-story homes. Nevertheless, the Staff Report downplays the importance of VLUP policies to protect these small homes in its discussion of cumulative effects.



[1] One home is 1,753SF based on L.A. County Assessor's files, but 2,300SF from Zillow website.



- The Staff Report states that "*The Commission staff is not aware of future development projects in the study area*." The definition of cumulative effect in the Coastal Act is "probable" future projects, not "known" future projects. The Commission staff has enough experience with this neighborhood to know that there is a high probability of applications for future very large homes. The size of probable future projects can easily be extrapolated to show the trajectory of the current project together with past and current similar current projects. Without considering probable future projects a cumulative effects analysis has not been achieved.

We are very thankful for the effort, findings and Substantial Issue recommendation by Commission staff. However, given the Commission's importance of the cumulative effects analysis, as confirmed by the two recent Superior Court rulings, it is important to correctly follow the definition of cumulative effects in performing the analysis.

Sincerely,

[signed]

Richard Stanger
Ingrid Marsten
Warren Adler
Sue Kaplan, Citizens Preserving Venice

Comments on Staff Report Study Area – Submitted July 2 to South Coast Staff

1. Why, when City, applicant and appellant <u>all</u> use Beach Avenue as the study area does staff adds two blocks of McKinley? With few exceptions, McKinley homes were built in the post-WWII era on a wider street with larger lots. The area selected seems arbitrary. Also, the area of analysis most commonly used is called the Viewshed, which is defined as "the geographical area that is visible from a location. It includes all surrounding points that are in line-of-sight with that location and excludes points that are beyond the horizon or obstructed by terrain and other features (e.g. buildings, trees)." The majority of properties, on McKinley, 32 of 55 (58%), can't even be seen from the subject property. The areas of the study area that cannot be seem from the project site is larger than the area of the study area that can be seen. In addition, McKinley is 36' wide, almost 30% wider than Beach Ave, which is 28' wide. The viewshed, aka the streetscape, "visual street," or block, would more appropriately be the area circled in red (the area circled in black was used):

2. On page 14 the Staff Report states that "the size of the proposed project is generally similar in scale to nearby development[11] on comparably sized lots." Three homes are listed in the footnote (3 of 54 homes). Why does the size of the lot matter? There is nothing in the VLUP that says a larger lot gets to have a bigger dwelling. That is an FAR

argument that isn't used in the VLUP. Every building must, however, be compatible with the mass, scale and character of its neighbors.

3. If the proposed project is approved, would it not be used to justify a similar-sized dwelling within your study area that would adversely affect the 51 remaining homes? That would be an adverse cumulative effect?

The text notes (Page 13) that 15 of the 23 2-story homes have "setback facades or second story additions toward the rear of the lots." This and their size indicates that they are probably compatible with the mass, scale, and character of the 31 1-story homes in the study area. Therefore, of the 54 homes in the study area, 46 are compatible in mass, scale and character (85%) and none are over 2,000 SF.

Corrections to Tables:

- Table 1 should not include 610 Mildred Avenue since it is not a "past" Commission action (we see that it's not part of the average calculation but it still shouldn't be there).

- Table 2 indicates that 2416 McKinley has a dwelling of 4,779 SF. In fact it is a consolidated lot. (#2416 has a 1,918 SF dwelling and #2420 has a 2,024 SF dwelling.) #2420 is correctly listed in Table 3.

- Table 3 wrongly indicates that there are 10 homes over 2,000 SF that were built prior to 2001, when there are actually only three (#2420 McKinley, #592 Olive, and #620 Mildred). And only #592 Olive (1996) comes close to the size of 610 Mildred Ave.

- Table 3 has the errors shown in the table below. These homes need to be in Table 2.

Address	Action #	Approval Year	Sq. Ft. (original)	(new)	Coastal Date
2325 McKinley (not listed in tables)		2005			
2425 McKinley Ave		2007	?	2,244	1950
2417 McKinley Ave		2006	?	2,304	1949
2412 McKinley Ave		2007	?	2,314	1949
2321 McKinley Ave		2007	?	3,219	1948
2332 Beach Ave		2004	?	1,784	1948
2318 Beach Ave		2004	?	1,364+626*	1936
2337 Beach Ave		2006	?	2,918	1921

#2318 Beach has two buildings on the lot, one 1,364 SF and one 626 SF. It is not one 1,990 SF building. (Page 12 bottom)

#620 Mildred was rebuilt in 1991 as a 2-unit dwelling, not in 1939.

From:	Frank Defurio
To:	Doyle, Jennifer@Coastal; SouthCoast@Coastal
Subject:	Appeal Number A-5-VEN-21-0036 Hearing Date: 11/17/2021 610 Mildred Ave, Venice, City of Los Angeles
Date:	Tuesday, November 9, 2021 2:45:18 PM
Attachments:	image.png

To: California Coastal Commissioners

Re: Support of Appeal Number A-5-VEN-21-0036
610 Mildred Avenue, Venice, City of Los Angeles

This letter is in **OPPOSITION to the proposed project,** and the Commission is urged to **VOTE NO** on the de novo permit for the project. With a total square footage of more than 2700 square feet, **the project is not in compliance with the provisions of the Coastal Act and the Venice Land Use Plan** (LUP) because: (1) the project is not compatible in mass, scale and character with the **"existing neighborhood"**, and (2) the size of the project will have a significant detrimental cumulative effect and impact on the **"surrounding neighborhood"**.

The City and Coastal Commision staff improperly compared the project to developments outside the "surrounding neighborhood", and to newly constructed developments that should not be considered as part of the "existing neighborhood", as those terms are used in the Coastal Act and the LUP.

The LUP was adopted in 2001. The property is in the neighborhood known as the Silver Triangle. This area is unique.

The neighborhood is bound by Mildred Avenue to the north, Harbor Street to the south and Ocean Avenue to the west. The properties on the north side of Mildred Avenue and on the south side of the Harbor Street are zoned Multi-Family, and therefore should not be included in the Siver Triangle "neighborhood" for the purpose of determining the project's compatibility with mass, scale and character of this neighborhood or the project's cumulative effect on the surrounding neighborhood. The Silver Triangle, as so defined and shown on the map, is the **"surrounding neighborhood"**, and the surrounding neighborhood as it existed in 2001 is the **"existing neighborhood"** as those terms are used in the Coastal Act and the LUP. **It is this surrounding neighborhood as it existed in 2001 with which the project must be compatible in mass, scale, and character, and with respect to which the project's cumulative effect on the surrounding neighborhood must be considered.**

The homes that existed in this neighborhood in 2001 were virtually all single-story homes with an average size of less than 1200 square feet. These modest homes define the true mass, scale, and character of the Silver Triangle. This is not to say that all new projects must be single story. But all new projects must be compatible with the single-story homes. Most of these single-story homes still exist today, along with a few compatible two-story homes of reasonable size. 70% of the homes in this neighborhood today are less than 1500 square feet in size. **It is these modest size homes with which all new developments, whether one- story or two-story, must be compatible**. A few large incompatible homes were built in this neighborhood since 2001 without considering their compatibility with the existing neighborhood. **With a few exceptions, all of homes in this area which exceed 2,500 square feet in size were built without the benefit of a full Coastal Development Permit (no notice to affected homeowners, public hearing, or rights of appeal). Compatibility with the existing homes was not even considered**. **If consideration had been given to the**

detrimental cumulative effect of these massive homes on future development, they wouldn't exist today to be used by the Castal Staff and the City when defining the mass, scale, and character of this neighborhood.

Consideration must also be given with respect to the compatibility of the project to the homes existing on Beach Ave. in 2001. Those homes are also in the "existing neighborhood" as that term is used in the Coastal Act and the LUP. **Seventeen of the twenty-three homes on Beach that exist today as they did in 2001 and average 1,119 square feet in size. The project at 2700 square feet is approximately 143% larger than, and clearly incompatible with, those homes in the "existing neighborhood" as defined by Coastal Act and the LUP.**

THE FACT THAT THE SIZE OF THE PROPOSED PROJECT IS COMPATIBLE WITH THE VERY LARGE HOMES IN THIS NEIGHBORHOOD (built without CDP's) IS IRRELEVANT. THE PROJECT MUST BE COMPATIBLE WITH THE SMALLER HOMES THAT EXIST TODAY AND THOSE THAT EXISTED IN 2001.

If this project is approved by the Coastal Commission based on its compatibility with the largest of the homes, it will be due to the detrimental cumulative effect and impact of the previous out-of-scale developments. Out-of- scale projects, including this project, have recently gained their approval by the City based on their compatibility with the previously improperly approved out-of-scale projects. **The dubious use by the City and the Coastal Staff to argue that the size of this project will not have a significant detrimental cumulative effect on the surrounding neighborhood, proves that the largest of new construction in this neighborhood has had, and together with the proposed project, will continue to have, a significant detrimental cumulative effect and impact on future developments in the Siver Trangle.**

Approval of the de novo permit must be denied.

Frank DeFurio, a long-term Venice resident

Agenda Item W16d,
A-5-VEN-21-0036
Stacy Fong
Oppose

jennifer.doyle@coastal.ca.gov
southcoast@coastal.ca.gov

I oppose the proposed project at 610 Mildred Avenue, Venice, CA 90291

In recent years, the City of Los Angeles and the California Coastal Commission have been approving the development of projects which are not consistent in character, mass or scale of the existing homes in the Silver Triangle Neighborhood of Venice, CA. These oversized homes have had a significant negative impact on its neighbors, reducing sunlight, airflow and privacy.

610 Mildred is yet another project that is grossly out of character, mass and scale (143% larger) than 17 other homes on the street. The applicant was asked to reduce the proposed project, but, to our dismay, they came back with a reduction of less than 4%!

610 Mildred is on the corner of Mildred and Beach. Beach Avenue happens to have the smallest lot sizes in all of the Silver Triangle, making any comparison of mass, scale and character to the other homes in the neighborhood even more startling. Why the Commission staff would add McKinley Avenue, whose lot sizes are far larger than those on Beach Avenue, as part of the study area only skews the numbers even further in the direction of the applicant, leaving the current residents, once again, without any protection or representation.

The original homes in the Silver Triangle had an FAR of less than 35%. Any new home built in our neighborhood which is double or triple the size of the original homes, has a severe impact on the adjacent homes, blocking light, airflow and privacy.

The following square footages illustrate the disparity of this new project with the existing homes on the street:

The average size of 17 still original homes on Beach:	1,119 SF
The average size of 6 renovated homes on Beach:	1,705 SF
The increase in size of 610 Mildred with the 17 original homes: (143% larger)	+1,600 SF
The increase in size of 610 Mildred with the 6 renovated homes: (59% larger)	+1,015 SF
The size of next largest home on Beach (Assessor's Files):	1,784 SF
The size of 610 Mildred compared with next largest home: (52% larger)	+ 935 SF

The above numbers prove, unequivocally, that 610 Mildred is not consistent in mass, scale and character of the existing surrounding homes. Approving this project will add to adverse cumulative effect on the character and scale of Beach Avenue because it is so much larger than existing homes. It will also help justify the next large-home project on Beach and other streets, causing an adverse cumulative impact in the entire neighborhood. Please protect our neighborhood by denying this project.

Stacy Fong
stacy@Q-LA.net
Owner of 2342 Cloy Avenue and 2326 Cloy Avenue

From: Judy Esposito
To: Doyle, Jennifer@Coastal; SouthCoast@Coastal
Subject: 610 Mildred Ave. Venice W16d A-5-VEN-21-0036
Date: Monday, November 8, 2021 3:30:56 PM

Agenda Item W 16d

A-5-VEN-21-0036

Judith Esposito

OPPOSE

Dear Coastal Commission,

610 Mildred is a pie shaped lot on the smallest street in the Silver Triangle, Beach Ave. at the corner of Mildred. **The width of Beach Ave. street is 28 feet curb to curb. McKinley Ave. street is 34 feet curb to curb, to which this project is being compared !**

The lot widths on Beach Ave. are 30 ft. the lot widths on McKinley Ave. are 40 ft. Beach Ave. and McKinley Ave are very different streets. Obviously.

The mass of this project is 2,719 sf !! the average mass of 6 renovated homes on Beach is 1,705 sf. This project would be 1,015 sf. LARGER than the 6 renovated homes on the street = 59% LARGER.

The average size of 17 original homes on Beach is 1,119 sf. so this project would be 1,600 sf LARGER or 143% LARGER !!

The hugeness of this project / the MASS of this project (located at the entrance to the Silver Triangle !) will have a most definitely adverse cumulative effect on the character and scale of Beach Ave. because it is SO much larger than existing homes !

This could help justify the next large-home project on Beach and other streets in the Silver Triangle, causing a catastrophic, adverse cumulative impact on our precious **coastal** neighborhood !

There are 2-story homes on Beach Ave. that do fit into the character of the street, primarily by setting back the second floor from the front. While the new design tries to do this, its sheer SIZE make it inherently incompatible with the mass, scale, and character of the street.

PLEASE protect the character of our precious coastal neighborhood.

PLEASE do not allow this clearly VERY out of scale project to go forward. It must not be approved.

Judith Esposito
Silver Triangle, Venice

Venskus & Associates
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November 12, 2021

VIA Email Only

November 12, 2021

VIA ELECTRONIC MAIL (list at end of letter)
Coastal Commissioners and Coastal Staff

W16d
A-5-VEN-21-0036
610 Mildred Avenue, Venice
OPPOSE

Honorable Commissioners and Staff:

Venskus & Associates, A.P.C. is a boutique law firm litigating in the areas of housing rights and environmental/land use. The law firm represents and advocates for traditionally under-represented plaintiffs, such as low-income tenants, community organizations and environmental groups. We submit this letter on behalf of Appellants Richard Stanger and Citizens Preserving Venice.

For the reasons set forth below, we implore the Commission to require a meaningful reduction in size/scale of the proposed project so that the project, in conjunction with the effects of past projects, the effects of other current projects and the effects of probable future projects, will not result in an adverse cumulative effect on community character and resulting harm to the Special Coastal Community of Venice. In addition, we request the Commission to require Staff to follow the Coastal Act definition in its analysis of cumulative effects. Finally, we request the Commission to inform Staff that they must not advise applicants on substantive issues such as the manner in which a proposed development might be made consistent with the Coastal Act.

I. The cumulative effects analysis does not conform with the Coastal Act.

Coastal Act section 30105.5 Cumulatively; cumulative effect 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 Staff Report for Substantial Issue contains the following cumulative effects analysis, based on charts summarizing the size of the structures in the survey area:

> "The information analyzed by Commission staff shows that the City-approved residence has a height and size consistent with past Commission and City actions on similar residences since 2001. Table 3 also demonstrates the subject residence is larger than the majority of homes that have not been redeveloped subsequent to 2001 within the survey area. Commission staff is not aware of future development projects in the survey area."

Although this is being called a cumulative effect analysis, this analysis does not conform with the Coastal Act's definition of cumulative effect.

First, in concluding that the residence has a height and size consistent with past Commission and City actions on similar residences, the Staff Report misconstrues the cumulative effects analysis. The question is not whether the project's height and size are consistent with past project approvals but rather whether the project would result in an adverse cumulative effect on the community character of the existing neighborhood.

Also, the Staff Report states that staff is "unaware" of future projects within the subject area. It is not clear, however, if Staff made a reasonable effort to determine whether there are any other current project applications pending. Absence of evidence is not evidence of absence, absent some showing that an inquiry for any existence of evidence has been conducted. In addition, Staff states that since 2007 there has been no Commission or City action regarding past similarly large projects. However, in 2019 an application was submitted for a 2,558 square foot project at 2424 McKinley Avenue. This was not acknowledged as a current or future project.

Even more importantly, staff completely omitted analysis of the effects of probable future projects. Consideration of probable future projects is the essence of a cumulative effects analysis. Without consideration of other current projects and probable future projects, the analysis results in the same conclusion as when the City simply compares to the largest previously approved projects, i.e. past projects. Without consideration of other current projects and probable future projects, the analysis completely fails to be an analysis of cumulative effects.

Finally, the cumulative effects analysis of the project as updated in the De Novo review Staff Report states:

> "...Staff is unaware of future projects within the subject area." and "...the proposed residence is not incompatible with the character of the smaller-sized homes that once predominated in this neighborhood and in Venice." and "...the revised project, as conditioned, is unlikely to contribute to any cumulative effect on community character, mass and scale, and visual resources of the surrounding area in combination with past and potential future Commission actions."

It is unclear how the minor 3% reduction in the project's size/scale completely changed Staff's so-called cumulative effects analysis for the project to suddenly result in no adverse cumulative impact. Also, the Staff Report conflates "future projects" with "probable future projects." It is not a matter of being aware of any future projects but rather is a matter of conducting an analysis regarding the probability of a similar future project.

A reasonable person would easily conclude that the adverse cumulative effect of approving a project of 2,719 square feet, 2.5 times larger than the existing development, which is 1,080 square feet, and almost 2 times larger than the average of all homes in the study area (average square footage of all of the homes in Appendix B is 1,432 square feet; 2,719/1,432 = 1.9), would harm community character

as this materially larger than average project on the Beach Avenue block will be used in the future on Beach Avenue and other streets to help justify other similarly large projects, causing an adverse cumulative impact on community character due to the trajectory of projects 2 times larger than the average of the homes in the study area.

The Staff Report also states:

> "...the Venice LUP anticipated that homes in Venice would be replaced over time and that larger homes could be built, as long as the LUP policies on height, setbacks, and community character are observed."

Nowhere does the LUP indicate that it anticipates that larger homes could be built over time. In fact, LUP Policy I.A.2 states:

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

This policy is unique to Venice's single-family neighborhoods.

Recent judicial orders (attached as Exhibit A) with respect to the Coastal Act's requirement for a cumulative effects analysis make it quite clear that effects of other similar current projects and probable future projects is key to this analysis:

In the Order of Hon. Mitchell Beckloff, Judge of the Superior Court of California Granting Petition for Writ of Mandate in Part, September 15, 2020 (Case No: 19STCP03010) the Court states:

> "Petitioner argues the Coastal Commission "abused its discretion by failing to perform a cumulative impact analysis of the...Project." ...The Commission does not take issue with Petitioners' position a cumulative impacts analysis is required under the law...The Commission admitted it did not consider cumulative impacts in its original staff report. The Commission's discussion concerning previously approved projects and the City's ability to prepare a Local Coastal Program (LCP) is insufficient in the context of Public Resources Code section 30250, subdivision (a). While the Commission must consider prejudice to the City's creation of a LCP, the statute requires a determination that the new development "will not have significant adverse effects, either individually or cumulatively, on coastal resources." (Pub. Res. Code 30250, subd. (a).) The Commission's single reference to previously approved projects does not comply with its obligation under the statute. It does not address "the effects of other current projects, and the effects of probable future projects"...Finally, that the Project in the Commission's view is compatible with community character and size of "surrounding structures" does not address "the effects of other current projects, and the effects of probable future projects." (Pub. Res. Code 30105.5.) ... Here, by statute a cumulative effects analysis requires consideration of "the effects of other current projects, and the effects of probable future projects." (Pub. Res. Code 30105.5.)..." (Emphasis added.)

The Court couldn't be clearer that the Commission must include analysis of the effects of other current projects and the effects of probable future projects and must not rely on a comparison to previously approved projects. Staff is doing exactly the opposite of what the Court has ordered.

In the Order of Hon. James C. Chalfant, Judge of the Superior Court of California, Granting Petition for Writ of Mandate, May 28, 2019 (Case No: BS170522), the Court states:

> "The Coastal Act requires a cumulative impact analysis: "[T]he 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." 30105.5... The staff report's analysis failed to address the Project's cumulative impact with other past, present, and future projects on the community and on the City's ability to certify a LCP... The Commission's approach is practical and appropriate, but it runs the risk of changing the character of the community as Petitioners argue... the "foot in the door" and precedential approval of a larger project can lead to a set of approvals that cumulatively change the nature of the neighborhood. The Commission should be sensitive to this fact. It was obligated by section 30105.5 to address the Project's cumulative impact and failed to do so... The Commission failed to proceed in the manner required by law and abused its discretion by not considering the Project's cumulative impact with other approved projects on the character of the neighborhood and the City's ability to certify an LCP. The petition for writ of mandate is granted." (Emphasis added.)

In both cases, the Court repeats over and over that the effects of other current projects and the effects of probable future projects must be considered. The Court is clear on how the precedent of a larger approval leads to future approvals, causing a cumulative impact on the community's character.

It is an indisputable fact that a cumulative effects analysis must include consideration of other similar current projects and probable future projects. Staff errs in the analysis of cumulative effects in not doing so and in concluding that the project would not result in a material adverse cumulative effect on the community character of this neighborhood.

II. Land use regulations must be applied consistently, and the Commission errs when acting arbitrarily.

For another project on this same Commission meeting agenda, 822 Angelus Place (W16b), the Staff Report concludes that the project's size would result in an adverse cumulative effect. Appellants and their counsel completely agree, as the facts and law support this conclusion. Ironically, the circumstances surrounding the 822 Angelus Place and 610 Mildred Avenue projects are almost identical. The proposed size for the Mildred project is 2, 719 square feet whereas the proposed size for the Angelus project is 2,795 square feet. Both Beach and Angelus have a much narrower street width compared to other surrounding streets (26-28').

However, the width of the Beach Ave lots is even more narrow than on Angelus, the zone of the Beach Ave lots is residential low, even more protected in the LUP than the Angelus multi-family zone, the average size of the existing block is even smaller for Beach (1,201 square feet vs. 1,347 square feet for Angelus), and the size of the Beach Ave project is 143% more than the average size of the block whereas the same comparison for Angelus is 107%. Thus, it is common sense that the recommendation regarding the effect of the size/scale of the proposed project would be at least the same if not more protective than the recommendation with respect to the Angelus project.

The conclusion that there is not an adverse cumulative impact re. the large size/scale of the Mildred project, vs. the conclusion that there is an adverse cumulative impact re. the large size/scale of the Angelus project, when the circumstances regarding the large size/scale of the Mildred project would

result in even more harm to the neighborhood than that of the Angelus project, appears to be arbitrary and capricious. Perhaps the inconsistency lies in the level of pressure that the 610 Mildred applicant brought to bear on Coastal staff. (See discussion of Coastal Act section 30335.1 below.)

III. The tiny 115 square foot reduction in the project's size/scale does not bridge the analytical gap between a finding of substantial issue due to non-conformance with the Coastal Act and LUP and a finding on De Novo review that the project is in conformance.

The Staff Report gets it right when concluding in the substantial issue section of the Staff Report that the project would cause an adverse cumulative impact. However, the conclusion of the De Novo Staff Report is perplexing because, with only a minor reduction in size/scale, it suddenly completely diverges from the substantial issue conclusion.

Although some insignificant improvements were made with respect to the lack of articulation and massing, the reduction of only a net 115 square feet to the sheer size and scale of the project is not nearly enough to bring the project into conformance.

IV. Venice is a special community protected by Coastal Act section 30253. This includes not only the mass, scale *and* character (which are three separate criteria) of existing development, but also Venice's unique social diversity.

The Staff recommendation correctly acknowledges that Venice is one of California's special coastal communities protected by Coastal Act section 30253. However, it is worth underscoring that this understanding of Venice is well-established in both the California Coastal Plan, which is the authoritative pre-cursor to the Coastal Act, and the LUP and Commission-adopted LUP Staff Report findings.

The Coastal Plan summarizes:

> *. . . that some of the unique communities along the coast, such as La Jolla,* ***Venice****, and Mendocino, are themselves coastal resources, and recommends special standards for protection of their scenic and community qualities (*Coastal Plan p. 8, emphasis added*).*

The Coastal Plan findings for Special Communities emphasizes that communities like Venice have "special cultural, historical, architectural, and aesthetic qualities that are as important to the coastal zone as are its natural resources" (p.77). They are:

> *. . . characterized by orientation to the water, usually a small scale of development, pedestrian use, diversity of development and activities, public attraction and use of facilities, distinct architectural character, historical significance, or ethnic or cultural characteristics sufficient to yield a sense of Identity and differentiation from nearby areas. Examples include such different coastal communities as: . . .*
>
> • *. . .* ***the Venice area*** *of the City of Los Angeles, . . (Id.).*

Consequently, "careful development" is required and "maintaining their qualities is dependent on maintaining the **prevailing scale** and mix of development" (Id.). The Plan recognized that in some areas new development was "replacing architecturally interesting and lower-density, smaller-scale

uses, destroying special places and neighborhoods, [and] displacing lower-income residents in favor of the more affluent..."

Because of Venice's acknowledged special character, the Coastal Plan recommended specific policies **to protect and preserve older structures**, in part to protect existing moderate-price housing, and **"maintain social diversity":**

> *The old Venice area, including the Canal and South Beach areas of Santa Monica, should be protected and preserved. Preservation and, where necessary, restoration of remaining older structures characteristic of Venice and Ocean Park beachfront should be encouraged. Plan policies call for protecting and rehabilitating existing moderate-price housing in Venice and Ocean Park and obtaining additional such units wherever possible* (p. 247).
>
> *Ocean Park-Venice Peninsula. Encourage rehabilitation of older homes; recycle residential land uses to be compatible with neighborhood character and to maintain social diversity* (p. 396).

The Coastal Plan's description of Venice as a special community has been carried through to the Venice Land Use Plan, certified by the Commission in 2001. The LUP thus identifies the "preservation of Venice as a Special Coastal Community," meaning the **preservation** of community character, scale and architectural diversity, as a core issue addressed by the LUP. The LUP summarizes the character of Venice as:

> *. . . the quintessential coastal village where people of all social and economic levels are able to live in what is still, by Southern California standards, considered to be affordable housing. Diversity of lifestyle, income and culture typifies the Venice community (LUP II-1).*

The LUP also identifies the need to develop appropriate height, density, buffer and setback standards to protect community character. The LUP has two key policies to preserve Venice as a "special coastal community":

> ***Policy I. E. 1. General.*** *Venice's unique social and architectural diversity should be protected as a Special Coastal Community pursuant to Chapter 3 of the California Coastal Act of 1976.*
>
> ***Policy I. E. 2. Scale.*** *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. . .*

Policy I.E.2 also includes specific direction to restrict lot consolidations and limit the height of roof access structures which, as acknowledged by Staff's recommendation, were two specific issues of concern at the time of LUP certification. However, as discussed further below, this does not mean that these are the only issues that need to be addressed in order to find a project consistent with Policy I.E.1 and Policy I.E.2.

> ***Policy I. E. 3. Architecture.*** Varied styles of architecture are encouraged with building facades which incorporate varied planes and textures while maintaining the neighborhood scale and massing.

In addition, it is erroneous as a legal matter to say the LUP includes sufficient standards – they are not; they are merely *maximum* standards, which does not ensure projects are consistent with, or maintain, mass, scale, and character of the neighborhood. A zoning code with FAR rules might

constitute in part sufficient standards, but character standards should address all kinds of things, including subjective matters, such as scale/bulk, design, open space, setbacks, landscaping, social make-up, history, etc.

Though only a single project, the issue at hand is the cumulative impact of the project on the character of this neighborhood and, ultimately, of Venice. The cumulative impact of the projects approved since LUP certification, with this project, and reasonably foreseeable projects, were they to be developed in similar fashion is not known because the analysis has not been done but would potentially show a substantial change in Venice's community character, including total size/scale and massing of residential development. Therefore, the extent and scope of the development in this context is significant or must be assumed to be such until shown otherwise (***the Coastal Act directs that its requirements be construed liberally***).

As should be clear, the precedential value of Staff's De Novo recommendation is that there will never be a meaningful analysis of the cumulative impacts of redevelopment in Venice to its character. As long as each project is compared to the ones that have come before, each of which has been on average larger and bulkier than the existing housing stock, the scale and mass of Venice will continue to increase. Without a legally correct and definitive cumulative assessment, each individual decision, by definition, may be prejudicing the completion of an LCP consistent with the Coastal Act. At the very least, we don't know whether the LCP will be consistent with the Act.

Furthermore, as summarized at the outset, LUP Policy I.E.1. makes clear that the special character of Venice is understood to include its unique social and economic diversity, including in the LUP. Indeed, one the concerns addressed by the Commission in its 2000 review of the LUP was the past and potential future "gentrification" of Venice's coastal zone as older housing stock is redeveloped. This concern continues to this day, not just in Venice but in many of California's coastal communities, where affordable housing is increasingly unavailable. But without a comprehensive cumulative effects assessment of how Venice will change under the current case-by-case approach, the social and economic effects of redevelopment are unknown. What is known, though, is that the average cost of housing in Venice has continued to rise, much more so than for the state as a whole. This project, therefore, also raises a substantial issue and serious concern with respect to the environmental justice policy of the Coastal Act, because there is no certified LCP that addresses this question or shows how equitable housing and access in Venice's coastal zone, and Venice's unique social diversity, will be protected.

On project after project the Commission is reminded not to prejudice the LCP, but approval of a project like this is testimony to how lightly this Commission has taken that duty. It's the City's fault, we're told repeatedly, as if the political vicissitudes of the City weren't precisely what the Coastal Commission was charged with protecting the coast and the Special Coastal Community of Venice from.

V. Staff shall not advise on substantive issues such as the manner in which a proposed development might be made consistent with the Coastal Act.

Coastal Act section 30335.1 Employees to give procedural assistance states:

> "The commission shall provide for appropriate employees on the staff of the commission to assist applicants and other interested parties in connection with matters which are before the commission for action. The assistance rendered by those employees shall be limited to

matters of procedure and shall not extend to advice on substantive issues arising out of the provisions of this division, such as advice on the manner in which a proposed development might be made consistent with the policies specified in Chapter 3 (commencing with Section 30200)."

The De Novo Staff Report states:

"After working with Commission staff, the applicant revised the project to include the following changes..."

Just as the language of Coastal Act section 30222 Ex parte communications excludes communications regarding procedural issues from the definition of ex parte communications, such as the hearing schedule, location, format or filing date, Coastal Act section 30335.1 limits employees to providing procedural assistance and specifically prohibits advice on substantive issues arising out of the provisions of the Coastal Act, such as advice on the manner in which a proposed development might be made consistent with the policies of Chapter 3.

Once again, your Staff has been put in the unfair position of coaching the applicant to the finish line and then needing to turn around and write an objective Staff Report about the project they've guided, the suggestions they've given and taken, and the compromises they've settled on. This is a textbook example of a conflicted situation. Staff does not deserve to be placed in that situation, and neither California's Coast nor the people of the state of California deserve its consequences. ***This is exactly why Coastal Act section 30335.1 outlaws this advisory role for Staff, despite the weight it takes off of the Commissioners' shoulders.***

More importantly, this Staff Report's problems should give caution that "working with Commission Staff" creates serious pressures on Staff to tailor the Coastal Act to the project application as much as the other way around. There are considerable pressures that can arise in negotiations between Staff and an applicant's representative. The good-faith effort to improve a project so that it conforms to the Coastal Act might tend to cause a helpful staffer to accept a proposal, or to negotiate his or her way to a solution to a sticky problem, without taking all of its ramifications fully into account.

This is hardly an inconsequential concern. Its cumulative impacts are extremely corrosive. The framers of the Coastal Act well understood this and wrote Coastal Act section 30335.1 to protect against it.

The Commission itself is also placed in an awkward position whenever Staff has invested a great deal in negotiating, coaxing, and fashioning a project with the applicant, and then, side by side with the applicant, presents it to the Commissioners. If the Commission turns it down, it risks being seen as betraying the best efforts of Staff as well as the good faith effort of the applicant. By honestly making the correct decision, the Commission may appear duplicitous and capricious, as well as wasteful of the funding provided by California taxpayers. However, this laborious process of "working with the applicant" and negotiation/give and take uses an extraordinary amount of Staff time and energy at taxpayer expense and the cumulative effects have done a great deal of mischief to the effectiveness of the Coastal Act. We see the results in Venice every day. The people of California deserve better for our spectacular coast and its special communities, and the Coastal Commission deserves better results for its herculean efforts.

We respectfully assert that this project must be denied due to the clear violation of Coastal Act section 30335.1 in and of itself, not to mention the fact that the cumulative impacts analysis is insufficient as a matter of law.

This project is materially in excess of the size/scale of its surrounding neighborhood and thus violates the Coastal Act and the LUP, and the Commission's so-called cumulative effects analysis fails to address that. We implore the Commission to require a meaningful reduction in size/scale of the proposed project so that the project, in conjunction with the effects of past projects, the effects of other current projects and the effects of probable future projects, will not result in an adverse cumulative effect on community character and the resulting harm to the Special Coastal Community of Venice. We also request that the Commission require Staff to follow the Coastal Act definition in its analysis of cumulative effects as well as inform Staff that they must not advise applicants on substantive issues such as advice on the manner in which a proposed development might be made consistent with Chapter 3 of the Coastal Act.

Please do not hesitate to contact me if you have any questions, comments, or concerns.

Sincerely,

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Attachment: Exhibit A

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EXHIBIT A

STANGER v. CALIFORNIA COASTAL COMISSION
Case Number: 19STCP03010
Hearing Date: August 12, 2020

ORDER GRANTING PETITION FOR WRIT OF MANDATE IN PART

Through their writ petition, Petitioners, Richard Stanger and Citizens Preserving Venice, seek an order compelling Respondent, California Coastal Commission, to set aside its approval of a project for which it issued a coastal development permit (CDP). Real Parties in Interest, NYE LLC and Nir Paz, are the owners of the project. (Pet. ¶ 5.)

Petitioners argue the Commission's decision approving the project must be set aside on three distinct grounds.

First, Petitioners assert, "the Commission abused its discretion by failing to perform a cumulative impact analysis" of the project. (Opening Brief 17:27-28.)

Second, Petitioners contend,

> "The Commission completely failed to analyze the compatibility of the project with the neighborhood's character, instead unlawfully conflating the subjective standard of character with objective standards of mass and scale. It therefore failed to proceed in the manner required by law because it failed to make the necessary finding to support its determination that the CDP complies with the Coast Act and LUP [Land Use Plan]." (Opening Brief 7:4-7.)

Finally, Petitioners further assert the project

> is objectively out of mass and scale and character with the neighborhood and substantial evidence does not support the Commission's determination otherwise." (Opening Brief 7:8-9.)

[On July 22, 2020 after a hearing, the court stayed Petitioners' claim the Commission has a "pattern and practice" of approving CDPs in the silver triangle neighborhood of Venice "even when the cumulative effects of such development have not been evaluated or analyzed." (Opening Brief 6:12-13.) The identical claim is currently pending before the Court of Appeal. Thus, only one of two claims in the petition is before the court. That claim is a specific challenge to the project.]

The Commission and Real Parties oppose the petition.

Both Petitioners' and the Commission's unopposed requests for judicial notice (RJN) are granted.

The petition is granted as to Petitioners' claim the Commission did not perform a cumulative impact analysis of the Project. The petition is denied, however, as to Petitioners' claims (1) the Commission failed to analyze the compatibility of the Project with the neighborhood's character through a subjective standard and (2) the Commission's findings the Project's mass and scale were not supported by substantial evidence.

No judgment can issue until the balance of the petition is adjudicated after the stay in this matter is lifted.

STATEMENT OF THE CASE

In July 2017, the Department of City Planning for the City of Los Angeles approved a CDP

> "authorizing the demolition of an existing one-story, single-family dwelling and the construction, use, and maintenance of a new two-story, 3001 square-foot, single-family dwelling with an attached two-car garage and a roof deck, located in the single permit jurisdiction area of the California Coastal Zone . . . ." (AR 301.)

The project is located at 2412 Clement Avenue in the silver triangle neighborhood of Venice (the Project). (AR 301.)

Petitioner Stanger appealed the City's approval of a CDP to the West Los Angeles Area Planning Commission (WLAAPC). (AR 635.) In November 2017, the WLAAPC denied the appeal, finding the Project "in conformity with Chapter 3 of the Coastal Act" as well as the Venice Local Coastal Land Use Plan (LUP). (AR 635, 645-646.)

Petitioner Stanger and others then appealed the WLAAPC's decision to the Commission. (AR 658.) After a public hearing, the Commission found a substantial issue on the appeal thereby rendering void the CDP issued by the City. (AR 874, 949.) More specifically, the Commission found the Project "raised a substantial issue with respect to the proposed project's consistency with Chapter 3 of the Coastal Act because of the project's potential impact to the existing community character." (AR 949.)

Subsequent to the Commission's determination Petitioner Stanger's appeal raised a substantial issue, Real Parties and the Commission staff met and discussed the Project. Real Parties then revised the Project by: (i) reducing the size of the structure to 2,878 square feet; (ii) reducing the building height to 24 feet; (iii) increasing the setback of the second story; (iv) eliminating a 9-foot roof access structure; and (v) eliminating a parapet wall fronting Clement Avenue. (AR 958.)

The Commission then reviewed and approved the Project as revised. (AR 959.) The Commission found the Project to "be consistent with the standards of the LUP and the relevant Coastal Act Polices." (AR 959.)

This action ensued.

STANDARD OF REVIEW

Petitioners seek relief before the court under Code of Civil Procedure section 1094.5 and 1085. Petitioners request an order from this court compelling the Commission to set aside its decision approving the Project.

Administrative Mandamus[1]

Under Code of Civil Procedure section 1094.5, subdivision (b), the issues for review of an administrative decision are: whether the respondent has proceeded without jurisdiction, whether there was a fair trial, and whether there was a prejudicial abuse of discretion. An abuse of discretion is established if the respondent has not proceeded in the manner required by law, the decision is not supported by the findings, or the findings are not supported by the evidence. (Code Civ. Proc. § 1094.5, subd. (b).)

Petitioners argue the Commission abused its discretion in three ways. First, they allege "the Commission abused its discretion by failing to perform a cumulative impact analysis of" the Project as it is required by law to do. (Opening Brief 17:27-28.) Second, they contend the Commission "failed to analyze the compatibility of the project with the neighborhood's character, instead unlawfully conflating the subjective standard of character with the objective standards of mass and scale." (Opening Brief 7:3-5.) Third, Petitioner assert the Project is "objectively out of mass and scale and character with the neighborhood and substantial evidence does not support the Commission's determination otherwise." (Opening Brief 7:8-9.)

As to Petitioners' first and second claims (failure to analyze cumulative impacts and compatibility), whether the agency proceeded as required by law is subject to de novo review. (*Bledsoe v. Biggs Unified School Dist.* (2008) 170 Cal.App.4th 127, 134; see also *Hoitt v. Department of Rehabilitation* (2012) 207 Cal.App.4th 513, 522.) Thus, the question raised by Petitioners is whether the Commission properly applied the law in its administrative process.

As to Petitioners' claim the evidence does not support the Commission's findings, "abuse of discretion is established if the court determines that the findings are not supported by

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[1] While the petition itself notes it is brought under both Code of Civil Procedure sections 1094.5 and 1085, Petitioners' brief does not discuss traditional mandamus. As noted by the Commission's counsel during argument, Public Resources Code section 30801 dictates relief would be available to Petitioners only under Code of Civil Procedure section 1094.5.

substantial evidence in the light of the whole record." (Code Civ. Proc. § 1094.5, subdivision (c).)

"In determining whether substantial evidence supports the Commission's decision, [the court] look[s] to the 'whole' administrative record and consider all relevant evidence, including that evidence which detracts from the decision. Although this task involves some weighing to fairly estimate the worth of the evidence, that limited weighing does not constitute independent review where the court substitutes its own findings and inferences for that of the Commission. Rather, it is for the Commission to weigh the preponderance of conflicting evidence, as [the court] may reverse its decision only if, based on the evidence before it, a reasonable person could not have reached the conclusion reached by it." (Kirkorowicz v. California Coastal Com. (2000) 83 Cal.App.4th 980, 986.)

" 'Courts may reverse an agency's decision only if, based on the evidence before the agency, a reasonable person could not reach the conclusion reached by the agency.' " (*La Costa Beach Homeowners' Assn. v. California Coastal Com.* (2002) 101 Cal.App.4th 804, 814, 124 Cal.Rptr.2d 618.)

ANALYSIS

Whether the Commission Proceeded in the Manner Required by Law

" 'The Coastal Act requires a person wishing to undertake development in the coastal zone to obtain a coastal development permit. [Citation.] Prior to certification of a local coastal program, and absent a local government procedure for issuing coastal development permits, the Commission or local government shall issue coastal development permits.' " (*Greene v. California Coastal Com.* (2019) 40 Cal.App.5th 1227, 1233 [quoting *Douda v. California Coastal Com.* (2008) 159 Cal.App.4th 1181, 1188].) "A 'coastal development permit shall be issued if the issuing agency, or the commission on appeal, finds that the proposed development is in conformity with the [provisions of] [c]hapter 3' of the Coastal Act." (*Ibid.* [quoting *Douda v. California Coastal Com., supra,* 159 Cal.App.4th at 1188-1189].)

1. *Cumulative Impacts/Effects*

Petitioner argues the Coastal Commission "abused its discretion by failing to perform a cumulative impact analysis of the . . . Project." (Opening Brief 17:27-28.) Relying on *Greene v. California Coastal Com.* (2019) 40 Cal.App.5th 1227, 1234 and its statement, "The Coastal Act . . . requires the Commission to consider a proposed project's cumulative effects in light of other present, past, and probable future developments." Petitioner contends without a cumulative effects analysis the Commission could not find that the Project conformed with all Chapter 3 requirements contained within the Coastal Act. (Pub. Res. Code § 30000 *et seq.*) Petitioner notes cumulative effects under the Coastal Act "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." (*Id.* at § 30105.5.)

Petitioners contend the Commission's staff report for Petitioner Stanger's appeal makes no reference to Public Resources Code section 30250 or a cumulative effects analysis. (AR 949-962.) During oral argument, Petitioners' counsel asserted the Commission gave no consideration to current or future projects. That is, the Commission merely considered past projects.

Petitioners are not entirely correct about the Commission's staff report; it actually does quote Public Resources Code section 30250 in part. (AR 8.) As noted by Petitioners, however, the report's quote of the statute omits the words "individually or cumulatively," the statute's language modifying "adverse effects." (AR 8; Opening Brief 11:17-22.)

The Commission does not take issue with Petitioners' position a cumulative impacts analysis is *required under* the law.[2] (Opposition Brief 16:17-17:21.) The Commission's staff report addendum admits "[c]umulative impacts were not mentioned in the original appeal and therefore were not addressed in the staff report." (AR 767.) Despite having not considered the issue, the Commission merely relies upon the fourth factor—"precedential value of the local government's decisions"—in connection with the no substantial issue analysis to suffice for consideration of cumulative impacts.

The Commission's discussion then of cumulative impacts consists of the following:

> "The approval of the proposed two-story single-family residence will not set new precedent, since there have been several City and Coastal Commission actions approving similar-sized development that precede this decision. This project, as proposed, will not prejudice the ability of the City to prepare a Local Coastal Program that is in conformation with Chapter 3 of the Coastal Act." (AR 16.)

The addendum concludes, "The cumulative impact of new similar-sized homes in the area is negligible and does not prejudice the ability for the City to prepare a LCP in the future." (AR 767.)

The Commission admitted it did not consider cumulative impacts in its original staff report. The Commission's discussion concerning previously approved projects and the City's ability to prepare a Local Coastal Program (LCP) is insufficient in the context of Public Resources Code

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[2] During oral argument, Real Parties in Interest raised an argument not briefed by any party to this phase of the litigation. Real Parties asserted Public Resources Code section 30250, subdivision (a) does not apply under these circumstances. As Real Parties in Interest joined the Commission in its opposition to the petition and as the Commission does not dispute its legal obligation to consider cumulative effects, the court finds Real Parties waived the argument. Allowing the argument to proceed now would deprive Petitioners of notice and a real opportunity to be heard. That another party may have raised the issue in related litigation is not relevant to here.

section 30250, subdivision (a). While the Commission must consider prejudice to the City's creation of a LCP, the statute requires a determination that the new development "will not have significant adverse effects, either individually or cumulatively, on coastal resources." (Pub. Res. Code § 30250, subd. (a).) The Commission's single reference to previously approved projects does not comply with its obligation under the statute. It does not address "the effects of other current projects, and the effects of probable future projects."[3] (*Id.* at § 30105.5.)

The court is not persuaded the Commission's references to the LUP addresses the cumulative effects of the Project. First, the Commission notes the LUP is "appropriate to use" as "guidance in determining whether or not the project is consistent with Sections 30251 and 30252 of the Coastal Act." (AR 957.) Thus, the Commission did not instruct the LUP is "appropriate to use" in connection with Public Resources Code section 30250.

Finally, that the Project in the Commission's view is compatible with community character (AR 958) and size of "surrounding structures" (AR 959) does not address address "the effects of other current projects, and the effects of probable future projects." (Pub. Res. Code § 30105.5.)

2. *Character*

The parties do not dispute the LUP is used "to promote the Coastal Act's objectives." (*Kalnel Gardens, LLC v. City of Los Angeles* (2016) 3 Cal.App.5th 927, 940.) The LUP "embod[ies] state policy." (*Ibid.*)

The LUP at Policy I. A. 2, entitled "Preserve Stable Single-Family Residential Neighborhoods," endeavors to "ensure that the character and scale of existing single-family neighborhoods is maintained . . . ." (Pet.'s RJN, Ex. A, p. 46.)

Petitioners argue "scale" and "character" are two "separate, distinct characteristics to be considered and protected." (Opening Brief 18:9-10.) Petitioners contend the Commission erred by conflating "mass and scale" with character.

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[3] The court is not persuaded *Hines v. California Coastal Com.* (2010) 186 Cal.App.4th 830, 857 requires a different result as suggested by the Commission during oral argument. *Hines* discussed cumulative impact in the context of a categorical exemption under the California Environmental Quality Act (CEQA), Public Resources Code section 21000 *et seq.* and speculation about potential future projects. More specifically, the parties challenging the exemption argued approval of a particular project could lead to 14 other lot owners building in the same fashion. *Hines* labeled the claim too speculative. Here, by statute a cumulative effects analysis requires consideration of "the effects of other current projects, and the effects of probable future projects." (Pub. Res. Code § 30105.5.)

Petitioners assert:

> "Neighborhood character is distinct from mass and scale. By looking solely at the size of the project, the Commission failed in its responsibility to make a subjective judgment on the project's appropriateness for the Silver Triangle Neighborhood. (*Reddell v. Cal. Coastal Com.* (2009) 180 Cal. App. 4th 956, 970 [stating with favor that a decision on the compatibility of the project with the surrounding area is a subjective decision].)" (Opening Brief 18:18-22.)

While Petitioner does not offer a definition of "character," Petitioner contends decisions about character involve "subjective judgment on the project's appropriateness" for the neighborhood. The subjective nature of "compatibility of the project with the surrounding area . . ." is supported by caselaw. (*Reddell v. California Coastal Com.* (2009) 180 Cal.App.4th 956, 970.) The California Coastal Plan adopted in 1972 also recognizes "certain communities and neighborhoods have special cultural, historical, architectural, and aesthetic qualities that are as important to the coastal zone as are its natural resources." (Petitioners' RJN, Ex. C p. 20.) The plain meaning of "character" is "the aggregate of features and traits that form the individual nature of some person or thing." (Random House, Webster's Desk Dictionary (1983) p. 152.)

According to Petitioners, the Commission's belief that "Venice LUP policies are intended to protect community character in Venice through objective standards relating to height, bulk, density, buffer and setback rather than subjective judgments (AR 958) is unsupported by law and belies the long-established function and intent of the Coastal Act." (Opening Brief 19:7-10.) Petitioner argues "[f]indings devoid of subjective community character analysis, which is a classic cumulative impacts issue, are insufficient under the law; thus, the Commission abused its discretion in approving the CDP." (Opening Brief 19:24-26 [emphasis added].)

The Commission contends Petitioners failed to exhaust their administrative remedies on the issue of subjective versus objective determinations on community character. The court agrees. (See *Greene v. California Coastal Com., supra*, 40 Cal.App.5th at 1238 [general objections insufficient instead "to satisfy the exhaustion requirement, [petitioners] were required to present the "'exact issue'" to the administrative agency"].)

"Where an administrative remedy is provided by statute, this remedy must be exhausted before the courts will act." (*Hagopian v. State of California* (2014) 223 Cal.App.4th 349, 371.) "The rationale for the rule is that an agency is entitled to learn the contentions of interested parties before litigation arises, so it will have an opportunity to address the contentions and perhaps render litigation unnecessary. [Citation.] To advance this purpose an interested party must present the exact issue to the administrative agency that is later asserted during litigation or on appeal. [Citation.] General objections, generalized references or unelaborated comments will not suffice. [Citation.] [T]he objections must be sufficiently specific so that the agency has the opportunity to evaluate and respond to them.' [Citation.]" (*Ibid.*)

"The petitioner bears the burden of demonstrating that the issues raised in the judicial proceeding were first raised at the administrative level." (*Porterville Citizens for Responsible Hillside Development v. City of Porterville* (2007) 157 Cal.App.4th 885, 909.)

Petitioners argue they "specifically raised the issue of confounding the terms mass, scale, and character to the Commission on appeal." (Reply 7:1-2.) Nothing in their appeal, however, raises the requirement that there be a subjective analysis of the project's character; despite having specifically raised the LUP's Policy I. A. 2 in their appeal, Petitioners did not claim the Commission erred in not making a subjective evaluation of the project. (AR 663.)

Petitioner's reliance on their statement before the Commission—"the City insists on skirting the policies established to protect Venice by using a project's height as its principle proxy for mass, scale and character determinations"—is unpersuasive. (AR 667.) In their appeal to the Commission, Petitioners did not raise character as a separate and distinct subjective element for consideration by the Commission; in fact, Petitioners' appeal conflated "mass, scale and character" of the Project. (AR 662-667, 776.) Petitioners never contended before the Commission it was required to "perform[] a holistic, subjective inquiry into whether the proposed development will adversely impact the character of the neighborhood . . . . " (Opening Brief 18:23-24.) Thus, this court has no jurisdiction to consider the claim.

[Given the court's determination of the exhaustion issue, the court need not reach the merits of Petitioners' claims. Nonetheless, the administrative record demonstrates the Commission did, in fact, consider community character separate and distinct from mass and scale.[4] Mass and scale, however, do inform on character as they are two features or traits that form the nature of the neighborhood. Thus, it is not improper to discuss mass and scale in the context of community character. (See *Reddell v. California Coastal Com., supra*, 180 Cal.App.4th at 970. ["Evidence in the record provides a basis for concluding the project is larger in scale and different in architectural style than the surrounding area."])

"In order to determine whether or not a proposed project is appropriate with regard to community character, the Commission looks at the existing development in an area to determine whether or not a proposed project is compatible." (AR 958.) The Commission considers "visual compatibility," and pursuant to the LUP, encourages varied styles of architecture. (AR 958.)

Here, the Commission considered the aesthetics of the Project. The Commission made findings concerning the Projects "façade" and overall design of the Project. (AR 958.) The Commission considered the side view of the Project and its "articulated . . . sloping roof, balcony floor and

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[4] It their Opening Brief, Petitioners assert this claim is an error of law. (Opening Brief 18:3-4.) As Petitioners allege the Commission failed to consider character separate and apart from mass and scale, Petitioners do not argue substantial evidence does not support the Commission's findings. They dispute the Commission considered character independently from mass and scale.

roof features, and various indentations of the wall." (AR 958.) The Commission noted the three bedroom, two bath house "maintains compatibility with the existing character of the two-story buildings within the block . . . ." (AR 959.)

Additionally, in the Commission's consideration of mass and scale, the Commission discussed community character. (AR 711.) The Project is located on a street that is two blocks long with both single and double story structures. The size of the homes varies which "reinforces the eclectic character and 'varied style' of the residences throughout Venice." (AR 711.) The Commission found the Project "compatible with the visual characteristics of the neighborhood." (AR 711.)

The Commission's discussions demonstrate it considered community character in addition to mass and size. (AR 950. ["As revised, the proposed development is compatible with the mass and scale of the surrounding area and will not adversely impact visual resources or community character."]) Thus, the Commission proceeded in the manner required by law.]

Substantial Evidence Supports the Commission's Findings Concerning Mass and Scale

Relying on LUP Policies 1. A. 2 and 1. E. 3, Petitioners contend substantial evidence does not support the Commission's findings the mass and scale of the neighborhood will be maintained because of the Project. (Reply Brief 8:1-4.) Petitioners assert,

> "Whether looking at the immediate block where the proposed project is located, or at all 232 in the Silver Triangle Neighborhood, the average square footage of existing development projects is under 1,500. (AR 720; 722.) At 2,878 square feet, replacing a 700 square foot house (AR 949), the . . . Project is completely out of scale with the existing development and the staff report is devoid of substantial evidence supporting its findings otherwise . . . ." (Opening Brief 20:1-7.)

Petitioners contend no reasonable person could reach the Commission's conclusion that a project double the size of the average home in the neighborhood is consistent with or maintains the neighborhood's mass or scale. (See *La Costa Beach Homeowners' Assn. v. California Coastal Com., supra,* 101 Cal.App.4th at 814.)

The Commission considered the surrounding development to determine whether the Project's mass and scale is consistent with neighborhood development. (AR 711.) The record shows there are 13 other two-story structures on the two blocks that are Clement Avenue. (AR 711, 1049.) There are 18 one-story structures. (AR 711.) Further, at 2,878 square feet and 24 feet high, the Commission found the Project will be *smaller* than five structures and the same height or shorter than thirteen structure on the two blocks of Clement Avenue. (AR 711.)

Given the presumption of correctness and the record evidence demonstrating similar homes in size and mass in the immediate neighborhood, the court finds that substantial evidence

supports the Commission's findings the Project is compatible with the mass and scale in the surrounding area.

CONCLUSION

Accordingly, the petition is granted as to Petitioners' claim the Commission did not perform a cumulative impact analysis of the Project. The petition is denied, however, as to Petitioners' claims (1) the Commission failed to analyze the compatibility of the Project with the neighborhood's character through a subjective standard and (2) the Commission's findings the Project's mass and scale were not supported by substantial evidence.

No judgment can issue until the balance of the petition is adjudicated after the stay in this matter is lifted.

IT IS SO ORDERED.

September 15, 2020

Hon. Mitchell Beckloff
Judge of the Superior Court

#6 T

Robin Rudisill, et al., v. California Coastal Commission, et al., BS170522

Tentative decision on petition for writ of mandate: granted in part

Petitioners Robin Rudisill ("Rudisill"), Judy Esposito ("Esposito"), Lydia Ponce ("Ponce"), and Richard Stanger ("Stanger") apply for a writ of mandate directing Respondent California Coastal Commission ("Coastal Commission" or "Commission") to set aside its decision not to conduct a *de novo* appeal for the Coastal Development Permit ("CDP") issued by the City of Los Angeles ("City") for 2325 Wilson Avenue ("2325 Wilson") in the Venice coastal zone ("Project").

The court has read and considered the moving papers, oppositions, and reply, and renders the following tentative decision.

A. Statement of the Case

1. Petition

Petitioners commenced this proceeding on August 7, 2017. The First Amended Petition ("FAP"), filed on February 25, 2019, is the operative pleading. The FAP states a single mandamus cause of action alleging that the Coastal Commission abused its discretion determining there was no substantial issue of the CDP's compliance with the Coastal Act and Venice Land Use Plan ("LUP"), and alleges in pertinent part as follows.

On July 6, 2016, Real Parties Pied a Terre LLC ("Pied a Terre") and Dan Brunn, Inc. filed applications for a CDP and Mello Act Compliance determination with the City of Los Angeles ("City") Department of City Planning ("Planning Department"). Real Parties sought to demolish an existing single-family dwelling and construct a new two-story single-family dwelling with a roof deck and attached garage.

On March 3, 2017, City planners approved City Permit No. DIR-2016-2381-CDP-MEL. This local CDP authorized the demolition of an existing one-story single-family dwelling and the construction, use, and maintenance of a 3,400 square-foot two-story single-family dwelling with an attached two-car garage and a rooftop deck ("Project").

On April 17, 2017, Petitioners filed an appeal from the City's CDP approval with the Commission. Petitioners argued, *inter alia*, that the Project was significantly out of character with the community character of Venice. Petitioners expressed concern about the rampant construction of homes "grossly out of scale" with existing neighborhoods. Petitioners also expressed concerns about factual findings pertaining to the permit approval.

On May 19, 2017, Commission staff issued a staff report concluding that the Project was consistent with the mass, scale, and character of the existing surrounding neighborhood. In making this determination, Commission staff compared the proposed project to six previous projects approved by Commission. These comparisons were inapt as three received in *de minimis* waivers and the other three were not in the same certified Venice LUP land use classification as the Project.

On June 7, 2017, a public hearing on the appeal was held. Prior to the hearing, Rudisill provided a written rebuttal to the staff report, and at the hearing Rudisill made remarks in opposition to the permit approval. The Commission denied the appeal.

Petitioners seek a writ of mandate directing the Commission to set aside its decision to

deny a *de novo* appeal as an abuse of discretion.

2. Course of Proceedings

On February 8, 2018, Petitioners dismissed the City as a Respondent. On March 13, 2018, Petitioners dismissed Pamela Harbour as a Petitioner.

On February 25, 2019, pursuant to a joint stipulation, Petitioners filed the FAP and the Commission's previously-filed Answer serves as its Answer to the FAP.

B. Standard of Review

CCP section 1094.5 is the administrative mandamus provision which structures the procedure for judicial review of adjudicatory decisions rendered by administrative agencies. Topanga Ass'n for a Scenic Community v. County of Los Angeles, ("Topanga") (1974) 11 Cal.3d 506, 514-15.

CCP section 1094.5 does not on its face specify which cases are subject to independent review, leaving that issue to the courts. Fukuda v. City of Angels, (1999) 20 Cal.4th 805, 811. Decisions of the Coastal Commission are governed by the substantial evidence standard. Ross v. California Coastal Commission, (2011) 199 Cal.App.4th 900, 921. "Substantial evidence" is relevant evidence that a reasonable mind might accept as adequate to support a conclusion (California Youth Authority v. State Personnel Board, ("California Youth Authority") (2002) 104 Cal.App.4th 575, 585) or evidence of ponderable legal significance, which is reasonable in nature, credible and of solid value. Mohilef v. Janovici, (1996) 51 Cal.App.4th 267, 305, n.28.

The Commission's decision and findings may rely on any relevant evidence, regardless of its admissibility in civil actions. 14 CCR §13065. Substantial evidence on which the Commission may rely includes expert opinions, photographs, and observations from Commissioners, Commission staff, and the public. La Costa Beach Homeowners' Assn., *supra*, 101 Cal.App.4th at 819; LT-WR, LLC v. California Coastal Com., (2007) 152 Cal.App.4th 770, 793-94.

Petitioners are obligated to lay out the evidence favorable to the other side and show why it is lacking. The "[f]ailure to do so is fatal" to any substantial evidence challenge and "is deemed a concession that the evidence supports the findings." Defend the Bay v. City of Irvine, (2004) 11928 Cal.App.4th 1261, 1266. The reviewing court should "not independently review the record to make up for appellant's failure to carry his burden." Ibid. The court must resolve reasonable doubts in favor of the Commission's decision. Paoli v. California Coastal Com. (1986) 178 Cal.App.3d 544, 550.) It may reverse only if, based on the evidence before the Commission, no reasonable person could have reached the Commission's conclusion. La Costa Beach Homeowners Assn. v. California Coastal Com. (2002) 101 Cal.App.4th 804, 814.

The court may not reweigh the evidence, or disregard or overturn a finding simply because a contrary finding would be more reasonable. Boreta Enterprises, Inc. v. Department of Alcoholic Beverage Control, (1970) 2 Cal.3d 85, 94. A court may only overturn the agency's decision if a reasonable person could not have reached the decision based on the evidence that the agency had before it. Bolsa Chica Land Trust v. Superior Court, (1999) 71 Cal.App.4h 493, 503.

An agency is presumed to have regularly performed its official duties (Evid. Code §664), and the petitioner therefore has the burden of proof. Steele v. Los Angeles County Civil Service Coastal Commission, (1958) 166 Cal.App.2d 129, 137. The petitioner must demonstrate that the agency's findings are not supported by substantial evidence in light of the whole record. Young

v. Gannon, (2002) 97 Cal.App.4th 209, 225. The trial court considers all evidence in the administrative record, including evidence that detracts from evidence supporting the agency's decision. California Youth Authority, *supra*, 104 Cal.App.4th at 585.

The agency's decision must be based on the evidence presented at the hearing. Board of Medical Quality Assurance v. Superior Court, (1977) 73 Cal.App.3d 860, 862. The agency is only required to issue findings that give enough explanation so that parties may determine whether, and upon what basis, to review the decision. Topanga, *supra*, 11 Cal.3d at 514-15. Implicit in CCP section 1094.5 is a requirement that the agency set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order. Id. at 515.

Legal issues are for the court to decide. However, California law affords "great weight" to the Commission's interpretation of the Coastal Act and its regulations, given its special familiarity with these legal issues. Ross v. California Coastal Com. (2011) 199 Cal.App.4th 900, 922-23. The court's review is "quite limited, and the Commission is "given substantial deference." Evans v. City of San Jose, (2005) 128 Cal.App.4th 1123, 1145-46.

C. The Coastal Act

1. The LCP

The Coastal Act of 1976 (Public Resources Code[1] §30000 *et seq.*,) ("Coastal Act") is the legislative continuation of the coastal protection efforts commenced when the People passed Proposition 20, the 1972 initiative that created the Coastal Commission. *See* Ibarra v. California Coastal Comm., (1986) 182 Cal.App.3d 687, 693. One of the primary purposes of the Coastal Act is the avoidance of deleterious consequences of development on coastal resources. Pacific Legal Foundation v. California Coastal Comm., (1982) 33 Cal.3d 158, 163. The Supreme Court has described the Coastal Act as a comprehensive scheme to govern land use planning for the entire coastal zone of California. Yost v. Thomas, (1984) 36 Cal.3d 561, 565. The Coastal Act must be liberally construed to accomplish its purposes and objectives. §30009.

The Coastal Act's goals are binding on both the Coastal Commission and local government and include: (1) maximizing, expanding and maintaining public access (§§ 30210-14); (2) expanding and protecting public recreation opportunities (§§ 30220-24); 3) protecting and enhancing marine resources including biotic life (§§ 30230-37); and (4) protecting and enhancing land resources (§§ 30240-44). The supremacy of these statewide policies over local, parochial concerns is a primary purpose of the Coastal Act, and the Coastal Commission is therefore given the ultimate authority under the Coastal Act and its interpretation. Pratt Construction Co. v. California Coastal Comm., (2008) 162 Cal.App.4th 1068, 1075-76.

Because local areas within the coastal zone may have unique issues not amenable to centralized administration, Coastal the Act "encourage[s] state and local initiatives and cooperation in preparing procedures to implement coordinated planning and development" in the coastal zone. §30001.5; Ibarra v. California Coastal Comm., *supra*, 182 Cal.App.3d at 694-96. To that end, the Coastal Act requires that "each local government lying, in whole or in part, within the coastal zone" prepare a local coastal program ("LCP"). §30500(a). The local government prepares the LCP in consultation with the Coastal Commission and with full public participation. §§ 30500(a), (c), 30503; McAllister v. California Coastal Comm., (2009) 169 Cal.App.4th 912,

[1] All further statutory references are to the Public Resources Code unless otherwise stated.

930, 953.

The LCP provides a comprehensive plan for development within the coastal zone with a focus on preserving and enhancing the overall quality of the coastal zone environment as well as expanding and enhancing public access. Citizens of Goleta Valley v. Board of Supervisors, (1990) 52 Cal.3d 553, 571. The Coastal Act defines a LCP as:

> "[A] local government's (a) land use plans, (b) zoning ordinances, (c) zoning district maps, and (d) within sensitive coast resource areas, other implementing actions, which, when taken together, meet the requirements of, and implement the provisions and policies of this division [the Coastal Act] at the local level." §30108.6.

Thus, the LCP consists of a LUP[2] and the implementing actions of zoning ordinances, district maps, and other implementing actions ("LIP"). Yost v. Thomas, *supra*, 36 Cal.3d at 571-72. These may be prepared together or sequentially, and may be prepared separately for separate geographical areas or "segments" of a local coastal zone. §30511.

Under normal circumstances, the local government drafts a LCP in accordance with Coastal Commission guidelines (*See* §§ 30501, 30503), and the local government's governing body adopts the proposed LCP as being in conformity with provisions of the Coastal Act. §30510. The local government then submits the LCP to the Coastal Commission for review and certification. §30511(a). In making this determination, the Commission first reviews the LUP for conformity with the policies in the Coastal Act. City of Chula Vista v. Superior Court, (1982) 133 Cal.App.3d 472, 481; §§ 30500-26. After the required public hearing(s), it may certify or not certify all or a portion of the LUP. §§ 30512, 30512.2. If the Coastal Commission does not certify the LUP, it must provide written reasons for not certifying and may suggest changes to the local government, that if enacted, would result in certification of the LUP. The Commission does not normally have the authority to change the LUP through its own action or to require the local government to do so. Ibid.

Once the LUP is certified, the Commission reviews the LIP to determine whether those items are sufficient to implement the policies of the certified LUP. §30513. If the Commission determines the LIP provisions are adequate, it certifies the LCP. As with the LUP, if the Commission denies certification of the LIP, it may suggest modifications that, if adopted, would result in certification of the LCP. Ibid. The Coastal Commission has no authority to impose either an LUP or a LIP on local governments. Ibarra v. California Coastal Comm., *supra*, 182 Cal.App.3d at 696.

2. The City's CDP Authority

The Coastal Act requires, with narrow exceptions, a CDP for any development in the coastal zone in addition to any other permit required. §30600. The authority to issue a CDP is

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[2]An LUP is defined as: "[T]he relevant portions of a local government's general plan, or local coastal element which are sufficiently detailed to indicate the kinds, location, and intensity of land uses, the applicable resource protection and development policies and, where necessary, a listing of implementing actions." §30108.5.

initially vested in the Coastal Commission.

The Coastal Act expressly recognizes the need to "rely heavily" on local government "[t]o achieve maximum responsiveness to local conditions, accountability, and public accessibility .... " §30004(a); Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles (2012) 55 Cal.4th 783, 794.

A local government may obtain authority to issue a CDP several different ways. The authority to issue CDPs automatically passes from the Coastal Commission to the local government once the LCP is certified. §30519(a). Prior to certification of its LCP, a local government may accept the authority and voluntarily adopt necessary procedural ordinances for processing CDPs. §30600(b). This option is discretionary with the local government, and an applicant must obtain a CDP from the Coastal Commission if the local government's LCP has not been certified and it has not chosen this option. Pub. Res. Code §30600(c). A local agency without a certified LCP, or the Commission on appeal, must find that the permitted development both conforms to Chapter 3 policies and will not prejudice the local government's ability to prepare a LCP that conforms with Chapter 3 policies. §30604(a).

All land west of Lincoln Boulevard in Venice, California is located in the "Coastal Zone" established by the Coastal Act. §§ 30001.5; 30103(a). The City does not have a certified LCP, but it does have a LUP for Venice. AR 9. The City assumed primary authority from the Coastal Commission to issue CDPs pursuant to section 30600(b), (c). Since then, the City has had sole authority to process CDP applications in the Venice Coastal Zone single permit jurisdiction.

CDP applications for properties in the Venice Coastal Zone are first submitted to Planning or the City Engineer. LAMC §12.20.2(D). Once the Planning Department approves or denies the permit, the decision may be appealed to the Planning Commission. *See* LAMC §12.20.2(H)

3. Appeal to the Commission

Whether or not there is an appeal to the Planning Commission, the City's CDP may be appealed to the Coastal Commission. §3060(a). Because the City does not have a certified LCP, any person, including the executive director or two members of the Commission, may appeal the City's issuance of a CDP within 20 working days. Cal. Code Regs. ("CCR") §13332. The grounds for appeal are limited to whether the project conforms with the Chapter 3 policies of the Coastal Act. §30604(a).

The appeal is a two-step process. First, the Commission decides whether the appeal raises a "substantial issue" of compliance with Chapter 3 policies. §30625(b); 14 CCR §13115(b). If the Commission decides that the appeal raises a substantial issue, then the City's CDP is nullified, and the Commission conducts a *de novo* review of the permit. §§ 30621(a), 30625(b)(2); Kaczorowski v. Mendocino County Board of Supervisors, ("Kaczorowski") (2001) 88 Cal.App.4th 564, 569.

On *de novo* review, the Commission takes jurisdiction over the project and decides whether to approve or deny the CDP. 14 CCR §13115. In evaluating Chapter 3 policy compliance, the Venice LUP is advisory in nature and may provide guidance for the appeal. AR 2512. The Commission hears the CDP application as if no local governmental unit was previously involved, "deciding for itself whether the proposed project satisfies legal standards and requirements." Kaczorowski, *supra,* 88 Cal.App.4th at 569. Once the Commission has assumed jurisdiction for the

project it retains jurisdiction to consider modifications to the project. *See e.g. Sec.* Nat'l Guar., Inc. v. California Coastal Com., (2008) 159 Cal. App. 4th 402, 408.

4. Pertinent Chapter 3 and Venice LUP Policies

The Coastal Act includes coastal protection policies, commonly referred to as "Chapter 3 policies," which are the standards by which the permissibility of proposed development is determined. §30200(a). The Coastal Act must be liberally construed to accomplish its purposes (§30009), and any conflict between the Chapter 3 policies should be resolved in a manner which on balance is the most protective of significant coastal resources. §30007.5.

Under Chapter 3, permitted development shall be visually compatible with the character of the surrounding areas. §30251. New development shall, where appropriate, protect special communities and neighborhoods that are popular visitor destination points because of their unique characteristic. §30253.

Venice LUP Policy I.A.2 seeks to "[e]nsure that the character and scale of existing single-family neighborhoods is maintained" and allow for infill development "that it is compatible with and maintains the density, character and scale of the existing development." AR 438. Venice LUP Policy I.E.1 states that "Venice's unique social and architectural diversity should be protected." AR 458. To that end, Policy I.E.2 states that "new developments..."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. AR 458-59. "All new development and renovations should respect the "scale, massing, and landscape of existing residential neighborhoods." AR 459. Varied styles of architecture are encouraged. AR 459 (Policy I.E.3). The maximum height allowed in the Project's area is 25 feet. AR 20.

C. Statement of Facts[3]

1. Background

In March 2016, Real Party Pied a Terre was grant deeded the property at 2325 Wilson, which is located on the corner of Wilson and Mildred Avenues. AR 16, 58. The Wilson Avenue neighborhood is a low-density, single-family residential neighborhood with predominantly single-story homes. AR 51-55. 2325 Wilson is a 4800 square foot lot developed with a one-story 700-square foot home. AR 7, 55.

Only July 6, 2016, Real Party Pied a Terre filed with the Planning Department applications for a CDP and Mello Act Compliance determination for the Project. AR 77-85.[4] Real Party sought to demolish the existing single-family residence and construct a new two-story, 3400 square foot single-family residence on a corner lot with a 500 square foot roof deck and 370 square foot attached garage. AR 7, 59. The Project floor to area ratio ("FAR") – the ratio of a structure's total floor area to lot size – of .708. AR 55. The Project observes the City's height and setback

[3] Petitioners request judicial notice of (1) Frequently Asked Questions: The Coastal Commission Permit Appeal Process (Ex. A), (2) Google Maps Printout showing distance between 2325 Wilson and 641-651 Mildred Avenue (Ex. B), and (3) ZIMAS Printout showing search results for address "647 Wilson Avenue" (Ex. C). The requests are granted. Evid. Code §452(b), (h).

[4] Real Party Dan Brunn Architecture is Pied a Terre's representative. AR 73.

requirements. AR 7.

In March 2017, the City approved Real Party Pied a Terre's CDP and Mello Act Compliance Review for the Project. AR 18-19. The City found that the Project conforms Chapter 3 of the Coastal Act and the Venice LUP, and that it would not prejudice the City's ability to prepare a LCP in conformity of the Coastal Act. AR 28, 30. In support of its approval, the City noted several comparable projects had recently been approved by the Commission. AR 31-32.

The City found that "existing residential structures within 100 feet [of the Project] are comprised of mostly one-story and two-story structures". AR 29. The massing is consistent with two-story structures in the area where the second story is a flat roofline. AR 29. Of the "25 homes fronting Wilson Avenue, 10 are two-story and many other homes in the immediate vicinity are two-stories". AR 29. The Project is one foot below the permissible height limit and the residential floor area is 70% of permissible. AR 29.

The City compared the Project to five other residences within the Southeast Venice area, and the three with listed square footage have between 3,313 and 3,503 square feet, and four of the five have two stories. AR 24-25. The City also found that the Project is consistent with the Venice LUP-which the Commission has certified as conforming to the Chapter 3 policies of the Coastal Act. AR 31. The City found that the Project is "in conformity with Chapter 3 of the Coastal Act." AR 28.

2. Appeal of the CDP

On April 17, 2017, 26 Venice residents, including Petitioners, filed an appeal of the CDP with the Commission. AR 258-61. The appellants argued that the City's findings regarding the CDP were not supported by evidence. They asserted, *inter alia*, that the Project is grossly incompatible with the existing neighborhood, will set an adverse precedent against which new developments will be evaluated, that the City improperly analyzed the Project's compatibility with the surrounding neighborhood by examining a 100-foot radius rather than the surrounding block, and that the Project will prejudice the City's ability to prepare a LCP in conformance with Chapter 3. AR 263-65.

The appellants included an analysis on the mass and scale compatibility of the Project with the neighborhood showing that the Project's .708 FAR is nearly double the average of the block (AR 267), past staff reports from the Commission that used what the appellants asserted to be the correct methodology (AR 602, 607, 625, 631), and argument that previous Commission approvals of development in Venice pursuant to *de minimis* waivers was prejudicing the City's ability to prepare a LCP. AR 338, 341-43, 349-51, 565-66, 626, 632. Appellants also argued that none of the comparables cited by the City were located in low-density, single-family residential neighborhoods in the Venice Coastal Zone, making the comparisons fallacious. AR 265. Appellants further challenged the challenged the decision to declare the Project categorically exempt from CEQA, arguing that its incompatibility with the surrounding neighborhood will result in a significant effect on the environment. AR 265.

3. The Appeal Hearing

On May 19, 2017, Commission staff issued a staff report recommending that the Commission determine that the appeal did not raise a substantial issue. AR 1. The staff report explained that, contrary to the appellants' assertions, the Project is consistent with the development

standards of the Venice LUP, and by extension, Chapter 3 of the Coastal Act, and that the Project will not prejudice the City's development of a LCP. AR 2. The report notes that the Commission considers five factors in determining whether the appeal raises a substantial issue as to conformity with Chapter 3 of the Coastal Act: (1) the degree of factual and legal support for the local government's decision, (2) the extent and scope of the development, (3) the significance of the coastal resources affected, (4) the precedential value of the local government's decision, and (5) whether the appeal raises local issues, or those of regional or statewide significance. AR 8. The report concludes that analysis of all five factors demonstrates that the Project's CDP does not raise any substantial issue. AR 13-14.

The staff report concluded that the appellants' contention that the Project is inconsistent with the community character of the neighborhood was unsubstantiated because the Project is consistent with the height, setbacks, and FAR of the certified Venice LUP, other single-family residences in the area, and with past Commission actions. AR 12. A maximum FAR is not a development standard in the LUP and the appellants failed to show how a FAR that is larger than the homes of the surrounding development is inconsistent with the Coastal Act. The appellants' examples showed an average FAR on both sides of Wilson Avenue for the 2325 Wilson block and one block to the south with an average FAR of .455, but they did not include adjacent residences to the north or residences along Boone Avenue one block to the west that would have increased the average FAR calculation. AR 2, 11. Many of the residences surveyed by the appellants were built several decades ago and are smaller than today's homes. AR 11. As such, the Commission reviews past Commission approvals in an area to determine whether a project is consistent with community character, mass, and scale. AR 11.

The report noted that 2325 Wilson is a much larger lot than the typical lot in the neighborhood and the City-approved 3400 square foot residence for that lot is consistent with and smaller than the FARs of other Commission approved residences in the area. AR 11. Further, the LUP does not restrict FAR for residential development in the area. Therefore, the appellants' contentions concerning FAR did not raise a substantial issue. AR 11. The Project also is consistent with previous Commission approvals in the area of Wilson and Mildred which have authorized similarly-sized two-story residences. AR 11-12 (Table 1). The Project is consistent with the height, setbacks, and FAR of the LUP, other single-family residences in the are, and past Commission actions. Therefore, the appellants' contentions that the Project is not consistent with the community character of the neighborhood do not raise a substantial issue. AR 12.[5]

The Commission held a hearing on the matter on June 7, 2017. AR 561. At the hearing, Commission staff presented a slideshow summarizing the findings in the staff report and recommended that the Commission find no substantial issue exists with respect to the CDP's compliance with the Coastal Act. AR 554-60, 561-64. Petitioner Rudisill spoke on behalf of the appellants at the hearing. Rudisill argued that Venice is not being afforded the proper legal protections provided to other neighborhoods. AR 565. Rudisill acknowledged that FAR analysis is not part of the standard of development but argued that it serves as a tool to demonstrate how the Project's sheer size and mass makes it incompatible to the surrounding neighborhood. AR

[5] The report also rejected the appellants' other contentions concerning urban versus suburban area, prejudice to the City' s ability to prepare a LCP, and the City's CEQA exemption. AR 12-13.

565. Rudisill also argued that the staff report improperly compared the Project to prior *de minimis* waivers in analyzing the neighborhood character of the Project. AR 565. Rudisill asserted that such a comparison is improper because the Commission has since stopped issuing such waivers. Rudisill concluded that the Project should be subjected to a compatibility analysis consistent with past Commission decisions and submitted evidence of 13 appeals using what Rudisill asserted to be the proper method. AR 566.

The Commissioners voted unanimously to find there is no substantial issue and to deny a *de novo* appeal. AR 567, 568.

D. Analysis

Petitioners seek a writ of mandate directing the Commission to set aside its denial of the appeal and perform a *de novo* review of the CDP for the Project.

1. Level of Deference

Petitioners argue that the Commission's finding that there is no substantial issue is entitled to a lesser degree of deference from the court. Pet. Op. Br. at 9. Petitioners assert that the Coastal Act presumes the existence of a substantial issue when an appeal is filed. Pet. RJN, Ex. A, p. 3 (Commission's Frequently Asked Questions). Petitioners conclude that a finding of no substantial issue is a high bar for the Commission, and given that the Coastal Act must be liberally interpreted in favor of protecting coastal resources, the Commission must liberally construe appeals as presenting a substantial issue for *de novo* review. Pet. Op. Br. at 9; Reply at 11-12.

Petitioners are wrong. As the Commission correctly notes, no presumption of appeal validity is reflected in the Coastal Act or the Commission's regulations. Opp. at 10-11. A presumption also is inconsistent with Alberstone v. California Coastal Commission, ("Alberstone") (2008) 169 Cal.App.4th 859, 863, which held that the courts review for abuse of discretion the Commission's decision on whether an appeal raises a substantial issue. In doing so, the court also will grant broad deference to the Commission's interpretation of the LCP (or LUP) and will not depart from that determination unless it is clearly erroneous. Ibid.

The case cited by Petitioners, Reddell v. California Coastal Commission, ("Reddell") 180 Cal. App. 4th 956, 965, does not support their argument that the Commission's appeal decision is entitled to less deference. Reddell states only that, in exercising their independent judgment on facts, the courts give deference to the Commission's determinations that are appropriate to the circumstances. The Commission's Frequently Asked Questions states that "the Coastal Act presumes that an appeal raises a substantial issue", but this document is not legally significant. It is written for laymen and avoids explaining legal issues of deference and burden of proof.

As a fallback, Petitioners correctly state that "deference is not abdication". Reply at 3. Petitioners argue that the courts defer to agency interpretations to the extent that the court is prepared to accept "the validity of its reasoning" and "its consistency with earlier and later pronouncements. Yamaha Corp. of America v. State Board of Equalization, (1998) 19 Cal.4th 1, 14 (citation omitted). Petitioners argue that the Commission departed from its previous and customary interpretation of the Coastal Act and LUP in this case and thereby acted inconsistently with its earlier pronouncements. Reply at 3.

Yamaha is a California Supreme Court case governing the deference courts must give to an agency's interpretation of statute, not whether substantial evidence supports the agency's

decision. There are two categories of administrative rules: quasi-legislative in which the agency has been delegated the Legislature's lawmaking power and rules that interpret a statute. If an agency adopts a regulation "within the lawmaking authority delegated to the agency by the Legislature," and "it is reasonably necessary to implement the purpose of the statute, judicial review is at an end." 19 Cal.4th at 10-11. Where the agency is performing an interpretative function for a statute, less deference is required because the courts have ultimate responsibility for construction of the statute, after according weight and respect to the agency's interpretation. Yamaha, *supra*, 19 Cal. 4th at 12.

The amount of weight required is situational and dependent on two broad factors: (1) the possible interpretative advantage of the agency over the courts, (2) the likelihood that the agency's interpretation is correct as based on the thoroughness of its consideration, the validity of its reasoning, its consistency with earlier pronouncements. Id. at 12. Where the legal text is obscure, complex or intertwined with issues of fact and the agency has expertise and technical knowledge, a court is more likely to defer to the agency's opinion. Ibid. Other opinions are entitled to less deference, although pertinent factors include careful consideration by senior agency officials, the long-standing nature of the agency interpretation, indications that the agency's interpretation was contemporary with enactment of the statute, and compliance with the Administrative Procedure Act's requirements of notice and comment in adopting the interpretive rule. Id. at 13.

In sum, the Commission must hear an appeal *de novo* unless it determines that no substantial issue exists as to conformity with Chapter 3. §30625(b). The term "substantial issue" is not defined in the Coastal Act or the pertinent regulations. Where there is a certified LCP (which is not true for Venice), a "substantial issue" is defined as one that presents a "significant question" as to conformity with the certified LCP. 14 CCR §13115. The Commission's determination of "substantial issue" requires evaluation of five factors, one of which is "the degree of factual and legal support for the local government's determination." AR 8; Hines v. California Coastal Corn., (2010) 186 Cal.App.4th 830, 849.

As Petitioners argue, the burden of proof before the Commission is on a developer opposing the appeal to show that no substantial issue exists. Reply at 12. Therefore, it is not true that the Commission had a "limited scope of review" when considering Petitioners' appeal of the City's decision, or that it could deny the appeal if the City's decision was "adequately supported." Opp. at 6, 8. *See* Reply at 12. Rather, the Commission could deny the appeal only if Petitioners failed to raise a substantial issue.

However, once the Commission has determined that no substantial issue exists, the court's review of that decision is for an abuse of discretion. Alberstone, *supra,* 169 Cal.App.4th at 863. Petitioners must show that the Commission's decision that there is no substantial issue is not supported by substantial evidence in light of the whole record. *See* Young v. Gannon, *supra,* 97 Cal.App.4th at 225. If interpretation of the LUP is required as part of this review, the court will make that determination, but will grant broad deference to the Commission's interpretation and will not depart from that determination unless it is clearly erroneous. Alberstone, *supra,* 169 Cal.App.4th at 863. Less deference to the Commission's LUP interpretation may be given if it is inconsistent with earlier pronouncements. *See* Yamaha, *supra,* 19 Cal. 4th at 12. The court must resolve reasonable doubts in favor of the Commission's decision. Paoli v. California Coastal Com. *supra,* 178 Cal.App.3d at 550), and may reverse only where, based on the evidence before the Commission, no reasonable person could have reached the Commission's conclusion that the

appeal raised no substantial issue. *See* La Costa Beach Homeowners Assn. v. California Coastal Com. *supra,* 101 Cal.App.4th at 814.

2. Abuse of Discretion

Petitioners argue that the Commission abused its discretion in making its determination that the Project raised no substantial issue as to conformity with Chapter 3 of the Coastal Act and the Venice LUP. Pet. Op. Br. at 10.

Section 30251 requires that development must be visually compatible with the character of the surrounding area, and section 30253 requires new development to protect special communities and neighborhoods that are popular visitor destination points because of their unique characteristic.

LUP Policy I.E.1 states that 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. AR 458.

LUP Policy I.E.2 provides in relevant part: "All new development and renovations should respect the scale, massing, and landscape of existing residential neighborhoods." AR 459.

LUP Policy I.A.2 requires the Commission to "[p]reserve Stable Single-Family Residential Neighborhoods" and provides that a project must "[e]nsure that the character and scale of existing single-family neighborhoods is maintained and allow for infill development provided that it is compatible with and maintains the density, character and scale of the existing development." AR 438.

a. Methodology

Petitioners challenge the methodology used by the Commission in making its determination.

(i). Limitation to the Subject Block

Petitioners argue that the Commission improperly compared the Project to projects in the entire Southeast Venice area rather than the Wilson Avenue 2300 and 2400 blocks. Pet. Op. Br. at 14-15. The Commission relied on projects up to five blocks away in the Southeast Venice subarea. AR 55. Petitioners argue this exceeds the appropriate scope of review and disguises the Project's incompatibility with the immediate neighborhood. Pet. Op. Br. at 15. Petitioners also argue that the Commission has historically interpreted LUP policies regarding mass and scale consistency to mean that a proposed project should be compared to development on the same block. Pet. Op. Br. at 16 (citing four projects evaluating the same block).

Asserting that Petitioners' reading of the law is too narrow, the Commission argues that it properly compared the Project both to homes in the overall area and the immediate 2300 block. Opp. at 11-12. Section 30251 requires compatibility with the character of the "surrounding areas" and LUP Policies I.E.2 and I.A.2 refer to the scale, massing, and character of existing "neighborhoods". Opp. at 12. The Commission asserts that usage of plural terms means the requirements cannot refer to a single block, making comparison to homes outside of the Project's immediate block proper. Opp. at 13.

Petitioners reply that section 30251 and the relevant LUP policies use plurals because Venice has many unique neighborhoods. According to Petitioners, the Commission's interpretation of the statutes and policies eventually would result in no unique Venice

neighborhoods. Reply at 11.

The court sees no reason to interpret section 30251 and LUP Policies I.E.2 and I.A.2 as limiting the Commission's evaluation to a project's block, and the court need not adopt the Commission's interpretation of "areas" and "neighborhoods" to reach this conclusion. In zoning cases, the subjective evaluation of a project's compatibility with the surrounding area or neighborhood generally means its compatibility with more than the single block on which the project is located. The evaluation is a gradient, with comparison of the subject block constituting the most important consideration and comparison of adjacent blocks of diminishing value the farther removed they are from the project site. For a corner lot, the evaluation must necessarily consider the block as viewed down both streets of the corner. The gradient also is dependent on whether a specific insular neighborhood with boundaries can be identified that is differentiated from the next neighborhood.

Finally, Petitioners' contention that in four staff reports the Commission compared the project only to its own block does not show adoption of a particular methodology. Four staff reports relying on a set of acts is not a pattern and practice, nor a basis to compel the Commission to follow a particular approach. Nothing in the Coastal Act or LUP requires the Commission to adhere to any particular approach in evaluating compatibility, scale, and mass. *See* Barrie v. California Coastal Commission, (1987) 196 Cal.App.3d 8, 24 (Commission's analysis supported by substantial evidence even if less exhaustive than a prior decision).

The Commission, therefore, was entitled to compare the Project to projects at the subject blocks of Wilson Avenue and Mildred Avenue and to a lesser extent, projects on adjacent blocks with diminishing importance as they moved away from the Project site.[6]

(ii) Use of De Minimis Waiver Projects

Petitioners also challenge the Commission's inclusion of past projects that had been approved through *de minimis* waiver in the comparison. Pet. Op. Br. at 13-14; Reply at 6. Petitioners note that the Commission ceased the practice of issuing *de minimis* waivers in 2014, and that it did so out of concern that such approvals were resulting in the failure to preserve community character and prejudicing the City's ability to obtain a Coastal Act-compliant LCP. Pet. Op. Br. at 14; Reply at 6-7.

It is true that in 2014 the Commission stopped using *de minimis* over concern that this expedited approval precluded public input to preserve community character and public comment about the cumulative impacts of projects. AR 626. This fact does not mean, however, that a project previously approved by the Commission through *de minimis* waiver cannot be considered in evaluating community character. In this matter, the Commission considered three homes approved by *de minimis* waiver (2413, 2429, and 2420 Wilson Avenue) to assess whether the Project is compatible with the community character and would not prejudice the City's ability to certify a complaint LCP. Opp. at 14. As the Commission argues, Petitioners do not show why

[6] Although Petitioners argue that the Project site is in one of only two single family residential low areas of Venice and that comparing the Project to areas outside the subject block does not reflect the uniqueness of the surrounding neighborhood, they fail to identify any unique neighborhood boundaries that the Commission should have used for the comparison. *See* Pet. Op. Br. at 16.

these three projects – which were found to be consistent with Chapter 3 policies and not to have an adverse effect, individually or cumulatively, on coastal resources -- should not be used in assessing the Project's community character. AR 349-51. Opp. at 13. There is no evidence that the CDPs should not have been issued for these three projects. The Commission also points out that these three homes are now constructed, are part of the existing neighborhood, and make up part of the community character. Opp. at 15.[7]

In sum, while the practice of *de minimis* waiver was stopped because it undermined public input on a project's individual and cumulative impact on community character, that does not mean that the Commission should not have used three projects with *de minimis* waivers in the comparison of the Project to community character; Petitioners have made no showing that these three projects are outliers. The Commission did not abuse its discretion in comparing the Project to, *inter alia*, four projects receiving *de minimis* waivers.

b. Compatibility with Existing Neighborhood

Petitioners assert that they presented sufficient evidence to create a substantial issue that the Project is inconsistent with the pertinent Chapter 3 and LUP policies. Pet. Op. Br. at 11. Petitioners assert that the Project violates these policies because its mass, scale, and density are not consistent with the character of the immediate neighborhood. Pet. Op. Br. at 11. Petitioners note that the Project has a FAR of .708, over 50% greater than the average FAR of .455 for homes in the surrounding neighborhood -- which is made up of predominantly single-story homes, including 16 of the 25 homes on Wilson Avenue. Pet. Op. Br. at 11-12. As a result, the Project would undermine the special community character of Venice and prejudice the City's ability to prepare a LCP in violation of sections 30251 and 30253, is significantly greater in scale than the majority of neighborhood homes in violation of LUP Policy I.E.2, and has excessive mass and scale fails to maintain the character and scale of existing single-family homes surrounding the Project site in violation of LUP Policy I.A.2. Pet. Op. Br. at 12.

The Commission found that the Project "does not deviate from surrounding homes... in part because the "massing is consistent with two story structures in the area where the second story is a flat roofline" and "the massing of the proposed development reflects a similar scale to other homes in the area...." AR 11-13. Petitioners take issue with the use of the term "area" rather than "neighborhood" as the LUP uses. Pet. Op. Br. at 12. The only staff report photos shows the Project site from above (AR 16) and from the front of the Project site (AR 17), and Petitioners argue that renderings of the Project site and photos show the Project as grossly out of character with the neighborhood. Pet. Op. Br. at 12-13. AR 533-34. Additionally, community members explained that the Project, which is over 50% larger than the median home on Wilson Avenue, most of which are one to two-story structures, has a block-like shape that maxes out the large corner lot in a single family, low density zoned neighborhood that is incompatible with, and erodes the unique character of, the neighborhood. *See, e.g.,* AR 387-88.

Petitioners acknowledge that the developer provided a letter from its architect in rebuttal to Petitioners' appeal. AR 56. The developer submitted a photograph showing larger structures in

[7] Petitioners note that the waiver forms for the three projects were not signed by the Executive Director as required by section 30624.7 (AR 349-51), but they do not show that this fact has any relevance. Reply at 6.

the neighborhood surrounding the Project which Petitioners criticize as a photo looking down Mildred Avenue, not Wilson Avenue. AR 558. The photograph notations imply that there are two and three-story buildings near the Project site, but no addresses are provided. Ibid. Petitioners describe this evidence as a carefully curated selection of the largest buildings that does not reflect the immediate neighborhood as a whole, nor the area on the Wilson block. AR 55. The developer provided other photographs in the record of larger buildings, but with no addresses or identification or anything to indicate their relationship to the Project site. AR 223-35. Pet. Op. Br. at n.1.

"A decision on the compatibility of the Project with the surrounding area is a subjective decision." Reddell, *supra,* 180 Cal.App.4th at 970. If a "reasonable person could reach the same conclusion as the Commission, [then] the Commission's decision must be upheld." Ibid. Petitioners arguments do not show that the Commission lacked substantial evidence to deny the appeal.

2325 Wilson is a lot cornered on two streets and the subjective compatibility determination must be made by looking down both streets. Petitioners' argument implicitly concedes that the Project is consistent with the mass, scale and character of the neighborhood as viewed on Mildred Avenue, which has two and three-story buildings on the same block. AR 558.

Petitioners' argument focuses on Wilson Avenue. Neither side presents a photo of the Project site as viewed on Wilson Avenue. Instead, Petitioners rely on their own testimony and the FARs. The Commission points out that the Coastal Act does not police FAR limits, a FAR does not limit the mass and scale of a project, and there is no authority justifying use of an average FAR, noting that the City's laws and LUP policies use maximum, not average, standards as a restriction. Opp. at 15. Although they do not agree now (Reply at 8), at the administrative level Petitioners agree that the FAR "is not part of the standard of development." AR 565. Opp. at 15.

In any event, the FARs for the subject block of Wilson Avenue show that seven of the homes have larger FARs than the Project FAR of .708. AR 369 (showing FARs of .900, .849; .834, .831, .825, .763, and .797). Additionally, the Commission points out that 34 structures on the surrounding streets cited by Petitioners have FARs exceeding the Project's FAR. Opp. at 16.

As for the Project's mass and scale, the Commission notes that the Project is a two-story structure with a flat roofline, the Project's height is one foot below the LUP's permissible maximum height, and it will not be the largest home in the area. Opp. at 16-17. The Commission also points out that Petitioners incorrectly state the Project as 4,000 square feet when the proper number value for the residence is 3,400 square feet when considered without the 370 square foot garage. A review of the Project's plan shows that it probably "maxes out the parcel envelope" as Petitioners contend (Pet. Op. Br. at 7), but with mass issues mitigated by wooden decking and balcony step backs. AR 534, 537-39. The Project's square footage is within the range of the homes in the surrounding neighborhood. Opp. at 17. Petitioners' own analysis shows homes of 3005 and 3242 square feet on the 2300 block of Wilson Avenue and two of 2993 and 3059 square feet on the 2400 block. AR 352. Opp. at 16-17. Numerous homes in the adjacent blocks are of similar square footage. Opp. at 17.[8]

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[8] The Commission is correct that Petitioners' reliance on average square footage belies the diversity of home sizes on the Wilson Avenue block, which range greatly depending on when the home was built. Opp. at 17-18. Older homes tend to be smaller than newer homes. The homes on Wilson Avenue range from 700 square feet to 3,242 square feet and merely averaging their

In reply, Petitioners criticize the projects used by the Commission for compatibility as either too far away from Wilson Avenue, as the largest homes on the street, or as obtained through *de minimis* waiver. Reply at 8. They point out that the majority of homes on the 2300 Wilson Avenue block are one-story and smaller than the Project. Reply at 9. Petitioners argue that LUP Policy I.A.2 provides that new development should ensure that the character and scale of existing single-family homes is maintained...." AR 438. The Commission's argument that the Venice neighborhood is an eclectic community with different styles does not mean that it should have different scale; style and massing are two different concepts. The Project is nearly twice the size of the average home on the block and the Commission does not maintain a neighborhood's character by looking only at the largest homes on the block. Reply at 9-10.

While Petitioners are correct that the Commission should look at all the homes on the block, not just the largest, the evidence does not show a failure to do so. Rather, the Commission used the largest homes on Wilson Avenue to demonstrate that the Project -- which on a corner lot that is the largest on the Wilson Avenue 2300 block, and clearly is compatible with the Mildred Avenue block – also is compatible with Wilson Avenue. To the extent that Petitioners believe that LUP Policy I.A.2 requires that the character and scale of the 2300 block of Wilson Avenue should be maintained as small, single-family one-story bungalow homes, the existence of other large structures on the block belies that fact. The Project's corner lot status also is entitled to consideration in the LUP Policy I.A.2 analysis.

Petitioners argue: "What could be a more significant question than the question of whether the development is consistent with the mass, scale, and character of the neighborhood...and whether it will prejudice the City's ability to prepare a Coastal Act-compliant LCP?" Pet. Op. Br. at 10. This question is answered in part. *See post.* Substantial evidence supports the Commission's decision that there is not a substantial issue whether the Project is consistent with mass, scale, and character of the surrounding neighborhood.[9]

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square footage is misleading. AR 369. The Project also is on a lot 1200 square feet larger than the second largest lot on the Wilson Avenue block, but its 700 square foot residence is less than 200 square feet larger than the second largest residence. AR 369.

[9] Petitioners argue that the Commission failed to make a finding under LUP Policy I.A.2, that the Project "is compatible with and maintains the density, character and scale of the existing development." AR 1-14, 438. Pet. Op. Br. at 15. Instead, the Commission focused on "development standards of the certified LUP" (AR 13), failing to analyze the Project's consistency with LUP Policies concerning mass and scale. As a result, the Commission's conclusion that there is no substantial issue fails to bridge the analytical gap required under Topanga, *supra,* 11 Cal.3d at 506. Pet. Op. Br. at 17-18.

The Commission does not respond to this argument. The Commission staff report quoted the pertinent Chapter 3 and LUP policies, including LUP Policy I.A.2. AR 9-10. The staff report evaluated Petitioners' FAR contentions, discussed the Project's height, square footage, lot size, FAR, setbacks, and concluded that it is consistent with the "development policies regarding mass, scale, and character of the certified LUP and, by extension, the Chapter 3 policies of the Coastal Act." AR 13. The report specifically found the Project "consistent with the community character of the neighborhood." AR 13. This is sufficient; the Commission was not required to use the precise language of LUP Policy I.A.2 with respect to mass and scale.

c. Cumulative Impact

The Coastal Act requires a cumulative impacts analysis: "[T]he 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." §30105.5.

Petitioners assert that the Commission abused its discretion in not considering the Project's cumulative impact with other projects on the City's ability to prepare a Coastal Act-compliant LCP. Pet. Op. Br. at 18. In evaluating whether a project would prejudice the City's ability to prepare and adopt a LCP that protects the community's character, the Commission has previous stated: "Protecting community character is a classic cumulative impacts issue." AR 615. Petitioners contend that approval of the Project would establish a precedent for massive, unarticulated home that would adversely affect the special community of Venice and would prejudice the City's ability to prepare a certified LCP for Venice. When the Commission approves an out-of-scale project inconsistent with the Coastal Act, the approval can have adverse impacts on the neighborhood because the City will base future permitting decisions on previous Commission decisions. §30625(c) (local governments shall be guided by Commission decisions). The Project represents a 56% increase in the baseline size of the neighborhood. AR 55. If the Commission continues to approve such out of scale developments, there will be significant adverse cumulative impacts to the scale and character of this low-density residential neighborhood, prejudicing the City's preparation of a Venice LCP. The Commission's failure to address this issue is a deviation from its past practice of considering cumulative impacts. AR 548 (noting cumulative effects), 553 (project sets bad precedent and creates cumulative impact on neighborhood) 608 (project would have adverse cumulative impact on Venice community), 606 (noting cumulative effect), 622, 610-11.

Petitioners correctly point out that the Commission's opposition ignores the cumulative impact issue. Reply at 3. More important, the staff report's analysis failed to address the Project's cumulative impact with other past, present, and future projects on the community and on the City's ability to certify a LCP. AR 14. Petitioners argue that this failure was aggravated by the Commission's intent to change the neighborhood's character:

> "Many of the residences that the appellants surveyed were built several decades ago and are naturally smaller than homes built by today's standards. As such, the Commission typically reviews past Commission action in an area to determine whether or not a proposed project is appropriate with regard to community character, mass, and scale for a specific project in a specific area." AR 11.

In other words, the Commission is focused on the "prevailing pattern of development" (AR 610) and the fact that, in today's expensive home market, developers seek to build larger homes on existing lots to increase market value and accommodate larger families. The Commission therefore principally compares new projects with those it has previously approved rather than to the small homes originally built decades earlier.

The Commission's approach is practical and appropriate, but it runs the risk of changing the character of the community as Petitioners argue. Reply at 5. The "foot in the door" and precedential approval of a larger project can lead to a set of approvals that cumulatively change

the nature of a neighborhood. The Commission should be sensitive to this fact. It was obligated by section 30105.5 to address the Project's cumulative impact and failed to do so. The matter will be remanded to the Commission for evaluation of whether the Project raises a substantial issue of cumulative impact on the neighborhood and the City's ability to certify a LCP.

The Commission failed to proceed in the manner required by law and abused its discretion by not considering the Project's cumulative impact with other approved projects on the character of the neighborhood and the City's ability to certify a LCP.

E. Conclusion

The petition for writ of mandate is granted. A writ shall issue remanding the matter for the Commission to consider whether the appeal raises a substantial issue with respect to the Project's cumulative impact with other approved projects on the character of the neighborhood and the City's ability to certify a LCP. In all other respects, the Petition is denied.

Petitioner's counsel is ordered to prepare a proposed judgment and writ, serve them on counsel for the Commission and Real Parties for approval as to form, wait ten days after service for any objections, meet and confer if there are objections, and then submit the proposed judgment along with a declaration stating the existence/non-existence of any unresolved objections. An OSC re: judgment is set for ~~July 2, 2019~~ July 16 @ 1:30 pm at 1:30 p.m.

Agenda Item: W16d
Application #: A-5-VEN-21-0036
Name: Richard Stanger, Ingrid Marsten, Warren Adler
Position: Oppose

November 12, 2021

California Coastal Commission
301 E. Ocean Boulevard, Suite 300
Long Beach, CA 90802

Dear Commissioners:

We appreciate the Commission's acknowledgement that cumulative effect analyses must be done for projects in Los Angeles' coastal zones. It is important that the Los Angeles City Planning Department also perform legally correct cumulative effects analyses for these projects. In doing so City's planners are obligated to look at the Commission's own cumulative effect analyses as guidance. On November 17th you will be asked to rule on two such analyses for similar projects on similar street settings.

The Coastal Commission analysis for the 822 Angelus Place project (Agenda Item W16b) resulted in a recommended finding of Significant Issue for its adverse effect on community character. The proposed project, over twice the size of the average-sized homes on its block, would harm the neighborhood by continuing the trajectory of home sizes away from the neighborhood character the VLUP intended to protect.

The Staff Report for 610 Mildred Avenue (Agenda Item W16d) is for a project that mirrors the 822 Angelus Place project. This can be seen in Table 1 on the next page. However, its cumulative effect analysis does not adhere to the definition of cumulative effect in the California Coastal Act. This cumulative effect analysis must not be the example for City Planning to follow.

Actually, the adverse cumulative effect will be worse with the 610 Mildred Avenue project. Beach Avenue (610 Mildred Avenue fronts on Beach Avenue) is one of the last "canal" era streets and is narrow. Twenty-one of the 23 lots on the block are 2,700 SF or less. By comparison, Angelus Place is also a narrow (one-way) street, but its lot sizes are much larger with deeper front-yard setbacks. All 26 lots in the 800 block of Angelus Place are above 3,675 SF in size with 24 of them above 4,200 SF, 56% larger than 21 of the 23 Beach Avenue lots. All of Angelus Place lots are also wider. Finally, the street is zoned Multi-Family Residential vs. the Single-Family Residential zoning of Beach Avenue. However, the cumulative effects analyses in the Staff Report for the 610 Mildred Avenue project is inconsistent with the one done for the 822 Angelus Place project.

In past evaluations in the Silver Triangle neighborhood, Commission staff typically listed all properties within study areas that varied in size. Staff then noted that there were some comparably-sized projects and therefore there was no substantial issue. The fact that a large majority of homes were still small, one-story homes was noted but ignored.

Court decisions ruled that this approach did not constitute a cumulative effect analysis as required by the Coastal Act. Nevertheless, staff still uses the same approach under the label of cumulative effect analysis. For the 610 Mildred Avenue project, it expanded the one-block study area (used by City Planning, the applicants, and the appellants) to three blocks, and from 23 homes to 54. It found comparably-sized homes to the 610 Mildred Avenue project within the added blocks and concluded that it therefore did not constitute an adverse cumulative effect.

TABLE 1: COMPARISON OF CUMULATIVE EFFECT ANALYSES

Project Description:	822 Angelus Place	610 Mildred Avenue
Original Size:	816 SF	1,080 SF
Project Size:	2,795 SF	2,834 SF (2,719 SF, de novo)
Street Character:		
Zoning Classification:	MFR	SFR
Width of Street:	26′	28′
Typical Front Yard Depth:	5′	17′
Typical Width of Parcels:	40′	30′
Cumulative Effects Study Area:		
Blocks Included:	1	3
Homes Included:	26	54
Homes on Project Block:	26	23
Cumulative Effect Analysis (for project block, de novo project):		
Average Size (2021):	1,347 SF	1,201 SF
Average Size, Approved Projects:	1,849 SF	1,705 SF
Project vs. Average:	+1,448 SF (107%)	+1,600 SF (143%)
Project vs. Approved:	+ 946 SF (51%)	+1,014 SF (59%)
Adverse Cumulative Effect:		
Staff Conclusion:	Yes	No
Appellant Conclusion:	Yes	Yes

The Staff Report notes that staff worked with the applicants on changes to their design, ignoring the simple fact that the project even with these changes would still be far too large and will continue to have an adverse cumulative effect on its neighbors. The "de novo" project has been reduced in size by 115 SF (<3%), yet is still 1,600 SF (143%) larger

than the 1,201 SF average of homes on this street, and almost 934 SF larger than the next largest home. A smaller difference resulted in a Significant Issue for the similar Angelus Place project.

We believe such "coaching" violates Section 30335.1 of the Coastal Act which states:

"The commission shall provide for appropriate employees on the staff of the commission to assist applicants and other interested parties in connection with matters which are before the commission for action. The assistance rendered by those employees shall be limited to matters of procedure and shall not extend to advice on substantive issues arising out of the provisions of this division, such as advice on the manner in which a proposed development might be made consistent with the policies specified in Chapter 3 (commencing with Section 30200)." [emphasis added]

In conclusion, approving S**taff's cumulative effects analysis for** this project will set an unacceptable example for City Planning because it does not follow the Coastal Act's definition of cumulative effect. On the contrary, the project will clearly continue the trajectory of approvals on Beach Avenue away from the character and scale of the neighborhood the Coastal Act and the Venice Land Use Plan intended to protect. The cumulative effect of the proposed project is a Significant Issue. Unless the project is reduced in size to less than 2,000 SF in the *de novo* phase, it will have an adverse cumulative effect on the character of the neighborhood.

Sincerely,

[signed]	[signed]	[signed]
Richard Stanger 2409 Clark Avenue	Ingrid Marsten 2319 Beach Avenue	Warren Adler 2334 Beach Avenue

cc: Mr. John Ainsworth, Executive Director
Mr. Steve Hudson, District Director
Ms. Shannon Vaughn, Coastal Program Manager
Ms. Jennifer Doyle, Coastal Program Analyst
Mr. Eric Stevens, District Supervisor

Appendix - Beach Avenue Survey Tables

All Square Footages are from L.A. County Assessor's Office unless noted.

Table 1: Past Commission actions on all structures within the survey area since Venice LUP certification in 2001.

Address	Action #	Approval Year	Height	Lot Size (sq.ft.)	Square Footage (original)	(new)
2345 Beach Ave	5-04-174-W	2004	2-story (flat roof)	2,698	565	1,703
			Average Square Footage (original/redeveloped):		565	1,703

Table 2: Past City of Los Angeles Actions local CDP and exemptions issued for redevelopment of all structures within the surveyed area since the Venice LUP certification in 2001.

Address	Action #	Year of Approval	2-story full	2-story compatible	1-story	Lot Size (sq.ft.)	Square Footage (original*)	(new)
2318 Beach Ave**	CDP Cleared	2004		1		4,428	1,119	1,990
2345 Beach Ave	5-04-174-W	2004	1			2,698	565	1,703
2332 Beach Ave	DIR-2003-4284-SPP	2003		1		2,700	735	1,784
2341 Beach Ave	Coastal Cleared	2016			1	2,699	700	700
2337 Beach Ave	CDP Cleared	2004		1		2,699	1,119	1,332
610 Mildred Ave (project)	DIR-2021-3520-CDP-MEL-1A	2021	1			4,101	1,080	2,719
			1	3	1			
			20%	60%	20%			
					Average Square Footage (original/redeveloped):		886	1,705

Note: Sometimes there is no Action # found. ZIMAS/Jurisdiction/Building Permits states only "CDP Cleared" or "Coastal Cleared" and the date.
* when actual data is not available assumes the original square footage of these homes is 1,223 SF, the average of all homes in Table 3.
** 2318 Beach Ave is a 3-unit rental - one structure of 1,364 SF and one of 626 SF.

Table 3: All structures currently within the survey area that were constructed prior to certification of Venice LUP in 2001

Address	Year Built (last renovated)	Lot Size (sq. ft.)	2-story full	2-story compatible	1-story	Square Footage
2324 Beach Ave	1966	2,699			1	1,230
2361 Beach Ave	1956	2,698			1	720
2349 Beach Ave	1994	2,699		1		1,835
2353 Beach Ave	1954	2,698			1	843
2340 Beach Ave	1953	2,439			1	852
2334 Beach Avenue	1989	2,700		1		1,680
2325 Beach Ave	1949	2,700			1	1,080
2333 Beach Ave	1941	2,700			1	810
2319 Beach Ave	1985	2,700	1			1,464
2346 Beach Ave	1994	2,204	1			1,627
2357 Beach Ave	1989	2,698			1	1,014
2317 Beach Ave	1998	2,700			1	1,604
2342 Beach Ave	1923	1,870			1	600
2309 Beach Ave	1921	2,700			1	893
2329 Beach Ave	1921	2,700			1	804
2365 Beach Ave	1930	2,697			1	438
2328 Beach Ave	1997	2,700		1		1,530
			2	3	12	
			12%	18%	71%	
Total Number of Residences in Table 3:						17
Average Square Footage:						1,119

Note: Information from L.A. County Assessor's Files and ZIMA

Note: Average Size of 23 Homes in 2021 = 1,201 SF

Agenda Item W16d
A-5-VEN-21-0036
Charmaine Soo
Oppose

Commissioners of the California Coastal Commission:

This is my letter opposing the proposed residential development at 610 Mildred.

Once again, my Silver Triangle neighborhood is under assault from another BIG house proposed at 610 Mildred Avenue, southwest corner of Mildred and Beach. The proposed development turns its back on the fundamental policies that have been put in-place to "protect Venice's unique community character, a significant coastal resource". And, unfortunately, the City of Los Angeles, has enabled this development to reach this juncture with the California Coastal Commission (CCC).

This development is an example of how the Silver Triangle Neighborhood will cease to be unique and go the way of large box houses on small lots that maximize the square footage of the house and ignore the impact on the people who live in the neighborhood, pedestrians who walk in the area, and negate the charm of the smaller surrounding houses who exist in their shadow. In an attempt to sway the Commission that this house "fits in", the rendering of the proposed house with the adjacent existing property in Exhibit 8, Page 1 of 3 (Sheet A4.5) accurately shows the scale of the house in context as opposed to the proposed house in Exhibit 8, Page 3 of 3 (A4.4).

In order to support the CCC staff recommendation to allow this development to go forward, information on other properties needed to be expanded beyond the Beach Avenue block, and include houses on Mildred Avenue. The reason is obvious, there are no houses on Beach Avenue that are the mass and scale of the proposed development. If the context of the development is Beach Avenue, how do the houses on Mildred substantiate this large house? These other properties cannot be used to justify the mass and scale of this proposed development as it will never be seen/experienced at the same time as the houses on Mildred Avenue.

Despite the revisions/concessions made to the City-approved design, the proposed development does not comply with the mass and scale of the Silver Triangle, and remains, in its latest iteration (Exhibit 8), out of character with the majority of properties not only on Beach Avenue, but the entire Silver Triangle.

I am relying on the CCC to protect the unique community character of the Silver Triangle Neighborhood, as the City of Los Angeles has made it clear that they will not. I am not opposed to houses being renovated or torn down to make way for larger 1- and 2-story houses. I am not opposed to the modern character of the houses that are in-vogue in my neighborhood (although, I do not think that this style is in keeping with the character of the neighborhood, but adding to water-down the current character). I am not opposed to houses that support a lifestyle that is different than mine.

What I do oppose is the size of the houses that are dominating the “skyline” of my neighborhood and at the rapid pace that they continue to proliferate. I have a great deal of uncertainty that the Silver Triangle will remain a neighborhood of houses that are 1,000-2,000 square feet on small lots and a great deal of certainty that my neighborhood is becoming a neighborhood of houses that are 2,000-3,000 square feet on small lots. Each house like the proposed development that is allowed to be built erodes my faith in the CCC’s ability to protect the Silver Triangle and allows the next development the ammunition to justify its mass and scale and character that is not the Silver Triangle neighborhood, and if continued will not be.

Charmaine Soo, Architect
2409 Clark Avenue
Venice, CA 90291

Citizens Preserving Venice

Agenda Item: W16d
Application #: A-5-VEN-21-0036
610 Mildred Avenue
Name: Citizens Preserving Venice
Position: Opposition

November 12, 2021

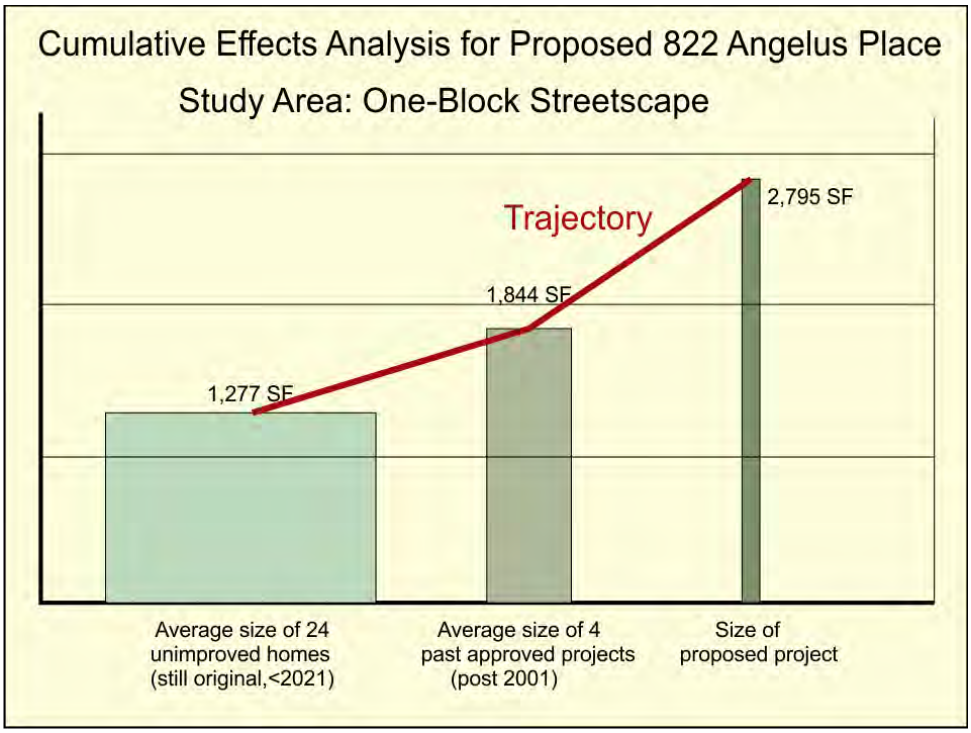
California Coastal Commission
Via email

Dear Commissioners and Staff:

In reviewing the agenda items for the November meeting, we were struck by the difference between the cumulative effect analyses done for the proposed projects at 822 Angelus Place (Item W16b) and for 610 Mildred Avenue (Item W16d). Coastal Act Section 30105.5 defines cumulative effect as follows:

> *"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.*

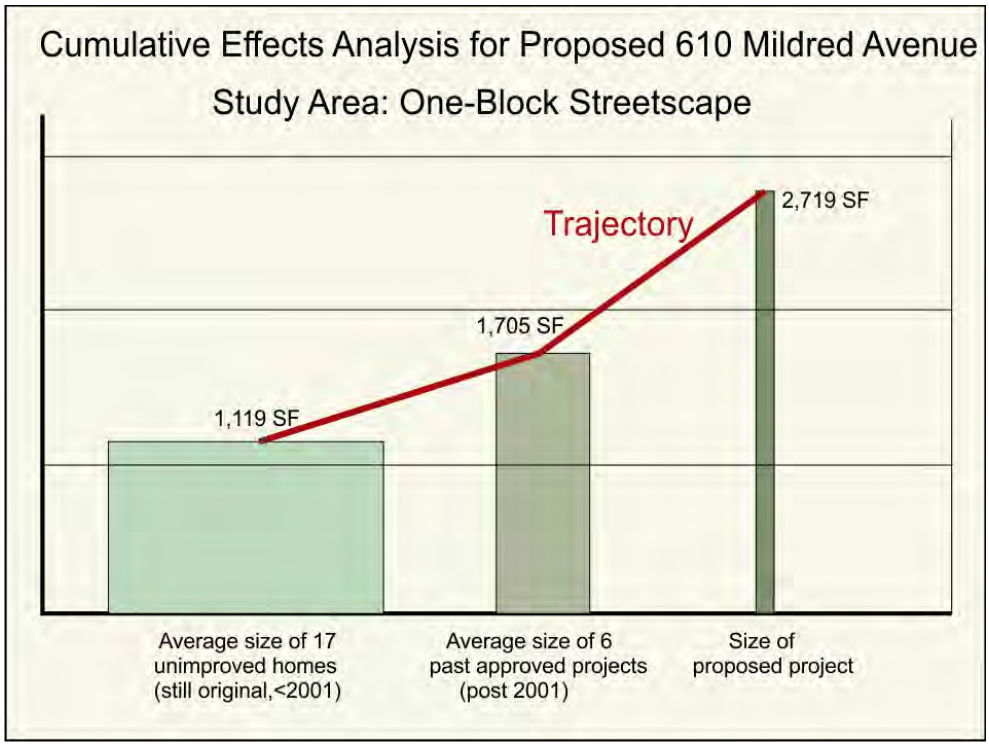
Applying this definition to the one-block study area and associated data used by Commission staff results in the follow graphic:



Clearly, the proposed project will incrementally continue the adverse cumulative effect of past approvals on the community character of Angelus Place. Staff recommended this a Significant Issue.

Staff did not do the equivalent one-block cumulative effect analysis for Mildred Avenue, but arbitrarily expanded the study area to three blocks.

Applying the Commission's data to the single block of Beach Avenue results in the following graphic:



The two graphs are almost identical. Yet Commission staff determined that the Angelus Place project constituted a Significant Issue based on its adverse cumulative effect but did not do so for the Mildred Avenue project.

By expanding the study area from one-block to three and from 23 homes to 54, Commission staff located several comparably large homes approved post-2001. It used those homes to justify a finding of no Significant Issue based on cumulative effect.

We are asking the Commission to find that the 610 Mildred Avenue project has the same adverse cumulative effect on the character of its neighbors as does the 822 Angelus project on Angelus Place.

To avoid the project adding to the adverse cumulative effect of past approvals on the character of Beach Avenue, its approved size should not be greater than the average size of past projects on Beach, 1,705 SF.

Sincerely,

Sue Kaplan, President on behalf of
Citizens Preserving Venice

cc: Mr. John Ainsworth, Executive Director
Mr. Steve Hudson, District Director
Ms. Shannon Vaughn, Coastal Program Manager
Ms. Jennifer Doyle, Coastal Program Analyst
Mr. Eric Stevens, District Supervisor

From:	Robin Rudisill
To:	SouthCoast@Coastal; Doyle, Jennifer@Coastal
Cc:	Sue Kaplan; Richard Stanger; Sabrina Venskus; Ainsworth, John@Coastal; Hudson, Steve@Coastal; Vaughn, Shannon@Coastal; Stevens, Eric@Coastal
Subject:	W16d, 610 Mildred Ave, A-5-VEN-21-0036
Date:	Friday, November 12, 2021 4:09:44 PM

Dear Commissioners and Staff,

The cumulative effect analysis prepared by Staff for this project is not in conformance with the Coastal Act. This is not a matter of opinion or judgement. It is in clear violation. In fact, Staff's analysis is essentially the same analysis as for the projects at 2412 Clement and 2325 Wilson, which two separate Superior Court Judges ruled was in error and an abuse of discretion.

Staff is not considering the incremental effects of the project together with the effects of past projects, the effects of other current projects, and the effects of probable future projects, also known as the trajectory (the path followed by an object moving under the action of given forces). This definition is the essence of what a cumulative effects analysis is, and eliminating one or more parts of this "formula" renders it no longer a cumulative effects analysis but rather a simple comparison to past projects, the very thing that the Courts have said a cumulative effect analysis is not.

This should be a relatively simple error for the Commission to correct. It should not have to fall on the shoulders of citizens and public benefit organizations to force something as simple and as obvious as this to be corrected through a court process.

Please Commissioners, give Staff your direction to follow the Coastal Act definition of cumulative effects in their analysis of community character.

Lastly, please require the De Novo stage of this hearing to be done at a future date, separate from the Substantial Issue hearing. Combining the Substantial Issue and the De Novo hearings at the same meeting prejudices the process in favor of the applicant as it does not provide the appellant or the public a fair opportunity to weigh in on the changes to the project needed in order to resolve the issues once Substantial Issue has been declared. Rather, Staff has already worked with the applicant to make changes and the Commission is unlikely to veer from their staff's recommendation, thus prejudicing the decision.

Thank you for your work, as always. You are our heroes.

For the Love of Los Angeles
and our precious Coast,
Robin Rudisill
(310) 721-2343